

**West Virginia Department of Education
Office of Special Programs (OSP)**

**Procedures for the
Investigation and
Resolution of State Complaints**

Effective January 2012

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I. AUTHORITY

34 CFR §300.151 *et seq.*

20 U.S.C. 1221e-3

Policy 2419: *Regulations for the Education of Exceptional Students*

II. PURPOSE AND APPLICABILITY

The West Virginia Department of Education (WVDE) adopts the following procedures for investigating and resolving complaints filed under Part B of the Individuals with Disabilities Education Improvement Act (IDEA 2004) and corresponding Federal and State laws and regulations. It is the responsibility of the WVDE to resolve all complaints meeting the requirements of 34 CFR §300.153 and filed in accordance with these procedures.

Complaints alleging a state or public agency has failed to meet the requirements of §§300.132 through 300.135 and 300.137 through 300.144 may also be filed by parents who have enrolled their children with exceptionalities in private schools. These complaints must be filed in accordance with the procedures described in §§300.151 through 300.153. For purposes of these procedures, the term “public agency” shall include all public agencies responsible for providing education to students with exceptionalities.

III. PROVISION OF TECHNICAL ASSISTANCE

The WVDE shall provide information to parents of students with exceptionalities, public agencies, and other interested individuals, including parent training and information centers, protection and advocacy agencies, private schools and other appropriate entities regarding: (a) rights under State and Federal special education laws and regulations; (b) compliance issues; (c) the WVDE’s complaint procedures contained herein; and (d) correction of identified areas of noncompliance.

IV. COMPLAINTS

A. Definition

A state complaint is a charge that a special education law or regulation is not being followed by a public agency. A state complaint includes all of the following components:

1. a signed written statement by an individual or organization which alleges the WVDE, the local education agency or participating public agency has violated a requirement of a federal or state law or regulation that applies to Part B of the IDEA and its implementing regulations, Policy 2419: *Regulations for the Education of Students with Exceptionalities and/or Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data*;
2. includes the facts upon which the allegation(s) is based;
3. the signature and contact information of the complainant; and
4. if alleging violations with respect to a specific student:
 - a) the name of the student and address of the student's residence;
 - b) the name of the school the student is attending;
 - c) in the case of a homeless child or youth, within the meaning of section 7245(2) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434 a (2)], available contact information for the child, and the name of the school the student is attending;
 - d) a description of the nature of the problem of the student, including the facts relating to the problem; and
 - e) a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

The WVDE shall resolve any complaint that contains the aforementioned components, including complaints that raise systemic issues and individual child complaints.

B. Timelines

The WVDE shall investigate and resolve any written state complaint within **sixty (60) calendar days** from the date the complaint is received unless exceptional circumstances justify an extension of the time limit.

The timeline for complaint decisions shall be extended only because "exceptional circumstances" exist with respect to a particular complaint or because the parties agree to extend the time to engage in mediation or other alternative dispute resolution. The exceptional circumstances and the timeline for the extension shall be considered and determined on a case-by-case basis. The district and complainant will be notified in writing of the time of the extension and the basis for the WVDE's decision. Timelines shall not be extended for refusal or failure by the public agency to cooperate with the complaint investigation.

C. Receipt

Any individual, organization or individual from another state may file a state complaint. The WVDE will document receipt of all signed written state complaints. Complaints that have been received via facsimile or email will not be accepted as they do not contain the complainant's original signature and the complaint cannot be verified.

If the complainant is not the parent or legal guardian of the student, the WVDE shall provide the complainant an opportunity to obtain parent/guardian release of information. Upon receipt of a signed parental consent for release of information, the non-parent complainant will be entitled to a copy of the letter of findings upon the conclusion of the complaint investigation.

Upon receipt of the letter of complaint, the WVDE shall forward the complaint, via facsimile, to the public agency's special education director, if one has not already been provided by the complainant.

The complainant and the public agency shall be provided written notification acknowledging receipt of the state complaint, identifying the allegations subject to the investigation, indicating the timeline for resolution, informing the parties of the right to submit additional information relevant to the allegations and identifying the WVDE complaint investigator assigned to resolve the complaint. The written notification shall also include the options available to the parties to resolve the complaint.

D. Sufficiency of Complaint

The WVDE shall determine whether the written statement is sufficient to constitute a state complaint. A complaint shall be considered sufficient if it meets the definition of "*state complaint*" specified in Part A of this section.

The WVDE shall investigate an allegation which pertains to a violation occurring not more than one year prior to the date of receipt unless a longer period is reasonable because the violation is continuing.

If the written statement is sufficient, the WVDE shall acknowledge receipt of the complaint to both parties (and the parent, if the complaint is filed by a non-parent complainant) in writing and conduct a complaint investigation in accordance with Section V of these procedures.

If the written statement is not sufficient, the WVDE shall provide the complainant with written notification that the complaint is not sufficient to merit investigation. The written notice shall provide the reasons for the WVDE's decision and may also refer the complainant to other agencies or offices for information or services, if appropriate.

If a written complaint is received that is also the subject of a due process hearing, the WVDE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue not subject to the hearing decision shall be resolved in accordance with Section VI of these procedures.

If an allegation raised in a complaint has previously been decided in a due process hearing, the hearing decision is binding and the WVDE shall inform the complainant to that effect.

V. OPTIONS FOR RESOLUTION

A. Early Resolution

Either the public agency or the parent may request early resolution (ER) of the issues set forth in the written state complaint prior to the initiation of the investigation. Early resolution is an informal conference conducted by the public agency and parent to discuss the issue(s) specified in the written complaint.

If an ER is achieved, the public agency must submit written verification to the OSP of the mutually developed decision(s). The ER statement must contain: a) the details of the resolution(s); b) verification the parent and the public agency have agreed to the resolution(s); and c) the signatures of both parties.

The timeline for submission of an ER statement is **fifteen (15) calendar days** from the date the public agency is notified a complaint has been filed or as otherwise specified. Early resolution remains an option for either party during the complaint investigation. However, if an ER is not achieved within **15 calendar days** of the parties being notified that a complaint has been filed, the district must submit the Complaint Response Form (CRF) within the required timelines.

Early resolution shall not delay the 60-calendar day timeline for the investigation of a state complaint. In the event the complaint issues cannot be resolved, the same timelines and procedures for investigation of the complaint set forth in Section VI of these procedures shall apply.

In the event that only a *partial resolution* of the complaint issues can be attained by the parties, the WVDE shall investigate any remaining unresolved allegations. A letter of findings (LOF) will be issued to the public agency and complainant in accordance with WVDE timelines and procedures for complaint investigations.

B. Mediation

Either party to the state complaint may request mediation in writing as a means to resolve the issues set forth in the complaint. If both parties agree to take part in mediation, the parent and the public agency **can agree** to extend the 60-day timeline to engage in mediation to resolve the complaint. If the parties involved agree to engage in mediation, and the mediation is not successful in resolving the dispute, the WVDE must ensure the complaint is resolved within the applicable timeline.

Upon receipt of written notice the complaint has been satisfactorily addressed by the public agency and the parent through mediation or early resolution, or has been withdrawn by the complainant, the WVDE will consider the complaint resolved.

The WVDE does not investigate allegations that an agreement reached through mediation has not been implemented. Any such allegation should be filed in a court of competent jurisdiction to be resolved.

VI. INVESTIGATION

The WVDE shall conduct a thorough investigation of the complaint through the collection and review of information submitted by the district and the complainant.

A. Collection of Information

The WVDE shall notify the public agency in writing a complaint has been filed and provide the name of the complainant, the allegation(s) and the facts upon which the allegation(s) is based.

The WVDE shall notify the complainant in writing of the allegations to be investigated and provide the complainant an opportunity to submit additional information, either orally or in writing, within **fifteen (15) calendar days** of receipt of the complainant's letter by the WVDE.

The WVDE shall request appropriate information from the public agency for the purpose of verifying and investigating the allegation(s). In the event the information is not submitted as requested, the WVDE shall conduct the investigation and issue the letter of findings based on the information at hand. Any written information submitted to the WVDE is subject to disclosure as part of the public record in accordance with West Virginia Board of Education Policy 1230: *Freedom of Information Requests*.

The WVDE may use, as appropriate, any or all of the following procedures to investigate the complaint:

- 1) Request copies of existing documents;
- 2) Request answers to written questions;
- 3) Conduct telephone or in-person interviews with school officials, employees, students, the complainant and/or other relevant persons; and/or
- 4) Conduct on-site fact finding.

B. Review of Information

The WVDE shall review the information to determine if the public agency has violated a State or Federal special education law or regulation.

VII: COMPLIANCE DETERMINATION

A. Issuance of Findings

The WVDE shall send to the public agency, and a copy to the parent and/or any complainant who has submitted the required confidentiality release, a letter of findings (LOF) which includes:

- 1) a statement of the issues investigated and any additional violations determined during the course of the investigation when the violations have impacted a provision of a free appropriate public education to the students;
- 2) investigation procedures, findings of fact, applicable State law and regulations;
- 3) conclusions for each of the investigated issues, including a statement of whether or not a violation of State or Federal law and/or regulations has occurred; and
- 4) the WVDE's reason(s) for its final decision(s).

B. Corrective Actions

If it is determined that the public agency has failed to meet a responsibility required by State or Federal law or regulations, the WVDE's LOF shall also include the following:

- 1) the action(s) which must be undertaken by the public agency to correct each identified deficiency and the action(s) to remediate the denial of services, including, as appropriate, the awarding of compensatory services or monetary reimbursement; or
- 2) other corrective action(s) appropriate to the needs of the student and the appropriate future provision of services for all students with exceptionalities (34 CFR §300.151); and
- 3) the timelines for implementing corrective actions.

C. Requests for Investigation Documents

Upon a written parental request for copies of documents submitted by the public agency for use in the complaint investigation, the request will be processed in accordance with West Virginia Board of Education Policy 1230: *Freedom of Information Requests*. Requests must contain an original signature and no facsimiles or emails will be accepted.

VIII. COMPLAINT RESOLUTION

The public agency's submission of corrective actions and subsequent approval of the actions by the WVDE constitute the resolution of the complaint. Any issue(s) resolved by means of the state complaint process may be further addressed through subsequent mediation or a due process hearing.

IX. IMPLEMENTATION OF CORRECTIVE ACTIONS

When the WVDE issues a letter of findings to a public agency which identifies violations of Federal or State law or regulations, the WVDE shall require the public agency to submit documentation verifying the implementation of corrective actions.

A. Timelines

Documentation of corrective actions shall be due within **fifteen (15) calendar days** following the issuance of the LOF unless otherwise specified.

Timelines for completing corrective actions will only be extended in circumstances related to approved solutions for building/renovating classrooms, physical relocation of classes, reassignment/reorganization of personnel, employment of additional personnel, illness of students or parents, parental request to reschedule meetings, or unforeseen circumstances (e.g., natural disasters). A request for an extension of the timelines must be made within **five (5) calendar days** of receipt of the LOF.

The public agency may request technical assistance from the WVDE **within ten calendar (10) days** of receipt of the LOF. A request for technical assistance must be in writing and made at such a time as to not delay the resolution process. Technical assistance may be provided by WVDE staff or the WVDE may refer the public agency to other person(s) to obtain the requested technical assistance (e.g., RESA personnel).

B. Requirements

The WVDE shall require the public agency to complete corrective actions that will accomplish the following:

- 1) eliminate each identified deficiency and, to the extent appropriate, any past effects of such deficiency;
- 2) describe each action the public agency will take to correct identified deficiencies and achieve compliance;
- 3) provide sufficient documentation to verify each required action has been instituted and that the intended results have been achieved; and
- 4) identify the time frame for achieving full compliance, when appropriate.

C. Review

Upon receipt of the corrective actions, the WVDE shall review the public agency's documentation to determine the following:

- 1) If the documentation is acceptable, the WVDE shall provide the public agency written notice, **within ten (10) business days** of receipt of the corrective actions, indicating the documentation is acceptable and the case is closed.
- 2) If the documentation indicates implementation of corrective actions has begun but portions have not been completed and/or an extension is requested, the WVDE shall provide the public agency written notice, **within ten (10) business days** of receipt of the documentation, that approves the corrective actions, negotiates and approves the request for an extension, and/or disapproves inadequate actions.
 - a. If the documentation is disapproved, the public agency must respond and complete further actions as required by the WVDE on or before the date specified in the written notice provided in C.2 above.
 - b. The WVDE shall review the public agency's documentation of corrective actions and approve and close the case **or** disapprove and provide written notice to the public agency of enforcement sanctions as specified in Section X.A **within ten (10) business days** of the review.

X. ENFORCEMENT

A. Failure to Comply

The WVDE shall recommend enforcement sanctions if any of the following occur:

- 1) at any time throughout the implementation of corrective actions, the public agency has failed to respond on or before the timelines specified;
- 2) at any time throughout the implementation of corrective actions, the public agency has failed to respond to the requirements ordered; or
- 3) corrective actions are not approved within **one (1) year** from the issuance of the letter of findings; and
- 4) at any time the public agency has failed to implement the corrective actions in accordance with the timelines specified in corrective action plans.

Right to a Hearing

The WVDE shall provide written notice and reasons for enforcement sanctions to the agency superintendent, the school board's president and the special education director, as well as provide notice of the public agency's right to request a hearing. This

constitutes giving reasonable notice and an opportunity for a hearing as required by 34 CFR 300.197.

If the public agency does not request a hearing **within ten (10) calendar days**, the WVDE shall implement enforcement sanctions as stated in the written notice.

If the public agency requests a hearing, the WVDE shall conduct the hearing in accordance with the fair hearing procedures established in West Virginia Code 18-3-4 and shall reach a final decision of compliance or noncompliance **within thirty (30) calendar days** of the request for a hearing.

B. Sanctions

If the WVDE reaches a final decision of noncompliance (i.e., the public agency has violated Federal or State law and regulations), the WVDE may use any of the following sanctions alone or in combination as a means of enforcement:

1. withhold all funds until the deficiencies are corrected;
2. withhold any administrative funds, maintained by the WVDE, used for the salary of the special education director;
3. redirect funds (e.g., earmark funds for specific activities);
4. remove the public agency's eligibility to apply for any discretionary funds established by the WVDE;
5. cease funding for all subsequent years until deficiencies are corrected if the agency is currently involved in a grant project maintained by the WVDE;
6. request that an audit be conducted of the agency's financial records;
7. direct the administration of the agency's special education programs; and/or
8. fine the agency on a daily and/or monthly basis until the deficiencies are corrected.