State Complaints Webinar Q&A

Below are answers to several of the questions submitted during the April 26, 2022 webinar, *The Power of IDEA State Complaints*.

Q: Can you file a state complaint with exhibits and let the school district know of the filed complaint without exhibits?

A: No. Complainants are required to provide the complaint to the LEA (Local Educational Agency/school district) or public agency serving the child at the same time the complaint is filed with the state educational agency (SEA). To do otherwise could jeopardize or delay the SEA’s investigation of the complaint. See Q&A dispute resolution Q B17.

Q: Can the state choose to reduce your formal complaint to an informal complaint without an investigation or speaking with the person filing a complaint?

A: A properly filed state complaint should not be reduced to an informal complaint without the complainant’s agreement. To do so would violate the SEA’s responsibilities as outlined in Federal regulations.

If the State says that the complaint does not include all the required components, ask the state what requirement is missing, add that, and resubmit. For required complaint components, see IDEA regulations, 300.153.

If the State still insists on doing an informal investigation, be sure you have this in writing. (“If it’s not in writing, it never happened.”) Email the State Department of Education to confirm, saying something like, “On xx/xx/xxxx date, I submitted a state complaint that includes all required components. On xx/xx/xxxx, you called/email me to say that you would not investigate but would use an informal process. I disagree this is appropriate and am asking that you process this as a formal complaint. If I don’t receive an email by xx/xx/xxxx date stating that you are opening my complaint formally, I will have to assume you are refusing to formally investigate my complaint.”

Then, if you hear nothing back, you may want to contact the Office of Special Education Programs at the U.S. Department of Education to ask for direction. Your state contact for Part B of IDEA at OSEP is here.
Q: Is it helpful to cite Case Law that is relevant to your complaint, or to cite outcomes of violations of similar state complaints? In addition, do you need to cite the specific violations of IDEA and include the specific law and codes that you are referencing?

A: First, be sure to include all required components in the complaint (see §300.153 of the Federal regulations). It’s wise to reference the specific federal regulation and/or the state’s special education regulations or administrative code that the complaint alleges is being violated. Doing so will help ensure that the alleged violation(s) are, in fact, a violation of federal or state rules and minimize the likelihood of the complaint being dismissed because it doesn’t comply with the regulations governing state complaints. As discussed in the April 26th webinar, some issues, while problematic, are not violations of federal and/or state special education rules. Citing case law and outcomes of complaints alleging the same/similar violations could also help support the complaint.

Q: During the webinar, you mentioned that there are both federal and state IDEA rules. What is the easiest way to access those?

A: You should be able to locate your state’s regulations or administrative code regarding special education on your state dept. of education website (contacts are here). In addition, SEAs are required to submit a list identifying any rule, regulation, or policy that is state imposed (not required by IDEA or federal regulations) as part of their annual state application under Part B of the Individuals With Disabilities Education Act as amended in 2004. Your state’s application, including this list, must be posted on the SEA website. The SEA is also required to inform local educational agencies in writing of such state-imposed rules, regulations or policies.

Q: When filing a systemic complaint, can you reference specific students?

A: Yes. In fact, a systemic complaint should be based on evidence that many students in the district are experiencing the same violation(s), so naming students in the complaint provides such evidence. Be sure to obtain permission from the parents of each student to name them in your complaint (see Q+A on dispute resolutions Q B-11). When filing a complaint regarding a violation involving a single student, ask that the SEA investigate whether the violation is also imposed on other students in the district.

Q: Are there time limits on corrective action?

A: The state educational agency will establish the timeline for completion of any corrective action ordered after a finding of noncompliance. As stated in the US Dept. of Education’s 2013 Q+A on dispute resolutions (Q B-31) “To ensure corrective action and pursuant to its general supervisory responsibilities in 34 CFR §§300.149 and 300.600, the SEA must inform the public
agency that is involved in the complaint of any findings of noncompliance and the required corrective action, and ensure that the corrective action is completed as soon as possible and within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance.” 34 CFR §300.600(e).

Q: Can you explain more about asking for an outside investigator?
A: If you are filing a complaint against the state department of education, arguably, it is a conflict of interest for the state to investigate itself to determine whether the state is in violation of IDEA requirements. It is helpful to request in the complaint that the SEA assign an outside investigator to process the complaint. See Q+A dispute resolution Q B12.

Q: Where does one file complaints regarding Sec 504 and the ADA?
A: The U.S. Dept. of Education’s Office for Civil Rights (OCR) enforces Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (ADA). More information is available in this Q+A. Information on filing complaints can be found here.

Q: Is an OCR Complaint supposed to be directed to the state Department of Education (DOE) for investigation and response?
A: No. OCR complaints are filed with the appropriate OCR regional office. More information on how to file a complaint is here.

Q. What happens if you file a state complaint and Office for Civil Rights (OCR) complaint at the same time on similar issues (e.g., district does not provide accommodations)? Does one (state or OCR) take precedence? Or the one that is filed first? OCR can take a while to investigate but probably should be filed first because can only go back 180 days.
A. State complaints are for IDEA violations, whereas the Office for Civil Rights investigates Section 504 and other discrimination laws. Since there is overlap between IDEA and Section 504, it is possible that a parent might want to request both agencies to review complaints. HOWEVER, the Office for Civil Rights will not typically investigate a complaint that is currently being investigated by another agency. So if you want OCR to investigate the complaint, start with them.
Q. If I want to request data on the number and type of complaints for a specific school district, where would I find that?

A. There is no IDEA requirement that states provide this information to the public. However, most, if not all, states have Freedom of Information Act (FOIA) laws that would require a public agency (like the state) to permit access to documents to the public upon request.

For example, if someone wanted to request copies of all state complaints filed in a particular district for a particular time period (e.g., 2019 through the present), they could submit a written Freedom of Information Act to the State Department of Education. To ensure timely processing, it is helpful for the request to be time-specific. Note that some states do not have a specific time frame for the public to agency provide records, and the bigger the request, the more time it may take for the state to gather and to provide access to the documents. So sometimes families make multiple requests for documents for different time periods.

Also, states will sometimes charge for copies of documents requested through FOIA. Asking for electronic copies can help. No matter what, check your state’s FOIA laws to determine when there can be no charge for copies. For example, in Connecticut, charges are waived if the person requesting the documents is indigent or if the documents are to be provided for the public welfare.

More information on FOIA, including sample letters for each state, is available here.