

What Happens When You Get a Formal Complaint?

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Legal basis for formal complaints

- IDEA Regulations: 34 C.F.R. § § 300.151 – 153
- State Special Education Rule 160-4-7-.12 Dispute Resolution

The formal complaint:

- A formal complaint can be filed by any individual or organization on behalf of a student or group of students (systemic).
- Complaints are filed against a school district or agency. Even if the parent is alleging something against a particular school, or person, it is the district that is being investigated.

The formal complaint (continued)

- The complaint must be in writing, and it must be signed. It must allege a violation of the IDEA, its regulations, and/or state special education rules.
- Complaints regarding allegations of 504 violations must be filed with the Office for Civil Rights (OCR).

Timelines

- Per IDEA, complaints are to be resolved within 60 calendar days.
- The complaint timeline does not stop just because both parties agree to mediation.
- Complaints can be ‘tolled’ due to extenuating circumstances if agreed to by both parties. Examples include agreeing to stop the timeline to mediate, serious illness, etc.

What must be in the content of the complaint to be considered sufficient?

- A statement that a public agency has violated a requirement of the IDEA. The complaint must also state facts on which the statement is based.
- The complainant must also provide suggestions for how to resolve the complaint.
- The allegations can only go back one calendar year.

Some complaints can be denied

- Not all complaints are opened for investigation.

Examples:

- Complaints against private schools
- Complaints alleging discrimination—these are referred to OCR
- Complaints alleging inappropriate staff behavior—these are referred to GaPSC

What are common complaint allegations?

- Implementation of the IEP
- Child find
- Evaluations/reevaluations
- Prior Written Notice
- Related services

What are common complaint allegations? (continued)

- Parent access to records/Parent participation
- Bullying (this is a FAPE issue)
- Review of the IEP
- Records/Parent participation
- Provision of FAPE

To be sufficient, the complaint must:

- State the name of the complainant—a person cannot file anonymously;
- Must list the complainant's complete address and contact information;
- Must state the name of the student, the student's current school, and physical address. A student's name is not required if the complainant is alleging a systemic complaint;
- Allege a violation of the IDEA regulations and/or state special education rules.

Complaint requirements:

- The complainant must provide either the district superintendent or special education director with a copy of the complaint prior to our office determining the sufficiency of the complaint—the complainant must state this within the complaint;
- The complainant must sign the complaint. We do allow electronic signatures;
- While we prefer complaints to be submitted electronically, parents can submit them by fax as well as by mail.

What happens when the complaint arrives at GaDOE?

- The program manager reviews the complaint to make sure the required components are included in the complaint;
- If something is missing, such as documentation of notification to the district or signature, etc., the program manager contacts the complainant asking for that information;

What happens when the complaint arrives at GaDOE? (continued)

- Once all required information is received, the complaint is forwarded to the administrative assistant for the complaint to be logged in and assigned a case number. The administrative assistant assigns the case to a program specialist.
- Then, the program specialist reviews the complaint and identifies the allegations of violations of IDEA made by the complainant.

What happens when the complaint arrives at GaDOE? (continued)

- The Dispute Resolution Team then reviews the complaint as a group and consensus is reached on what the IDEA allegations are that will be investigated.
- Next, an Initiation letter is written. The letter is addressed to the district superintendent with copies to the district special education director, the complainant (and the parent if they are not the complainant), and the district liaison.

What happens when the complaint arrives at GaDOE? (continued)

- The program manager reviews the complaint to make sure the required components are included in the complaint;
- If something is missing, such as documentation of notification to the district or signature, etc., the program manager contacts the complainant asking for that information;

What happens when the complaint arrives at GaDOE? (continued)

- The program specialist assigns a complaint investigator to the case. Investigators are contracted individuals with special education knowledge and background. Many are retired special education administrators.
- Once an investigator is assigned, the parent is sent an assignment letter informing them the name of the investigator. The district superintendent and special education director are copied on that letter.

What happens when the complaint arrives at GaDOE? (Continued)

- The program manager reviews the complaint to make sure the required components are included in the complaint;
- If something is missing, such as documentation of notification to the district or signature, etc., the program manager contacts the complainant asking for that information;

I've gotten a complaint, now what?

- Until you receive the initiation letter, you do not officially know what allegations of IDEA violations are being investigated.
- While you are waiting on the initiation letter, start getting your documentation together.
- While you are waiting on the initiation letter, study the complaint and discuss with your team. Determine what documentation you will need to state your case in the response.

I've gotten a complaint, now what? (continued)

- Most of the time, but based on the issues raised by the complainant, you will need to compile the student's IEPs, eligibility reports, evaluations, etc. Compile all email correspondence on this student and other notes, that have been between staff and the parent as well as between staff members.

I've gotten a complaint, now what? (continued)

- Gather information about the student that covers the past calendar year—some of this information (IEP, etc.) may be over 1 year old because that paperwork may have been in effect during part of the past calendar year.
- As appropriate, be sure to include progress reports, anecdotal information that you may have in writing, etc. Also, be sure to include the student's schedules and names/positions of all who interact with the student. Gather scores for Milestones, EOC, etc .

I've gotten a complaint, now what? (continued)

- Keep in mind: Not every complaint needs the same kind of documentation. What you get together will be based on what the complaint is about--but the previous recommendations are a good start.

Resolving the complaint prior to the investigation

- When you receive the initiation letter, if the parent has indicated on the complaint that they are willing to go to mediation, you will receive a form you are asked to send back indicating if the district is willing to go to mediation with the parent. Both parties must agree to mediation. While mediation is voluntary, it is highly recommended as a means of trying to resolve the dispute.

Resolving the complaint prior to the investigation (continued)

- It is appropriate, but not required, for you to reach out to the parent to attempt ways to resolve their concerns. There are times when a complaint is filed about a situation you were not aware of, and the parent didn't know there was someone beyond the school level who may be able to help. This can be in addition to, or in lieu of, mediation.
- A third party, unless they are an attorney, cannot commit a parent to participate in mediation. That is up to the parent of the student.

The District Response:

- The initiation letter asks for the district's official response within 10 **business** days. This is critical documentation and is the district's opportunity to address the allegations the complainant has made.
- In the district response, include the student's IEPs covering the time period in question, the evaluations/eligibility reports covering the time period, emails and other correspondence related to the student between staff, between the parent and staff, etc. Gather all information about the student as thoroughly as possible.

The District Response (continued)

- As mentioned earlier, your response and documentation should be tailored to the specific student and the issues raised by the complainant.
- When you submit your district response to the GaDOE, you must submit a copy to the parent. If this is a 3rd party complaint (such as an advocate, friend, etc.) you do not provide the 3rd party with a copy UNLESS you have a signed FERPA release by the parent (or student if they are 18 or older).

The District Response (continued)

- You are to also submit a copy of the district response to the investigator at the same time. It is recommended, for security purposes, that all correspondence between the district and the GaDOE/investigator go through the Portal as it is a secure way to transmit documentation.
- Make yourself available to the investigator to answer questions and to assist in understanding what is going on. If you are not the direct district contact for the investigation, please let the investigator know as soon as possible.

The District Response (continued)

- Parents do have a right to reply to the district response.
- The role of the investigator is to ask questions of the parent/complainant and district representatives. The investigator also reviews the documentation presented by the parent/complainant as well as the district. Neither party has the burden of proof, but from a review of the documentation, a recommendation is made by the investigator to GaDOE staff.
- We generally do not need to do onsite visits.

Once the Investigation portion of the complaint appears complete:

- The investigator turns in a draft final resolution letter to the program specialist at GaDOE assigned to the case.
- The Dispute Resolution Team (to include program specialists, program manager, legal analysis specialist, and senior program manager/legal officer) and the State Director thoroughly review, edit and approve the letter.

Once the investigation portion of the complaint appears complete (continued)

- By day 60 of the complaint, the final resolution letter is sent out to the parties. It is addressed to the district superintendent with copies to the special education director and the GaDOE district liaison. The letter is sent through the portal to the appropriate district representatives.
- The final resolution letter is sent by email to the parent and is password protected.

What happens if something new comes up after the complaint is filed?

- There are times, through the investigation process, that districts are found to be out of compliance with an issue the parent did not raise in the original complaint.
- In those cases, the issue is addressed in the findings and the district is allowed to formally respond to that particular issue.

What happens if something new comes up after the complaint is filed? (continued)

- Sometimes parents/complainants want to raise new issues after they have filed a complaint. If the initiation letter has already been sent to the district, we generally inform the parent they will have to file a new complaint.

What happens next?

- If the district is found in compliance with all issues that were investigated, then the final resolution letter states that the case is closed. Nothing further is required.
- If the district is found out of compliance with at least one investigated issue, then the final resolution letter identifies required corrective action.

When Corrective Action is required:

- The corrective action identifies timelines to follow and may include a review and/or revision of policies and procedures; training for identified personnel groups; a new evaluation/eligibility determination; a requirement to hold a new IEP Team meeting; compensatory services. Corrective action is determined based on the findings of the complaint.

When Corrective Action is required (continued)

- All corrective action is to be completed within one calendar year of the date of the resolution letter.
- When the corrective action is completed, a close letter is sent to the district and to the parent.

Questions?

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