New York State Complaint Procedures
Questions & Answers

Introduction

This document clarifies the procedures used by the New York State Education Department (NYSED) in the investigation and resolution of State complaints, which allege that a school district or public agency has violated federal and New York State law or regulation relating to the education of students with disabilities. Federal regulations require each State Educational Agency to adopt written procedures for the investigation and resolution of any State complaint alleging that a school district or other public agency has violated certain requirements of the Individuals with Disabilities Education Act (IDEA). NYSED's procedures can be found in section 200.5(l) of the Regulations of the Commissioner of Education. This question and answer document has been provided as a public service and is interpretative of the State's regulations relating to State Complaints. NYSED provides this information as non-regulatory guidance.

The following questions and answers provide information on the State's procedures for State complaints.

General Information on State Complaints

1. What is a State complaint?

A State complaint is a written, signed statement of an allegation that a local or State educational agency (e.g., school district or other public agency) has violated a federal or New York State (NYS) law or regulation relating to the education of students with disabilities.

2. Who can file a State complaint?

An individual or organization, including individuals or organizations from another state (complainant), may submit a written, signed State complaint.

3. What is meant by a "school district or public agency" for purposes of the State complaint process?

For purposes of a State complaint in NYS, a school district or public agency includes any school that receives public funds for the education of students with disabilities. In NYS, this includes a public school district, Charter school, special act school district, boards of cooperative educational services (BOCES), State-operated school (School for the Blind; School for the Deaf), State-supported school, approved private day and residential school, preschool programs approved pursuant to section 4410 of the Education Law, a State agency that operates the student's education program (e.g., Office of Mental Health (OMH), Office for People With Developmental Disabilities (OPWDD), Department of Correctional Services (DOCS), and Office of Children and Family Services (OCFS)) and NYSED.

4. Can a State complaint be filed to enforce the decision of an impartial hearing officer?

Yes. A State complaint may be filed if a school district or public agency fails to implement the decision of an impartial hearing officer.

Filing a State Complaint

5. Who can submit a State complaint?

Any individual or organization, including an individual or organization from another State may submit a State complaint.

6. Where would a State complaint be filed?

The original signed State complaint must be filed with NYSED's Special Education Services at the following address:

New York State Education Department
Office of Special Education
89 Washington Avenue, Room 309
Albany, New York, 12234
Attention: State Complaints

Note: NYSED does not accept electronic mail or facsimile transmittals of a State complaint as they do not meet the original signature requirement under section 200.5(l)(1)(iv) of the Regulations of the Commissioner of Education.

7. Is there a time limit for submitting a State complaint?

Yes. The State complaint must allege a violation that occurred not more than one year prior to the date that the State complaint is received. There is no exception provided in federal and State regulation to the one year time limit for filing a State complaint.

8. Must the complainant send a copy of the State complaint to the school district or public agency?

Yes. To ensure that the school district has knowledge of the issues raised in the State complaint and an opportunity to resolve these directly with the parent or other parties filing the State complaint, a copy of the State complaint must be forwarded to the school district or public agency serving the student, at the same time the State complaint is filed with NYSED [8 NYCRR section 200.5(l)(1)(v)]. It is recommended that the complainant indicate in the State complaint if a copy of the State complaint was provided to the school district or public agency named in the complaint.

9. When the school district or public agency receives a State complaint, must it provide the parent with a copy of the procedural safeguards notice?

Yes. Upon receipt of the parent's first State complaint in a school year, the parent must be given a copy of the procedural safeguards notice. For purposes of this requirement, school year means July 1 to June 30.

Required Components of a State Complaint

10. What information must be included in a complainant's submission of a State complaint?

The written State complaint must include the following:

a. a statement alleging that the school district or public agency has violated a federal or State law or regulation relating to the education of a student(s) with disabilities;
b. the supporting facts upon which the statement is based (supporting fact means the information provided by the complainant that supports his or her belief that there has been a violation);
c. the signature and contact information for the complainant; and
d. if alleging violations with respect to a specific student:
    i. the name and address of the residence of the student;
    ii. the name of the school the student is attending;
    iii. in the case of a homeless child or youth, available contact information for the student and the name of the school the student is attending;
    iv. a description of how the alleged violation affected the student (i.e., nature of the problem of the student) including facts relating to the problem; and
    v. a proposed resolution of the problem to the extent known and available to the complainant at the time the State complaint is filed.

The 60-day timeline for NYSED to issue its decision for a State complaint begins upon receipt of a State complaint that includes all of the above information, as required, and that includes an original signature. Submissions of a State complaint that reference other documents where information can be found in lieu of providing such information in the State complaint submission itself will not be considered to include all of the required information.

11. Does NYSED have a sample form for filing a State complaint?

Yes. The *Sample New York State Complaint Form* is available on the special education State Complaint webpage (www.nysed.gov/special-education/state-complaint).

12. Is an individual/organization required to file a State complaint using *NYSED's Sample State Complaint Form*?

No. While use of the *Sample New York State Complaint Form* is recommended, it is not required. An individual or organization submitting a State complaint who does not use the State's sample form must still provide all of the required information as identified in Question 10 above. Using the State's sample form would help the party submitting the complaint to ensure all the required information is provided.

Review of a State Complaint

13. What actions does NYSED take when it receives a State complaint?

When NYSED receives a State complaint, it first determines:

a. Whether the State complaint includes an original signature. Regulations require that a State complaint include an original signature. Therefore, a complaint submitted by electronic mail or facsimile cannot be accepted as a State complaint since it would not meet the original signature requirement. In addition, anonymous or unsigned complaints cannot be treated as a State complaint.

b. Whether the State complaint alleged violations occurred within 12 months of the date that the State complaint was received by NYSED. Federal and State regulations require that the complaint must allege a violation that occurred not more than one year prior to the date that the State complaint is received. A complaint that alleges a violation that occurred more than one year prior to the date that the State complaint is received cannot be investigated as a State complaint.

c. Whether the alleged law/regulatory violations in the State complaint relate to the education of students with disabilities. NYSED will only investigate State complaints that allege a violation of a federal or State law or regulation relating to the education of students with disabilities. NYSED will notify the complainant when the allegation will not be investigated because it does not meet this standard and, when appropriate, inform the complainant about other options for addressing those concerns.

d. Whether the State complaint includes supporting facts for each alleged violation. Each statement of alleged violation in a State complaint must include the facts upon which the statement is based. General statements about the school, school district or program lacking the facts or specificity to support the statement needed for NYSED to focus the allegation on a particular student, group of students or practice are not sufficient to constitute a State complaint. For example, a State complaint alleging a law/regulatory violation of the least restrictive placement requirements for students with disabilities that is based solely on submission of school, district or program special education placement data would be considered as having insufficient facts for the alleged violation. If it is determined that an allegation is not supported by sufficient facts, NYSED will inform the complainant that sufficient facts

have not been provided and that an investigation of the identified allegation will not be initiated.

e. Whether any of the State complaint allegations are currently being addressed in an impartial hearing. Under federal and State requirements, NYSED must set aside any part of a State complaint that is currently being addressed in an impartial hearing or an appeal of the hearing decision. If it is determined that any of the allegations are the subject of a pending[1] or ongoing impartial hearing, NYSED must set aside (i.e., will not proceed with an investigation of) those issues. Upon completion of the impartial hearing, if the issue(s) has not been addressed in the impartial hearing officer's decision, NYSED will conduct a State Complaint investigation unless the complainant withdraws the alleged violation.
f. Where an issue raised in a State complaint has been previously decided in an impartial hearing conducted pursuant to Education Law section 4404 and involving the same parties, the decision of the impartial hearing officer is binding regarding that issue and therefore NYSED will not investigate.

CONDITIONS THAT PRECLUDE THE INVESTIGATION OF A STATE COMPLAINT

14. Under what circumstances will NYSED dismiss a State complaint or an issue in a State complaint without an investigation?

NYSED will dismiss a State complaint or an issue in a State complaint *without* an investigation if:

a. it does not include allegations of violations;
b. it is not timely (the alleged violation occurred more than 12 months from the date NYSED received the State complaint);
c. it does not include facts to support the violations;
d. the allegations have been resolved in an impartial due process hearing; or
e. the complainant notifies NYSED that the issues have been resolved or otherwise requests that the State complaint be withdrawn. Such notification must be in writing or confirmed in writing by NYSED.

The complainant retains the right to submit a new State complaint that includes sufficient facts to support the allegations, provided that it is received by NYSED not later than one year after the alleged violation occurred.

[1] Pending means that a due process complaint notice has been submitted by the parent or school district on the issue that is the subject of the State complaint and the impartial hearing has not been initiated.

15. Under what circumstances will NYSED "set aside" an issue in a State complaint?

NYSED will set aside an issue in a State complaint when it is determined that any of the allegations in a State complaint are the subject of a pending or ongoing impartial hearing or an appeal of the hearing decision. When an issue is set aside, it means that NYSED will not investigate the set aside issue until a decision has been rendered by an impartial hearing officer, and until the complainant submits a request to activate the complaint at the end of the hearing. That request to activate the complaint must include evidence that the issue was not addressed by the impartial hearing.

Notification of Receipt of a State Complaint

16. How will NYSED notify the complainant that it has received his/her State complaint?

NYSED will send the complainant a letter through regular mail. The letter acknowledging the complaint will include the following:

a. A statement that NYSED received a form/letter from the party requesting investigation of the State complaint and the date it was received.
b. A list of the allegations to be investigated.
c. Identification of those allegations that have been dismissed or set aside, if any, and the reasons why.
d. A statement of the complainant's right to submit additional information, either orally or in writing regarding the allegations in the State complaint and a request that any additional information that the complainant has that is relevant to the investigation be submitted as soon as possible in order for NYSED to complete the investigation and determine the findings within 60 calendar days of the receipt of the complaint. (*Note: NYSED will make a determination on a case by case basis as to whether any additional information submitted by a complainant is a new State complaint or an amendment to an existing State complaint).*
e. A statement that the State complaint decision will be issued no later than 60 calendar days after the complaint was received by NYSED except when the timeline is extended upon the determination that exceptional circumstances exist requiring the decision to be delayed or when the parties agree to extend timelines to engage in mediation (refer to Timeline for a Complaint section).
f. The option for the complainant and the school district or public agency to resolve the complaint locally, prior to the completion of the 60 calendar day investigation timeline (refer to the Local Complaint Resolution section).

17. How will NYSED notify the school district or public agency that a State complaint against them has been submitted?

NYSED will notify the school district or public agency in writing that a State complaint has been submitted. The letter that is sent to the school district or public agency will be the same letter acknowledging receipt of the complaint that is sent to the complainant. This letter will include required components that the school district or public agency must address and will provide the following information:

a. A statement of the allegations to be investigated, and those that have been dismissed or set aside.
b. Identification of initial relevant information that the school district or public agency must submit to NYSED which may include, but is not limited to, such information as:
    i. student records, including individualized education programs (IEPs) and evaluations;
    ii. schedules of classes and/or related services sessions;
    iii. correspondence and notices; and
    iv. telephone records and other documentation of communication or attempts to communicate with the parents.
c. A statement that if the school district or public agency does not respond to NYSED's request for information, NYSED will use all available relevant information in reaching its determination in the State complaint.
d. A statement that the State complaint decision will be issued not later than 60 calendar days after the State complaint was received by NYSED except when the timeline is extended upon the determination that exceptional circumstances exist requiring the decision to be delayed or when the parties agree to extend timelines to engage in mediation (refer to Timeline for a Complaint section).
e. The option for the complainant and the school district or public agency to resolve the complaint locally, prior to the completion of the 60 calendar day.

18. What are the notification requirements related to a State complaint initiated by a third party?

If the State complaint is initiated by a third party (someone other than the parent, legal guardian or a student 18 years of age or older), NYSED will redact (delete) any personally identifiable information about the student from the letter of findings. The only exception is if the third party submits a written authorization, signed by the parent of the student or consent of a student 18 years of age or older, for the release of personally identifiable information about that student. *(Note: NYSED will send a copy of all correspondence related to the complaint investigation directly to the parent or legal guardian of the student, if known).*

Local Complaint Resolution[2]

19. Does the complainant have the opportunity to seek local resolution first?

Yes. NYSED encourages the parties to reach local resolution of issues that are identified in a State complaint. In the letter acknowledging receipt of the complaint, NYSED will inform the complainant and the school district or public agency of the opportunity to reach a resolution to the issues raised in a State complaint prior to the completion of the 60 calendar day investigation period. If the school district or public agency reach a local resolution, the complaint may be withdrawn (refer to Question 21).

[2] The school district must provide parents of a student with a disability with a copy of the Procedural Safeguards Notice when the school district is in receipt of a parent's first State complaint in a school year. For purposes of this requirement, school year means July 1 to June 30.

20. Can the issues in the State complaint be resolved through mediation?

Yes. The complainant and the school district or public agency may agree to voluntarily engage in mediation to attempt to resolve the State complaint. If parties agree to mediation, the school district or public agency should inform NYSED of the parties' intention to seek mediation. In this situation, the school district or public agency will implement its procedures for mediation established pursuant to section 200.5(h) of the Regulations of the Commissioner of Education. NYSED may extend the 60 calendar day timeline to issue its State complaint decision if the parties agree to engage in mediation and written notification of such agreement is provided to NYSED.

21. What written information must the school district or public agency provide NYSED if the issues in a State complaint have been resolved or corrected before the State issues its findings?

If the school district or public agency and the complainant reach a local resolution of any or all issues identified in the State complaint prior to the date NYSED issues its findings, the complainant should contact NYSED, in writing or by telephone, to request that the State complaint be withdrawn or that specific issues be dismissed from the State complaint. If there are any remaining issues identified in the State complaint that were not resolved, NYSED will investigate only those allegations. If all issues have been resolved and the State complaint is withdrawn, NYSED will close its investigation of the State complaint and notify the parties. However, NYSED may decide to exercise its general supervisory authority to conduct an investigation and issue findings regarding allegations in a State complaint even in situations when the parties reach an agreement.

Withdrawal of a State Complaint

22. Can a State Complaint be withdrawn?

Yes. A State complaint may be withdrawn by the complainant at any time prior to the date that NYSED issues the final decision regarding a State complaint. However, NYSED may decide to exercise its general supervisory authority to conduct an investigation and issue findings regarding allegations in a State complaint even in situations when the State complaint has been withdrawn.

23. What must a complainant do to notify NYSED that he/she wishes to withdraw a State complaint?

A withdrawal of a State complaint may be made by the complainant in writing or by verbal request to NYSED. Upon receipt of a verbal request, NYSED will send a written confirmation of the withdrawal of the State complaint to the complainant with a copy of the confirmation to the school district or public agency.

24. Can the complainant re-file a withdrawn State complaint?

Yes. Withdrawal of a State complaint does not preclude the complainant from submitting a State complaint at a later date, provided that it is received by NYSED not later than one year after the alleged violation occurred.

Investigation of a State Complaint

25. What is the State complaint process?

The State complaint process includes the following steps. NYSED will:

a. Determine if the complaint includes the required information identified in Question 13.
b. Review additional information provided either orally or in writing from the complainant.
c. Decide whether the school district or public agency must submit a written reply[3].
d. Review the school district or public agency's written reply to the complaint, if applicable.
e. At the discretion of NYSED, conduct additional fact finding, including an on-site investigation if NYSED determines such investigation is necessary.

After review of all relevant information, NYSED will issue a written final decision. The decision will address each allegation in the complaint, contain findings of fact and conclusions, and set forth the reasons for the final decision.

Upon a finding of a violation of federal or State law or regulation relating to the education of students with disabilities, the written findings may include technical assistance activities, negotiations and corrective actions if they are necessary to implement the decision and to achieve compliance.

Upon a finding of failure to provide appropriate services to an individual student with a disability, the final written decision must include remediation of the denial of services and appropriate future provision of services for all students with disabilities.

Timeline for a State Complaint

26. How long will it take for NYSED to investigate a State complaint and issue its findings?

NYSED will issue a letter with findings and conclusions from the investigation to the complainant and the school district or public agency within 60 calendar days of receipt of the State complaint except when the parties agree to mediation to resolve the issues in the State complaint or when a time extension has been determined necessary for exceptional circumstances.

[3] At the discretion of the school district or other public agency, the written reply may include a proposal to resolve the complaint. Such notification may also state that the parent who has filed the State complaint and the school district or other public agency have agreed to voluntarily engage in mediation.

27. What exceptional circumstances could result in a NYSED decision to extend the 60-day time line? (Rev. July 2011)

NYSED may, at its sole discretion, determine that the timelines to issue its findings of fact and conclusions in regard to a particular State complaint need to be extended for extenuating circumstances. Extensions to the 60-day timelines are considered only to the extent the extenuating circumstance would preclude NYSED from completing its investigation and issuing its findings within 60 days. Extensions will be authorized only for the minimum length of time necessary to complete the investigation and issue the findings. Examples of extenuating circumstances include, but are not limited to:

- Delayed availability of one or more key interviewees;
- An extensive volume of information about the allegations that needs to be reviewed and considered;
- Unusually high number of interviewees for NYSED to contact, including where multiple districts or programs are involved;
- Extended illness or family emergency of either party involved in the State complaint to the extent that the unavailability of the parties impacts the investigation of the State complaint;
- NYSED receives a revised State complaint that includes additional information regarding the allegations such that the amount of new information to be considered and/or timing of receipt of new information will require significant additional time. (The submission of additional information by the complainant which constitutes a new State complaint will require a new letter acknowledging receipt of the new complaint and initiation of a new 60 calendar day timeline); and/or
- NYSED receives a State complaint in the native language of the complainant or other mode of communication used by the complainant will require additional time for translation and/or transcribing of the State complaint.

28. How will parties know if an extension has been granted?

NYSED will inform all parties in writing of the date by which it will issue a letter with its findings and conclusions from the investigation and the circumstances requiring the extension.

Findings of the Investigation

29. What do the findings and conclusions of a State complaint include?

Following the completion of the investigation, NYSED will issue a letter with its findings and conclusions resulting from the investigation. The letter with the investigation findings will constitute NYSED's final decision on the State complaint that:

a. addresses each allegation NYSED investigated in the State complaint;
b. identifies findings and conclusions;
c. sets forth the reason(s) for the final decision regarding each allegation; and
d. sets forth corrective action(s) required, if any, to resolve any noncompliance and the timeline for such actions.

30. Who receives the letter of findings?

The letter with the findings of the investigation will be sent to the complainant and the superintendent or lead administrator of the school district or public agency involved in the State complaint.

31. Will the student be named or otherwise identified in the report if the State complaint was filed by a third party?

No. If the State complaint is filed by a third party (someone other than the parent, legal guardian or a student 18 years of age or older), NYSED will redact (i.e., delete) any personally identifiable information about the student from the final letter with the investigation findings. The only exception is if the third party submits a written authorization, signed by the parent of the student or consent of a student 18 years of age or older, for the release of personally identifiable information about that student. *(Note: NYSED will send a copy of the findings of fact and conclusions directly to the parent or legal guardian of the student, if known).*

Corrective Action

32. What actions are taken by NYSED when it is determined that a school district or public agency has violated federal and State law and regulation relating to the education of students with disabilities?

If NYSED finds that the school district or public agency violated a federal or State law or regulation relating to the education of students with disabilities, the letter with the findings of the investigation to the school district or public agency will specify the violation, the corrective action(s) the school district or public agency must take and the timeline for achieving compliance. The corrective action will depend on the type of violation and the circumstances pertaining to the violation. NYSED will monitor and enforce correction of noncompliance and required resolution of the complaint.

33. What possible actions may NYSED require of a school district or public agency when NYSED finds the student with a disability was denied a free appropriate public education (FAPE)?

If NYSED finds that the school district or public agency has violated a federal or State law or regulation relating to the failure to provide appropriate services to an individual student with a disability, the letter with the findings of the investigation will identify actions the school district or public agency must take to:

a. provide remediation of the denial of services, which could include, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective actions which are appropriate to the needs of the individual student; and
b. ensure the appropriate future provision of services for all students with disabilities.

34. May a school district or public agency propose a corrective action to correct a compliance issue?

Yes. The school district or public agency may propose to correct a compliance issue related to a State complaint allegation at anytime during an investigation to resolve one or more of the allegations. NYSED may accept, reject or modify the proposal to ensure that the district will achieve compliance.

35. What happens after NYSED issues its findings and corrective action to the school district or public agency?

NYSED ensures effective implementation of its decision through actions which include, but are not limited to, technical assistance activities and monitoring of corrective actions the district has taken to demonstrate compliance. NYSED will determine when the school district or public agency completed the corrective action and achieved compliance. The State complaint file will remain open until proof of compliance with the corrective action is obtained and approved by NYSED. Upon approval of proof of compliance with the corrective action(s), NYSED will send a closure letter to the school district or public agency and the complainant who initiated the investigation indicating that the complaint has been closed.

Disagreement with the Findings of a State Complaint

36. Can the findings of a State complaint be appealed? (Rev. July 2011)

No. Except as explained in questions 38 and 39 below, NYSED's decision regarding a State complaint is final and cannot be appealed to the State Education Department. NYSED will, however, correct any errors that have been made in the Statement of Facts presented in the written final decision. If either party believes that any facts presented in the written final decision include an error, the party may notify NYSED, in writing, within 15 calendar days of the date of the decision. Requests for correction not received within the 15 calendar day timeline will not be reviewed.

A request for correction must:

- identify the factual error, including the page number and section of the written final decision on which the error appears and where, in the originally-submitted documentation, information exists to support the party's claim that a factual error was made;
- explain why the party believes the fact is an error; and
- indicate how the error affects the conclusion of the investigation.

To ensure that the other party has knowledge that a request for correction has been made, a copy of the request should be sent to that party, at the same time it is submitted to NYSED.

Upon review, NYSED will issue a written response clarifying/correcting the factual error or notifying the parties that no factual error was found and no further action will be taken. If it is determined that a factual error affects NYSED's written final decision,

NYSED will issue an amended decision to both parties, including, if appropriate, revised corrective actions. The timeline for implementing the corrective actions the school district or public agency must take to achieve compliance specified in the original final written decision cannot be delayed while the request for correction is being reviewed.

37. Can the complainant request an impartial hearing regarding issues raised in a State complaint if he/she disagrees with the State complaint findings of fact and conclusions?

Yes. Where the State complaint involves the rights of an individual student, upon receipt of an adverse decision rendered in a State complaint, the complainant or the school district may initiate an impartial due process hearing to address the issues raised in the State complaint, provided that the subject of the complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings has not expired.

Complaints Filed by Nonpublic School Officials

38. Can nonpublic school officials file a State complaint?

Yes. An official of a nonpublic school is specifically authorized by federal law to file a State complaint alleging that the public school district did not meet the consultation requirements with private school representatives and representatives of parents of parentally-placed private school children with disabilities (as required in 34 CFR §300.134) during the design and development of special education and related services for parentally-placed students with disabilities. For more information on this topic, refer to Summary and Guidance on Parentally-Placed Nonpublic Elementary and Secondary School Students with Disablities (https://www.nysed.gov/special-education/guidance-parentally-placed-nonpublic-elementary-and-secondary-school-students).

39. What if an official of a nonpublic school, where the students have been parentally placed, is dissatisfied with the complaint findings?

If an official of a nonpublic school, where students have been parentally placed disagrees with NYSED's State complaint findings regarding the consultation process, he or she may submit a complaint to the Office of Special Education Programs at the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.