

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter E. Special Education**

#### **Part 130. Procedural Requirements and Program Standards**

#### **Subpart 12. State Complaint Procedures**

##### **6 CAR § 130-1201. Filing a complaint.**

(a) An organization or an individual, including those from another state, may file a written, signed complaint with the Division of Elementary and Secondary Education, or the complaint may be made in person by recorded deposition or statement.

(b) Such complaint may be communicated directly or indirectly via other state or federal agencies.

(c) A complaint must include:

(1) A statement that a public agency has violated a requirement of:

(A) Part B of Individuals with Disabilities Education Act or its implementing federal regulations; or

(B) This part;

(2) The specific facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child:

(A) The name and address of the residence of the child;

(B) The name of the school the child is attending;

(C) 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;

(D) A description of the nature of the problem of the child, including facts relating to the problem; and

(E) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(d) The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received in accordance with 34 C.F.R. § 300.151.

(e) 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.

**6 CAR § 130-1202. Preliminary action.**

(a) Complaints received pursuant to 6 CAR § 130-1201 shall be referred to the Special Education Unit of the Division of Elementary and Secondary Education for subsequent investigation and resolution within sixty (60) calendar days after receipt of the complaint, except that an extension of the timeline may be granted if:

(1) It is determined by the Director of the Special Education Unit that exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under state procedures) and the public agency involved agree to extend the time to engage in:

(A) Mediation pursuant to 34 C.F.R. § 300.152(a)(3)(ii); or

(B) Other alternative means of dispute resolution, if available in the state.

(b)(1) Within ten (10) business days of receipt of a written complaint, the director shall have designated a team to conduct an investigation of the allegations.

(2) The complainant and the party under investigation shall be notified in writing of the:

(A) Designated team members; and

(B) General investigation process.

**6 CAR § 130-1203. Team composition.**

Each investigative team shall include:

(1) At least two (2) but no more than five (5) persons; and

(2) Any person whom the Director of the Special Education Unit deems necessary to expedite the investigation and resolve the issues of the complaint.

**6 CAR § 130-1204. Timeline.**

(a) The investigation shall be completed and a written report issued of the findings, decisions, and corrective actions, if any, within sixty (60) calendar days of receipt of the complaint, unless an extension of the timeline is granted by the Director of the Special Education Unit.

(b) Should an extension of the timeline be necessary, the parties to the investigation shall be notified in writing of:

- (1) The reasons for the timeline extension; and
- (2) A projected date for issuance of the report.

**6 CAR § 130-1205. Fact-finding activities.**

(a) The complaint investigation team may use any of a variety of fact-finding activities in the course of a complaint investigation, including, but not limited to:

- (1) Independent on-site data collection, if the SEA determines that an investigation is necessary;
- (2) Off-site data collection;
- (3) Interviews; and/or
- (4) Personal observation.

(b) The complainant shall be provided an opportunity to submit additional information, either orally or in writing, concerning the allegations in the complaint.

(c) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:

- (1) At the discretion of the public agency, a proposal to resolve the complaint; and
- (2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506.

**6 CAR § 130-1206. Complaint investigation report.**

(a) At the close of a complaint investigation, the relevant information will be reviewed by the investigative team, and the team will make an independent determination regarding the allegation or allegations against the agency as to whether the public agency is violating a requirement of Part B of the Individuals with Disabilities Education Act or of 34 C.F.R. §§ 300.151 – 300.153.

(b) The results of the investigation shall be included in a written report, which shall include:

(1) A summary of the substance of the allegation or allegations in the complaint;

(2) The name of the individual, group, or agency that filed the complaint;

(3) A summary of the investigative activities conducted by the team;

(4) Findings of fact;

(5) The conclusions reached by the team regarding the allegation or allegations made by the complainant;

(6) The reasons for the SEA's final decision or decisions;

(7) Remedies for denial of appropriate services in the form of any necessary corrective action or actions to achieve compliance to be taken by the agency against whom the complaint was filed (including, as appropriate, the awarding of monetary reimbursement and appropriate future provision of services for all children with disabilities) and/or technical assistance activities and negotiations; and

(8) The documentation from the agency needed to establish that the corrective actions ordered in the report, if any, have been initiated.

(c) A copy of the written report that addresses each allegation in the complaint, findings of fact, and conclusions shall be forwarded to the complainant and the party under investigation within sixty (60) calendar days of receipt of the complaint by the Director of the Special Education Unit or by the terms of the timeline extension if one was granted.

**6 CAR § 130-1207. Complaint set-aside.**

(a) Complaints filed under this section and due process hearings under:

- (1) 34 C.F.R. §§ 300.507 and 300.530 – 300.532; and
- (2) 6 CAR § 130-1001 et seq.

(b)(1) If a written complaint is received that is also the subject of a due process hearing under 34 C.F.R. § 300.507 or §§ 300.530 – 300.532 and 6 CAR § 130-1001 et seq., or contains multiple issues, of which one (1) 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.

(2) However, any issue in the complaint that is not a part of the due process action must be resolved using the timeline and procedures set out in this part.

(c) If an issue is raised in a complaint filed under this part that has previously been decided in a due process hearing involving the same parties, the:

- (1) Due process hearing decision is binding on that issue; and
- (2) SEA must inform the complainant to that effect.

(d) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.