



**WRITTEN STATE
COMPLAINTS**
UNDER PART C of IDEA

34 C.F.R. §§ 303.432 through 303.434



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Stakeholders providing feedback included:

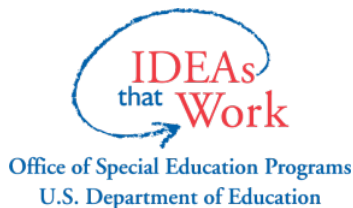
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ABOUT THIS RESOURCE

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This manual draws from the OSEP’s [Dispute Resolution Self-assessment](#), [OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), US Dept. of Education policy documents, comments to the regulations, and relevant case law. While the OSEP Memo and Q&A on Dispute Resolution (2013) is specific to Part B of the IDEA, references to the Q&A may provide insight to Part C Lead Agencies. This resource is not intended to interpret, modify, replace requirements of Federal or State law, or serve as a definitive treatment of the regulations. Application of information presented may be affected by State statutes, regulations, departmental and local policies, and any new guidance not issued at the time of this publication.



INTRODUCTION

Each State is required to establish, implement, and maintain procedural safeguards related to State administrative complaints (also called written State complaints). To assist Lead Agencies (LAs) in meeting Federal requirements under IDEA, and effectively and efficiently administer State complaints, CADRE has created a general manual aligned with the Federal regulations. This manual includes hyperlinked citations, responses to some frequently asked questions, coaching questions to prompt reflection about DR system design and how some procedures are, or might be, operationalized, and more. Key features needed for the administration of State administrative complaints include:

- Written State procedures that align with IDEA
- Infrastructure to support the oversight, case management, data collection and reporting, and implementation of the procedural safeguards related to written State complaints
- Trained and impartial complaint investigators that align practices with Federal and State law
- Mechanisms to effectively communicate with stakeholders about the State complaint process, as well as to explain how it operates in conjunction with the other IDEA dispute resolution processes
- Means to access the State complaint option

CADRE has identified five management function areas for effective systems: [Systemwide Oversight, Infrastructure & Organization](#); [Program Access & Delivery](#); [Standards & Professional Development](#); [Public Awareness & Outreach Activities](#); and [Evaluation & Continuous Quality Improvement \(CQI\)](#). For more information, visit CADRE's [System Improvement](#) online resource.

To conduct a crosswalk of your State regulations, policies, and procedures with the Federal requirements under IDEA, use OSEP's [Dispute Resolution Self-Assessment](#).

Lead Agencies are strongly encouraged to periodically review their State administrative complaint procedures to ensure that they: 1) align with State and Federal law; 2) are clear; and 3) help facilitate an efficient and effective written State complaint system. States may consider developing an internal operations manual addressing the implementation of the State's policies and procedures.





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WRITTEN STATE COMPLAINTS

Each Lead Agency must adopt written procedures for resolving any State complaint alleging a violation of Part C of the IDEA (for infants and toddlers with disabilities, age birth through two) filed with the Lead Agency, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § [303.434](#) [34 C.F.R. § [303.432\(a\)\(1\)](#)]. State complaints can be filed to resolve both child-specific and systemic issues.

The IDEA uses the term “complaint” to mean two different processes: 1) written State complaint and 2) a due process complaint. Both processes seek to have an authority make a formal determination about the issues identified by the complainant. The written State complaint requires the Lead Agency to investigate and issue a written decision on each of the allegations of IDEA violations, whereas a due process complaint requests a decision to be made by a hearing officer after an administrative hearing. For more information about due process, see the *State Administration of Early Intervention Due Process Complaints & Hearings—Adopting Part C Procedures* and *State Administration of Early Intervention Due Process Complaints & Hearings—Adopting Part B Procedures* manuals.

In addition to the IDEA dispute resolution processes of mediation, written State complaints, and due process complaints, many States adopt additional informal or early dispute resolution procedures and practices. While these additional procedures and practices can result in efficient and satisfactory outcomes, States must ensure that any informal or early dispute resolution procedures and practices in place do not deny or delay parental rights or present obstacles to accessing the dispute resolution processes afforded under IDEA.

Coaching Question

- ***What informal dispute resolution procedures and practices does your State have in place?***
- ***Is it clear that any informal procedures for resolving disputes are not a barrier, prerequisite, or a substitute for parents’ accessing their rights under the IDEA?***

When a State complaint is filed, the Lead Agency is required to issue a written decision within 60 calendar days of the date the complaint was filed, subject to allowable extensions (discussed in this manual on page 10). The decision must address each allegation of noncompliance in the complaint, contain findings of fact and conclusions on each allegation, and provide reasons for the LA’s final decision [34 C.F.R. § [303.433\(a\)\(5\)](#)]. In addition, under 34 C.F.R. § [303.433\(b\)\(2\)](#), the LA must have procedures for effective implementation of its final decision, when necessary, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

Time Limitation for Filing a State Complaint

The complaint must allege a violation of Part C of the IDEA that occurred not more than one year prior to receiving the complaint in accordance with § [303.432](#) [34 C.F.R. § [303.434\(c\)](#)]. The one-year timeline requirement applies even if the alleged violation is continuing or reoccurring [[76 Fed. Reg. 60215 \(September 2011\)](#)].

FILING A WRITTEN STATE COMPLAINT



An organization or individual may file a signed written complaint under the procedures described in 34 C.F.R. §§ [303.432](#) and [303.433](#) [34 CFR § [303.434\(a\)](#)].

Model Forms

OSEP encourages Lead Agencies to develop model forms to assist parents and other parties in filing a State complaint. However, States may not have policies or procedures that require complainants to use a model form.

Coaching Questions

If your State has a model form:

- *Is the form easy to understand? Is it 508-compliant?*
- *What considerations are made for non-English speakers?*
- *Is the form accessible online?*
- *How does your State communicate that the model form is optional?*
- *If the form requests additional information beyond what is required to file a State complaint, how is that request for optional information noted?*

To ensure model forms are easy to understand and accessible, Lead Agencies should seek input and feedback from various stakeholder groups. Examples of different States' written State complaint forms can be found in [CADRE's main library](#).



States should include information in their procedural safeguards notice and State complaint procedures, about where to file the complaint (e.g., when possible, provide an address where the complaint should be sent). States may permit but cannot require in-person or hand delivery of complaints, as such requirements could interfere with the right of a complainant to file.



Filing Electronically

There is nothing in the Part C regulations that would prohibit a State from accepting State complaints that are filed electronically. States considering accepting, or choosing to accept, electronic filings of State complaints and digital signatures would need to ensure that there are appropriate safeguards to protect the integrity of the process. States that are considering or have chosen to accept State complaints filed electronically should also consult any relevant State laws governing electronic transactions.

Safeguards should:

- Identify and authenticate a particular person as the source of the consent and indicate such person's approval of the information contained in the electronic consent [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-13];
- Be sufficient enough to ensure that a party filing a State complaint electronically understands that the complaint has the same effect as if it were filed in writing; and
- Ensure that the same confidentiality requirements that apply to written State complaints apply to State complaints filed electronically.

While a State has some discretion in determining when a complaint is considered received, the LA must ensure that its procedures for the resolution of complaints are timely and uniformly applied. For example, if a State complaint is filed electronically on a day that is not considered a business day (e.g., the weekend), the State could consider the complaint received on the date the complaint is filed or on the next business day [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-14].

Support for Parents

Lead Agencies often provide technical assistance (e.g., FAQ documents, informational sheets) on the State complaint process to a variety of stakeholders, including parents. Lead Agencies may also refer parents to State Parent Training and Information (PTI) Centers and the Community Parent Resource Centers (CPRC) for additional support in writing a State complaint.


States may also wish to consider sharing or linking to [CADRE's parent guides and companion videos](#) on State complaints and other DR options as appropriate.

Coaching Questions

- *What supports does your State make available to assist parents with understanding the State complaint process?*
-

Forwarding Copy of the Complaint

The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the Lead Agency [34 C.F.R. § [303.434\(d\)](#)]. States should establish procedures that include actions they will take when a complainant does not provide a copy of the complaint to the public agency or EIS provider serving the child at the same time the complaint is filed with the LA and should explain how failure to provide these copies will affect the initiation of the complaint resolution and/or the time limit for



completing the complaint resolution. As an additional protection for parents, OSEP encourages States to adopt procedures that ensure the Lead Agency provides a copy of the complaint to the public agency or EIS provider serving the child if the complainant does not do so.

Coaching Questions

- *How does the Lead Agency confirm that the complainant forwarded a copy of the complaint to the public agency or EIS provider serving the child at the same time the complaint was filed with the Lead Agency? What action does the Lead Agency take if the complainant does not do this?*
- *How does the Lead Agency ensure a complaint given to a service provider is forwarded to the Lead Agency?*
- *Do your State procedures address the implication for the filing date if a copy of the complaint is not forwarded to the public agency or EIS provider?*

Required Information

The State’s procedural safeguards must identify the required content of the complaint. The required content is as follows:

- A statement that the Lead Agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- The facts on which the statement is based;
- The signature and contact information for the complainant; **and**
- If alleging violations with respect to a specific child:
 - The name and address of the residence of the child;
 - The name of the EIS provider serving the child;
 - 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 [34 C.F.R. § [303.434\(b\)](#)].

States can only require complainants to provide the information included in 34 C.F.R. § [303.434\(b\)](#) as part of a State complaint. If other information is requested, the State must either label it as “optional” or use other language indicating that the complainant is not required to provide that information.

States should establish procedures for notifying a complainant when a complaint is received that does not include all of the required content.

States are not required to issue written decisions in response to anonymous complaints. However, depending upon the nature of the anonymous complaint, States may need to consider this information as part of their general supervisory responsibilities through their monitoring system.

Coaching Questions

- *What are your State's procedures for dismissing a complaint for lack of required information (e.g., missing a signature)?*
 - *If a complaint lacks required information, how does your State follow up with the complainant to either provide the missing elements or inform them of other dispute resolution options?*
-

MINIMUM STATE COMPLAINT PROCEDURES

Each Lead Agency must adopt written State complaint procedures under 34 C.F.R. §§ [303.432 through 303.434](#) to widely disseminate to parents and other interested individuals, including PTI Centers, protection and advocacy agencies, and other appropriate entities [34 C.F.R. § [303.432\(a\)\(2\)](#)].

60-Day Time Limit

Each LA must include in its minimum State complaint procedures a time limit of 60 calendar days after the date that the complaint is filed to resolve the complaint (34 C.F.R. § [303.433\(a\)](#)) unless extended due to exceptional circumstances or unless the complainant and the lead agency, public agency or EIS provider agree to use mediation/dispute resolution and agree to extend the timeline [34 C.F.R. § [303.433\(b\)\(1\)\(i\) and \(ii\)](#)]. OSEP interprets this requirement to mean that States must ensure that the 60-day time limit for complaint resolution begins on the date that a complaint is received. While a State has some discretion in determining when a complaint is considered received, the LA must ensure that its procedures allow for the timely resolution of complaints and are uniformly applied, consistent with 34 C.F.R. § [303.433\(a\)](#) and [\(b\)](#). The criteria used to determine when a complaint is considered received must be included in a State's complaint procedures. Likewise, information about filing and timelines for resolving State complaints must also be included in the procedural safeguards notice to parents in accordance with 34 C.F.R. § [303.421\(b\)](#).

OSEP encourages States to maintain a log to track State complaints. The log can be used to ensure that State complaints are resolved in a timely manner. The log could also facilitate the collection of information regarding State complaints that States are required to report under Section 618 and 635(a)(14) of the IDEA. These tracking mechanisms can also assist a State with identifying professional development needs within the State.

Coaching Questions

- *How does your State determine when the State complaint is received by both the LA and public agency or EIS provider serving the child?*
 - *How does your State inform the parties about 1) the date of receipt of the complaint and 2) timeline?*
 - *Prior to issuing a final written decision, what is the State's internal review process, and how does that process impact the 60-day timeline?*
-



Time Extensions

The regulations specify two allowable reasons for extending the 60-day time limit for complaint resolution. Under 34 C.F.R. § [303.433\(b\)\(1\)](#), the Lead Agency may extend this time limit only if:

- Exceptional circumstances exist with respect to a particular complaint; or
- The parent (or individual, or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the Lead Agency, public agency or EIS provider involved *agree to extend the time* to engage in mediation or other alternative means of dispute resolution, if available in the State.

States need to determine case by case whether it is appropriate to extend the 60-day resolution time limit for a particular complaint due to exceptional circumstances. The Lead Agency determines when there are exceptional circumstances, such as a governmentwide shutdown, if the LA needs additional information under 34 C.F.R. § [303.433\(a\)\(2\)](#) or [\(a\)\(3\)](#) and the relevant party is unavailable due to hospitalization, or if a parent complainant is unavailable due to illness and cannot provide the additional information under 34 C.F.R. § [303.433\(a\)\(2\)](#) with respect to a particular complaint that would justify an extension of the 60-day time limit in that complaint [[76 Fed. Reg. 60215 \(September 2011\)](#)]. OSEP encourages States to establish procedures for communicating with parties when the State complaint timeline is extended.

The LA may not treat mediation, in and of itself, as an exceptional circumstance under 34 C.F.R. § [303.433\(b\)\(1\)\(i\)](#) that would warrant an extension of the time limit for complaint resolution. Rather, the parties engaged in mediation or other alternative means of dispute resolution, if available in the State, must agree to extend the time limit. If the parties involved agree to engage in mediation once the State complaint is filed, but do not agree to an extension of the complaint resolution timeline, the State must ensure that the complaint is resolved within 60 days after the complaint was filed, as specified in 34 C.F.R. § [303.433\(a\)](#).

OSEP has found that the following do *not* constitute exceptional circumstances that would warrant an extension of the 60-day time limit:

- State staff shortages or heavy caseloads;
- The use of mediation or alternative dispute resolution without agreement by the parent (or individual or organization under State procedures) and the Lead Agency, public agency or EIS provider to extend the 60-day time limit [[Questions and Answers on IDEA Part C Dispute Resolution Procedures During COVID-19 \(June 22, 2020\)](#)].

Coaching Question

- *What case-specific criteria would warrant an extension of the 60-day timeline?*
-

Filings that Do Not Include the Required Components of a Complaint

Upon receipt of the State complaint filing, the Lead Agency reviews the submission for required components, specifically:

- Does the letter include facts, which if true, would be a violation of IDEA/State legal requirements addressing the provision of early intervention services?

- Does the complaint allege violations of legal requirements that occurred within the last year?
- Does the letter clearly state what the complainant seeks as proposed resolution of the problem to the extent known and available to the party at the time of the filing?

Note: A Lead Agency may not dismiss a systemic complaint based on a lack of a proposed resolution of a problem [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-16].

Coaching Questions

- *How does your State respond to an incomplete complaint or one that is inappropriate for an IDEA complaint investigation (e.g., claims of unprofessional conduct)? Is information provided to the complainant about what will be needed for a resubmission or where a complaint would be more appropriately filed (e.g., Office of Civil Rights)?*

Opportunity to Respond to the Complaint


The Lead Agency, public agency, or EIS provider must be allowed the opportunity to respond to the complaint, including, at a minimum and at the discretion of the Lead Agency, public agency, or EIS provider, a proposal to resolve the complaint [34 C.F.R. § [303.433\(a\)\(3\)\(i\)](#)].

If a Lead Agency accepts a proposed resolution to a State complaint by the Lead Agency, public agency, or EIS provider, the State is still required to issue a written decision to the complainant. The Lead Agency's decision must address each allegation in the complaint, including findings of fact, and the reasons for the Lead Agency's final decision.

**Responsibility
to Issue a
Written
Decision**

Coaching Questions

- *How does the State inform the parties of the right of the Lead Agency, public agency, or EIS provider to submit a response?*
- *What measures does your State have in place that allow for the Lead Agency, public agency, or EIS provider to respond to the complaint and submit documentation in a timely manner? Does your State share the response with the complainant? If so, what information and documentation gets shared, through what mechanism(s), and at what point in the investigation?*
- *Does your State establish a timeline by which the Lead Agency, public agency, or EIS provider must submit their response and/or a proposal to resolve the complaint? If so, how is this timeline communicated?*

- 
- *If a Lead Agency, public agency, or EIS provider submits a proposal to resolve the complaint and it is accepted by the Lead Agency, what information is shared with the complainant?*
 - *How does your State address in its decision a situation where the Lead Agency, public agency, or EIS provider has acknowledged violations and taken voluntary corrective actions of all issues in the complaint?*
-

Opportunity for Complainant to Provide Additional Information

The complainant must be provided the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint [34 C.F.R. § [303.433\(a\)\(2\)](#)]. If the complainant submits information on a different or unrelated allegation, generally the new information would be treated as a separate complaint. If the information submitted is on the same allegation, generally it would be deemed as an amendment to the original complaint. Ultimately, it is up to the State to make the determination [[71 Fed. Reg. 46603 \(August 2006\)](#)].

Coaching Questions

- *How does the State inform the parties of the right of the complainant to submit additional information?*
 - *Does your State establish a timeline by which a complainant must submit additional information? If so, how is this timeline communicated?*
-

Mediation

Mediation may help resolve issues that give rise to State complaints under §§ [303.432 through 303.434](#). A State's minimum State complaint procedures must provide an opportunity for a parent who has filed a State complaint and the Lead Agency, public agency, or EIS provider to voluntarily engage in mediation consistent with § [303.431](#) [34 C.F.R. § [303.433\(a\)\(3\)\(ii\)](#)]. The 60-day timeline for resolving a State complaint may be extended if the parties involved in a mediation agree to an extension [34 C.F.R. § [303.433\(b\)\(1\)\(ii\)](#)].

If a State complaint is not withdrawn as a result of mediation, even if the issues have been resolved, the LA must issue a written decision on the complaint.

Coaching Questions

- ***How are mediation and potentially other alternative dispute resolution opportunities for resolving a complaint communicated to a parent who has filed a complaint and the Lead Agency, public agency, or EIS provider?***
 - ***How is the Lead Agency informed if an extension to the 60-day timeline will be needed for parties to continue with mediation?***
 - ***When a complaint is resolved through mediation or other alternative dispute resolution opportunity, how does your State determine if a complainant intends to withdraw the complaint?***
-

INVESTIGATION SCOPE AND APPROACH

Under 34 C.F.R. § 303.433, once a State complaint is properly filed, it is solely the Lead Agency’s duty to investigate the complaint, gather evidence, and make an independent determination as to whether a Lead Agency, public agency, or EIS provider violated a requirement of Part C of IDEA [34 C.F.R. § [303.433\(a\)\(4\)](#)]. The Lead Agency must independently review and weigh the evidence, generally by reviewing the infant or toddlers records, data and other relevant information, and come to a determination supported by relevant facts [[Letter to Reilly, OSEP, 2014](#)].

Consider Developing an “Investigation Plan”

Prior to beginning an investigation, consider making a plan for the scope of inquiry. Consider mapping out the following:

- Identify the issues or allegations in neutral language.
- List and research, if necessary, the applicable legal standard(s) to determine a violation of IDEA
- List the information you will need to determine if the legal standards were met.
- Identify how you will gather the required and relevant facts.
 - What documents will be reviewed?
 - Is an onsite visit necessary?
 - What interviews will take place?
 - What questions will be posed to the Lead Agency, public agency, or EIS provider?
 - What questions will be posed to the complainant?

Framing the Issues for Investigation

Some States quote the language in the complaint to list the allegations that will be investigated. A different approach to consider is to restate the allegations in neutral terms to maintain (and to be perceived as maintaining) an objective approach to the investigation. For example, if the complainant lists an issue that, “The EIS provider violated the IFSP by not providing speech services for the last 2 months,” consider restating the issue to investigate as, “Did the EIS provider fully implement the speech services listed in the IFSP for 2019-2020?”

Appropriate IDEA and State Standards

Set out the evidence relied upon to determine whether the appropriate standard was met related to the issue in the complaint. After identifying an allegation that was investigated, present the applicable standard for each complaint allegation (e.g., IDEA statute/regulations; State statute/regulations; court decisions; OSEP Letters/Memos) for each issue. It is important to note that OSEP guidance documents are provided as informal guidance and are not legally binding but may be used to inform the Lead Agency's decision. Since Part C of the IDEA requires States to have policies and procedures under 34 C.F.R. § [303.101\(a\)\(2\)](#), consider if there are applicable State legal requirements that apply to the alleged violation.

Note: A determination made by the Lead Agency is based on the legal standard, not on what would be considered "best practice."



On-site Investigations

Although the Lead Agency must investigate the complaint, the Lead Agency is only required to conduct an independent on-site investigation if it determines that such an investigation is necessary [34 C.F.R. § [303.433\(a\)\(1\)](#)]. The standards to be used in determining whether to conduct an on-site investigation are left to each State. If the Lead Agency determines that there is no need to conduct an independent on-site investigation, the Lead Agency must still comply with all other applicable requirements in 34 C.F.R. § [303.433\(a\)](#) and [\(b\)](#) in resolving the complaint.

Coaching Questions

- *How does your State determine if an on-site investigation is necessary?*
 - *How does the Lead Agency inform the parties of the investigation plan (e.g., on-site, interviewees, issues to be investigated, files to be reviewed)?*
 - *How do the procedures or practices during an on-site investigation differ from an investigation done from the Lead Agency office?*
-

ISSUING A WRITTEN DECISION

Within 60-days of the date that the complaint was filed, subject to allowable extensions, a Lead Agency is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions; and (2) the reasons for the LA's final decision [34 C.F.R. § [303.433\(a\)\(5\)](#)]. Some States organize the findings of fact in the chronological order of events that occurred. Others address each allegation as it was presented in the written complaint. Regardless of how it is organized, each allegation must be addressed.



Findings of Facts and Conclusions, and Reasons for Determination

Present the relevant facts uncovered as part of the investigation and conclusions drawn from the evidence and apply those facts to the appropriate legal standard. Consider including in the report only the facts identified in the investigation that are pertinent to the determination of compliance. Recitation of all the information collected during the course of the investigation is not necessary.

It is recommended that the conclusion address each issue separately and reference applicable IDEA and State law and/or regulations or judicial decisions. The Lead Agency must determine whether there is sufficient evidence to find that there is or is not a violation of the IDEA. If the investigation does not provide sufficient information to reach a determination, the State still has an obligation to make a determination within the 60-day timeline. If the evidence is contradictory, then the investigators must address those contradictions and come to a conclusion [See [Manalansan v. Board of Education of Baltimore City, et al. \(United States District Court, Maryland \(2001\)\)](#)].

Coaching Questions

- ***Do your final reports include findings of fact and a conclusion of compliance for each allegation accepted in the complaint?***
 - ***For each finding of non-compliance, is there a corresponding corrective action?***
-

No “Burden of Proof” and Use of the “Preponderance of Evidence” Standard

It is not consistent with the IDEA for the State to assign the burden of proof to either party when handling a State administrative complaint. It is solely the Lead Agency’s duty to investigate the complaint, gather evidence, and make a determination as to whether a Lead Agency, public agency, or EIS provider violated the IDEA. It is not the burden of either party to produce evidence to persuade the Lead Agency to make a determination one way or another. Additionally, it is consistent with the IDEA for a State to use the “preponderance of evidence” standard in making the independent determination in a State complaint [[Letter to Reilly, OSEP, 2014](#)].

When there is conflicting evidence, it is important for the State to weigh and discuss the conflicting evidence in its decision. As discussed above, it is incumbent upon the State to reach a determination and a conclusion on each issue.

When the State Identifies Additional Violations

If, through the course of a complaint investigation, the State identifies other violations not initially identified in the complaint, the State has the general supervisory responsibility to address it, either within the complaint findings or separately. Regardless of the specific level of noncompliance, if a State finds noncompliance, the State must notify the Lead Agency, public agency, or EIS provider in writing of the noncompliance and of the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from the identification [34 C.F.R. § [303.700\(e\)](#)]. In determining the steps that the Lead Agency, public agency, or EIS provider must take to correct the noncompliance and document such correction, the State may consider a variety of factors, including whether the noncompliance: 1) was extensive or found in only a small percentage of files; 2) resulted in the denial of a basic right under the IDEA; and 3) represents an isolated incident or reflects a long-standing failure to meet the IDEA requirement [[OSEP Memo 09-02](#)].



CORRECTION OF NONCOMPLIANCE

Under 34 C.F.R. § [303.433\(b\)\(2\)](#), the Lead Agency must have procedures for effective implementation of its final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. Therefore, if necessary to implement the Lead Agency’s final decision, the Lead Agency’s written decision must contain remedies for the denial of appropriate services, including corrective actions that are appropriate to address the needs of the infant or toddler with a disability involved in the complaint. If appropriate, remedies could include compensatory services or monetary reimbursement and measures to ensure appropriate future provision of services for all infants and toddlers with disabilities [34 C.F.R. § [303.432\(b\)](#)]. All corrective action should be written in the decision to be completed as soon as possible and within the timeframe specified in the Lead Agency’s written decision, and in no case later than one year of the State’s identification of the noncompliance [34 C.F.R. § [300.700\(e\)](#)].

Corrective Actions

Lead Agencies have broad flexibility in determining the appropriate remedy or corrective action necessary to resolve the issue based on the specifics of the particular complaint [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-10].

Corrective actions need to be directly related to the legal violation. Strategies for drafting a corrective action plan include:

- Be clear and articulate:
 - What needs to be done;
 - When it needs to be completed by—include specific time limit(s); and
 - Who needs to be included in the corrective action(s).
- Identify the documentation that will need to be submitted to the State, with timelines, to verify that the corrective action has been completed.
- Use mandatory language (i.e., shall instead of should or will).
- Identify potential technical assistance resources.
- Consider the Lead Agency, public agency, or EIS provider submitting an implementation plan.

Possible corrective actions include, but are not limited to:

- Training
- Compensatory Services
- Monetary Reimbursement
- Reconvening of the IFSP Team
- Measures to Ensure Appropriate Future Provision of Services for All Infants and Toddlers with Disabilities
- Revision of Local Policies, Procedures, and/or Practices

Coaching Questions

- *For each finding of non-compliance, is there a corresponding corrective action directly related to the violation?*
 - *What is the scope of your State's corrective actions? For example, are corrective actions limited to the staff responsible for the violation? What criteria would expand a corrective action to a larger population (e.g., an IFSP team, the Lead Agency, public agency, or EIS provider staff)?*
 - *Is the corrective action designed to bring the Lead Agency, public agency, or EIS provider into compliance and not require a correction to best practice?*
 - *What considerations does your State make for both consistency and variability in the design of corrective actions?*
-

Implementation of the Lead Agency's Final Decision

In general, the IDEA requires that all noncompliance is corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance [34 C.F.R. § [303.120\(a\)\(2\)\(iv\)](#)]. However, the one-year timeline for the correction of noncompliance is not intended to limit a Lead Agency's authority or flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the Lead Agency has found that the EIS has failed to provide appropriate services to an infant or toddler with a disability [[Letter to Zirkel, OSEP, 2016](#)].

Additionally, if a Lead Agency has determined that corrective actions are necessary as a result of a written complaint investigation and a due process hearing is subsequently filed on the same issues, the State cannot permit the Lead Agency, public agency, or EIS provider to delay implementation of the corrective actions. Under its IDEA general supervisory responsibility, the State would be obligated to ensure that the corrective actions are completed as soon as possible within the timeframe specified in the State's written decision and not later than one year from the State's identification of the noncompliance [[Letter to Deaton, OSEP, 2015](#)].

RESPONDING TO VARIOUS TYPES OF COMPLAINTS

Systemic Complaints

A State complaint alleging systemic noncompliance could be one that alleges that a Lead Agency, public agency, or EIS provider has a policy, procedure, or practice applicable to a group of children that is inconsistent with Part C of the IDEA. If the complaint names certain children and alleges that the same violations apply to a class, category, or similarly situated children, the Lead Agency must review all relevant information to resolve the complaint but would not need to examine additional children if no violations are identified in the policies, procedures, or practices for the named children [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-9].

However, if the State identifies violations for any of the named children, the State's complaint resolution must include measures to ensure correction of the violations for all children affected by the alleged systemic noncompliance described in the complaint. Additionally, the State would need to examine the policies, procedures, and practices that may be causing the violations and the written decision on the complaint must contain procedures for effective implementation of that decision, including corrective actions to achieve compliance [34 C.F.R. §§ [300.433\(b\)\(2\)\(iii\)](#), and [303.120\(a\)](#)].

Important note: A systemic complaint cannot be dismissed if it did not include a proposed resolution since the requirement for a proposed resolution only applies to complaints involving a specific child [34 C.F.R. § 303.434(b)].

Coaching Questions

- ***How does your State respond to systemic complaints? Do investigations occur onsite?***
 - ***Are multiple investigators used? If so, how are efforts coordinated?***
-

Complaints Against the Lead Agency

In resolving a complaint filed against the Lead Agency, the Lead Agency may either appoint its own personnel or may make arrangements with an outside party to resolve the complaint. Regardless of whether the Lead Agency chooses to resolve the complaint on its own or chooses to use an outside party, the Lead Agency must ensure that all of the procedures in 34 C.F.R. §§ [303.432 through 303.434](#) are followed. Specifically, an independent on-site investigation must be conducted, if necessary, consistent with 34 C.F.R. § [303.433\(a\)\(1\)](#), and the Lead Agency must take appropriate steps to ensure this occurs.

Additionally, the Lead Agency must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency (in this case the Lead Agency) has violated a requirement of Part C of the IDEA with respect to the complaint [34 C.F.R. § [300.433\(a\)\(4\)](#)]. The Lead Agency also must ensure that it or an outside party, whichever resolves the complaint, considers all available remedies in the case of a denial of appropriate services consistent with 34 C.F.R. § [303.432\(b\)](#).

Regardless of whether the complaint is resolved by the Lead Agency or by an outside party that the Lead Agency designates to resolve the complaint, the Lead Agency must comply with all corrective actions, including remedies, set out in the final decision.

Coaching Questions

- ***What procedures does your State have in place for responding to complaints against itself?***
 - ***How does the Lead Agency address any actual or perceived conflicts of interest?***
 - ***What accountability mechanisms would be put into place to ensure the Lead Agency complies with any corrective actions issued?***
-

Complaints Alleging Failure to Implement Due Process Hearing Decision

Under 34 C.F.R. § [303.433\(c\)\(3\)](#), if a State complaint alleges that a Lead Agency, public agency, or EIS provider has failed to implement a due process hearing decision, the complaint must be resolved by the Lead Agency. States must have procedures and practices that ensure that all corrective actions that a due process hearing officer specifies in a due process hearing decision are implemented.



Complaints Regarding Eligibility Determination

Under 34 C.F.R. § [303.322](#), parents are to be provided their dispute resolution options when there is a determination that a child is not eligible under Part C of the IDEA. In resolving a State complaint challenging a Lead Agency, public agency, or EIS provider's eligibility determination, a Lead Agency should determine not only whether the Lead Agency, public agency, or EIS provider has followed the required Part C procedures to reach its determination, but also whether the Lead Agency, public agency, or EIS provider has reached a determination consistent with Part C requirements governing the evaluation and eligibility determination in 34 C.F.R. §§ [303.321](#) and [303.21](#).

To do so, the Lead Agency may need to review the evaluation data in the child's record or any additional data provided by the parties to the complaint. In addition, the Lead Agency may need to review the explanation included in the Lead Agency, public agency, or EIS provider's prior written notice to the parents under 34 C.F.R. § [303.322](#) explaining why the Lead Agency, public agency, or EIS provider made the challenged eligibility determination. If necessary, the Lead Agency may need to interview appropriate individuals to determine: (1) whether the Lead Agency, public agency, or EIS provider followed procedures and applied standards that are consistent with State standards, including the requirements of Part C; and (2) whether the Lead Agency, public agency, or EIS provider's eligibility determination is consistent with those standards and supported by the evaluation and other data included in the child's record or the information provided by the parties to the complaint.

The LA may find that the Lead Agency, public agency, or EIS provider has complied with Part C requirements if the Lead Agency, public agency, or EIS provider has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data and is consistent with Part C. If the LA determines that the Lead Agency, public agency, or EIS provider eligibility determination is not supported by the child-specific facts, the LA can order the Lead Agency, public agency, or EIS provider, on a case-by-case basis, to reconsider the eligibility determination in light of those facts. In addition, a parent always has the right to challenge the Lead Agency, public agency, or EIS provider's eligibility determination by filing a due process complaint to request a due process hearing and may also engage in mediation with the Lead Agency, public agency, or EIS provider to seek to resolve the dispute.

OTHER CIRCUMSTANCES INVOLVING STATE COMPLAINTS

When the Parent is Not the Complainant

A Lead Agency is required to resolve any complaint that meets the requirements described in 34 C.F.R. §§ [303.432](#) and [303.433](#) filed by an organization or individual, including one from another State. If a complaint is filed by an organization or individual other than the parent, the LA must investigate the complaint and issue a decision. However, parental written consent must be obtained before a LA may provide personally identifiable information about a child to a non-parent complainant as part of the complaint decision [34 C.F.R. § [303.402](#)].

If parental consent is not obtained, any personally identifiable information about the child who is the subject of the complaint must be redacted from the LA's written decision on the complaint. Because the complaint resolution would likely involve the child's personally identifiable information, it may not be possible for the LA's decision to be issued to a non-parent complainant. The LA must make this determination case by case but should not withhold relevant non-personally identifiable information from the complainant regarding the results of the LA's complaint resolution.

Moreover, even if the LA is unable to issue a written decision to the complainant because of its personally identifiable nature, the LA still must ensure that it resolves the complaint, issues a written decision that addresses each allegation in the complaint, and ensures timely implementation of its written decision, including, if appropriate, corrective actions to achieve compliance and remedies for the denial of appropriate services [34 C.F.R. §§ [303.433\(b\)\(2\)](#) and [303.432\(b\)](#)].

Coaching Questions

- ***What are your policies and procedures for protecting personally identifiable information when the complainant is not the parent?***
 - ***Do you have a consent form to send the parent when you receive a complaint from someone other than the parent?***
-

Making State Complaint Decision Available to the Public

There is no requirement in Part C of the IDEA for a State to make written State complaint decisions available to the public. If a State chooses to do so it must ensure that the confidentiality of any personally identifiable information in the complaint decision is protected from unauthorized disclosure. A Lead Agency also should consult State law for its public records requirements [[OSEP Memo and Q&A on Dispute Resolution \(2013\)](#), B-33].

The determination as to whether a State is obligated to provide the public with copies of complaint investigation reports is governed by State law, as they are State and/or local government documents. Although some States have disclosure laws similar to the Freedom of Information Act (FOIA), the Federal law requiring public disclosure of Federal documents, the applicable State law in question should be consulted [[Letter to Opuda, OSEP, 1994](#)].

State Complaint is Also Subject of a Due Process Hearing

If a due process complaint is filed on an issue under 34 C.F.R. § [303.430\(d\)](#) that is also the subject of a pending State complaint, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing officer issues a final decision. However, any issue in the State complaint that is not part of the due process action must be resolved using the 60-day time limit and procedures described in 34 C.F.R. § [303.433\(a\)](#) and [\(b\)](#) [34 C.F.R. § [303.433\(c\)\(1\)](#)].

Coaching Questions

- ***How does your State ensure that issues in a pending State complaint are not also the subject of an open due process complaint?***
-

Issue in State Complaint Previously Ruled on at a Due Process Hearing

Under 34 C.F.R. § [303.432\(c\)\(2\)](#), if a hearing officer has previously ruled on an issue that has now been included in a State administrative complaint submission at a due process hearing involving the same parties, the decision is binding on that issue. If a State complaint involving the same parties is filed on the same issue that was previously decided by the hearing officer, the Lead Agency must inform the complainant that the hearing decision is binding on that issue [34 C.F.R. § [303.432\(c\)\(2\)\(ii\)](#)]. However, the Lead Agency must use its State complaint resolution procedures to resolve any issue in the complaint that was not decided in the due process hearing. In determining that it will not resolve an issue in a State complaint because that issue was previously decided in a due process hearing, the Lead Agency must ensure that the legal and factual issues are identical.

Coaching Questions

- *What mechanism(s) are in place to ensure that a hearing officer hasn't previously ruled on an issue in a State complaint involving the same party?*
-

Reconsideration of a State's Decision

While not required by the IDEA, States may choose to establish procedures for reconsidering findings in a State complaint decision. One option is for the State to adopt procedures that allow for reconsideration of a decision within 60 days of the original filing. Note: the 60-day timeline cannot be extended just because the complaint is under review. Alternatively, a State may establish procedures for a review to occur later than 60 days. However, implementation of any corrective actions required in the Lead Agency's initial decision must not be delayed pending the review of that decision.

REPORTING OF DISPUTE RESOLUTION DATA

Lead Agency data managers submit to the Office of Special Education Programs (OSEP) their annual State data via EMAPS showing that the IDEA is being implemented. There are 12 data collections authorized under Section 618 of the IDEA, which includes the State's Part C Dispute Resolution data.

In November, Lead Agencies submit the previous year's data, ending on June 30. OSEP reviews the reported data for

quality issues and provides feedback. Lead Agencies typically submit their finalized data the following May. It is important to note that only actions initiated during July 1 through June 30 are reported. Actions initiated in a previous reporting year that continued into the current reporting year are not included in the current counts. For more detailed instructions, view [OSEP's ED Facts Initiative](#). In addition to reporting on State complaints, Lead Agencies report on mediation requests, due process complaints and hearings, and expedited due process complaints and hearings.

Report only the actions initiated during the reporting year (July 1 through June 30). Do NOT include actions initiated in a previous reporting year that continued into the current reporting year.



To be specific, for State complaint activity, Lead Agencies report:

Variable Reported	Explanation
1. Total number of written, signed complaints filed	The total number of written, signed complaints filed between July 1 and June 30
1.1 Complaints with reports issued	The total number of written, signed complaints (row 1) that were complaints with reports issued as of 60 days following the end of the reporting period; that is, enter how many of the complaints had a written decision from the Lead Agency as of August 29.
1.1 (a) Reports with findings of noncompliance	The total number of reports issued that were reports with findings of noncompliance. Row 1.1 (a) is a subset of row 1.1. <i>NOTE: The difference between the number entered in row 1.1 and the number entered in 1.1 (a) is the number of reports without findings of noncompliance.</i>
1.1 (b) Reports within timelines	The total number of reports issued within timelines (60 days). Row 1.1 (b) is a subset of row 1.1. <i>NOTE: Do NOT include any written decisions issued more than 60 days after the written, signed complaint was filed.</i>
1.1 (c) Reports within extended timelines	The total number of reports issued were reports within extended timelines. Row 1.1 (c) is a subset of row 1.1. <i>NOTE: The difference between the number in row 1.1 and the sum of the numbers entered in rows 1.1 (b) and 1.1 (c) is the number of complaints with reports issued late (not within the 60-day timeline or an extended timeline).</i>
1.2 Complaints pending	The total number of written, signed complaints (row 1) that were complaints pending as of August 29.
1.2 (a) Complaints pending a due process hearing	The total number of pending complaints were complaints pending a due process hearing. Row 1.2 (a) is a subset of row 1.2. <i>NOTE: The difference between the number in row 1.1 and the sum of the numbers entered in rows 1.1 (b) and 1.1 (c) is the number of complaints with reports issued late (not within the 60-day timeline or an extended timeline).</i>
1.3 Complaints withdrawn or dismissed	The total number of written, signed complaints (row 1) that were complaints withdrawn or dismissed as of August 29 (60 days following the end of the reporting period). Row 1.3 is a subset of row 1.



APPENDIX A: COACHING QUESTIONS

FILING A WRITTEN STATE COMPLAINT

Model Forms

- ❖ *If your State has a model form:*
 - *Is the form easy to understand? Is it 508-compliant?*
 - *What considerations are made for non-English speakers?*
 - *Is the form accessible online?*
 - *How does your State communicate that the model form is optional?*
 - *If the form requests additional information beyond what is required to file a State complaint, how is that request for optional information noted?*

Support for Parents

- ❖ *What supports does your State make available to assist parents with understanding the State complaint process?*

Forwarding Copy of the Complaint

- ❖ *How does the Lead Agency confirm that the complainant forwarded a copy of the complaint to the public agency or EIS provider serving the child at the same time the complaint was filed with the Lead Agency? What action does the Lead Agency take if the complainant does not do this?*
- ❖ *How does the Lead Agency ensure a complaint given to a service provider is forwarded to the Lead Agency?*
- ❖ *Do your State procedures address the implication for the filing date if a copy of the complaint is not forwarded to the public agency or EIS provider?*

Required Information

- ❖ *What are your State's procedures for dismissing a complaint for lack of required information (e.g., missing a signature)?*
- ❖ *If a complaint lacks required information, how does your State follow up with the complainant to either provide the missing elements or inform them of other dispute resolution options?*

MINIMUM STATE COMPLAINT PROCEDURES

60-Day Time Limit

- ❖ *How does your State determine when the State complaint is received by both the LA and public agency or EIS provider serving the child?*
- ❖ *How does your State inform the parties about 1) the date of receipt of the complaint and timeline?*
- ❖ *Prior to issuing a final written decision, what is the State's internal review process, and how does that process impact the 60-day timeline?*

Time Extensions

- ❖ *What case-specific criteria would warrant an extension of the 60-day timeline?*



Filings that Do Not Include the Required Components of a Complaint

- ❖ *How does your State respond to an incomplete complaint or one that is inappropriate for an IDEA complaint investigation (e.g., claims of unprofessional conduct)? Is information provided to the complainant about what will be needed for a resubmission or where a complaint would be more appropriately filed (e.g., Office of Civil Rights)?*

Opportunity to Respond to the Complaint

- ❖ *How does the State inform the parties of the right of the Lead Agency, public agency, or EIS provider to submit a response?*
- ❖ *What measures does your State have in place that allow for the Lead Agency, public agency or EIS provider to respond to the complaint and submit documentation in a timely manner? Does your State share the response with the complainant? If so, what information and documentation gets shared, through what mechanism(s), and at what point in the investigation?*
- ❖ *Does your State establish a timeline by which the Lead Agency, public agency, or EIS provider must submit their response and/or a proposal to resolve the complaint? If so, how is this timeline communicated?*
- ❖ *If a Lead Agency, public agency, or EIS provider submits a proposal to resolve the complaint and it is accepted by the Lead Agency, what information is shared with the complainant?*
- ❖ *How does your State address in its decision a situation where the Lead Agency, public agency, or EIS provider has acknowledged violations and taken voluntary corrective actions of all issues in the complaint?*

Information Opportunity for Complainant to Provide Additional

- ❖ *How does the State inform the parties of the right of the complainant to submit additional information?*
- ❖ *Does your State establish a timeline by which a complainant must submit additional information? If so, how is this timeline communicated?*

Mediation

- ❖ *How are mediation and potentially other alternative dispute resolution opportunities for resolving a complaint communicated to a parent who has filed a complaint and the Lead Agency, public agency, or EIS provider?*
- ❖ *How is the Lead Agency informed if an extension to the 60-day timeline will be needed for parties to continue with mediation?*
- ❖ *When a complaint is resolved through mediation or other alternative dispute resolution opportunity, how does your State determine if a complainant intends to withdraw the complaint?*

INVESTIGATION SCOPE AND APPROACH

Onsite Investigations

- ❖ *How does your State determine if an on-site investigation is necessary?*
- ❖ *How does the Lead Agency inform the parties of the investigation plan (e.g., on-site, interviewees, issues to be investigated, files to be reviewed)?*
- ❖ *How do the procedures or practices during an on-site investigation differ from an investigation done from the Lead Agency office?*
- ❖



ISSUING A WRITTEN DECISION

Findings of Facts and Conclusions, and Reasons for Determination

- ❖ *Do your final reports include findings of fact and a conclusion of compliance for each allegation accepted in the complaint?*
- ❖ *For each finding of non-compliance, is there a corresponding corrective action?*

CORRECTION OF NONCOMPLIANCE

Corrective Actions

- ❖ *For each finding of non-compliance, is there a corresponding corrective action directly related to the violation?*
- ❖ *What is the scope of your State's corrective actions? For example, are corrective actions limited to the staff responsible for the violation? What criteria would expand a corrective action to a larger population (e.g., an IFSP team, the Lead Agency, public agency, or EIS provider staff)?*
- ❖ *Is the corrective action designed to bring the Lead Agency, public agency, or EIS provider into compliance and not require a correction to best practice?*
- ❖ *What considerations does your State make for both consistency and variability in the design of corrective actions?*

RESPONDING TO VARIOUS TYPES OF COMPLAINTS

Systemic Complaints

- ❖ *How does your State respond to systemic complaints? Do investigations occur onsite?*
- ❖ *Are multiple investigators used? If so, how are efforts coordinated?*

Complaints Against the Lead Agency

- ❖ *What procedures does your State have in place for responding to complaints against itself?*
- ❖ *How does the Lead Agency address any actual or perceived conflicts of interest?*
- ❖ *What accountability mechanisms would be put into place to ensure the Lead Agency complies with any corrective actions issued?*

OTHER CIRCUMSTANCES INVOLVING STATE COMPLAINTS

When the Parent is Not the Complainant

- ❖ *What are your policies and procedures for protecting personally identifiable information when the complainant is not the parent?*
- ❖ *Do you have a consent form to send the parent when you receive a complaint from someone other than the parent?*

State Complaint is Also Subject of a Due Process Hearing

- ❖ *How does your State ensure that issues in a pending State complaint are not also the subject of an open due process complaint?*



Issue in State Complaint Previously Ruled on at a Due Process Hearing

- ❖ *What mechanism(s) are in place to ensure that a hearing officer hasn't previously ruled on an issue in a State complaint involving the same party?*