



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

**March 2, 2023**

Ms. Callie Oettinger  
Sent via email: Callie.Oettinger@gmail.com

Dear Ms. Oettinger:

This letter responds to your email correspondence to several staff within the Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In that email you asked that OSEP clarify the requirements under the Individuals with Disabilities Education Act (IDEA or Act) related to the State complaint provisions in 34 C.F.R. §§ 300.151 through 300.153. Specifically, you have asked:

- (1) Must a State educational agency (SEA) resolve a complaint that meets the requirements of 34 C.F.R. § 300.153 if the child who is the subject of the complaint has graduated?
- (2) Must an SEA resolve a complaint that meets the requirements of 34 C.F.R. § 300.153 if the complainant is alleging systemic noncompliance based on facts related to a child who has graduated?

We note that Section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of Section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA Section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further, please note that OSEP responds to these matters, generally, and not in the context of any specific due process complaint or State complaint that may be pending or resolved.

Each SEA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153(a). See 34 C.F.R. § 300.151. Under 34 C.F.R. § 300.153(b), a complaint submitted to the SEA for resolution must include the following information: a statement that a public agency has violated a requirement of Part B of IDEA or its implementing regulations; the facts on which the statement is based; and the complainant's signature and contact information. If the complaint alleges violations with respect to a specific child, the complaint must also include: the name and address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem of the child, including facts relating to the

problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. If the complaint involves 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)), the complainant must provide available contact information for the child, and the name of the school the child is attending.

The regulation in 34 C.F.R. § 300.153(c) requires that the alleged violation occur not more than one year prior to the date that the complaint is received.<sup>1</sup> The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the complaint is filed with the SEA. 34 C.F.R. § 300.153(d).

IDEA's State complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met. Through its Part B State complaint procedures, each State has a powerful tool to address noncompliance with Part B of IDEA and its implementing regulations in a manner that both supports and protects the interests of children with disabilities and their parents and facilitates ongoing compliance by the State and its public agencies with the IDEA and its implementing regulations. [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#), Question B-1, citing to 71 Fed. Reg. 46601 (Aug. 14, 2006). The Department stated that the broad scope of the State complaint procedures, as permitted in the regulations, is critical to each State's exercise of its general supervision responsibilities under IDEA. The Department received public comments requesting that the State complaint procedures be limited in certain respects, such as allowing State complaints to be used to resolve only systemic violations that reach beyond the involvement of one child or restricting the types of issues that could be resolved. In its response, the Department declined to limit the scope of the State complaint procedures noting its concern that doing so would diminish the SEA's ability to ensure its LEAs are in compliance with Part B of the Act and its implementing regulations. Further, the Department voiced concern that placing limits on the scope of State complaints could result in an increase in the number of due process complaints filed and the number of due process hearings held. 71 Fed. Reg. 46601.

The State complaint procedures can be used to resolve *any* complaint that meets the requirements of 34 C.F.R. § 300.153, including complaints that raise systemic issues, and matters concerning the identification, evaluation, or educational placement of a child, or the provision of FAPE to a child. (Emphasis added). It would be inconsistent with IDEA's provisions and the Department's previous guidance for an SEA to remove or limit a party's right to file a complaint that a public agency has violated a requirement of Part B of the Act. 71 Fed. Reg. 46605. Therefore, an SEA must accept and resolve a State complaint filed on behalf of a child who has graduated, so long as the complaint meets the requirements of 34 C.F.R. § 300.153, including the requirement that the alleged violation occurred not more than one year prior to the date that the complaint is received. Similarly, systemic issues that are the subject of a State complaint filed with the SEA that are based on facts related to a child who has graduated must be resolved using the State's complaint resolution procedures, provided the complaint meets the requirements of 34 C.F.R. §

---

<sup>1</sup> A State may choose to accept and resolve complaints alleging violations that occurred more than one year prior to the SEA's receipt of the complaint as an additional protection for parents. See [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#), Question B-18, citing to 71 Fed. Reg. 46606 (Aug. 14, 2006).

300.153, including the requirement that the alleged violation occurred not more than one year prior to the date that the complaint is received.

We have provided the examples below to help clarify the SEA's responsibility when it receives a State complaint on behalf of a child with a disability who has graduated with a regular high school diploma or exceeded the age of eligibility for IDEA services. In these examples, we assume that the State complaint filed with the SEA meets the filing requirements outlined in 34 C.F.R. § 300.153.

Example 1: A parent alleges that their child, who graduated with a regular high school diploma within the previous calendar year, was not provided the transition services included in the child's IEP. To resolve this complaint, the SEA reviews data provided by the parties to the complaint and the child's record and interviews appropriate individuals to determine whether the public agency complied with the IDEA requirements. Based on its review, the SEA makes an independent determination and concludes that the LEA did not fully implement the transition services included in the child's IEP. Consistent with 34 C.F.R. § 300.151(b), the SEA addresses the failure to provide appropriate services, including relief appropriate to remedy or redress the needs of the child (such as compensatory services<sup>2</sup> or monetary reimbursement).

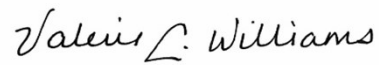
Example 2: On June 30, 2022, the parent files a State complaint that alleges that the public agency fails to provide parents with sufficient notice in advance of IEP meetings, including for a May 27, 2022, IEP Team meeting held for their child who graduated on June 15, 2022. The parent reports in their complaint that despite the public agency's failure to provide them with notice as required by 34 C.F.R. § 300.322(a)(1), they were able to attend the meeting. In this circumstance, there would likely be no remedy required for the child related to the alleged violation, since the parent attended the IEP Team meeting. However, the SEA must resolve the systemic allegation in the complaint and make an independent determination about whether proper implementation of the IDEA requirement was occurring. If the SEA confirms the public agency was not complying with the notice requirement, it must order corrective actions for the public agency to ensure that the violations do not reoccur and the requirement is properly implemented.

---

<sup>2</sup> Because the purpose of compensatory services is to remedy a failure to provide a free appropriate public education in order to address the needs of the child, for children who are beyond the period of eligibility for IDEA services, compensatory services could take the form of an additional period of eligibility. For more information about compensatory services, including compensatory services for children with disabilities who have graduated with a regular high school diploma or exceeded the age of eligibility for IDEA services, see [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act \(PDF\)](#), Section D (Sept. 30, 2021).

We trust this addresses the questions that you have raised. In the interests of transparency, we are copying the Virginia Department of Education on this response. If you have additional questions, please feel free to contact Koko Austin, OSEP's State Lead for Virginia at 202-245-6720 or by email to [Ayorkor.Austin@ed.gov](mailto:Ayorkor.Austin@ed.gov).

Sincerely,

A handwritten signature in cursive script that reads "Valerie C. Williams".

Valerie C. Williams

cc: Samantha Hollins, Ph.D.  
State Director of Special Education  
Virginia Department of Education