

**MARYLAND STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION COMPLAINT RESOLUTION PROCEDURES
PART B**

I. AUTHORITY

- A. 34 CFR §300.660 *et seq.*
- B. COMAR 13A.05.01.15A

II. PURPOSE

- A. The Maryland State Department of Education (MSDE) adopts the following written procedures for the investigation and resolution of complaints filed under the Individuals with Disabilities Education Act (IDEA) and corresponding federal and State law and regulations. It is the responsibility of MSDE to investigate all complaints that meet the requirements of 34 CFR §300.662 and are filed with MSDE in accordance with these procedures.
- B. It is the responsibility of MSDE to monitor the implementation of corrective actions issued as a result of a complaint investigation, as well as take action necessary to ensure compliance with corrective actions, including the provision of technical assistance and additional enforcement actions as appropriate.

III. COMPLAINT REQUIREMENTS

Any organization or individual, including those from outside the State of Maryland, may file a complaint with MSDE.

- A. The complaint should be addressed to the Assistant State Superintendent, Maryland State Department of Education, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, MD 21201. MSDE will also investigate complaints received by other Divisions within MSDE or State government officials which specifically allege violations of IDEA and corresponding federal or State law or regulations.
- B. The complaint shall be in writing and signed by the individual making the complaint or an agency official, if an organization is making the complaint. MSDE will accept complaints which have been received via facsimile if the complaint is signed by the individual or agency official and meets the requirements of III(C) and (D) below. Complaints filed with MSDE via electronic mail (e-mail) *will not be* accepted as e-mail does not contain the complainant's signature and the complainant cannot be verified. Therefore, the complaint must be provided in writing with appropriate signature.

- C. The complaint must include a statement that a public agency or another provider of special education services within the State has violated federal or State law or regulation regarding students with disabilities. This statement shall include the facts that support the alleged violation(s). The complaint may allege violations regarding the identification, evaluation or educational placement of a student, or the provision of a free appropriate public education (FAPE) to the student, as well as any other allegation that a public agency has violated IDEA and corresponding federal or State regulations. MSDE requests that the complainant provide copies of any documentation that supports the statement of alleged violations with the letter of complaint. For purposes of these procedures, “public agency” includes local public school systems, the Maryland State Department of Education, the Maryland Department of Health and Mental Hygiene, the Maryland Department of Juvenile Justice, the Maryland School for the Blind, the Maryland School for the Deaf, the Maryland Office of Children, Youth and Families, and adult correctional facilities.
- D. The complaint must allege a violation that occurred not more than one (1) year prior to the date that MSDE receives the complaint. A longer period may be reasonable and subject to investigation if the alleged violation is continuing in nature or the complainant is requesting compensatory services for a violation that occurred not more than three (3) years prior to the date that MSDE receives the complaint (34 CFR §300.662).
- E. If the complaint does not meet the requirements outlined in paragraphs IIIA-D of these procedures, MSDE shall provide the complainant with notification as to why an investigation will not be conducted and what additional information is needed in order to investigate the allegations as appropriate.
- F. Subsequent to the filing of the initial complaint, the complainant may submit additional information that alleges violations of IDEA or the corresponding State or federal regulations. MSDE will make a determination, on a case by case basis, if the additional allegations will be incorporated into the initial investigation or if a new complaint investigation is warranted. As a general rule, MSDE will incorporate similar issues if the investigation has not yet been completed and the sixty (60) day timeline for issuance of the Letter of Findings will not be delayed.

IV. COMPLAINT INVESTIGATION PROCEDURES

- A. Upon receipt of the complaint, MSDE shall forward the complaint, via facsimile, to the designated public agency personnel.
- B. The complainant and the public agency shall be provided with written notification that acknowledges receipt of the complaint, identifies the issues to be investigated, indicates the timeline for resolution, informs the parties of the right to submit information, and identifies the MSDE staff person assigned to investigate the complaint. With that notification, MSDE shall provide the public agency with another copy of the complaint and any documentation the complainant submitted to MSDE.

- C. The public agency or agencies subject to the complaint are encouraged to conduct a review of the allegations and submit a written report of findings to MSDE prior to the date of any site visit. The report should address each of the alleged violations, provide the facts as determined by the public agency and if violations are determined, propose corrective actions to remediate any loss of services to the individual student. If the violations are systemic in nature, the public agency shall propose corrective actions to ensure that the violations do not recur and propose actions to remediate any loss of services to similarly situated students. MSDE may however conduct an on site visit during the investigation in any case that we deem appropriate, even if the public agency provides a written response.
- D. MSDE shall conduct an investigation of the alleged violations by interviewing public agency staff, the complainant, the student's parent(s), and other persons, as appropriate. In addition, MSDE will review the student's educational record and any other documentation submitted by the parties
- E. MSDE shall issue a written decision (Letter of Findings) to the complainant and the public agency, with a copy sent to the parents, if they are not the complainant, which includes:
1. A statement of the issues investigated and any additional violations determined during the course of the investigation. These additional violations will be included when the violations have impacted the provision of FAPE to the student(s);
 2. Investigative procedures, outlining the persons interviewed, documents used as a basis for the findings of fact, and dates of contacts with all parties;
 3. Findings of Fact, including a statement of the student's eligibility for special education, as appropriate;
 4. Discussion of applicable law and regulations, as appropriate;
 5. Conclusions for each of the issues investigated, including a statement whether or not a violation of State or federal law and/or regulations has occurred;
 6. If MSDE determines that violations of State or federal law and/or regulations occurred, the Letter of Findings shall include a statement whether the student is entitled to compensatory services and the corrective actions the public agency must take to address:
 - (a) how to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and
 - (b) appropriate future provision of services for all students with disabilities (34 CFR §300.660);
 7. Timelines for implementing corrective actions;
 8. A contact person for technical assistance in implementing the corrective actions;
 9. A statement informing the parties that additional information may be provided to MSDE for review;

10. A statement informing the parties that they maintain the right to initiate mediation or a due process hearing if they disagree with the resolution of the issues by MSDE regarding the identification, evaluation, placement or provision of FAPE for the student; and
 11. A statement informing the parties that MSDE recommends the Letter of Findings be included with any request for mediation or due process.
- F. The Letter of Findings shall be issued by MSDE within sixty (60) calendar days of the date the complaint is received by MSDE. The sixty (60) days may be extended if exceptional circumstances exist with respect to a particular complaint. If an extension is necessary, the complainant and public agency shall be notified, in writing, by MSDE of the need for the extension prior to the expiration of the sixty (60) days and of the new date for issuance of the Letter of Findings.
- G. If either party disagrees with the conclusions in the Letter of Findings, the party has the right to submit, within fifteen (15) days, additional information either not considered or not available at the time of the investigation. Following receipt of the additional information, MSDE will determine if the information is sufficient to warrant a review of the conclusions of the Letter of Findings as to whether a violation or violations occurred. Upon determining the sufficiency of the information, MSDE will notify the parties in writing of the decision whether the additional information merits a reconsideration of the conclusions reached, and if any corrective actions required need to be held in abeyance pending a final determination.

V. COMPLAINTS OUTSIDE OF MSDE AUTHORITY

A. DISCRIMINATION/CIVIL RIGHTS/OTHER LAWS:

If the complaint includes allegations of discrimination based on race, creed, sex, age, color, national origin, marital status or physical or mental handicap or conduct addressed by regulations and laws other than the special education law or regulations, MSDE will notify the parties in writing of the allegations that are not within MSDE's authority to investigate and identify those issues, if any, that will be investigated by MSDE. In that notification, MSDE will provide the complainant with the name and address of the appropriate agency with jurisdiction over those specific allegations. MSDE will forward a copy of this correspondence to the public agency.

B. DUE PROCESS:

1. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of the hearing, MSDE must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not part of the due process hearing request will be resolved in accordance with MSDE complaint procedures.

MSDE will notify the parties in writing of the decision to set aside issues and what issues, if any, will be investigated.

2. If an issue is raised in a complaint filed with MSDE that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on the parties and MSDE will inform the complainant and public agency to that effect.
3. A complaint alleging that a public agency has not implemented a due process hearing decision or mediation agreement is a matter subject to the State complaint process and will be resolved in accordance with MSDE procedures (34 CFR §300.661(c)).

VI. WITHDRAWAL OF A COMPLAINT

Upon receiving notification from the complainant that the complaint is being withdrawn, MSDE will close the investigation as requested. However, to ensure the future provision of appropriate services to all students with disabilities, MSDE reserves the right to conduct a separate investigation to determine whether there are systemic issues that need to be addressed. In making the determination to conduct a separate investigation, MSDE will consider the nature of the alleged violation(s) and the potential impact of the alleged violation(s) on other students.

VII. VERIFICATION ACTIVITIES/COMPLAINT FOLLOW-UP

When MSDE issues a Letter of Findings which identifies violations of federal or State law or regulation, MSDE shall require the public agency to submit documentation verifying the implementation of the corrective actions.

- A. The Letter of Findings shall require corrective actions to be completed by a specified date. Timelines for implementation of the corrective actions will be extended upon a reasonable and timely request of the public agency or in accordance with section IV (G) of these procedures.
- B. Either party may request technical assistance from MSDE pursuant to the Letter of Findings. The request for technical assistance must be made in a timely manner as to not delay the implementation of the corrective actions.
- C. MSDE may negotiate other methods to effectively implement the final decision.¹
- D. MSDE staff shall review the actions taken and determine if the actions satisfy the required actions.
 1. If the actions taken satisfy the corrective actions, MSDE will provide written notice of its decision to the parties and close the complaint investigation.

¹ Required by 2001 OSEP Monitoring Report

2. If the actions taken by the public agency do not satisfy the corrective actions and the public agency has not made good faith efforts to implement the corrective actions, MSDE will provide the public agency with written notice of the enforcement sanctions as specified by these procedures.

VIII. ENFORCEMENT

- A. When a public agency has not implemented the corrective actions by the date specified in the Letter of Findings or by the date of any extension granted in accordance with Section VII of these procedures, MSDE shall initiate the following actions:
 1. Written correspondence to the Superintendent, Director of Special Education, and other local school system personnel, as appropriate, advising that the corrective actions must be implemented without delay to avoid further enforcement action within a deadline specified; and
 2. Offer additional technical assistance to the public agency to assist in the implementation of the corrective actions.
- B. If after MSDE has taken the steps outlined in VIII (A) above, and the public agency still has not implemented the corrective actions or made good faith efforts to correct substantial violations, MSDE may take any or all of the following actions:
 1. Redirect or target the use of funds allocated under IDEA Part B Discretionary funds;
 2. Reduce or eliminate the use of funds allocated under IDEA Part B Discretionary funds;
 3. Redirect or target the use of funds allocated under IDEA Part B Pass Through funds;
 4. Withhold or reduce Part B Pass Through funds pending completion of the corrective actions;
 5. Withhold or reduce State funds for special education services pending the completion of corrective actions;
 6. Assign MSDE staff on-site to assist in the completion of the corrective actions;
 7. Assign a monitor to oversee the public agency's special education programs with the responsibility for the costs of monitoring to be determined by MSDE.

- C. Prior to reducing or withholding funds, all requirements regarding proper notice must be met (34 CFR §300.197(b)). Under 34 CFR §76.400 in order for a State to approve the application for funds of an entitlement program or a discretionary program, the applicant must meet the federal laws and regulations of that program. §76.401 requires the opportunity for a hearing prior to the disapproval of an application including the procedures to be followed. Therefore, if the State finds it necessary to take steps to reduce or withhold funds because the public agency has not corrected or made good faith efforts to correct substantial violations, a hearing before the State Board of Education shall be held. The State Board may refer the matter to the Office of Administrative Hearings for hearing and recommended decision.

IX. PUBLIC AWARENESS EFFORTS

Public agencies must ensure that the complaint procedures are explained to parents, advocates and school personnel, including providing notice of the procedural safeguards.

MSDE shall disseminate the complaint procedures through presentations to advocacy organizations, public agency personnel, and others as requested. MSDE has developed partnerships with advocacy and parent organizations such as the Maryland Disability Law Center; Parents' Place of Maryland; Maryland Coalition for Inclusive Education; and ARC/Maryland, to ensure awareness of these procedures.