

# **COMPLAINT RESOLUTION MANUAL**

Reviewed/Updated April 2023

## **ACCEPTING/ASSIGNING THE CASES**

**Purpose: To respond appropriately to requests for a complaint investigation.**

**HOW TO: Accept/Assign new requests for complaint investigations.**

1. Requests for complaint investigations that are received via fax, email, or standard mail are date-stamped by administrative personnel in the Office of Special Education (OSE). The requests are placed in the Coordinator of Complaint Investigation (Coordinator)'s mailbox.
2. The Coordinator reviews the complaint to determine whether it contains the following required information set forth in N.J.A.C. 6A:14-9.2 and 34 C.F.R. §300.152: 1) copy served to the public or private educational agency (hereinafter referred to as the "district"); 2) facts to support each allegation; and 3) special education issues. The Coordinator also creates a record in the database, and assigns a Complaint Investigator (CI).
3. If the complaint request does not include the required information specified above, the Coordinator prepares a return letter explaining the reason that the request for complaint investigation was not accepted and how the request can be remedied, if applicable. The return letter provides a telephone number for assistance if the complainant needs help completing the complaint request. The Coordinator also updates the database and the complaint tracking spreadsheet.

## **DETERMINING THE ISSUES**

**Purpose: To outline the issues raised in the complaint and determine the scope and nature of the resolution process.**

Note: In accordance with 34 C.F.R. §§300.151 through 153, the OSE investigates complaints that involve disagreements regarding the child's educational placement as well as other disagreements including whether the education agency provided an individual child or a group of children with a free appropriate public education (FAPE) or with FAPE in the least restrictive environment (LRE). OSE also investigates systematic violations concerning policies, procedures or practices.

**HOW TO: Identify the Issue(s)**

1. CI reviews the request and any supporting documents in order to define what areas of federal and state law and regulations, as well as precedent in the United States Supreme Court and Third Circuit Court of Appeals, are involved in each allegation(s).
2. When a student is a parentally-placed student in a nonpublic school, the procedural safeguards available to nonpublic school students with disabilities and their parents as

specified by federal law and rules under Part B of the Individuals with Disabilities Education Act (IDEA) shall apply. The OSE may accept a complaint regarding whether services for a particular nonpublic school student are being duly provided by the public school district of attendance or whether the district has followed proper procedures to provide such services.

3. CI prepares the acknowledgment correspondence to the district and complainant. In the letters, the CI sets forth the specific issue(s) which will be investigated. Check federal and state code citations and precedent in the United States Supreme Court as well as the Third Circuit Court of Appeals for proper wording of issues. Examples:

- a. **Whether the prior written notice provided by the district board of education after the Individualized Education Program (IEP) team meeting complied with the requirements of federal and state regulations and, if it did not, did such violation deprive the child of a FAPE or significantly impede the parent's opportunity to participate in the decision-making process.**
- b. **Whether the district board of education and the receiving school followed required procedures to discipline a student with disabilities when they disciplined the student by removing them from their current educational placement for nine school days and offered them no educational services during the suspension. If required procedures were not followed, did this violation deprive the child of a FAPE or significantly impede the parent's opportunity to participate in the decision-making process?**
- c. **Whether the district board of education provided occupational therapy as required by the IEP of a student with disabilities.**
- d. **Whether the IEP provided the student with a FAPE that was reasonably calculated to enable the student to make meaningful progress in light of their circumstances.**
- e. **Whether the district board of education should have evaluated the student for eligibility for special education and related services pursuant to its general responsibilities for identification of children with disabilities as well as in response to the complainant's requests.**
- f. **Whether the district board of education's policy or practice of not providing an in-class resource program, including a special education teacher, to students in 3<sup>rd</sup> grade general education classes violated state and federal requirements.**
- g. **Whether implementing the student's IEP through virtual instruction was reasonably calculated to enable the student to make meaningful progress in light of the student's circumstances.**

**h. Whether the teachers providing instruction to the student held the required certifications.**

4. A complainant must receive a copy of PRISE with the acknowledgement letter.

5. CI enters the date on the database beside "Acknowledgement Prepared."

## **EARLY RESOLUTION AND MEDIATION OF THE COMPLAINT**

**Purpose: To provide the complainant and the education agency an opportunity to resolve the issue(s) raised in the complaint at the local level, perhaps with the assistance of a mediator. Resolving issues at the local level through the use of mediation or other alternative means of dispute resolution will be less adversarial and time consuming and, ultimately, children with disabilities will be the beneficiaries, services will be expedited, and relationships may improve.**

### ***HOW TO: Initiate the Complaint Resolution Process***

1. The acknowledgment letter will indicate that the district has ten days to either resolve the matter at the local level or submit a response to the complaint.

2. CI contacts the parties to discuss the early resolution options.

3. If the education agency is able to resolve the complaint, it must provide documentation of the early resolution. The district may utilize the Early Resolution Statement Form provided with the acknowledgment letter to the district.

4. Upon receipt of documentation of early resolution, the CI prepares a letter indicating that OSE has closed its investigation.

5. The CI will update the database and the complaint tracking spreadsheet to indicate the date the matter was resolved and closed.

6. Early resolution may also include use of an OSE mediator, provided that both parties agree to mediation. When the parties agree to mediation, the CI will provide the entire file to the complaint mediator who is assigned by the Coordinator.

7. The CI will contact the parties and establish the mediation date. The CI will send confirmation of the mediation conference.

8. Where an agreement is signed by the parties with the assistance of an OSE complaint mediator, the complainant will sign an acknowledgement that the issues are resolved and the matter is closed.

9. The complaint mediator will prepare the closing letter to the parties.
10. The file should contain a copy of the attendance record, mediation agreement, and the OSE Post Mediation Resolved letter.
11. The CI will update the database and the complaint tracking spreadsheet to indicate the date the matter was resolved and closed.
12. A request to extend the 10-day early resolution timeline may be submitted to the attention of the CI or the Coordinator before expiration of the 10 calendar days, provided that the complainant and the district have already agreed to either mediate the issues in the complaint or otherwise engage in early resolution efforts. The request for extension should be signed by the district representative, with a copy to the complainant and should identify the date when an anticipated resolution will be reached. Granting a request for an extension will be solely at the discretion of the OSE.
13. The CI prepares an internal memorandum to the Coordinator seeking up to a 60-day extension to permit mediation or other dispute resolution efforts.
14. After conferring with the Coordinator, if necessary, the CI may prepare a letter to the parties granting up to a 60-day extension to permit mediation or other dispute resolution.
15. The extension letters are mailed to the parties and copies are placed in the file.
16. The CI will update the database and the complaint tracking spreadsheet to indicate the date the complaint investigation timelines were extended.

### **If Complainant Also Files for Due Process**

Filing a complaint does not preclude a parent from requesting a due process hearing. However, if a complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the OSE shall set aside those issues in the complaint that are being addressed in the due process hearing until the conclusion of the due process hearing. Any allegation in the complaint that is not part of the due process hearing complaint shall be resolved in accordance with OSE's complaint procedures and applicable timelines. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding with respect to that issue.

1. If the complainant files for a due process hearing at the same time s/he files a complaint, the Dispute Resolution Unit will provide a copy of the request for due process to the CI.

2. If the CI does not receive a copy of the request for due process, but knows that one has been filed, the CI should obtain a copy of the petition from the Dispute Resolution Unit.

3. The CI should check the due process database prior to sending an acknowledgement and prior to submitting the draft of a report to ensure that a complainant has not also filed for due process without the investigator's knowledge.

4. The CI must review the request for due process and determine whether the complaint should be placed in abeyance by assessing what complaint issues, if any, will be before the Office of Administrative Law (OAL).

5. The CI prepares an internal memorandum to the Coordinator requesting an extension of time until the due process matter is resolved.

6. In lieu of an acknowledgement letter, the CI prepares a letter to the district and the complainant identifying the issues which will be investigated and notifying the parties that the other issues raised in the complaint will be held in abeyance pending resolution of the due process matter. The letter shall notify the complainant of his or her obligation to inform OSE when the due process matter has been completed, whether through a settlement agreement or by resolution by the Administrative Law Judge (ALJ), and the resolution thereof. OSE shall inform the complainant that issues that are resolved, through a settlement agreement or by the ALJ against the same parties, are binding and cannot be addressed if the complaint investigation resumes after the due process matter has been completed.

7. The CI indicates the extension date on the database for the issues being addressed in the due process hearing and updates the complaint tracking spreadsheet.

8. Periodically, the CI should follow up, as needed, to determine whether the due process matter has been resolved and whether the complaint investigation can resume on the remaining issues, or whether the issues have been decided by the ALJ.

9. If a settlement was reached in the OAL matter, the CI must review the settlement and determine whether all of the issue(s) raised in the complaint were resolved in the settlement agreement.

10. If a decision is issued at the OAL, the CI will review the decision and determine whether the ALJ ruled on the issue(s) raised in the complaint.

11. Where the ALJ rules on the issue(s) raised in the complaint and assuming the due process involved the same parties as were in the complaint, the CI shall send a letter to the parties indicating that the matter has been resolved in the due process hearing. If the due process only involved one of the parties named in the complaint, then the complaint investigation should proceed with respect to the other party.

12. The CI shall indicate on the database that the case was “closed pursuant to due process” and update the complaint tracking spreadsheet.

13. Where the ALJ did not address the issue(s) raised in the complaint, or the matter was withdrawn at the OAL and the complainant has not contacted the investigator, a letter shall be sent to the complainant with a copy to the district. The letter shall indicate that the complainant must contact the OSE within a specified period of time to advise the CI whether s/he is requesting that the investigation be resumed.

14. If the complainant fails to contact the investigator notifying them of the intent to resume the investigation within the specified period of time, the matter shall be closed. A closing letter is sent, and the CI shall indicate on the database the date that the case was “closed pursuant to due process” and update the complaint tracking spreadsheet.

15. Where the complainant wishes to move forward, the parties shall be sent a modified version of the acknowledgement letter (*i.e.*, one that indicates in the first paragraph that the matter had been held in abeyance, pending the due process hearing.) The parties may still resolve the remaining issues in accordance with early resolution procedures.

## INVESTIGATION AND WRITING THE REPORT

### Investigation/Document Review:

If the matter is not resolved, there will be an investigation of each allegation raised in the complaint, which may include, but need not be limited to: a review of relevant federal and state statutes and regulations as well as precedent in the United States Supreme Court and controlling precedent in the Third Circuit Court of Appeals; a review of policies and procedures; a review of student records; observation of programs; interviews and an on-site investigation, if deemed necessary. The CI shall conduct fact-finding in order to carry out the investigation.

The district against whom the complaint is directed shall be provided an opportunity to respond to the complaint and submit any relevant documents. If the district responds to the complaint, the district is encouraged to respond to each alleged violation, provide the facts as determined by the district, and, if a violation is identified, propose corrective actions or describe actions that have been taken to remediate any loss of services to the individual student. The complaint investigator may, at his or her discretion, share documentation from the district with the complainant, where a document contradicts the complainant's position or requires further clarification.

Once an investigation is completed, both the report and documentation in the record are part of a public record which may be accessed in accordance with law. However, documentation which includes identifying student specific information is not public information. Care must be taken to avoid any violation of a student's rights to confidentiality. Complaint investigation records must be maintained in compliance with the Student Records Code, N.J.A.C. 6A:32-7.1 et seq. No student's name should appear in the report. If, for the purposes of clarity, it is necessary to distinguish a particular student, #'s should be used (student #1, student #2). Also, use titles (director, superintendent, parent, teacher, etc.) as much as possible rather than names of persons referenced in a report. Again, for purposes of clarity, use #s if more than one parent, teacher, paraprofessional, etc. are involved. The first time any # is used to identify a person, descriptive information must also be provided to ensure that the complainant can correlate the # to a specific person identified in the complaint request.

A report must be signed within 60 calendar days after receipt of the written request for an investigation, unless an extension of that timeline is duly requested and granted in accordance with regulations. The investigator should submit a draft of the report to the Coordinator for review by the 40th day after the complaint is received so as to permit full review of the report by OSE personnel and Director by the 60-day deadline. It is the CI's responsibility to track the report in all stages of review and ensure that the report is signed.



## **FACT FINDING**

**Purpose:** The purpose of fact finding is to determine the objective, verifiable facts with respect to each allegation, eliminate subjective facts and establish the legal sufficiency of the conclusion(s) reached.

**How to determine the relevant facts:**

1. Establish a timeline of events.
2. Verify dates and facts with documentation.
3. Where necessary, conduct a site visit and interview the parties. Complainant interviews may be conducted via telephone or video conferencing. Although permissible for the investigator to speak with attorneys for the complainant or district, fact-finding must be based on interviews with the parties themselves.
4. Facts should be documented in sequential order to preserve the integrity of the events. The focus of the facts should be on the questions raised by the allegations.
5. The absence of documentation may be recorded as a fact.
6. In the absence of documentation, if both parties agree that an event occurred, it can become a fact.
7. Relevant facts are those that are essential to the outcome of the case (*i.e.*, if they were altered or deleted, the conclusion would change).
8. If the fact does not answer in part or in whole the legal question raised by the issue, it may not be relevant and should not be included in the report.
9. Be precise and succinct with wording.

### **RESOLVING ALLEGATION(S) CHALLENGING APPROPRIATENESS OF STUDENT'S EDUCATIONAL PROGRAM OR SERVICES, PROVISION OF A FAPE OR WHETHER THE STUDENT IS EDUCATED IN THE LRE**

1. In determining whether a district's decision regarding the provision of FAPE to a student with a disability is correct, the CI must: (a) determine whether the district followed the required federal and state statutes, regulations, and case law precedent and, if it did not, whether that failure deprived the student of a FAPE; and (b) determine whether the special education and related services,

IEP and placement were reasonably calculated to enable the student to make meaningful progress in light of their circumstances.

2. In reaching these determinations, the CI will need to obtain data on the student's progress and may need to interview appropriate individuals (including district, and with the consent of the parent, independent, and/or private evaluators) to determine: (a) why the IEP team made its decisions regarding the child's educational program or services (and/or refused to make an alternative decision requested by the parents or others); and (b) whether the determination made by the IEP team is supported by the data on the individual child's abilities and needs.
3. The CI may find that the district has complied with federal and state statutes, regulations, and case law precedent if the evidence clearly demonstrates that the district has followed required procedures, applied required standards, and reached a determination of FAPE that is reasonably supported by child-specific data and by effective practices relevant to the child's disability(ies).
4. If a violation of a FAPE is found, this violation must be addressed, including by ordering the IEP team to reconvene and develop an IEP and placement that ensures the provision of a FAPE to the child and by providing appropriate relief for past violations such as compensatory education and/or reimbursement to the parent.
5. Similar steps need to be taken when the allegation is that the student is not educated in the LRE including: (a) determining whether the district followed federal and state requirements and case law precedent concerning placement in the LRE; (b) deciding whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily; and (c) if the CI finds that placement outside of the regular classroom is necessary for the child's educational benefit, they must evaluate whether the district has included the child in school programs with nondisabled children to the maximum extent appropriate.

## **WRITING THE REPORT**

1. A report will include the following:
  - a. **Procedural History:** Include the date the complaint was filed and the procedures undertaken by the investigator, a statement of the problem presented, and the district response. If an extension was granted for any reason, this should be noted and explained in the procedural history.
  - b. **The Issue(s):** The report repeats the issue(s) stated in the parties' acknowledgement letters. Wherever possible, the allegations are approached separately and there should be a conclusion for each issue. However, if two

issues are closely related, they may be listed together with one set of factual findings.

c. **Findings of Fact:** As set forth above, findings should establish the basis for the conclusion. Use the document table to organize events chronologically. Findings should be aligned with the statement of the problem and the district's response.

d. **Conclusion(s) and Reasons for Decision:** The purpose of this section is to draw a clear and logical relationship between the requirements of law and regulation and the findings of fact in order to determine whether a violation occurred. The conclusion need not restate the facts but should either state or paraphrase the relevant code section.

e. **Corrective Action and Chart:** The purpose of this section is to: (a) identify and number the findings of noncompliance; (b) direct activities that the district must undertake to address the noncompliance; and (c) set a timeline for documenting that the district has completed all required corrective actions. If there is a finding that the education agency has failed to provide appropriate services to a specific child or a group of children, OSE must include corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement) as well as appropriate future provision of services for all children with disabilities.

f. **Table of Persons Interviewed** (where interviews are necessary).

g. **Table of Documents:** a chronological listing of all documents in the record.

2. Draft reports should be submitted to the Coordinator on or before day 40. The Coordinator will make changes, as necessary, and either return the report to the CI or forward the report for review and further revision.

3. After making any changes required, the CI will forward the report to the Director for review.

4. Once signed by the Director, the CI will generate cover letters, from the database, to accompany the report.

5. Administrative personnel will return a copy of the letters and the report to the CI.

6. The CI indicates the "date approved" on the complaint database, updates the Corrective Action Plan information, as applicable, and updates the complaint tracking spreadsheet.

7. After the final complaint investigation report is sent to the complainant and the district, OSE will require the district to implement all corrective action(s) within the timelines set out in OSE's Corrective Action Plan and to verify its completion of the corrective action(s).

8. OSE will maintain a log of its contact with the complainant and the district related to implementation of the corrective action(s).

9. OSE's files on each complaint will remain open until it has determined that all corrective action(s) have been implemented and either the time for an appeal of its report has expired or, if there was an appeal, it has been resolved.

10. When closing files, all work product documents should be removed (*e.g.*, investigation plan). Records of complaints that have been closed are stored electronically by OSE.

### **ENFORCEMENT OF CORRECTIVE ACTION PLANS**

If a district has not completed the corrective action plan by the date specified in the Complaint Investigation Report or by the date of any extension granted by OSE, then OSE will take steps to enforce all aspects of its corrective action plan until the education agency is in full compliance, as soon as possible, but in no case later than one year after the State's identification of the noncompliance.