

**PROCEDURES FOR SPECIAL EDUCATION COMPLAINTS
IOWA DEPARTMENT OF EDUCATION
PUBLIC DISSEMINATION**

I. What is a “state complaint”?

A complaint is a signed, written statement alleging that a school district and/or Area Education Agency (AEA) (or other public agency involved with special education, such as the Iowa Department of Education) violated a requirement of the Individuals with Disabilities Education Act (IDEA) or a state law or rule that implements IDEA.

II. Who handles and investigates state complaints?

The Iowa Department of Education (DE) investigates complaints filed under the IDEA:

IDEA Complaint Investigation Team
Iowa Department of Education
400 E. Fourteenth Street
Grimes State Office Building
Des Moines, Iowa 50319

An assigned complaint investigator or investigators will investigate the complaint and will make a written decision within 60 calendar days of receipt of the complaint (unless an extension is granted).

III. Who may file a complaint?

An organization or individual may file a signed, written complaint under the procedures described in 34 C.F.R. sections 300.151-300.153 and in this document. The individual does not have to be a child’s parent. The individual or organization may be from out of state.

This document refers to the filer of the state complaint as “the Complainant.”

The DE is not required to investigate unsigned or anonymous complaints, such as by an unnamed “concerned citizen.” The DE may pursue those allegations through other means, but will not use the state complaint process.

IV. What are the requirements for filing a complaint?

1. What must a state complaint include? The complaint must include:

- A statement that a public agency has violated a requirement of Part B of the Act or of Part 300 or state rules implementing Part 300.

Note: “Part 300” is where the federal special education regulations are located. Title 34, Code of Federal Regulations, Part 300. State rules implementing Part 300 are located in Iowa Administrative Code chapter 281—41.

- The facts on which the statement is based.

Note: The Complainant may attach additional documents or information. The more detail provided in the complaint, the more focus the investigation is likely to have.

- The signature and contact information for the Complainant.
Note: Iowa’s special education rules allow electronic signatures, including electronic signatures on state complaints. Iowa Admin. Code r. 281—41.51(14). Under Iowa law, an electronic signature is “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” Iowa Code § 554D.103(8).
- If alleging violations with respect to a specific child (note: these items are not required if the complaint is not about a specific child), the Complainant must include all of the following information:
 - o The name and address of the residence of the child.
 - o The name of the school the child is attending.
 - o 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.
 - o A “description of the nature of the problem of the child, including facts relating to the problem.”
Note: This particular language is from the federal special education regulations.
 - o A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- The Complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received, in accordance with 34 CFR section 300.151.

2. *Who must get a copy of the state complaint?* The Complainant must send a copy of the complaint to the local educational agency (LEA and AEA) or public agency serving the child at the same time the Complainant files the complaint with the DE.

Note: This is required by the United States Department of Education, which wrote: “The purpose of requiring the party filing the complaint to 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, is to ensure that the public agency involved has knowledge of the issues and an opportunity to resolve them directly with the complaining party at the earliest possible time.”

3. *Is there a form to use to file a state complaint?* A model form for state complaints is in the procedural safeguards notice, available from a school district, an AEA, or the DE. The model form is also available on the DE’s website or from the Complaint Officer. A Complainant is not required to use the model form.

4. *When must a state complaint be filed?* As noted above, a Complainant must file a state complaint within one year of the alleged violation. This is a fixed time and is not extended even when Complainants allege they could not have known about the alleged violation within one year, based on regulatory history from the United States Department of Education.

5. *What are the permissible subjects of a state complaint?* As noted above, a Complainant may allege any violation of the IDEA or state or federal special education rules, including the

identification, evaluation, placement, or provision of a free appropriate public education to a child with a disability. Rule 281—41.153(2). In addition, state complaints may contain allegations of other matters under special education law, including the following:

- Failure of a public agency to implement a decision after a due process hearing, a resolution meeting agreement, or a mediation agreement [Rule 281—41.153(5)].
- Failure of a public agency to comply with the IDEA’s staff licensure requirements [Rule 281—41.156(5)].
- Failure to meet the IDEA’s requirement that students in accredited nonpublic schools have “equitable” participation in Part B funded activities [Rule 281—41.140(3)].

Note: The DE will investigate allegations of violation of other law (e.g., seclusion and restraint regulations) in an IDEA state complaint only to the extent that the violation of the other law resulted in a violation of state or federal special education statutes or rules.

V. What procedures will the DE follow when it receives a complaint?

- 1) *DE opens the record and assigns a complaint investigator.* When the DE receives a complaint, DE staff members assign the complaint a number and enter data information about the complaint into the DE’s dispute resolution data system. Hard copies, if provided, are maintained in a folder with the complaint name and number on a cover sheet. The DE assigns one or more investigators, who must not have a personal or professional interest in the outcome of the investigation.
- 2) *DE sends a copy of the Procedural Safeguards Notice.* DE staff members send the most current version of the procedural safeguards notice required by 34 C.F.R. section 300.504 if the complaint is filed by a parent and this is the first state complaint filed by this parent during the school year.
- 3) *DE determines whether the Complainant sent a copy to the public agencies.* The DE will determine within five business days whether the Complainant has provided a copy of the complaint to all required parties (the district, the AEA, and the DE). The DE will contact the Complainant, advising that until all required parties have a copy, the investigation will not proceed and the 60-day timeline will not begin.
- 4) *DE determines whether the complaint is proper in form.* On the day the complaint is received, the DE decides whether the complaint is proper in form and within the DE’s jurisdiction under the IDEA. If the complaint is not proper in form, the DE will notify the Complainant within 10 business days that the complaint or parts of the complaint do not meet the requirements. The DE will provide a reason. The DE will indicate (a) that the complaint will be dismissed if not revised within two weeks of receipt of the notice; and (b) the complaint will not be investigated and timelines will not start until the missing content is provided. The Complainant may revise the complaint. If the revised complaint contains allegations for which the state can proceed, timelines will be adjusted. When possible, the DE will inform the Complainant of the appropriate agency, entity or process to address concerns that do not meet the complaint requirements (e.g., Board of Educational Examiners).

- 5) *DE calculates the decision timeline.* If the complaint is considered proper in form, Day One of the 60-day timeline is on the calendar day immediately following the date on which all required parties received the complaint. (Faxes and e-mails will be treated identical to mail arriving in the DE or bureau; *e.g.*, faxes and e-mails arriving after office hours will be date-stamped with the first date the office is open following receipt of the fax or e-mail).
- 6) *DE offers dispute resolution options.* Because OSEP encourages states to offer mediation when a complaint is filed, the DE promotes building cooperative, collaborative relationships by supporting the use of the AEA Mediator process or the Special Education Mediation process. Either or both of these options are voluntary. As soon as possible after receipt of the complaint, the Complainant will be informed, usually by telephone, in writing, or both, of the following options:
 - *AEA Mediator process.* The AEA Mediator is an objective third party who has received mediation training and is employed by an AEA. The AEA Mediator will lead a meeting and help all parties seek common ground and solutions. If the meeting is successful, the parties will devise and implement a written plan acceptable to all. The services are available by contacting the AEA. (A State mediator can be requested to serve as an AEA Mediator if parties desire.) If the parties cannot agree on an appropriate course of action, the complainant may continue with the complaint process.
 - *Mediation Conference.* The DE provides a trained neutral mediator. Rules 281—41.506, 41.1002. If the conference results in an agreement about some or all of the issues in the complaint, the parties sign a legally binding agreement. If the parties cannot reach agreement, the complaint process will continue.

If the Complainant decides to use the AEA Mediator process and expresses that no further involvement by the DE is necessary, the Complainant will be asked to provide a statement in writing that the complaint be withdrawn. The DE will keep the complaint open if requested by the Complainant.

If the Complainant decides to use the Mediation Conference and expresses that no further involvement in the state complaint is necessary, the DE will open a mediation file and follow mediation procedures and will close the state complaint. The DE will keep the complaint open if requested by the Complainant.

The parties may voluntarily resolve a portion of the state complaint. In that event, the DE will investigate the unresolved allegations.

A party may use either of these processes without dismissing the complaint. If the parties decide to use mediation or other alternative dispute resolution processes, the parties will be asked whether the 60-day timeline for resolving the state complaint should be extended. It will be extended upon agreement. Rule 281—41.152(2)“a”(2). However, if the Complainant has expressed the desire to completely drop the complaint, refer to procedures outlined above.

- 7) *Respondents are given an opportunity to provide a response and proposed resolution.* The DE must include an opportunity for the district/AEA to respond to the complaint including,

at a minimum, a proposal to resolve the complaint. [Rule 281—41.152(1)“c”; 34 CFR 300.152(a); 20 U.S.C. 1221e-3]. The DE will send a letter informing the district and AEA of this opportunity. The DE provides 20 calendar days to provide a response and proposed resolution.

- a. The responding agency may propose a resolution to address the allegations in the complaint. If the Complainant accepts the proposed resolution, the DE will review it in case there are any systemic concerns requiring investigation.
 - b. If the Complainant does not agree to the proposed resolution, the public agencies may revise their proposal for further consideration by the Complainant or may request that the DE investigate.
 - c. If the Complainant accepts the proposed resolution and the DE concludes that no systemic issues require investigation, the complaint will be closed as “withdrawn” or “dismissed.”
- 8) *The DE reviews the public agencies’ response and conducts an investigation.* If the public agencies do not offer a proposal to resolve the complaint, or the proposal to resolve the complaint was not acceptable to the complainant, or parties were not agreeable to use other alternative ways of resolving the allegation, the Complaint Officer will investigate the complaint.

The Complaint Officer will remind the public agencies of their opportunity to file a response, if they have not done so already.

CAUTION: If the public agencies do not respond to the allegations in the complaint, the DE may deem the public agencies to have admitted or conceded the truth of the allegations in the complaint.

The Complaint Officer will ask the parties to submit any materials they wish the DE to consider, any witnesses they wish the DE to interview, etc., within a specified timeline. At the discretion of the DE, the DE may hire a private, contracted, impartial investigator.

If the DE is named, the DE may investigate or may make arrangements with an outside party to resolve the complaint depending on the facts of the particular complaint; however, the DE remains responsible for complying with all steps required by state IDEA complaint rules.

Note: The DE must provide the Complainant with an opportunity to provide additional information regarding the complaint. Iowa Admin. Code r. 281—41.152(1).

- 9) *The DE makes the following determinations as to additional alleged violations.* If new information submitted by the Complainant is on a different or unrelated incident, the new information will generally be treated as a separate complaint. If the information submitted were on the same incident, as a general rule, the DE will treat the new information as an amendment to the original complaint. The DE will determine whether the new information constitutes a new complaint or whether it is related to the pending complaint.
- 10) *In its discretion, the DE conducts interviews.* When a party wants the Complaint Officer to contact certain individuals as part of the investigation, the DE will do so in its discretion. The

Complaint Officer will attempt to contact all pertinent people during this stage to obtain alleged required information. As a general rule, the Complaint Officer will interview the Complainant by telephone, during which additional information may be gathered and the issues clarified.

11) *The DE monitors timelines for its decision.* The DE will issue a decision within 60 days after receipt of the complaint. Rule 281—41.152(1). The DE will permit an extension of this timeline in only two circumstances: (1) the parties agree to an extension while they pursue mediation [See # 8, above]; and (2) if “exceptional circumstances exist concerning a particular complaint.” Rule 281—41.152(2). Exceptional circumstances include but are not limited to the following:

- The investigation is hindered by the unanticipated unavailability of necessary parties or information.
- Either the agency or Complainant submits additional information that changes the course of the investigation.
- The Complainant submits large volumes of additional information at a date making it impossible to review and stay within the timeline.

Exceptional circumstances do not include the following, according to the United States Department of Education:

- Staff shortages or caseload.
- School vacations or breaks.
- The use of mediation or negotiations, without an agreement to extend the decision timeline.

12) *At its discretion, the DE may go on-site as part of an investigation.* The DE typically will conduct the investigation without going on-site. Depending on the nature of the allegations, as determined by professional judgment, the DE may decide to visit on-site. The Complaint Officer will provide notice to the parties of the on-site investigation and make arrangements with the agency whose location will be inspected.

13) *The DE will review the record.* The Complaint Officer shall review all relevant information and make an independent determination whether the public agency has violated a requirement of federal or state special education statute, regulation or rule.

14) *The DE will make a decision.* The DE will send a written decision of the investigation (using the 60-calendar day time limit, unless extended) to the parties. The decision shall address each allegation in the complaint. The decision shall provide the DE’s findings of fact, conclusions of law, and the reasons for the DE’s decision. The DE’s consultants in charge of school district and AEA monitoring will be given a copy of the findings, if at least one allegation is confirmed.

A Complainant will only be provided personally identifiable information about a student if the Complainant is the student’s parent or has a release of information form signed by someone meeting the IDEA’s definition of parent. In all other cases, a Complainant will receive a redacted decision.

Internal Procedure: No later than ten days before the due date, the assigned complaint investigator or investigators will circulate a confidential draft to the State Director of Special Education and the Administrator for the Division of Learning and Results. At least three days before the due date, a final draft will be prepared for signature by the Complaint Investigators, the Complaint Officer, the State Director of Special Education and the Administrator for the Division of Learning and Results.

- 15) *The DE may provide optional suggestions for improvement.* The complaint investigator, in the complaint investigator's sole discretion, may provide suggestions for improvement to the public agencies. These suggestions are optional to implement and will not be monitored. The complaint investigator may offer such suggestions for confirmed or unconfirmed allegations. The DE's authority to offer these suggestions is its authority under state law to act in an "advisory capacity." Iowa Code § 256.1.
- 16) *The DE takes no further action on an unconfirmed complaint.* If the allegations of the complaint are not confirmed, the DE will take no further action and will so advise the parties.
- 17) *The DE orders remedies for confirmed violations.* The DE develops a remedy for each confirmed allegation in a complaint. Rule 281—41.151(2), 41.152(2). If the DE finds a failure to provide appropriate services, the DE must address how to remedy the denial of those services, including, as appropriate, the awarding of compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child. The DE must also consider the appropriate future provision of services for all students with disabilities in the district. Rule 281—41.151(2). The DE's remedial authority also includes technical assistance activities, negotiation, and corrective actions to achieve compliance. Rule 281—41.152(2).

Depending on the facts of a particular complaint, the DE may offer the parties the option to jointly develop a plan to address confirmed violations. See Rule 281—41.152(2) ("negotiations").

If a child is ordered compensatory education and then moves to another district, the public agencies remain responsible for completing corrective action. These options can be used: (1) the former district makes written arrangements with the new school to provide the services and reimburse excess costs; (2) the former district could contract with a private provider; or (3) it could continue to offer the services. The parent needs to be involved in the decision about the compensatory education provided and when it occurs.

- 18) *The DE monitors for timely correction of noncompliance.* The DE must make certain any and all identified noncompliance issues are corrected as soon as possible but in no case later than one year from identification. Based on the facts of each case, the DE may order corrective action to be completed at an earlier time. There may be different deadlines within the same order, depending on the nature of the ordered remedy.

The DE will monitor corrective action timelines and will periodically contact the public agencies, reminding them of the timelines. Failure to adhere to the required timeline will

result in the DE taking available action against the public agency, including but not limited to the actions specified in Rules 281—41.222, 41.600, 41.603 *et seq.*

- 19) *The DE reviews evidence of correction.* The public agencies are required to demonstrate correction ordered in the decision. Acceptable evidence depends on the facts of each case, but may include a new IEP for the child, amended policies, professional development agenda and attendance sheets, a “satisfaction” signed by the Complaint, or a cancelled check. When all of the corrective action has occurred, the DE will close the case notify the parties.

VI. Is the DE’s decision appealable?

The DE’s decision is the final agency action for state complaints. There is no internal administrative appeal or request for reconsideration. The Iowa Administrative Procedure Act (Iowa Code ch. 17A) provides for judicial review of the DE’s decision in a state complaint. Chapter 17A gives a party who is “aggrieved or adversely affected by agency action” the right to seek judicial review by filing a petition for the same in the Iowa District Court for Polk County (home of state government) or in the district court in the county in which the party lives or has its primary office. The DE advises the parties of this provision in each state complaint decision.

Additionally, if the complaint concerns identification, evaluation, placement, or provision of a free appropriate public education, a party may file a due process complaint or seek mediation to resolve the ongoing dispute. The DE advises the parties of this provision in each state complaint decision.

According to the United States Department of Education, there is no appeal of the DE’s state complaint decision to the United States Department of Education.

VII. What is the relationship between state complaints and due process complaints?

- *Raising Issues Also Pending in a Due Process Complaint.* If a state complaint is received that is also the subject of a due process hearing under 34 CFR 300.507 or 300.530 through 300.532; or contains multiple issues, one or more of which are part of that hearing, the DE 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 complaint must be resolved using the time limit and procedures described above. Rule 281—41.152(3).
- *Raising Issues Decided in Previous Due Process Decisions.* If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the DE must inform the Complainant to that effect. Rule 281—41.152(3).
- *Alleging a Public Agency Is Not Complying with a Due Process Decision.* If a complaint alleges a district and/or AEA failed to implement a due process hearing decision rendered by an ALJ, the DE will investigate the allegation. If confirmed, the DE will grant appropriate relief. Rules 281—41.152(3), 41.153(5).

VIII. What happens if an attorney represents a party?

Because the state complaint process is not an administrative proceeding or judicial action, in the event an attorney appears to represent a party, there is no right for an attorney to demand that he or she be present when the DE conducts the investigation (and in particular queries individuals for whom the attorney represents). A request for the presence of an attorney will be considered and a decision made at the sole discretion of the investigator. If an attorney appears for a party, copies of all papers will be sent to the attorney and the attorney's client.

An award of attorneys' fees is not available under the IDEA for state complaint proceedings.

IX. Do these procedures apply to complaints filed under Early ACCESS (IDEA Part C)?

Yes. Iowa's administrative rules for Early ACCESS (early intervention services for infants and toddlers with disabilities, from birth through the third birthday) contain parallel complaint procedures. Iowa Admin. Code rr. 281—120.432 through 281—120.434.

X. What steps is the DE taking to publicize the state complaint process?

The complaint process and a sample form for filing a complaint are included in the procedural safeguards notice. Therefore, LEAs, AEAs, and the DE provide this information to parents. The manual is also on the DE website.

Disability Rights Iowa and other advocacy groups also are aware of the process, as well as the AEA Special Education Directors, and the parents and educators involved with the Family Educator Partnership.

ASK Resource Center, Iowa's parent training and information center, has been provided a copy of the complaint procedures and forms.

Iowa's independent living centers will be provided a copy of the complaint procedures, as well as the procedural safeguards notice.

XI. Are state complaint decisions public? How does the DE protect confidentiality?

A state complaint decision is a public document; however, the personally identifiable information is protected from disclosure under state and federal law. The DE will provide an unredacted state complaint decision to the parents of the child, to persons who have a release of information form signed by a parent of the child, or whenever FERPA permits release of personally identifiable information without parental consent.

If a state complaint decision contains personally identifiable information about more than one child, the DE provides a partially redacted copy to each parent.

If a state complaint decision is subject of a request under Iowa Code chapter 22, before the request is fulfilled, the state complaint team will determine how much redaction is necessary to safeguard parental rights under the IDEA. This may include approval from the complaint investigators, the State Director of Special Education, or one of the DE's attorneys.