



**Council for
Exceptional
Children**

**Council for Exceptional Children's
Initial Summary of Selected Provisions from
Part B Proposed Regulations for the
Individuals With Disabilities Education Act**

State Complaint Procedures

June 12, 2005

State Complaint Procedures

Note: Bold text in left column indicates language not specifically included in IDEA 2004

NPRM Language	Current Regulation	Comments
<p>§ 300.136 Compliance.</p> <p>(a) General. A private school official has the right to submit a complaint to the SEA under §§ 300.151 through 300.153 that the LEA--</p> <p>(1) Did not engage in consultation that was meaningful and timely; or</p> <p>(2) Did not give due consideration to the views of the private school official.</p> <p>(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and</p> <p>(2) The LEA must forward the appropriate documentation to the SEA.</p> <p>(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and</p> <p>(ii) The SEA must forward the appropriate documentation to the Secretary.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>§300.140(b) State complaints</p> <p>(b) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.144 must be filed under the procedures in § 300.151 through 300.153.</p>	<p>§457(c) Complaints</p> <p>(c) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of §§300.451-300.462 may be filed under the procedures in §§300.660-300.662.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>§300.151 Adoption of State complaint procedures.</p>	<p>§300.660 Adoption of State complaint procedures.</p>	

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<p>(a) General. Each SEA must adopt written procedures for--</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--</p> <p>(i) Providing for the filing of a complaint with the SEA; and</p> <p>(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.</p> <p>(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--</p> <p>(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and</p> <p>(2) Appropriate future provision of services for all children with disabilities.</p>	<p>(a) General. Each SEA shall adopt written procedures for—</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.662 by—</p> <p>(i) Providing for the filing of a complaint with the SEA; and</p> <p>(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§300.660-300.662.</p> <p>(b) Remedies for denial of appropriate services. In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:</p> <p>(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and</p> <p>(2) Appropriate future provision of services for all children with disabilities.</p>	<p>OSERS discussion of proposed regulatory changes “Proposed §300.151(b)(1) would remove the reference to monetary reimbursement, so as not to imply that reimbursement would be appropriate in the majority of State complaints.”</p>
<p>§300.152 Minimum State complaint procedures.</p>	<p>§300.661 Minimum State complaint procedures.</p>	<p>OSERS discussion of proposed regulatory changes “Proposed §300.152, regarding</p>

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<p>(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--</p> <p>(A) At the discretion of the public agency, a proposal to resolve the complaint; and</p> <p>(B) With the consent of the parent, an opportunity for the public agency to engage the parent in mediation, or alternative means of dispute resolution;</p> <p>(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit</p>	<p>(a) Time limit; minimum procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to—</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and</p> <p>(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph(a) of this section also must—</p> <p>(1) Permit an extension of the time limit</p>	<p>minimum State complaint procedures, would retain the current provisions in §300.661, with several changes. Proposed §300.152(a) (3) would be added in order to incorporate into the State complaint procedures an opportunity for a public agency to respond to a complaint, including a chance to make a proposal to resolve the complaint, and, with the consent of the parent, to engage the parent in mediation or other alternative means of dispute resolution. This change would encourage meaningful informal resolution of disputes between the parties to the dispute.”</p> <p>OSERS discussion of proposed regulatory changes “Proposed §300.152(b) (1) would add a provision that would allow extensions of the 60-day time limit if the parties agree to extend the timelines so that they can engage in</p>

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<p>under paragraph (a) of this section only if--</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(ii) The parent and the public agency involved agree to extend the time to conduct the activities pursuant to paragraph (a)(3)(B) of this section; and</p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.</p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, the State must set aside the complaint until the conclusion of the procedures in §300.507 or §§300.530 through 300.532.</p> <p>(2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The SEA must inform the complainant to that effect.</p>	<p>under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and</p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section, and due process hearings under §§300.507 and 300.520-300.528.</p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—</p> <p>(i) The hearing decision is binding; and</p> <p>(ii) The SEA must inform the complainant to</p>	<p>mediation or other alternative means of dispute resolution. This change is intended to support cooperative dispute resolution efforts, and not to result in uniform extensions.”</p> <p>OSERS discussion of proposed regulatory changes “Proposed §300.152(c) (1) would revise the language in current §300.661(c) (1) to provide a simplified process for setting aside complaints that also are the subject of a due process hearing, which should aid State implementation of the State complaint process. Finally, current §300.661(c) (3) regarding a complaint involving a public agency’s failure to implement a due process decision would be removed. The enforcement and implementation of due process hearing decisions are matters in the province of State and Federal courts.”</p>

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	<p>that effect.</p> <p>(3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA.</p>	
<p>§300.153 Filing a complaint.</p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.</p> <p>(b) The complaint must include--</p> <p>(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;</p> <p>(2) The facts on which the statement is based;</p> <p>(3) The signature and contact information for the complainant; and</p> <p>(4) If alleging violations against a specific child--</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the school the child is attending;</p> <p>(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;</p> <p>(iv) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p>	<p>§300.662 Filing a complaint.</p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in §§300.660-300.661.</p> <p>(b) The complaint must include—</p> <p>(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and</p> <p>(2) The facts on which the statement is based.</p> <p>(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a).</p>	<p>OSERS discussion of proposed regulatory changes “Proposed §300.153, regarding the filing of a complaint, would retain the current provisions in §300.662, with some changes. Proposed §300.153(b) (3) and (4) would add new information requirements for complaints, similar to the basic notice requirement for filing a due process complaint, in order to give the public agency the information that would allow it to attempt to resolve the complaint at the earliest opportunity. Proposed §300.153(c) would revise the language in current §300.662(c) to require that the complaint must allege a violation that occurred not more than one year prior to the date the complaint is received, removing references to longer periods for continuing violations and for compensatory services claims, to ensure expedited resolution for public agencies and children with disabilities. A one-year timeline is reasonable, and will assist in smooth implementation of the State complaint procedures. Finally, proposed §300.153(d) would add a new requirement that the party filing a complaint forward a copy to the public agency involved at the same time as the party files the complaint with the SEA. This will ensure that the public agency involved has knowledge of the issues raised, and an opportunity to resolve them directly with the complaining party.”</p>

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<p>(c) Except for complaints covered under §300.507(a)(2), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.</p>		