

A Parent's Guide to Frequently Asked Questions About Special Education State Complaints

1. What is a State Complaint?

A State Complaint is a written, signed letter directed to the Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), which alleges that a public agency¹ responsible for the education of a student with disabilities violated a requirement of the Individuals with Disabilities Education Act (IDEA) and accompanying State and federal regulations. The complaint may be filed on behalf of an individual student or a group of students that were affected by the alleged violation. The MSDE will investigate a complaint that alleges that a public agency did not implement a due process hearing decision if the written complaint meets the criteria as described in Question # 3, below.

For specific information regarding due process complaints and how that complaint process differs from the State Complaint process, please refer to the document titled, "A Parent's Guide to Frequently Asked Questions About Special Education Due Process Complaints." That document can be found on the MSDE website (see Question #17).

2. Who may file a State Complaint?

Any organization or individual, including those from outside Maryland, may file a complaint with the MSDE. This individual is referred to as the "complainant" throughout this document.

3. What information needs to be included in a State Complaint?

Under federal requirements each written complaint to the MSDE must include the following:

1. A statement that a public agency has violated a requirement of State or federal special education law or regulation;
2. The facts on which the statement is based (the complainant is encouraged to provide copies of any documentation that supports the allegation(s));
3. The signature and contact information of the complainant;
4. If alleging a violation with respect to a specific student, the complaint must include:
 - a. The name and address of the residence of the student;
 - b. The name of the school the student is attending;

¹ Public Agency is defined at IDEA 34 CFR §300.33, and in Maryland it includes the Maryland State Department of Education; local school systems, including any charter school in the jurisdiction; Department of Health and Mental Hygiene; Department of Juvenile Services; Maryland School for the Blind; and the Maryland School for the Deaf (COMAR 13A.05.01.02).

- c. In the case of a homeless student, available contact information for the student and name of the school the student is attending;
- d. A description of the nature of the problem of the student, including facts relating to the problem;
- e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

A model form has been developed to assist with filing a State Complaint. It is available on the MSDE website (www.marylandpublicschools.org) or can be obtained by contacting the Division of Early Intervention and Special Education Services at the MSDE at 410-767-7770; however, the MSDE will investigate a complaint not submitted on the model form as long as it contains all required information.

4. When filing a State Complaint, in addition to MSDE, who needs to receive a copy of the complaint?

A copy of any complaint sent to the MSDE must also be sent to the public agency against which the complaint is made. It is recommended that a copy of the complaint be sent to the attention of the Director of Special Education for the public agency. This permits the public agency to review the complaint and consider resolving it as quickly as possible.

5. What types of complaints will not be investigated by MSDE under its Special Education general supervisory responsibilities?

The MSDE does not investigate complaints regarding personnel matters, complaints that do not allege a violation of State or federal special education requirements, and other matters that do not fall within the State's authority to monitor and enforce, such as alleged violations of the Rehabilitation Act of 1973. The MSDE does not investigate allegations that the school did not implement any agreements between a public agency and parents of a student with a disability that were developed as a result of mediation, a resolution meeting, or other settlement agreement.

6. What are the timelines for filing a State Complaint?

The complaint must allege a violation that occurred no more than one (1) year prior to the date the MSDE receives the complaint.

7. What will the MSDE do when it receives a complaint that meets the requirements?

The MSDE will usually contact the complainant by telephone, if possible, and will respond to the written complaint in writing. The written response will notify the complainant and the public agency against which the complaint is filed, that the complaint was received and specify the allegations subject to the investigation. It will also identify the staff person assigned to investigate the complaint, the steps that the public agency may take to resolve the complaint and describe the procedures that will be used in the investigation.

8. What if my complaint does not include all the required information or it is not filed within one (1) year of the alleged violation?

When the MSDE receives a complaint that does not meet the requirements, the complainant is contacted either by telephone or in writing, and he/she is informed of the specific content that has been omitted or

informed that a copy of the complaint must be sent to the public agency against which the complaint is filed. If the alleged violation occurred more than one (1) year from the date the complaint is received by the MSDE, the complainant is informed that the MSDE does not have the authority to investigate the matter and is provided information regarding other possible methods to resolve the dispute.

9. Can the public agency attempt to resolve the complaint before an investigation occurs?

Yes. It is suggested that the public agency contact the complainant as soon as it is aware of the complaint to discuss the alleged violation(s) and any remedy requested. The public agency may wish to resolve the complaint with the complainant by providing the remedy requested, or some other agreed upon remedy reached through mediation or a less formal process. Should the public agency offer to resolve the complaint by providing the requested remedy, or the parties agree that the matter has been resolved, MSDE will consider the matter closed and no further investigation of the specific complaint will occur. If the public agency conducts an internal investigation into the allegation and determines that a violation occurred, it may acknowledge the violation and propose a corrective action that addresses the loss of services to the named student(s) and to make corrections to address the future provision of services for all students with disabilities, as appropriate.

10. How long does it take the MSDE to complete an investigation and issue a written decision to the complaint?

The MSDE completes each investigation and issues a written decision [Letter of Findings (LOF)] to the parties as soon as possible. However, federal regulation requires that, unless unusual circumstances exist, the LOF must be sent within 60 calendar days from the date a complaint that meets all requirements is received by MSDE.

11. What type(s) of remedies can be expected as a result of the MSDE's investigation?

When determining a remedy, or remedies, for a violation of the requirements, the MSDE may require the public agency to take actions such as:

- a. determining compensatory services to address the student's needs or other remedies agreed upon by the parent and the public agency,
- b. monetary reimbursement,
- c. reconvening the IEP team to consider other information not previously considered, and
- d. staff training activities.

The MSDE may not substitute its judgment for the judgment of the student's IEP team. Therefore, the MSDE may not order the specific placement requested by the complainant.

12. What other actions may be taken as a result of a finding of noncompliance through the State Complaint investigation process?

The MSDE may determine that a site visit be conducted by State staff to determine whether the violation is prevalent in the public agency, or if other violations to the requirements are occurring and, if so, may require additional corrective actions to address the violation(s).

13. Can a complainant or public agency appeal the determinations made by the MSDE?

Under the State Complaint process, there is no formal appeal process for a party to the complaint. However, a party to the complaint may submit additional documentation for the MSDE to consider within two weeks of the date of the LOF. MSDE will only review and consider documentation provided by a party to the complaint that was not previously available or reviewed during the investigation to determine if there are grounds to reconsider the conclusion(s) reached.

14. What happens if an issue in a State Complaint is also the subject of a due process hearing?

If a written complaint is received regarding a matter that is also the subject of a due process hearing or contains multiple issues of which one or more are part of the 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.

However, any issue in the complaint that is not a part of the due process action must be resolved using the timelines and procedures described in this document. If an issue in the complaint has been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and will not be investigated by MSDE.

15. What steps can a parent take if it is believed that a public agency retaliates against them or their child for filing a complaint with the MSDE?

If parents believe a public agency is retaliating against them or their child or believe that their child is being discriminated on the basis of the handicapping condition, they may file a complaint with the Office for Civil Rights. Those complaints should be submitted to:

**Philadelphia Office
Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323**

**Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov**

The MSDE does not have the authority to monitor or enforce allegations of retaliation or discrimination where the failure to provide a free appropriate public education (FAPE) is not alleged. See answer to Question #5 above.

16. Where can an individual or organization get assistance in submitting a State Complaint?

Help may be obtained in filing a complaint by contacting one of the organizations that offers free or low cost legal or other services. A list of these organizations is included with the Request for Mediation and Due Process Complaint form that is available from each public agency and on the MSDE website referenced at the answer to Question #17, below. Additional assistance in filing a State Complaint may be received from one of the private attorneys and organizations who represent parents in disputes against public agencies.

17. Where can additional information be found concerning the State Complaint process?

Additional information can be found on the Division of Early Intervention and Special Education Services' webpage on the MSDE website at www.marylandpublicschools.org or by calling 410-767-7770. A link to the IDEA regulations is also available through this website.