

IDEA COMPLAINT PROCEDURES
34 CFR § 300.151-153 and § 115.762(3)(g), Wis. Stats.

Complaint

The Department of Public Instruction is responsible for investigating complaints and issuing a written decision within 60 calendar days of receipt of the complaint. The complaint must be in writing and signed. It must allege a violation of subchapter V of Chapter 115, Wis. Stats., and/or the Individuals with Disabilities Education Act (IDEA). The violation alleged must have occurred not more than one year prior to the date that the complaint is received. The complaint also must set out sufficient facts to permit the department to initiate an investigation of the allegation.

If the complaint allegation involves a specific child, the complaint must include the name of the child, the child's address, the name of the school where the child attends, a description of the nature of the problem of the child, including related facts, and a proposed resolution of the problem to the extent known and available at the time the complaint is filed. A parent or other person filing a complaint may either use the form provided by the department or provide a letter that contains the above information. The parent or other person filing the complaint must forward a copy of the complaint to the public agency at the same time the complaint is filed with the department.

When a complaint raises an issue that may involve discrimination prohibited under § 118.13, Wis. Stats., the complainant is provided with information concerning how to file a complaint under this statute.

Acknowledgment of Complaint

When a letter stating a potential complaint is received, the letter is forwarded immediately to the complaint coordinator and complaint office operations associate. The complaint coordinator reviews the letter to determine if it meets the definition of a complaint and identifies the issues. If the letter is not a complaint, it is given to the state director of special education for re-assignment.

If the letter is a complaint, the complaint coordinator prepares an acknowledgement letter to the complainant and the agency administrator that includes the date the department received the complaint, who filed the complaint, and the issues to be investigated. The acknowledgement letter informs district staff that the department will contact the district after five days, requests the district to review the matter to determine actions the district may take to resolve the issues, and requests that the child(ren)'s relevant special education records be forwarded to the department by a specified date, generally within 10 calendar days. The district is offered the opportunity, at its discretion, to propose a resolution of the complaint. The acknowledgement letter also informs the parties of the opportunity to voluntarily resolve the issues through mediation and provides information about Wisconsin's special education mediation system.

The letter of acknowledgement will be signed by the state director and mailed within a reasonable amount of time after the complaint is received. After signature and prior to mailing, the complaint consultant or coordinator contacts the special education director or agency administrator regarding the complaint. If the complainant is not the child's parent, the complaint office operations associate requests the parent's written permission to release personally identifiable information to the complainant.

Withdrawal of Complaint

The complainant may withdraw the complaint prior to the issuance of a decision by the department. The complaint consultant drafts a letter for the state director's signature to be sent to the complainant and the agency confirming the withdrawal of the complaint and stating that the case will be closed.

Due Process or Mediation Requested

The department sets aside an issue when a due process hearing under § 115.80, Wis. Stats., has been requested on the same issue. Complaint issues that are different from the hearing issues will be investigated without delay. The complaint consultant drafts a letter for the state director's signature to be sent to both parties informing them that the investigation will be set aside and the reasons for the department's action. If the issue set aside is not decided in the due process proceedings, the department will complete an investigation of the issue within 60 days of a final decision in the due process proceedings. If the issue set aside is resolved in the due process proceedings, the complaint consultant will prepare a letter for the state director's signature to be sent to both parties informing them that the issue has been decided and that the decision in the due process proceedings is binding. A complaint alleging an agency's failure to implement a due process decision may be resolved through the complaint procedures. The department will not set aside the complaint if mediation is requested unless the parties agree to extend the 60-day time limit to engage in mediation.

Request for Records

If the records requested by the department do not arrive by the date specified in the acknowledgement letter, the complaint consultant contacts the agency's special education director and obtains a commitment to send the materials in no more than seven calendar days from the date of the contact. If the records requested do not arrive by the agreed upon date, the complaint consultant informs the state director who contacts the district administrator and directs that the records be submitted without delay. If the department does not receive the requested records, the department will rely on the allegations in the complaint and other available information, if any, in reaching its determination.

Complaint Investigation

Following receipt of the records, the complaint consultant reviews the records, conducts interviews, and gathers additional information, as needed. When a district acknowledges a procedural error for any issues, the decision reflects the district's conclusion. The complaint consultant must determine the facts relevant to each issue. The complaint consultant carries out an independent investigation, onsite if necessary. During the complaint investigation, the parent must be contacted and must be given an opportunity to submit additional information, either

orally or in writing, about the allegations in the complaint. Department staff reviews all relevant information and makes an independent determination, based upon a preponderance of the evidence, about whether the district has not followed a requirement.

Extending 60-day Timeline

The department may extend the 60-day time limit for exceptional circumstances such as:

- The investigation is hindered by the unavailability of necessary parties or information.
- Either the agency or complainant submits additional data that changes the course of the investigation, i.e., raises new issues in the complaint.
- The complaint investigation is held in abeyance because there is a due process hearing on the same issue.
- The parties in mediation have agreed to an extension of the 60-day time limit.
- The complaint addresses unusually complex or numerous issues or it relates to numerous students.

The department sends a letter informing the parties of an extension of the 60-day time limit for exceptional circumstances which includes the basis for the extension.

Complaint Decision and Corrective Action

The complaint consultant prepares a draft decision including findings of fact for each issue and a conclusion for each issue. When the district already has taken child-specific or general action to correct noncompliance, the decision reflects the district's corrective actions. If the district must take additional corrective action, the decision includes a directive for the agency to submit to the department, within a specified time, generally within 30 days of the decision, a corrective action plan addressing each violation and specifying the time period within which compliance will be achieved. In the alternative, the decision specifies the action to be taken and a time for completion. The directive addresses corrective actions appropriate to the specific child(ren) whose education is the subject of the complaint and corrective actions to insure appropriate future provision of services for all children with disabilities. If no corrective action is required or if all required corrective action already has been completed, the letter includes a statement closing the complaint.

The complaint coordinator reviews the first draft of the decision. The state director, Office of Legal Services, and complaint coordinator review subsequent drafts. The Assistant State Superintendent signs the final decision. When the decision is signed, the complaint office operations associate sends an electronic copy to the agency's special education director so that any corrective actions identified can be addressed as soon as possible.

If the agency is unable to submit a corrective action plan (CAP) within the time specified in the decision, the complaint consultant may extend the time for submission of the CAP for good cause. If the CAP is not received within seven days of the due date, the complaint consultant contacts the public agency's special education director and obtains a commitment to send the CAP to the department by a specific date, not to exceed seven calendar days. The consultant informs the special education director that if the CAP is not received by the agreed upon date, the complaint consultant will notify the state director who will then contact the agency administrator.

Corrective Action Plan

Upon receipt, the complaint consultant and the complaint coordinator review the CAP. If the CAP is acceptable, the complaint consultant will inform the agency's special education director in writing that the CAP is acceptable and may be implemented. If the CAP is not acceptable, the complaint consultant will contact the district to negotiate changes to the CAP, provide technical assistance if needed, and set a date for submission of CAP revisions. If the revised CAP is not received within seven calendar days of the date agreed upon, the process noted in the previous paragraph will be followed.

The CAP or decision will include a date for submission of documentation that corrective activities have been completed. If documentation is not received from the public agency within seven calendar days after the due date, the procedures noted above will be followed. If a new CAP is required, the complaint consultant drafts a new CAP and a letter to the agency directing implementation of the CAP. For example, a new CAP may be required if the LEA failed to implement the original CAP. The state director reviews the new CAP and the cover letter. The complaint consultant contacts the agency special education director regarding the CAP. The cover letter is signed by the state director and sent with the CAP to the district. If the CAP is not implemented, the complaint consultant refers the matter to the state director for enforcement action.

Closing the Complaint

The complaint is closed when the public agency submits documentation it has complied with the directives in the complaint decision or the decision finds no violations of law. All noncompliance identified through the complaint process must be corrected as soon as possible, but in no case no later than a year after the decision is signed. When a public agency submits sufficient documentation of compliance with directives in a complaint decision, the complaint consultant prepares a closing letter for the state director's signature.