

PROCEDURES FOR STATE COMPLAINT INVESTIGATIONS

MAINE DEPARTMENT OF EDUCATION

(DRAFT)



MAINE DEPARTMENT OF EDUCATION SPECIAL SERVICES TEAM DISPUTE RESOLUTION OFFICE

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The state complaint investigation process is an important part of the Maine Department of Education’s general supervisory responsibility pursuant to the Individuals with Disabilities Education Act (IDEA). Unlike a due process hearing, which provides a forum for resolving disputes between parents and school administrative units (SAUs) over the identification, evaluation, placement or provision of FAPE to a child with a disability, a state complaint investigation is a means of determining whether a public agency is in compliance with the governing law and regulations. If the investigation reveals noncompliance, a corrective action plan will be developed and monitored in order to both address the noncompliance and ensure that it is unlikely to occur in the future.

The Department seeks to make the complaint investigation process easily accessible to individuals and public agencies. While the Department’s process must be fair to all parties, the Department discourages treating the complaint investigation process as a “due process hearing lite” – motions, objections and legal practices are discouraged and will not distract the assigned investigator or the Department from conducting an independent investigation and determining whether a public agency has complied with federal or state law.

What is a “state complaint”?

A complaint is a signed, written statement alleging that a public agency (such as an SAU, the Child Development Services State IEU, or the Maine Department of Education) has failed to comply with the Maine Unified Special Education Regulations (MUSER) or the IDEA and its regulations.

Who handles and investigates state complaints?

The Maine Department of Education (MDOE or the “Department”) investigates complaints filed under MUSER/IDEA:

Maine Department of Education
Special Services Team – Dispute Resolution Office
23 State House Station
Augusta, ME 04333-0023
(207) 624-6641
TTY: Maine Relay 771
dueprocess.doe@maine.gov

An assigned complaint investigator or investigators will investigate the complaint and will make a written decision within 60 calendar days of receipt of the complaint (unless an extension is granted).

Who may file a complaint?

An organization or individual may file a signed, written complaint under the procedures described in 34 CFR sections 300.151-300.153, MUSER XVI.4, and in this document. The individual does not have to be a child’s parent. The individual or organization may be from out of state.

This document refers to the filer of the state complaint as “the Complainant.”

The Department is not required to investigate unsigned or anonymous complaints, such as by an unnamed “concerned citizen.” The Department may pursue those allegations through other means but will not use the state complaint process.

What are the requirements for filing a complaint?

1. What must a state complaint include?

- The complaint must include a statement that a public agency has violated a requirement of Parts B or C of the IDEA or MUSER.
- The facts on which the statement is based
Note: The Complainant may attach additional documents or information. The more detail provided in the complaint, the more focus the investigation is likely to have.
- The signature and contact information for the Complainant.
Note: Faxes and documents attached to emails with signatures is sufficient.
- If alleging violations with respect to a specific child (these items are not required if the complaint is not about a specific child), the Complainant must include all of the following information:
 - The name and address of the residence of the child.
 - The name of the school or early intervention services provider the child is attending.
 - In the case of a homeless child or youth within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the child, and the name of the school the child is attending.
 - A description of the nature of the of the child, including facts relating to the problem.
 - A proposed resolution of the problem to the extent know and available to the party at the time the complaint is filed.
- The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the complainant is requesting compensatory services for a violation that allegedly occurred not more than two years prior to the date that the written complaint is received by the Department. MUSER, XVI.4.B.(3).

2. Who must get a copy of the state complaint?

The party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the Department.

Note: This is required by the United States Department of Education, which wrote: “The purpose of requiring the party filing the complaint to forward a copy of the complaint to the [SAU] or public agency serving the child, at the same time the party files the complaint with the SEA, is to ensure that the public agency involved has knowledge of the issues and an opportunity to resolve them directly with the complaining party at the earliest possible time.”

3. Is there a form to use to file a state complaint?

A model form for a state complaint is available online:

<https://www.maine.gov/doe/sites/maine.gov.doe/files/inline-files/State%20Complaint%20Investigation%20Request%20Form%200119.pdf>

or by request from the Dispute Resolution Office, (207) 624-6641, TTY: Maine Relay 771, dueprocess.doe@maine.gov. A Complainant is not required to use the model form.

4. What are the permissible subjects of a state complaint?

As noted above, a Complainant may allege *any* violation of the IDEA or MUSER, including the identification, evaluation, placement, or provision of early intervention services or a free appropriate public education to an infant, toddler or child with a disability. In addition, a state complaint may contain allegations of other matters under special education law, including the following:

- Failure of a public agency to implement a decision after a due process hearing, a resolution meeting agreement, or a mediation agreement.

Note: The Department will investigate allegations of violation of other law (e.g., bullying/harassment or seclusion and restraint regulations) in an IDEA state complaint only to the extent that the violation of the other law or regulation resulted in a violation of state or federal special education statutes or rules.

What procedures will the Department follow when it receives a complaint?

1. The Department opens the record and assigns a complaint investigator.

When the Department receives a complaint, a staff member assigns the complaint a number and enters information about the complaint into the dispute resolution data system. Hard copies are maintained in a folder with the complaint name and number on a cover sheet. The Department appoints one or more complaint investigators, who must not have a personal or professional interest in the outcome of the investigation.

2. The Department determines whether the Complainant sent a copy to the public agencies.

The Department will determine within five business days whether the Complainant has provided a copy of the complaint to all required parties. If needed, the Department will contact the Complainant, advising that until all required parties have a copy, the investigation will not proceed, and the 60-day timeline will not begin.

3. The Department determines whether the complaint is proper in form.

On the day the complaint is received, the Department decides whether the complaint is in proper form and within the Department's jurisdiction under the IDEA. If the complaint is not in proper form, the Department will notify the Complainant within 10 business days that the complaint or parts of the complaint do not meet the requirements. The Department will provide a reason. The Department will indicate (a) that the complaint will be dismissed if not revised within two weeks of receipt of the notice; and (b) the complaint will not be investigated, and timelines will not start until the missing content is provided. The Complainant may revise the complaint. If the revised complaint contains allegations for which the state can proceed, timelines will be adjusted. When possible, the Department will inform the Complainant of the appropriate agency, entity or process to address concerns that do not meet the complaint requirements (*e.g.*, Office of Civil Rights).

4. The Department calculates the decision timeline.

If the complaint is considered proper in form, day one of the 60-day timeline is on the calendar day immediately following the date on which all required parties received the complaint. (Faxes and e-mails will be treated identically to mail arriving in the Department; *e.g.*, faxes and e-mails arriving after office hours will be date-stamped with the first date the office is open following receipt of the fax or e-mail).

5. The Department offers mediation.

Mediation occurs when two parties agree to participate in a structured dispute resolution with an impartial, neutral third party. When a complainant indicates they are interested in mediation, the Department reaches out to the other party to see if they would like to participate and schedules a mediation session. A third-party mediator, appointed by the Department, facilitates a resolution but cannot impose a solution. Mediation is voluntary. Either party may decline to participate or may discontinue participation at any time. The Department encourages mediation to solve disputes.

6. The Department provides the following information to the parties.

A docket sheet containing: general contact information of the parties, appointed mediator (if scheduled), appointed complaint investigator, and a tentative schedule with due dates. Other general forms including: procedural handbooks, feedback forms, and a withdrawal form. The information will be provided electronically unless a Complainant indicates they do not have electronic access.

7. Respondents are given an opportunity to provide a response and proposed resolution.

The Department must include an opportunity for the SAU or public agency to respond to the complaint including, at a minimum, a proposal to resolve the complaint. MUSER XVI.4.A.(1)(c); 34 CFR 300.152(a); 20 U.S.C. 1221e-3.

- The responding agency may propose a resolution to address the allegations in the complaint anytime during the investigation before the Complaint Investigation Report (CIR) is issued.
- After the CIR is issued, the responding agency may propose alternatives that address the corrective action identified in the report.

If a responding agency believes that it is not an appropriate party, or that the complaint is deficient for any other reason, those points should be raised in their response, not in a separate “motion to dismiss” or similar document. The CI may elect not to resolve any jurisdictional or other issues prior to the conclusion of their investigation.

8. The Complaint Investigator reviews the public agency’s response and investigates.

If the public agency does not offer a proposal to resolve the complaint, or the proposal to resolve the complaint was not acceptable to the complainant or the Department, or the parties were not agreeable to use other alternative ways of resolving the allegation, the Complaint Investigator (CI) will investigate the complaint. The CI will remind the public agency of their opportunity to file a response, if they have not done so already.

9. The Complaint Investigator makes the following determinations as to ancillary allegations.

The CI will clarify the allegations with the Complainant and will communicate with the parties regarding the allegations via a draft allegations letter. If new information submitted by the Complainant relates to on a different or unrelated incident, the new information will generally be treated as a separate complaint. If the information submitted relates to the same incident, as a general rule, the CI will treat the new information as an ancillary allegation to the original complaint. The CI will determine whether the new information constitutes a new complaint or whether it is related to the pending complaint.

During the investigation, the investigator may learn that the public agency did not comply with a law or regulation that was not initially identified as an allegation. If an investigator finds that non-compliance with special education statutes and/or regulations not identified in the allegations impact the provision of FAPE for the child, the report will contain those findings.

In all cases, the CI will notify the parties and the DPO of the ancillary allegation(s) and give both parties the opportunity to respond and provide documentation about the allegation(s) to the investigator, the other party and their representatives or advocates, if applicable, and a deadline by which to do so.

10. The Complaint Investigator holds a telephonic complaint investigation meeting.

At the discretion of the CI, the CI may schedule a preliminary meeting, called a complaint investigation meeting, to explain the process of the investigation and clarify the allegations with the parties.

11. Submission of documents and interview lists.

By the indicated due date in the allegations letter, parties will submit any documents they wish for the CI to consider and a list of any people they wish for the investigator to consider for interviews. Documents and interview lists must be shared with the other party at the same time materials are shared with the CI. All materials will be retained after the investigation has concluded and will not be returned to the parties.

12. At his/her discretion, the complaint investigator conducts interviews.

When a party wants the CI to contact certain individuals as part of the investigation, the investigator will do so at his/her discretion. The investigator will attempt to contact all pertinent people during this stage to obtain relevant information. As a general rule, the investigator will interview the Complainant by telephone, during which additional information may be gathered and the issues clarified. The Department expects that public agencies will make staff available to be interviewed by the CI. The Department discourages public agencies from having counsel present for staff interviews. If the CI believes that the presence of counsel is interfering with the interviewee's ability to respond fully and truthfully to the CI's questions, the CI may ask the attorney to leave the interview. If the attorney declines, the CI may terminate the interview. The CI may consider the impact of the attorney's presence on the quality of the information provided by the interviewee.

13. At his/her discretion, the complaint investigator may go on-site as part of an investigation.

The CI typically will conduct the investigation without going on-site. Depending on the nature of the allegations, as determined by professional judgment, the investigator may decide to visit on-site. The investigator will provide notice to the parties of the on-site investigation and make arrangements with the agency whose location will be inspected.

14. The Department monitors timelines for the complaint investigator's decision.

The Department will issue a decision within 60 days after receipt of the complaint. The Department will permit an extension of this timeline in only two circumstances: (a) if exceptional circumstances exist concerning a particular complaint; or (b) the parties agree to an extension while they pursue mediation. Exceptional circumstances include, but are not limited to, the following:

- The investigation is hindered by the unanticipated unavailability of necessary parties or information.

- Either the public agency or Complainant submits additional information that changes the course of the investigation.
- The Complainant submits large volumes of additional information at a date making it impossible to review and stay within the timeline.

Exceptional circumstances do not include the following, according to the United States Department of Education:

- Staff shortages or caseload.
- School vacations or breaks.
- The use of mediation or negotiations, without an agreement to extend the decision timeline.

15. The complaint investigator will review the record.

The complaint investigator shall review all relevant information and make an independent determination whether the public agency has violated a requirement of federal or state special education statute, or regulation.

16. The Department will make a decision.

The Department will send a written decision of the investigation (using the 60-calendar day time limit, unless extended) to the parties. The decision shall address each allegation in the complaint. The decision shall provide the findings of fact, conclusions of law, and the reasons for the decision.

A Complainant will only be provided personally identifiable information about a child if the Complainant is the child’s parent or has a release of information form signed by someone meeting the IDEA’s definition of parent. In all other cases, a Complainant will receive a redacted decision.

17. The Department takes no further action if no violations are found.

If no violations are found, the Department will take no further action and will so advise the parties.

18. The Department orders corrective action for violations.

The Department develops a remedy for each violation a complaint. If the Department finds a failure to provide appropriate services, the Department must address how to remedy the denial of those services, including, as appropriate, the awarding of compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child. The Department must also consider the appropriate future provision of services for all children with disabilities in the SAU. The Department’s remedial authority also includes technical assistance activities, negotiation, and corrective actions to achieve compliance.

Depending on the facts of a particular complaint, the Department may offer the parties the option to jointly develop a plan to address confirmed violations.

If a child is ordered compensatory education and then moves to another district, the public agency remains responsible for completing corrective action. These options can be used: (1) the former district makes written arrangements with the new school to provide the services and reimburse excess costs; (2) the former district could contract with a private provider; or (3) it could continue to offer the services. The parent needs to be involved in the decision about the compensatory education provided and when it occurs.

19. The Department monitors for timely correction of noncompliance.

The Department must make certain any and all identified noncompliance issues are corrected as soon as possible but in no case later than one year from identification. Based on the facts of each case, the Department may order corrective action to be completed at an earlier time. There may be different deadlines within the same order, depending on the nature of the ordered remedy.

The Department will monitor corrective action timelines and will periodically contact the public agencies, reminding them of the timelines. Failure to adhere to the required timeline will result in the Department taking available action against the public agency.

20. The Department reviews evidence of correction.

The public agencies are required to demonstrate correction ordered in the decision. Acceptable evidence depends on the facts of each case, but may include a new IEP for the child, amended policies, professional development agenda and attendance sheets, evidence of provision of compensatory services or evidence of reimbursement to the parent. When all of the corrective action has occurred, the Department will close the case and notify the parties.

A copy of the complaint investigation report, corrective action plan, and closure letter will be placed in the public agency's file and will be considered as part of the Department's routine monitoring of all public agencies receiving federal and state special education funds.

Is the decision appealable?

The Department's decision is final for state complaints. There is no internal administrative appeal or request for reconsideration.

If the complaint concerns the identification, evaluation, placement, or the provision of a free appropriate public education to an identified student, a party may file a due process complaint or seek mediation to resolve the ongoing dispute. A due process complaint is not an "appeal" of the state complaint decision.

According to the United States Department of Education, there is no appeal of the Department's state complaint decision to the United States Department of Education. The IDEA does not provide for an appeal of a state complaint decision to state or federal court.

What is the relationship between state complaints and due process hearing complaints?

- **Raising Issues Also Pending in a Due Process Complaint** - If a state complaint is received that is also the subject of a due process hearing under 34 CFR 300.507 or 300.530 through 300.532; or contains multiple issues, one or more of which are part of that hearing, the Department must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process complaint must be resolved using the time limit and procedures described above.
- **Raising Issues Decided in Previous Due Process Decisions** - If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the Department must inform the Complainant to that effect.
- **Alleging a Public Agency Is Not Complying with a Due Process Decision** - If a complaint alleges an SAU or other public agency failed to implement a due process hearing decision rendered by a hearing officer, the Department will investigate the allegation. If confirmed, the Department will grant appropriate relief.

The Department concluded that my school administrative unit violated MUSER and ordered them to provide compensatory education. Can I recover my attorneys' fees?

An award of attorneys' fees is not available under the IDEA for state complaint proceedings.

Are state complaint decisions public? How does the Department protect confidentiality?

A state complaint decision is a public document; however, the personally identifiable information is protected from disclosure under state and federal law. The Department will provide an unredacted state complaint decision to the public agency, to the parents of the child, to persons who have a release of information form signed by a parent of the child, or whenever FERPA permits release of personally identifiable information without parental consent.

If a state complaint decision contains personally identifiable information about more than one child, the Department will provide a partially redacted copy to each parent.