

## FREQUENTLY ASKED QUESTIONS

### IDEA State Complaint

#### 1. What is a state complaint?

A state complaint is a written, signed, and dated statement alleging that a Local Education Agency (LEA) such as a public school district or other public agency has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or Montana implementing regulations.<sup>1</sup>

A state complaint may be filed on behalf of an individual student or a group of students, and/or a state complaint may be filed alleging a public school district has district-wide systemic noncompliance; for example, a state complaint could allege that an LEA has a policy, practice, or procedure which results in a district-wide violation of the IDEA and/or Montana special education laws.

#### 2. Who can file a state complaint?

An organization or an individual, including an individual from another state, may file a written signed state complaint. Anonymous complaints will not be accepted, but the information received may be considered through the Montana Office of Public Instruction's (OPI) general supervisory responsibilities.<sup>2</sup>

#### 3. What is a Local Education Agency (LEA) or Public Agency?

The IDEA provides definitions for LEAs<sup>3</sup> and public agencies.<sup>4</sup> A public school district or educational service agency (ESA), also known as an education cooperative in Montana, are examples of LEAs.<sup>5</sup>

The OPI, the state educational agency (SEA) for Montana, LEAs, ESAs, and other political subdivisions of the State that are responsible for providing education to children with disabilities are all examples of a public agency, as that term is defined by the IDEA.

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<sup>1</sup> The allegation(s) may be regarding a violation of Part B of the IDEA (20 U.S.C. 1400, et. seq.) or its implementing regulations (34 Code of Federal Regulations (CFR), part 300), the Montana statutes pertaining to special education (Title 20 Chapter 7, part 4 of Montana Code Annotated (MCA)), or the Administrative Rules of Montana (ARM) promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

<sup>2</sup> 34 CFR 300.151(b)(1); ARM 10.16.3662(1).

<sup>3</sup> 34 CFR 300.28.

<sup>4</sup> 34 CFR 300.33.

<sup>5</sup> MCA 20-7-451; ARM 10.16.3803(6).

#### **4. Who is considered a parent?**

Under the IDEA, the term “parent” means:

1. a biological or adoptive parent of a student;
2. a foster parent;
3. a guardian, generally authorized to act as the student’s parent or authorized to make educational decisions (but not an employee of the state if the student is a ward of the state);
4. a person acting in the place of a biological or adoptive parent, such as a grandparent or stepparent with whom the student lives (such as a caretaker relative) or a person legally responsible for the child’s welfare; or
5. a surrogate parent who has been appointed in accordance with 34 CFR 300.519 and 20-7-461 MCA.

The biological or adoptive parent, when attempting to act as a parent under IDEA or when more than one party is qualified, is presumed to be the parent, unless such parent does not have legal authority to make educational decisions.

A foster parent may act as a parent under IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a) is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student.

However, if a judicial decree or order identified a specific person or persons under 1-4 above to act as the parent, then that person shall be determined to be the “parent” for IDEA special education purposes. A judicial order which identified only an agency or organization is not sufficient to allow any representative of that agency/organization to act as the parent.<sup>6</sup>

#### **5. What if the person filing the complaint is not the parent of the student?**

The OPI is still required to follow the same procedures to resolve the complaint. However, if the person filing the complaint is not the student’s parent, or if the student has reached the age of majority (18 years old in Montana), the state complaint must include consent for the release of information to the complainant, signed by the student’s parent or the student, if age 18 or older, before any information will be shared with the complainant. If consent for release of information is not provided, then no personally identifiable information will be shared with the complainant.<sup>7</sup>

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<sup>6</sup> 34 CFR 300.30; 34 CFR 300.519; MCA 20-5-501 through 503; MCA 20-7-461; ARM 10.16.3504

<sup>7</sup> 34 CFR 300.9; 34 CFR 300.622; 34 CFR 99.30; OSEP, *Dispute Resolution Procedures under Part B of the IDEA*, Question B-11 (July 23, 2013).

## **6. Is there a specific form for filing a state complaint?**

No. Complainants may use the OPI state complaint form or another method such as a written statement or letter as long as it contains the required information.<sup>8</sup>

## **7. What information must be included in a state complaint?**

A state complaint against a local education agency (LEA) or public agency for alleged violation of the provisions of Part B of the IDEA or Montana implementing regulations<sup>9</sup> must include the following:

- (a) allege a violation that occurred not more than one year prior to the date the complaint is filed;
- (b) state the name and address of the affected child, if applicable, and the name of the school or public agency where the violation allegedly occurred;
- (c) contain a statement that the agency has violated a requirement of federal or state special education laws or regulations;
- (d) state the nature of the problem and the facts on which each allegation is based; and
- (e) state a proposed resolution of the problem to the extent known and available to the complainant.

## **8. Where is a state complaint filed?**

The state complaint must be signed and filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501. A copy of the complaint must be provided by the complainant to the LEA or public agency.<sup>10</sup>

## **9. Can complainants allege a violation that occurred more than one year prior to the date the complaint is filed, if the allegation is for a continuing violation?**

No. Montana's administrative rule states the allegation must occur within one year of the date the complaint is filed. Although an alleged violation may have first occurred prior to the one-year look back period, the investigation and possible corrective action will only cover the one-year timeframe.

## **10. Can a state complaint be filed by email or other electronic means?**

No. The OPI Dispute Resolution Office does not accept electronic filing of state complaints.

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<sup>8</sup> 34 CFR 300.509.

<sup>9</sup> Part B of the IDEA (20 U.S.C. 1400, et. seq.) or its implementing regulations (34 Code of Federal Regulations (CFR), part 300), the Montana statutes pertaining to special education (Title 20 Chapter 7, part 4 of Montana Code Annotated (MCA)), or the Administrative Rules of Montana (ARM) promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

<sup>10</sup>ARM 10.16.3662(1)-(3).

**11. When is the state complaint considered to be filed and why is the filing date important?**

A state complaint is considered filed when the OPI Dispute Resolution Office receives it. The filing date will begin the 60-day time limit for completion of the state complaint procedures and issuance of a final report.<sup>11</sup>

**12. What if a state complaint does not contain all the required elements upon filing?**

If a complaint is submitted without all the required contents discussed in Question 7, depending on what is missing, the complaint may be dismissed or held until the missing content is received. The OPI Dispute Resolution Office will send a letter to the complainant explaining deficiencies or dismissing the complaint. If a complaint is dismissed, the complainant may resubmit the complaint, providing the missing content. Timeframes associated with the filing of the complaint will not commence until all the required content is provided.<sup>12</sup>

**13. What if a copy of the state complaint is not provided to the LEA or public agency?**

Upon receiving the complaint, the OPI Dispute Resolution Office will contact the LEA or public agency to see if they received a copy of the complaint. If a copy was not provided, the OPI Dispute Resolution Office will provide a copy to the LEA or public agency via U.S. Mail. To determine the filing date of the complaint, three days shall be added to the date OPI mails the complaint to the LEA or public agency.<sup>13</sup>

**14. What happens after the state complaint is filed?**

The OPI Dispute Resolution Office reviews the complaint to ensure the required content is included and the school district or public agency received a copy of the complaint. Within 10 calendar days of filing, the OPI Dispute Resolution Office sends notice to the parties that a complaint has been filed. If the complainant is a parent alleging a violation related to the identification, evaluation, or educational placement of a student with a disability or a denial of free appropriate public education (FAPE), the notice will inform the parent of the right to request a [due process hearing](#).

The notice will also inform the parties the Early Assistance Program (EAP) has up to 15 business days from the date the complaint is filed to assist the parties in resolving the dispute.<sup>14</sup> Often, by the time the parties receive the notice, the EAP Director has already contacted the parties to begin the process. If the parties resolve the dispute during the

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<sup>11</sup> 34 CFR 300.152(a) and 10.16.3662(8).

<sup>12</sup> OSEP, *Dispute Resolution Procedures under Part B of the IDEA*, Question B-15 (July 23, 2013); ARM 10.16.3662(3).

<sup>13</sup> OSEP, *Dispute Resolution Procedures under Part B of the IDEA*, Question B-15 (July 23, 2013); ARM 10.16.3662(3).

<sup>14</sup> ARM 10.16.3660(3) and 3662(5).

15 days, typically a written agreement is signed setting out the resolution, and the complainant dismisses the complaint. If the EAP process is not successful, the school district or public agency is notified and requested to submit a written response to the OPI Dispute Resolution Office and the complainant within 10 calendar days. If necessary, the OPI Dispute Resolution Office will appoint a complaint investigator and may also ask the school district or public agency for specific documentation regarding the allegations.

If at any time the EAP director decides the attempt to mutually resolve the dispute would be futile, the OPI Dispute Resolution Office shall proceed with the complaint process.<sup>15</sup>

The parties may agree to extend the timeframe for the state complaint to continue pursuing resolution.<sup>16</sup> The OPI Dispute Resolution Office will request written confirmation of an agreement for an extension of the time.<sup>17</sup>

**15. Can a parent and the LEA or public agency engage in IDEA mediation or IEP facilitation even though a complaint has been filed?**

Yes. The parties may (but do not have to) agree to extend the 60-day time limit for complaint resolution to engage in [mediation](#) or [IEP facilitation](#). If the parties agree to extend the time limit, the OPI Dispute Resolution Office will request written confirmation.<sup>18</sup>

**16. What happens once the OPI Dispute Resolution Office receives the written response to the complaint?**

The complainant will have 10 calendar days to submit additional information, although not required. This can be done in writing or orally to the OPI Dispute Resolution Office. Upon receipt of the written response, the OPI Dispute Resolution Office initiates an investigation. If a complaint investigator has been appointed, the investigator will contact the parties directly with additional information regarding the investigation process. The complaint investigator will investigate the allegations of the complaint by conducting interviews with individuals who have knowledge of the allegations, reviewing student records and correspondence, and/or reviewing other information provided by the parties regarding the allegations. An on-site investigation may be conducted, if necessary, to resolve the issues in the complaint.<sup>19</sup>

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<sup>15</sup> ARM 10.16.3660(4).

<sup>16</sup> ARM 10.16.3660; ARM 10.16.3662(4)-(5), (8); 34 CFR 300.152(b)(1)(ii).

<sup>17</sup> 34 CFR 300.152(b)(1)(ii).

<sup>18</sup> 34 CFR 300.152(b)(1)(ii).

<sup>19</sup> ARM 10.16.3662(6)-(7).

## **17. Who is the complaint investigator and what does she or he do?**

A complaint investigator is a neutral fact finder. The complaint investigator is not an advocate for the parent, the LEA, or the public agency. A complaint investigator, who is knowledgeable about special education laws, is appointed by the OPI Dispute Resolution Office to investigate the alleged violations of federal or state special education law alleged in the complaint. The complaint investigator submits his or her findings to the OPI Dispute Resolution Office.

## **18. What happens after the investigation?**

If a complaint investigator is appointed, the investigator may have follow-up questions for the interviewees or may request additional documentation. The complaint investigator submits an investigation report to the OPI Dispute Resolution Office. A final report will be issued by the OPI Dispute Resolution Office within 60 days of the filing of the complaint, summarizing the allegations, listing findings of fact and conclusions, and including the reasons for the decision of compliance or noncompliance. If the report concludes an allegation is true, corrective actions will be required to address the needs of the child or group of children involved in the complaint. Corrective actions are issued along with timelines for implementation.<sup>20</sup> Although not an exhaustive list, examples of corrective actions include compensatory services, monetary reimbursement, required training for school personnel, and/or revisions of public agency policies or procedures. Remedies must ensure appropriate future provision of services for all children with disabilities.<sup>21</sup>

## **19. What happens if a written state complaint is filed that is also the subject of a due process hearing?**

If a state complaint contains the same issues that are also the subject of a due process hearing, the resolution of those same issues in the state complaint must be put on hold or set aside until the completion of the due process hearing. If the state complaint alleges other violations that are not at issue in the due process hearing, these allegations must be resolved within the state complaint resolution timeline.<sup>22</sup>

## **20. Can the 60-day time limit for the state complaint process be extended?**

Yes. The parties may agree to extend the 60-day time limit for resolution of the state complaint. Additionally, the OPI Dispute Resolution Office may extend the timeframe, but only if exceptional circumstances exist. Whether a timeframe is extended for exceptional circumstances is determined on a case-by-case basis.<sup>23</sup>

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<sup>20</sup> ARM 10.16.3662(8)-(9).

<sup>21</sup> 34 CFR 300.151(b) OSEP, *Dispute Resolution Procedures under Part B of the IDEA*, Question B-30 (July 23, 2013).

<sup>22</sup> 34 CFR 300.152(c)(1).

<sup>23</sup> 34 CFR 300.152(b)(1).

**21. If a state complaint final report orders corrective actions, what is the timeframe for completion?**

The state complaint final report will set forth specific timeframes for corrective actions. The OPI must ensure the ordered corrective actions are completed as soon as possible and within the timeframe specified, and in no case longer than one year of the OPI's identification of the noncompliance.<sup>24</sup>

**22. What happens if an LEA or public agency does not comply with the ordered corrective actions?**

If the LEA or public agency has not implemented the corrective actions within the timelines required by the final report, the Superintendent of Public Instruction shall take appropriate sanctions, such as recommending to the Board of Public Education (BPE) that state education funds are withheld, denying in whole or part of IDEA Part B federal funds, or recommending to the BPE a change in accreditation status.<sup>25</sup>

**23. What happens if the complainant wants to withdraw the complaint after it is filed?**

A state complaint can be withdrawn at any time before the OPI issues its final report. The complainant must submit a written statement to the OPI Dispute Resolution Office indicating withdrawal of the complaint.

**24. May a state complaint final report be reconsidered or is there an appeal process?**

No. There is no right to appeal a final report issued as the result of a state complaint.<sup>26</sup>

**25. Can a state complaint allege a public agency has failed to implement a due process hearing decision?**

Yes. A state complaint may be filed alleging a public agency failed to implement a due process hearing decision.<sup>27</sup>

**26. May a parent or district file a due process complaint after a state complaint final report has been issued? If so, what happens to any corrective actions issued in the state complaint final report?**

Yes. A parent or district may file a due process complaint after a state complaint final report is issued on the same or different issues, if it meets the requirements for filing a due process complaint. However, this will not delay the public agency or LEA's

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<sup>24</sup> 34 CFR 300.600(e).

<sup>25</sup> ARM 10.16.3662 (11)-(12).

<sup>26</sup> ARM 10.16.3662(13).

<sup>27</sup> 34 CFR 300.152(c)(3).

responsibility to comply with the corrective actions issued in the state complaint final report. Pursuant to the OPI's general supervisory responsibility, the OPI is responsible for tracking and monitoring implementation of corrective actions ordered and completion of those actions within the timeframes ordered.<sup>28</sup>

## **27. Can a parent of a parentally placed private school student file a state complaint?**

Allegations that can be raised in the state complaint process for parentally placed private school students are limited to the requirements set out in 34 CFR 300.132 through 300.135 (the provision of equitable services for parentally placed private school children with disabilities, expenditures, and consultation) and 34 CFR 300.137 through 300.144 (written affirmation of consultation, compliance, and the determination of equitable services).<sup>29</sup>

Additionally, private school officials may file a state complaint that an LEA did not engage in consultation that was meaningful or timely or did not give due consideration to the views of the private school official.<sup>30</sup> The private school official must provide the OPI Dispute Resolution Office the basis of the noncompliance by the LEA with the applicable private school provisions and must include any appropriate documentation.<sup>31</sup> If the private school official does not agree with the final report of the OPI, the private school official may submit a complaint to the U.S. Secretary of Education.<sup>32</sup>

## **28. What resources are available to assist with questions about filing a state complaint?**

More information about state complaints can be found on the OPI Dispute Resolution webpage for [state complaints](#) or by calling the OPI Dispute resolution office at (406) 444-2046.

The Montana Empowerment Center (MEC), Montana's Parent and Training Information Center (PTI), is available to assist with questions about special education in general but does not provide legal advice or legal representation. More information about MEC can be found at [www.mtempowermentcenter.org](http://www.mtempowermentcenter.org) or by calling 1-877-870-1190.

[Disability Rights Montana \(DRM\)](#), Montana's federally mandated protection and advocacy system, is another resource for parents and can be contacted by calling 1-800-245-4743 or emailing [request for service](#). In some situations, Disability Rights Montana may provide legal advice or legal representation.

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<sup>28</sup> OSEP *Letter to Deaton* (May 19, 2015).

<sup>29</sup> 34 CFR 300.140(c).

<sup>30</sup> 34 CFR 300.136(a).

<sup>31</sup> 34 CFR 300.136(b)(1)-(2).

<sup>32</sup> 34 CFR 300.136(b)(3).

**The footnotes in this document contain citations to the relevant legal authority. Links to the special education laws referenced may be found [here](#).**

*The OPI makes reasonable accommodations for persons with disabilities. If you need an alternative accessible format of notices or final report or have questions about accessibility, please contact the Dispute Resolution Office at (406) 444-2046.*