

Starting View

Slide loads with this view.

State Complaints

- What is a State complaint?



Clicks 1-4


Clicks 1-4:
Each time you click, another bullet appears and the picture changes.

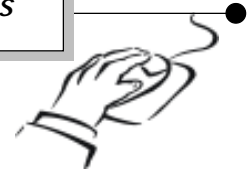
State Complaints

- What is a State complaint?
- Who may file one?
- What information must be included?
- What are the SEA's procedures for handling the complaint?
- Are there time limits?



CLICK AGAIN to advance to next slide.

(discussion on next page) 



And now: A look at requirements in the final Part B regulations related to State complaints. These are found at §§300.151 through 300.153, are presented on **Handout E-9**, and will be excerpted in boxes at relevant points in this discussion.

The slide is designed to let you walk through the content, bringing up a question (e.g., “What information must be included?”) and then answering it, using the information provided below and in the Part B regulations.

The 2004 Amendments to the IDEA and prior versions of the IDEA statute do not include State complaint procedures. Rather, it is the final Part B regulations and their predecessors that have required each State to adopt written procedures for resolving any complaint that meets the definition of a “State complaint” under the Part B regulations [§300.151(a)(1), see box at right].

The Department explained the importance of each State having effective complaint procedures in the Analysis of Comments and Changes accompanying publication of the final Part B regulations in the Federal Register:

We believe that the broad scope of the State complaint procedures, as permitted by the regulations, is critical to each State’s exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other

individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA with a powerful tool to correct noncompliance with Part B of the Act or Part 300 [of the regulations]. (71 Fed. Reg. 46601)



In response to a public comment, the Department explained further:

We believe the State complaint procedures, which are directly under the control of the SEA, provide the parent and the school district with mechanisms that allow them to resolve differences without having to resort to a more costly and cumbersome due process

§300.151 Adoption of State complaint procedures.

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

complaint, which by its nature, is litigious. (71 Fed. Reg. 46606)

The final Part B regulations provide that the SEA must widely disseminate its State complaint procedures under §§300.151 through 300.153 to parents and other interested individuals, including PTI centers, protection and advocacy agencies, independent living centers, and other appropriate entities. You'll find this requirement at §300.151(a)(2), cited in the box on the previous page and on Handout E-9.

Many of the provisions regarding State complaint procedures that were a part of the previous regulations are retained. But there are some significant changes that you should know about. We'll highlight these with the "New in IDEA!" icon as we review requirements for State complaints.

What is a State complaint?

A State complaint, which can be filed by an organization or individual, including an organization or individual from another State, must be *signed* and *written*. The complaint must meet applicable procedures in §§300.151 through 300.152 and the content requirements in §300.153 (see the box at the right).

Who can file a State complaint?

Not only may a child's parent file a State complaint but so may any organization or individual (including those from another State)—see §300.151(a)(1) and §300.153(a). This is an important difference between State

complaints and due process complaints and mediation. Those two dispute resolution options—due process complaints and mediation—require either the child's parent or the public agency to initiate the process.

The person who files a State complaint is referred to as the "complainant." This term is used in the regulations at §300.152(a)(2) and (a)(5) and is also used in this module.

What information must be included in a State complaint?

This is an important question, because the final Part B regulations expand the specific content

to be included in a "State complaint." This represents a key change from the previous regulations; relevant provisions are found at §300.153(b) (see provisions in the box on this page and on Handout E-9).

With the audience, go over the elements that the final Part B regulations require be included in a State complaint, so they appreciate the methodical and reasoned nature of the process.



§300.153(b): What a State Complaint Must Include

- (b) The complaint must include—
- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The 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—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) 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;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

KEY CHANGE—A new provision in the final Part B regulations, found at §300.509(a), requires each SEA to develop a model form to assist parents and other parties in filing a State complaint. However, the SEA or LEA may not *require* the use of its model forms. Another form or document may be used so long as the form or document includes the content required for filing a State complaint. [§300.509(b)]



KEY CHANGE—It is important to note that the party filing the State complaint must also send a copy of the State complaint to the LEA or public agency serving the child at the same time the State complaint is filed with the SEA. This new provision is found at §300.153(d).



In response to a public comment, the Department explained the reasoning behind the new provision:

The purpose of requiring the party filing the complaint to forward a copy to the LEA or public agency serving the child, at the same time the complaint is filed 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. The sooner the LEA knows that a complaint is filed and the nature of the issue(s), the quicker the LEA can work directly with the complainant to resolve the complaint. (71 Fed. Reg. 46606)

What happens if the complainant does not include all required information?

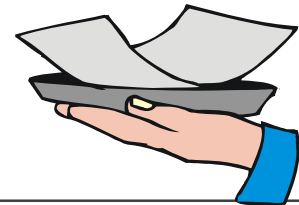
This question arises because IDEA's due process procedures specify what must occur if the SEA receives a due process complaint that is insufficient [see §300.508(d), "Sufficiency of complaint"]. Unlike due process, however, the Part B regulations governing the State complaint process do not even *mention* "sufficiency of complaint."

The Department has addressed this issue directly in its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*. We've provided both the question and the Department's answer in the box on this page.

What is the SEA's obligation when it receives a State complaint?

The SEA must have procedures that comply with the requirements in §300.152. The first part of §300.152—(a)—is presented in the box on the next page; participants will find all of §300.152 on **Handout E-9**.

As you can see, the SEA's obligations include ensuring that State complaints are resolved within the required timeline—60 days from the date the complaint is filed unless an extension of the timeline is permitted for reasons that are outlined in the regulations [§300.152(a) and (b)(1)]. We'll review the timeline



When the Complaint Doesn't Include All Required Information in a State Complaint

From the Department's *Q&A on Procedural Safeguards and Due Process Procedures*¹

Question A-2: What is an SEA's responsibility to conduct a complaint investigation if the written complaint submitted to the SEA does not include the content required in 34 CFR §300.153?

Answer: The regulations do not specifically address an SEA's responsibility when it receives a complaint that does not include the content required in 34 CFR §300.153. However, in the *Analysis of Comments* accompanying the regulations, the Department indicates that when an SEA receives a complaint that is not signed or does not include contact information, the SEA may choose to dismiss the complaint. In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be investigated and timelines not commence until the missing content is provided.

requirements in more detail later. First, here's a rundown of the basic steps involved in resolving a State complaint, with discussion to follow.

- The SEA must carry out an independent on-site investigation, if the SEA determines that an investigation is necessary [§300.152(a)(1)].
- The SEA must give the complainant the opportunity to submit additional information about the complaint, either orally or in writing [§300.152(a)(2)].
- The SEA must provide the public agency with the opportunity to respond to the State complaint [§300.152(a)(3)].
- The SEA must review all relevant information, make an independent determination on the complaint, and issue a written decision to the complainant [§300.152(a)(4)-(5)].
- The SEA must have procedures to ensure effective implementation of the SEA's final decision [§300.152(b)(2)].

Now for some discussion!

Opportunity to submit additional information. The SEA must give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This provision was carried over from prior regulations and gives the complainant the opportunity to clarify the allegations in a complaint that meets the requirements of §300.153(b), either orally or in writing.

The Beginning of...

§300.152 Minimum State complaint procedures.

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
- (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.

[§300.152(a)]

Opportunity to respond. Under a new provision in the final Part B regulations, the SEA must provide the public agency with the opportunity to respond to the State complaint, including, at a minimum:

- at the discretion of the public agency, a proposal to resolve the complaint; and
- an opportunity for a parent who has filed a complaint with the public agency to voluntarily engage in mediation consistent with §300.506. [§300.152(a)(3)]

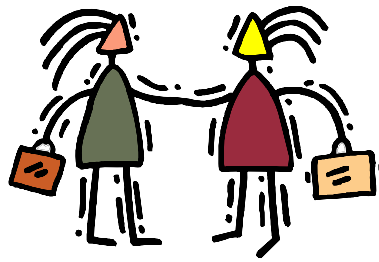
KEY CHANGE—This is a key change from the previous regulations. The Department provided the following explanation of the reasons for this important change in the Analysis of Comments and Changes:



Section 300.152(a)(3) was proposed to encourage meaningful, informal resolution of disputes between the public agency and parents, organizations, or other individuals by providing an opportunity

for parties to resolve disputes at the local level without the need for the SEA to resolve the matter. We believe that, at a minimum, the State's complaint procedures should allow the public agency that is the subject of the complaint the opportunity to respond to a complaint by proposing a resolution and provide an opportunity for a parent who has filed a complaint and the public agency to resolve a dispute by voluntarily engaging in mediation...Resolving disputes between parties at the local level through the use of mediation, or other alternative means of dispute resolution, if available in the State, will be less adversarial and less time consuming and expensive than a State complaint investigation, if necessary, or a due process hearing and, ultimately, children with disabilities will be the beneficiaries of a local level resolution. (71 Fed. Reg. 46603)

Opportunity to engage in mediation or other method of dispute resolution. The regulations also require that the SEA offer the parent and the public agency the opportunity to voluntarily engage in mediation or other alternative methods of dispute resolution, if available in the State, to resolve the issues in a State complaint. However, the regulations do *not* require the State to offer the opportunity to voluntarily engage in mediation when an individual other than the child's parent files a State complaint.



Regarding this provision, the Department provided the following explanation in the Analysis of Comments and Changes:

Although we do not believe we should regulate to require that mediation be offered to non-parents, there is nothing in the Act or these regulations that would preclude an SEA from permitting the use of mediation, or other alternative dispute resolution mechanisms, if available in the State, to resolve a State complaint filed by an organization or individual other than a parent...In fact, we encourage SEAs and their public agencies to consider alternative means of resolving disputes between the public agency and organizations or other individuals, at the local level, consistent with State law and administrative procedures. It is up to each State, however, to determine whether non-parents can use mediation or other alternative means of dispute resolution. (71 Fed. Reg. 46604)

SEA review, determination, and decision. Let's get back to the procedures each SEA must have in place for State complaints. The SEA must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B

of the IDEA (the statute) or the Part B regulations (34 CFR Pt. 300). This requirement is found at §300.152(a)(4)—which is cited in the box on the previous page and on **Handout E-9**.

The SEA must then issue a written decision to the complainant that addresses each of the allegations in the State complaint. The written decision must include findings of fact and conclusions and the reasons for the SEA's final decision. [§300.152(a)(5)]

Remedies for denial of appropriate services. If the SEA found, through its complaint resolution, that there has been a failure to provide appropriate services, the SEA must, pursuant to its general supervisory authority, address the failure, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement). The SEA must also address the appropriate future provision of services for all children with disabilities [see §300.151(b)(1)-(2), cited in the box on the next page]. The final Part B regulations give the SEA broad flexibility and discretion in determining the appropriate remedy or corrective action when resolving a State complaint (71 Fed. Reg. 46602).

The SEA must also have procedures in place to ensure effective implementation of the SEA's final decision, if needed. This includes technical assistance activities, negotiations, and corrective actions to achieve compliance. The provision governing this requirement is found at §300.152(b)(2), cited on the next page and on **Handout E-9**.

What is the time limit for filing a State complaint?

KEY CHANGE—The final Part B regulations include a very important change concerning the time limit for filing State complaints. The new requirement, found at §300.153(c), states:



The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

The Department received many comments about changing the time limit for filing a complaint available under the previous regulations. The 1999 Part B regulations allowed complaints to be filed under certain circumstances for alleged violations that occurred up to three years prior to the date the complaint was received. The Department explained the reasons for changing the time limit for filing a State complaint in the Analysis of Comments and Changes, as follows:

We believe a one-year timeline is reasonable and will assist in smooth implementation of the State complaint procedures. The references to longer periods for continuing violations and for compensatory services claims [included in the 1999 Part B regulations] were removed to ensure expedited resolution for public agencies and children with disabilities. Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will

help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale that they are unlikely to be resolved. However, States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline, just as they are free to add additional protections in



other areas that are not inconsistent with the requirements of the Act and its implementing regulations. (71 Fed. Reg. 46606)

How long does the SEA have to resolve a State complaint and issue a final decision?

The SEA's procedures must include a time limit of 60 days after the complaint is filed for specified activities to take place in the complaint resolution process. These include:

- conducting an independent on-site investigation, if the

The Middle of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) 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 mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

[§300.152(b)]

SEA determines that an investigation is necessary;

- giving the complainant the opportunity to submit additional information, either orally or in writing, providing the public agency with the opportunity to respond to the complaint;
- having the SEA or the public agency responsible for resolving the complaint review all relevant information and make an independent determination; and
- issuing a final decision on the allegations in the State complaint. [See §300.152(a)(1)-(5), cited in the box on page 18-25.]

The SEA's complaint procedures must permit extension of the 60-day timeline for issuing the complaint decision, only if exceptional circumstances exist with respect to a particular complaint. See §300.152(b), cited in the box on the previous page and on **Handout E-9**.

KEY CHANGE—Also, under a new provision added to the final Part B



regulations in 2006, the timeline may be extended if the parent and the public agency involved agree to extend the time to engage in mediation (or other alternative means of dispute resolution, if available in the State). If the complaint is filed by an individual or organization other than the parent, the timeline may also be extended through agreement between the public agency and the other individual or organization filing a complaint if mediation or other alternative means of

dispute resolution is available to the individual or organization under State procedures [§300.152(b)(1)(ii)]. This means that the fact that the parties agree to use mediation is not sufficient by itself to warrant an extension of the 60-day timeline. The complainant organization or individual and the public agency must also agree to extend the timeline as a result of the decision to use mediation.



What is the SEA's obligation to investigate a State complaint if the party filing the complaint and the public agency resolve the dispute through mediation?

An agreement reached through mediation consistent with §300.506(b)(6) of IDEA is legally binding. Such an agreement is enforceable in an appropriate State or federal court [§300.506(b)(7)]. Therefore, as the Department explained in the Analysis of Comments and Changes:

... an agreement reached through mediation is not subject to the SEA's approval. Parties are encouraged to resolve a State complaint at the local level without the need for the SEA to intervene. If a complaint is resolved at the local level or is withdrawn, no further action is required by the SEA to resolve the complaint. (71 Fed. Reg. 46605)

So, if the agreement results in a complaint resolution and is implemented, the SEA would have no further obligation to investigate or otherwise resolve the complaint.

What happens if a State complaint and a due process complaint are filed to resolve the same issue?

The final Part B regulations address this very situation. Section 300.152(c)(1) provides that, if a State complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the SEA must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. But any issue in the State complaint that is *not* a part of the due process hearing action must be resolved using the time limit and State complaint procedures described above. These requirements are stated at §300.152(c)(1)—which appears on **Handout E-9** and in the box on the next page.

It is important to note that, the final Part B regulations implementing the 2004 Amendments to IDEA retain the provision from the 1999 Part B regulations regarding the relationship between a State complaint and a due process hearing. Under §300.152(c)(2)—also in the box on the next page—if an issue that is included in a State complaint has previously been decided in a due process hearing that involved the same parties, the due process decision is binding on that issue,

and the SEA must inform the complainant to that effect.

If that decision is not appealed, under its general supervisory responsibilities the SEA has an obligation to ensure a final hearing decision is implemented [§300.149 and 300.514(a)]. Therefore, the Part B regulations at §300.152(c)(3) also provide that State complaints alleging that a public agency has failed to implement a due process hearing must be resolved by the SEA.

Is there a process to appeal an SEA decision on a State complaint?

There is no provision in the Part B regulations for an appeal of the SEA's decision on a State complaint. In responding to a public comment, the Department provided the following explanation regarding this matter in the Analysis of Comments and Changes:

The regulations neither prohibit nor require the establishment of procedures to permit an LEA or other party to request reconsideration of a State complaint decision. We have chosen to be silent in the regulations about whether a State complaint decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law.

If a State chooses, however, to adopt a process for appealing a State complaint decision, such process may not

The End of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) ...

(c) *Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one 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. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

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

[§300.152(c)]

waive any of the requirements in §§300.151 through 300.153. Section 300.152 requires that the SEA issue a final decision on each complaint within 60 calendar days after the complaint is filed, unless the SEA extends the timeline as provided in §300.152(b). This means that, absent an appropriate extension of the timeline for a particular complaint, the State must issue a final decision within 60 calendar days.

However, if after the SEA's final decision is issued, a party who has the right to request a due process

hearing (that is, the parent or LEA) and who disagrees with the SEA's decision may initiate a due process hearing, provided that the subject of the State complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired. (71 Fed. Reg. 46607)



Summary

The final Part B regulations include important changes in the procedures States must adopt for resolving written complaints filed under the State complaint procedures. As discussed in the Department's Q&A on procedural safeguards and due process,² this includes:



- a new requirement to forward a copy of the State complaint to the public agency serving the child;
- new content requirements for complaints; and
- a revised time limit for filing complaints.

These changes are all noteworthy and, together, will hopefully provide public agencies, parents, and others with streamlined and effective State complaint processes for resolving disputes.

Time for Review?

A volume of information has been presented on this slide, even with its focus narrowed to State complaint procedures. Clearly, there's a lot to know—and a lot for participants to absorb and remember.

Consider taking a moment to review what's been said, either at length or in brief. You can also invite questions from the audience.

Organizing the Review

How you shape a review here will likely depend on whether or not audience members came to this training session already well-versed in IDEA's provisions and you've focused primarily on what's changed, or whether participants have just heard about State complaint procedures for the first time (or nearly so) and the foundation of knowledge had to be built from the ground up. For a mixed group, you might consider dividing the audience into those two categories, asking folks to self-report themselves into either group (e.g., "All the know-it-alls" on the left, all the "what-was-that-again's?" on the right). Then you can handle each group separately, via some of the suggestions below or an approach of your own devising.

Some Suggestions

There are numerous ways to shape a review; you may already have one in mind. What's listed below are only suggestions to consider.

- *True/false.* Ever popular! You make the statement, the audience tells you whether it's true or false—and, most importantly, *why* it's true or false. If false, what's the correct information?

True/false is more fun when the audience is formed into teams, with questions alternated between them. You might even form the teams and have them prepare true/false questions for each other.



- *Fill in the blank.* Either conducted orally or in writing via a worksheet you prepare, fill in the blank (also known as *cloze*) is a standard in many a classroom. You can emphasize specific content over other content by what words or phrases you leave blank in a passage or list that participants then have to fill in.

A perfect example is what IDEA requires be included in a State complaint. You can provide several items in that list but leave two or more to be filled in.

- *Trainer questions.* A quicker review can take the form of you asking review questions and the audience giving you the answers.
- *Audience questions.* Consider simply opening the floor up for participants' questions. Answers can be provided either by you or the audience. Tying the answers back to the regulations is always a good idea. Have the audience find the answer in the regulations, just to be sure.

Space for Notes



¹ Quote from page 2 of: U.S. Department of Education. (2007, January). *Questions and answers on procedural safeguards and due process procedures for parents and children with disabilities*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>

² *Id.*