

Frequently Asked Questions

FORMAL COMPLAINTS

May the State complaint procedures, including the remedies outlines at 34 CFR §300.151(b), address the problems of a group of children? If so, please provide an example of a systemic complaint. Yes. A State Education Agency (SEA) is required to resolve any complaint that meets the requirements of 34 CFR §300.153, including a systemic complaint alleging that a public agency failed to provide a free appropriate public education (FAPE) to a group of children with disabilities. The Department views the State complaint procedures as an important tool for a State to use to fulfill its general supervision responsibilities to monitor implementation of the requirements in Part B of the Act by LEAs in the State. These responsibilities extend to both systemic and child-specific issues. An example of a systemic complaint could include a complaint alleging that an LEA has a policy, practice, or procedure that results in not providing occupational therapy to children in a specific disability category, which if true, would be inconsistent with the requirements of IDEA.

What is an SEA's responsibility to conduct a complaint investigation if the written complaint submitted to the SEA does not include the content required in 34 CFR §300.153? The regulations do not specifically address an SEA's responsibility when it receives a complaint that does not include the content required in 34 CFR §300.153. However, in the *Analysis of Comments* accompanying the regulations, the Department indicates that when an SEA receives a complaint that is not signed or does not include contact information, the SEA may choose to dismiss the complaint. In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint or that the complaint will not be investigated and timelines not commence until the missing content is provided.

What is an SEA's responsibility to conduct a complaint investigation if the complainant does not provide a copy of the complaint to the public agency/LEA serving the child at the same time the complaint is filed with the SEA? The regulations do not address this specific question. It would be appropriate for an SEA, when establishing its complaint procedures, to include the actions that will be taken under such circumstances and provide proper notice of these procedures. An SEA's complaint procedures may address how the complainant's failure to provide the required copy to the public agency/LEA will affect the initiation of an investigation and/or the timeline for completing the investigation. For example, an SEA could adopt procedures that include advising the complainant in writing that the investigation will not proceed and the 60-day timeline will not begin until the complainant provides the public agency/LEA with a copy of the complaint as required by the regulation.

May a complaint be filed with an SEA over an alleged violation that occurred more than one year prior to the date of the complaint if the violation is continuing or the complainant is requesting compensatory services for failure to provide appropriate education services? No, unless the State chooses to accept and resolve complaints regarding alleged violations that occurred outside the one-Year timeline. The regulations at 34 CFR §300.153(c) stipulate that a complaint must allege a violation that occurred not more than one year prior to the date the complaint is received. The *Analysis of Comments* accompanying the regulations notes that the previous regulations allowed complaints to be filed for continuing violations and for compensatory services claims using a longer time period. The references to these circumstances were removed from the current regulations to expedite resolution of complaints. The Department believes that limiting a complaint to a violation that occurred not more than one year prior to the

date that the complaint is received will help ensure that problems are raised and addressed promptly so that children receive FAPE. However, a State may choose to accept and resolve complaints alleging violations that occurred outside the one-year timeline, just as a State is free to add additional protections in other areas that are not inconsistent with the requirements of the Act.

Please clarify the requirements related to extension of the timeline for resolving a State complaint when the parties are engaged in mediation. As provided in 34 CFR §300.152(b)(1)(ii), 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 public agency involved can agree to extend the time limit to engage in mediation to resolve the complaint.

If the parties involved voluntarily agree to engage in mediation once the State complaint is filed, and the mediation is not successful in resolving the dispute, the entity responsible for the resolving the complaint at the State level must ensure that the complaint is resolved within the applicable timeline in 34 CFR §300.152.

If the complainant is a party other than the parent, may parties use the mediation process to attempt to resolve the issue in the State complaint? The regulations at in 34 CFR §300.152(a)(3)(ii) require an SEA to offer the parent and the public agency the opportunity to voluntarily engage in mediation (or other alternative methods of dispute resolution if available in the State to resolve the issues in a State complaint) to resolve the issues in a State complaint. The regulations do not require an SEA to provide mediation when an organization or individual other than the child's parents files a State complaint.

As set out in the *Analysis of Comments* accompanying the regulations: The statute does not require that mediation be available to other parties, and we believe it would be burdensome to expand, through regulation, new 34 CFR §300.152(a)(3)(ii) (proposed in 34 CFR §300.152(a)(3)(B)) to require that States offer mediation to non-parents. Although we do not believe we should regulate to require mediation be offered to non-parents, there is nothing in the Act or these regulations that would preclude an SEA from permitting the use of mediation, or other alternative dispute resolution mechanisms, if available in the State, to resolve a State complaint filed by an organization or individual other than the parent, and we will add language to 34 CFR §300.152(b)(1)(ii) to permit extensions of the timeline if the parties are voluntarily engaged in any of these dispute resolution procedures. In fact, we encourage SEAs and their public agencies to consider alternative means of resolving disputes between the public agency and organizations or other individuals, at the local level, consistent with State law and administrative procedures. It is up to each state, however, to determine whether non-parents can use mediation or other alternative means of dispute resolution.