



New Jersey Department of Education

# SPECIAL EDUCATION Complaint Investigation

2023

Office of Special Education

## What is a State complaint?

A State complaint is a procedure for alleging that a public or private education agency providing publicly funded educational programs and services to students with disabilities, including the State Department of Education, has violated federal or state special education law. A State complaint, as its name indicates, is filed with the State Department of Education, and requests an independent investigation by the Department of the alleged violation(s).

## What are some differences between a State complaint and a due process hearing request?

A few important differences are as follows:

- (1) a State complaint requires the State Department of Education to itself investigate a parent's allegations while a due process hearing is a formal, adversarial process before an Administrative Law Judge, often requiring expert witnesses to be hired;
- (2) a State complaint must be filed within one year of the alleged violation while a due process petition must be filed within two years of the date the parent knew or should have known of the alleged violation;
- (3) a State complaint may be filed by anyone while a due process petition may only be filed by a parent, guardian, adult student (or, in certain instances, a local education agency);
- (4) a State complaint may pertain to systemic violations impacting an individual student and/or a group of students while a due process petition generally pertains to an individual student.

These differences are discussed in a separate publication, titled Comparison of Written State Complaints and Requests for Due Process Hearings, available at <https://www.nj.gov/education/specialed/policy/disputeresolution/>



## Who can file a State complaint?

Anyone, including an organization or individual from another state, can request a State complaint investigation.

## How can a request for a State complaint investigation be filed?



**By Email:** [specialeducationcomplaints@doe.nj.gov](mailto:specialeducationcomplaints@doe.nj.gov)



**By Mail:**

Director

Office of Special Education

New Jersey Department of Education P.O. Box 500

Trenton, New Jersey 08625-0500



**By Fax:** (609) 984-8422

## Is there a time limit for filing a State complaint?

Yes. Time limits for filing a State complaint have been established so that the issues are not too out of date to arrive at an appropriate resolution. The complainant must allege a violation that occurred not more than one year prior to the date that the Office of Special Education (OSE) receives the complaint.



## What issues can be addressed in a State complaint?

A State complaint can address any issue alleging a violation of the federal or state special education statutes or regulations. Such issues include failure by an education agency to provide an individual child or a group of children with a free, appropriate public education (FAPE) or with FAPE in the least restrictive environment, provide all of the services required by the individualized education program (IEP) of one or more students, meet its child find obligations, or appropriately evaluate student(s) or determine eligibility. While State complaints may determine whether an education agency followed required procedures – such as holding annual IEP meetings with the correct participants – State complaints also address substantive issues including whether the IEP developed and/or the proposed placement selected were consistent with IDEA requirements in light of the individual child’s abilities and needs. In deciding such issues, complaint investigators obtain data on the student’s progress and determine whether the IEP team’s decisions regarding the child’s educational program or services were reasonably supported by the child-specific data. Pursuant to 20 U.S.C. §1412(a)(14)(E), a parent may also file a State complaint about staff qualifications.

## May a State complaint be filed alleging that an education agency has failed to implement a due process hearing decision?

Yes, a State complaint alleging that an education agency has failed to implement a due process hearing decision must be resolved by OSE under the same procedures that apply to all other State complaints. The State complaint must be filed within one year of the date that the action ordered by the due process hearing decision was required to have occurred. If more than one action was ordered, then a separate State complaint may be filed for each action that fails to occur, as long as each complaint is received by OSE within one year of the date that each such action was required to have occurred.



## How is a State complaint resolved?

1. It is most desirable for the potential complainant and the education agency to work together to come to an understanding of mutual concerns and an agreement in the best interest of the student with a disability before it becomes necessary to file a formal complaint.
2. If a formal complaint is filed with OSE, a ten-day period is allowed for the parties to resolve the issues in the complaint before an investigation begins. This ten-day period is referred to as an opportunity for Early Resolution. A signed resolution statement is submitted to OSE to show that the matter is resolved. Mediation is also available at no cost to the parties.
3. During the investigation period, OSE may conduct interviews, review documentation submitted by the parties, review policies, procedures, and student record(s), and conduct an on-site investigation including observation of programs, as necessary, in order to reach an independent determination as to whether the education agency is violating a special education law or regulation. If the State complaint has been filed against the State Department of Education, OSE may use an outside party to conduct the investigation and issue a report.
4. Unless a complaint is resolved through the early resolution process, a report will be issued, which will include factual findings concerning each allegation which is the appropriate subject of a State complaint, conclusions, reasons for the final decision and any corrective action the education agency must take (including timelines for implementation and completion) to remediate a violation. Corrective action may include the awarding of compensatory services, monetary reimbursement, or other relief appropriate to the needs of the student(s). Corrective action plans may also include directives to ensure that the violation will not reoccur.



What information must be included in the State complaint investigation request?

## A State complaint must include:

A statement that one or more violations of federal or state special education laws or regulations has occurred.

The period of time or dates when each alleged violation occurred.

**Note: You must allege a violation that occurred not more than one year prior to the date that the complaint is received by OSE.**

The facts on which each alleged violation of federal or state special education laws or regulations is based (you are encouraged to provide copies of any documentation that supports your allegation(s)). If you are claiming that the district has failed to implement a specific student's IEP and have a copy of the IEP, please include a copy of the entire IEP as well as any other documentation that supports your allegations.

Name, address, signature and contact information of the person filing the complaint.

If alleging a violation with respect to a specific child or specific children, you must also provide:

- The name(s) of the specific child or children and school(s) where the alleged violation(s) occurred;
- The relationship of the person filing the complaint to the specific student(s);
- A description of the nature of the problem, including facts relating to the problem;
- A statement of how you would like the problem resolved, to the extent known and available to you at the time of filing.

In the case of a homeless child or youth, contact information for the child.

If alleging a violation with respect to a group of children, you must specify the group of students affected by the alleged violation and school(s) where the alleged violation(s) occurred. For example, you might allege that the education agency will not provide in-class support for 3rd grade students in [name of school] or that students with disabilities attending a particular general education classroom are not receiving the in-class support required by their IEPs.

A model form to assist you in filing a complaint can be obtained from the [Department's website](#). Please note that use of the model form is not required; however, providing the requested information may assist in expediting your request.

URL: [https://www.nj.gov/education/specialed/policy/disputeresolution/REQUEST\\_FOR\\_COMPLAINT\\_INVESTIGATION.pdf](https://www.nj.gov/education/specialed/policy/disputeresolution/REQUEST_FOR_COMPLAINT_INVESTIGATION.pdf)



# State Complaint Resolution

**Must a copy of the State complaint be provided to the education agency responsible for the student(s)' educational program?**

Yes. If your complaint concerns one or more specific student, you must forward a copy of the State complaint to the education agency against which the complaint is directed at the same time you file the complaint with the New Jersey Department of Education.

**How long does it take to make a determination on a State complaint?**

Federal/state law and regulations require that a determination be made on a complaint within 60 calendar days of OSE's receipt of the written, signed complaint. The Director of OSE may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint or if the complainant and education agency agree to mediate the dispute or engage in another means of dispute resolution. For this reason, the parties are asked to work cooperatively to resolve the issues raised in the complaint and/or to submit necessary documentation promptly.

**What happens if there are areas of noncompliance?**

If the education agency is found to be noncompliant, the report issued by OSE will include, if needed, technical assistance and a corrective action plan developed to achieve compliance with the federal and state statutes and regulations.

**If there is a finding in a State complaint that appropriate services were not provided or an IEP was not fully implemented or did not offer FAPE, what are the remedies for the individual student or group of students?**

If OSE finds a failure to provide appropriate services, it must address this failure through remedies for past violations such as compensatory services or monetary reimbursement as well as appropriate future provision of services for all children with disabilities.



## What happens if a State complaint is filed on the same issue that is being addressed in a due process hearing?

If a State complaint is submitted on the same issue that is being addressed in a due process hearing, the State complaint must be set aside (placed in abeyance) until the conclusion of the due process hearing. If the State complaint contains multiple issues, and one or more are issues included in a due process hearing, the issues in the State complaint that are being addressed by the due process hearing must be set aside until the conclusion of the due process hearing. However, any issue in the State complaint that is not a part of the due process hearing must still be resolved within the required time limits.

## If a parent has already filed a request for a State complaint investigation, can the parent still request a due process hearing?

Yes. The fact that a State complaint has been filed does not limit the right to request due process regarding issues raised in the State complaint. However, if a State complaint is also the subject of a due process hearing, OSE must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing.

## What happens if a State complaint is filed on an issue that has already been decided in a due process hearing?

If an issue is raised in a State complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding. OSE must inform the individual or organization submitting the State complaint that the decision in the due process hearing is binding. Therefore, a State complaint investigation cannot be conducted with respect to that issue.

## Will the complainant have an opportunity to provide additional information about the State complaint?

Yes. The complainant is given the opportunity to provide additional information, either orally or in writing, about the State complaint.



## How will I be notified of the results of the State complaint investigation?

You will receive a written report of findings of fact, conclusions, reasons for the decision and any required corrective actions within 60 calendar days of receipt of the request, unless an extension is granted for extenuating circumstances.

## What action can be taken if a party believes there is a mistake in the report?

If a party (the complainant or the education agency) believes there is a mistake that affects the conclusion, determination of compliance or noncompliance, or corrective action, the party may inform OSE and the other party, in writing, within 15 days of the date of the report. The letter must identify the alleged error and include any documentation in support of the claim that an error was made. If a party fails to submit relevant documentation, OSE will not be able to review the claim. After receipt of the letter and documentation, OSE will decide what steps will be taken to determine whether an error was made. Both parties will be notified in writing of the outcome. If an error is substantiated, the report will be revised, as necessary.

## What if I disagree with the outcome of a State complaint investigation?

A complaint investigation report is considered a final agency decision. Therefore, you may file an appeal with the Superior Court of New Jersey Appellate Division. You have 45 days from the date of the decision to file the appeal. More information is available at: <https://www.njcourts.gov/self-help/appeals/guide>.

Alternatively, a parent, guardian or adult student has the right to file a due process hearing request to address your concerns even though they have previously filed a State complaint.



## What can I do if the education agency does not comply with any corrective action ordered by the State in its report?

You should notify OSE in writing that the education agency involved in the complaint has not implemented one or more aspects of the State's written decision and/or corrective actions. If OSE finds that the education agency has not fully implemented the State's written decision and/or corrective actions on a timely basis, it must take steps to enforce all aspects of its corrective action plan until the education agency is in full compliance, as soon as possible, but in no case later than one year after the State's identification of the noncompliance.

## What is the State complaint system not able to do?

OSE does not investigate complaints regarding alleged violations of Section 504 of the Rehabilitation Act of 1973 or other allegations of violations of civil rights. These matters are addressed directly to the Office for Civil Rights in the U.S. Department of Education at (800) 421-3481 or to the New Jersey Office of the Attorney General, Division on Civil Rights, <https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/>.

Also, aside from staff qualifications, addressed above, OSE cannot address personnel issues or general education matters. Local boards are responsible for the operations of their schools, including the supervision of personnel and the administration of programs.

