

**North Carolina  
Department of Public Instruction  
Exceptional Children Division**

**FORMAL STATE COMPLAINT  
PROCEDURES**

**Relating to the Education of  
Children with Disabilities  
Under the Individuals with Disabilities  
Education Improvement Act  
(IDEA 2004)**

**Effective September 15, 2009**

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**INTRODUCTION**

The Individuals with Disabilities Education Improvement Act (IDEA 2004) requires the State Educational Agency (SEA) to adopt written procedures for the investigation and resolution of any formal written complaint alleging that a public agency has violated a requirement of the IDEA. This document specifies the procedures used by the North Carolina Department of Public Instruction, Exceptional Children Division in the investigation and resolution of formal written complaints under the IDEA, the IDEA federal regulations, North Carolina General Statutes (GS) Article 9, Part 1A, of Chapter 115C, and/or North Carolina *Policies Governing Services for Children with Disabilities*.

**DISTRIBUTION OF STATE COMPLAINT PROCEDURES**

The EC Division will ensure the State Complaint Procedures are available to parents, organizations, public agencies, and general public by posting them on the EC Division's website at <http://www.ncpublicschools.org/ec/policy/dispute/complaints/>; providing a copy to each of the following organizations: Exceptional Children's Assistance Center; Family Support Network of North Carolina; Legal Aid of North Carolina; Disabilities Rights of NC; North Carolina Special Needs Federation; The Children's Law Center; and mailing or emailing a copy to individuals and organizations upon request.

**NC Department of Public Instruction**

June S. Atkinson, State Superintendent  
301 N. Wilmington Street, Raleigh, NC 27601-2825

In compliance with federal law, including the provisions of Title IX of the Education Amendments of 1972, NC Public Schools administers all state-operated programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color, age, military service, disability, or gender, except where exemption is appropriate and allowed by law.

## I. PURPOSE

- A. The North Carolina Department of Public Instruction (NCDPI), Exceptional Children (EC) Division adopts the following complaint investigation procedures for resolving complaints filed under the Individuals with Disabilities Education Improvement Act (IDEA), its corresponding federal regulations, Chapter 115-C, Article 9 of the NC General Statutes (GS), and North Carolina *Policies Governing Services for Children with Disabilities (Policies)*. It is the responsibility of the NCDPI to resolve all complaints that meet the requirements of 34 CFR §300.153 and are filed with the EC Division in accordance with these procedures.
- B. It is the responsibility of the EC Division to monitor the completion of corrective actions issued as a result of a complaint investigation, as well as to take steps necessary to ensure compliance with corrective actions, including providing technical assistance and taking additional enforcement actions, as appropriate.

## II. AUTHORITY

- A. The IDEA Federal Regulations 34 CFR §300.151 *et seq.* located at <http://idea.ed.gov/>
- B. North Carolina *Policies Governing Services for Children with Disabilities (Policies)* <http://www.ncpublicschools.org/ec/>

## III. COMPLAINT REQUIREMENTS

- A. Any organization or individual, hereafter the “complainant(s)”, including those from outside the State of North Carolina, may file a complaint. The complaint must be signed by the complainant.
- B. A complaint must allege a violation of the IDEA and corresponding federal regulations, or State *Policies*.
  - 1. Alleged violations must have occurred not more than one year prior to the date that the complaint is received by the EC Division. In extraordinary circumstances including, but not limited to, failure to issue prior written notice or procedural safeguards, the EC Division may investigate alleged continuing violations that exceed the one year statute of limitations.
  - 2. Alleged violations may be related to the identification, evaluation or educational placement of a student, or the provision of a free appropriate public education (FAPE) to the student.
  - 3. A parent may request enforcement of a mediation agreement reached through the NCDPI Mediation Program; a settlement agreement reached through a resolution meeting related to a due process hearing; or a due process hearing decision.
- C. The complainant may use the State Complaint Form, located in Appendix A of this document, and on the EC Division website at <http://www.ncpublicschools.org/ec/policy/dispute/complaints/> .

There is no requirement to use the model form; however, it contains all of the required information. If the complainant does not use the form, he/she must include all of the following in a signed letter of complaint:

- 1. A statement that a public agency has violated either a requirement of the IDEA, federal regulations, Article 9 of GS 115C, or NC *Policies Governing Services for Children with Disabilities*;
- 2. The facts on which the statement is based;
- 3. The signature and contact information for the complainant (mailing address, telephone numbers, and email address);
- 4. If alleging violations with respect to a specific child include:
  - a. The name and address of the residence of the child;
  - b. The name of the school the child is attending and the LEA;
  - c. In the case of a homeless child or youth, available contact information for the child/youth and the name of the school the child is attending;
  - d. A description of the nature of the problem regarding the child, including specific facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

- D. A signed complaint must be addressed and submitted to the Director of the Exceptional Children Division, Department of Public Instruction, 6356 Mail Service Center, Raleigh, NC 27699-6356.
  - 1. The EC Division will accept a complaint received via facsimile, as long as it is signed and includes all of the requirements written in Section III. A. and B. of these procedures. The complaint timeline will begin on the date the facsimile is received.
  - 2. The EC Division will accept a complaint attached to an email as a pdf file as long as it is signed and includes all of the requirements written in Section III. A. and B. The complaint timeline will begin on the date the email is opened.
- E. The complainant must send a copy of the complaint to the Superintendent of the public agency named in the complaint or if a public charter school is named in the complaint, its administrator.
- F. If the complaint is filed on behalf of an individual student and the complainant is not the student's parent, the complainant must provide the following:
  - 1. A release of confidential information that is signed by the parent giving the NCDPI permission to send the investigation report to the complainant; and
  - 2. The contact information for the parent(s), i.e. mailing address, telephone numbers, and email address.
- G. If a complaint is received that is also the subject of a due process hearing or contains multiple allegations, of which one or more are part of the hearing, the EC Division will set aside any part of the complaint that is being addressed in the due process hearing and the complaint timeline will stop. When the due process case is closed, the EC Division will review the outcome of the due process and close the complaint or proceed with the investigation.
  - 1. Any alleged violation in the complaint that is not part of the due process petition will be resolved in accordance with the following complaint procedures and applicable timelines. The EC Division will notify the parties in writing of the decision to set aside allegations and which allegations, if any, will be resolved through the complaint process.
  - 2. If an alleged violation is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on the parties, and the EC Division will inform the complainant and public agency to that effect.
- H. If the complaint does not meet the requirements outlined in Section III of these procedures, the EC Division shall provide the complainant with written notification that the complaint has been determined to be insufficient and what additional information is needed in order for the complaint to meet the requirements.

#### **IV. NOTIFICATION TO THE PARTIES**

- A. Upon receipt of the complaint, the EC Division shall forward a copy to the designated public agency personnel.
- B. The complainant and the public agency shall be provided with written notification that:
  - 1. Acknowledges receipt of the complaint.
  - 2. Identifies the issue(s) subject to an investigation.
  - 3. Identifies any issue(s) that are not subject to an investigation and why.
  - 4. Identifies the EC Division investigator assigned to resolve the complaint.
  - 5. Notifies both parties of the sixty (60) day timeline for investigating the complaint and issuing a investigation report.
  - 6. Encourages the parties to take steps to resolve the complaint as early as possible at the local level through informal means of dispute resolution.
    - a. Advises the complainant and the public agency that the public agency has twenty (20) days after receiving the notice to resolve the complaint at the local level;
    - b. Advises the complainant and the public agency of their right to request mediation and that the EC Division will appoint a neutral mediator to assist with early resolution; and
    - c. Includes the EC Division's mediation request form.
  - 7. Includes, for the complainant, a statement of the complainant's right to submit additional information

relevant to the identified issue(s); a withdrawal form should the complainant decide to withdraw the complaint at any time during the sixty (60) days; and the most recent copy of the *Procedural Safeguards: Handbook on Parents' Rights*.

8. Includes, for the public agency, notice to submit its written response and requested documents within twenty (20) days of receiving the written notification, unless the twenty (20) days are extended by the EC Division because the parties are making progress toward early resolution.

## V. EARLY RESOLUTION

- A. Upon receipt of a written request the EC Division may grant a specific extension of the twenty (20) day timeline for the public agency to submit its response and supporting documentation if the parties are actively involved in the early resolution process. An extension for submitting documentation cannot affect the sixty (60) day timeline required by the federal regulations.
- B. The early resolution agreement must:
  1. Be in writing and signed by both parties;
  2. Contain a detailed description of the resolution of each issue;
  3. Contain a statement that both parties agree all issues raised in the complaint were resolved; and
  4. For complaints involving a failure to provide services that impacted more students than the one student who is the subject of the investigation, the public agency must also provide documentation of the action taken to correct the violation for all impacted students.
- C. The public agency shall submit the agreement to the investigator assigned to the case.
- D. The EC Division will review the agreement and close the complaint or proceed with the investigation.
- E. If the public agency is unable to resolve the complaint, it must provide the investigator with a written response to the alleged violation(s) and the requested documentation within the twenty (20) day timeline or the extended timeline.

## VI. PUBLIC AGENCY RESPONSE

- A. The public agency named in the complaint is encouraged to review the issue(s) raised with appropriate school system personnel and provide a thorough response to each issue that includes:
  1. The facts determined by the public agency;
  2. Any violation(s) identified and a proposal of corrective action(s); and
  3. Actions proposed or taken to provide compensatory services for any loss of services to the individual student and any other students affected by the violation(s).
- B. Documents requested by the EC Division must be provided or the public agency must include in its written response an explanation as to why they were not provided.
- C. The public agency must send a copy of its written response only to the complainant unless confidentiality rules prohibit.
- D. Failure of the public agency to respond may result in a finding of noncompliance.

## VII. INVESTIGATION PROCESS

- A. The investigator will conduct an independent review of all information and documents provided by the complainant and the public agency.
- B. During the course of the investigation, the investigator may request additional documentation, conduct individual interviews, and/or conduct an on-site visit.
- C. Upon identifying any ancillary issue(s) during the course of the investigation, the investigator will notify the EC Director, and provide a reasonable time period for a response to the ancillary issue(s).

- D. The sixty (60) day timeline may be extended if exceptional circumstances exist with respect to a particular complaint or the complainant and the public agency involved agree to extend the time to engage in mediation or other alternative means of dispute resolution. If an extension is necessary, the complainant and public agency shall be notified, in writing, by the EC Division.

**VIII. INVESTIGATION REPORT**

- A. The investigation report shall include:
  - 1. A statement of the issue(s) investigated.
  - 2. Findings of fact and a conclusion for each issue investigated, including a statement of whether or not a violation of federal and state laws, regulations, and policies occurred, and the reasons for the conclusion.
  - 3. If the public agency is found to be compliant with the applicable federal and state laws, regulations, and policies, the complaint file will be closed.
  - 4. If the public agency is found to be noncompliant, the report shall include a corrective action plan that the public agency must implement to address the findings of noncompliance:
    - a. Remediation for the denial of any services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student;
    - b. Appropriate future provision of services for all students with disabilities;
    - c. Timelines for completing corrective actions; and
    - d. An EC Division contact person for technical assistance in completing the corrective actions.
- B. The NCDPI will issue the investigation report to the complainant and the superintendent of the public agency (or charter school administrator) within sixty (60) days of the date the complaint was filed with the EC Division.

**IX. CORRECTIVE ACTIONS**

- A. The public agency must report completion of the corrective action(s) to the Regional Consultant by the date(s) set forth in the Corrective Action Plan (CAP). The date(s) may be extended at the discretion of the EC Division, but cannot to exceed one (1) year from the issuance of the investigation report.
- B. Following confirmation that all corrective actions have been implemented the Regional Consultant will notify the investigator who will contact the complainant to verify that any corrective actions requiring individual services for the student have been implemented.
- C. Following confirmation that any corrective actions requiring individual services for the student have been implemented, a letter closing the case will be sent to the superintendent (or charter school administrator), complainant, and a copy will be sent to the EC Director.
- D. If the public agency does not complete all of the necessary corrective action(s) within the time required, the EC Division may initiate the sanctions in General Statute §115C-107.4(b) (2), (d - e).

**APPENDIX A MODEL COMPLAINT FORM**

Also located at: <http://www.ncpublicschools.org/ec/policy/dispute/complaints/>

<b>North Carolina Department of Public Instruction                  Exceptional Children Division                  State Complaint Form</b>				<b>Submit the signed original to:</b> Mary N. Watson, Director of EC Division NC Department of Public Instruction 6356 Mail Service Center Raleigh, NC 27699-6356
<b>FOR NCDPI                  USE ONLY</b>	<b>Case No. &amp; DRC:</b>	<b>Date Received:</b>	<b>Report Due:</b>	<b>The federal regulations require that you submit a copy of the signed original to:</b> The Superintendent of your local school system, or if the public agency is a charter school, to the Administrator of the charter school.

This form has been developed to assist in filing a formal state complaint about possible violations of the IDEA, federal regulations, Article 9 of the NC General Statutes 115C, and/or the State *Policies*. This form is not required; however, all the information contained in this form is required. Failure to provide all information may delay the complaint investigation.

<b>Name of Complainant:</b>		<b>Mailing Address:</b>		<b>Email Address:</b>	
<b>Relationship to Student:</b>		<b>City, State, Zip Code:</b>			
If complainant is someone other than the child's parent, he/she must submit contact information for the parent and parental consent to release confidential information. If the EC Division does not receive the signed parental consent, the Division cannot send the investigation report to the complainant.		<b>Home Telephone:</b>		Public Agency (local school system, charter school, state operated program, etc.)	
		<b>Cell Phone:</b>			
<b>Name of Student:</b>		<b>School Student Attends:</b>			
<b>Student's Area of Disability:</b>		<b>School Student Attended When Alleged Violation(s) Occurred if Different from Current School:</b>			
<b>Student's Address, if Different from Parent's (In case of homeless youth, provide contact information):</b>					
<b>Complaint and Supporting Facts:</b> Write a statement about the violation(s) of the IDEA, federal regulations, Article 9 of GS 115C, or NC <i>Policies Governing Services for Children with Disabilities</i> that occurred. Write the facts on which the above statement is based. Describe the nature of the problem of the child, including specific facts relating to the problem.					
<b>Proposed Solution:</b> Describe a proposed resolution of the problem to the extent known and available to you at this time.					
<b>Early Resolution:</b> A complaint investigation takes up to 60 days. You may work with the public agency to resolve the complaint at the local level. If both parties agree to mediation, the EC Division can appoint an impartial mediator to assist with resolving the complaint. A mediation request form will be sent upon receipt of the formal complaint.					
<b>Signature of Complainant (Required):</b> Please attach any other information and supporting documents, e.g. a copy of the student's current IEP and results of the most recent evaluation.					<b>Date:</b>