



Utah State
Board of
Education

Special
Education
Services

A GUIDE TO IDEA SPECIAL EDUCATION STATE COMPLAINTS

USBE TECHNICAL ASSISTANCE DOCUMENT

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INTRODUCTION

The purpose of this document is to provide guidance for parents, adult students, local education agencies (LEAs), and stakeholders outlining the steps in the State complaint process under Part the B of the Individuals with Disabilities Education Act (IDEA) and the Utah State Board of Education (USB) Special Education Rules (SpEd Rules).

It is important to note disagreements do happen and can be an opportunity for making individual and program-wide improvements for families, students with disabilities, and other stakeholders.

Please Note: This technical assistance document is not intended to provide any legal advice. Please consult with legal counsel about how to proceed in any legal situation.

IDEA STATE COMPLAINTS

WHAT IS A STATE COMPLAINT?

A State complaint (“State complaint” or “complaint”) is very much what it sounds like: a written complaint addressed to an official State agency to report a violation or problem. Within special education, it is one of several Procedural Safeguards, or student and parent rights, available under the IDEA to resolve disputes between parents of children with disabilities (or an adult student with disabilities) and the school systems responsible for educating those children.

For further information, see the USBE technical assistance on [Procedural Safeguards](#).

WHO CAN FILE A STATE COMPLAINT?

Unlike other methods of dispute resolution, which are solely available to students with disabilities and their parents, any individual or organization may file a State complaint if they believe the school district, charter, or other public agency in the State that provides special education and related services to students with disabilities (“LEA or other public agency”) has violated state or federal special education requirements. The complaint must be filed within one year of the alleged violation.

HOW TO FILE A STATE COMPLAINT

USBE has a [State complaint form](#) that may be used to file a State complaint. Parties are not required to use the form, but it can be helpful in meeting the required elements.

In order to file a State complaint, certain information is required, including the following:

1. A statement that the LEA has violated a requirement of Part B of the IDEA or USBE SpEd Rules.

2. The facts on which the statement is based.
3. The signature and contact information for the complainant.
4. If alleging violations with respect to a specific student:
 - a. The name and address of the residence of the student;
 - b. The name of the school the student is attending;
 - c. In the case of a student experiencing homelessness, available contact information for the student and the name of the school the student is attending;
 - d. A description of the nature of the problem of the student, including facts relating to the problem; and
 - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is received.

When filing a State complaint, the parent of a student with a disability or the adult student themselves has an opportunity to request mediation at the same time they file the State complaint. There is a box to check and request mediation on the State complaint form. Parents or adult students and LEAs may use formal mediation to resolve special education disputes. For further information, see the USBE technical assistance on [Mediation](#).

WHAT HAPPENS AFTER A STATE COMPLAINT IS FILED?

USBE assigns an independent State complaint investigator to investigate the complaint and issue a decision. The State complaint investigator will gather and review documents, review relevant facts, identify legal issues, and draft a decision with legal conclusions.

COMMUNICATION TO THE FILING PARTY

USBE will mail an initial letter to the parent(s), guardian, adult student, or nonparent filer confirming assignment of the State complaint to an investigator. The parent(s), (or guardian or adult student) will receive a copy of Procedural

Safeguards and a contact information sheet that contains information about how to contact the State complaint investigator and the LEA.

The LEA will receive a copy of the initial letter via the Utah Program Improvement Planning System (UPIPS). Upon request, the initial letter will be mailed to the LEA via U.S. Mail.

WHAT HAPPENS AFTER USBE ASSIGNS AN INVESTIGATOR?

Within approximately seven to fourteen days, the State complaint investigator will contact the parties via U.S. Mail and request information from the LEA and offer the complaining party the opportunity to submit additional information. This communication is commonly referred to as an “issues letter.” The issues letter identifies the scope of the investigation and the alleged violations of state and federal law.

From that point, the State complaint investigator will be the parties contact for things relating to the investigation.

NOTE: Both parties are admonished to read the investigator’s letter thoroughly, paying close attention to any timelines outlined therein.

The State complaint investigator will give the parties instructions regarding what documentation to provide, how to provide it, and when to provide it.

- The investigator may also request the name, title, and contact information for potential witnesses based on the State complaint.
- The investigator may or may not contact every potential witness and may rely on other sources of information to reach a conclusion.
- Depending on the circumstances, the investigator may need to conduct an on-site LEA visit or request other information not contained herein.
- The LEA Special Education Director should identify who will provide the information to the investigator, help set up interviews with LEA witnesses, organize site visits if requested, etc.

- The LEA Special Education Director should communicate the contents of the Issues Letter to other LEA staff as needed.
- The LEA may, at their discretion, propose resolution of the issues, but that proposed resolution may or may not be part of the final decision.

WHEN WILL THE INVESTIGATION BE COMPLETED?

As per the Utah State Board of Education Special Education Rules¹, the State complaint decision timeline is 60 calendar days (absent exceptional circumstances) of the date that both USBE and the LEA received a copy of the State complaint. Exceptional circumstances are determined on a case-by-case basis. An example of exceptional circumstances might include personal or family illness on the part of one of the parties, a temporary inability to access critical records, or the parties engaging in ongoing mediation.

The complaint decision must be postmarked by the 60th calendar day following the date of filing.

WHAT DOES A WRITTEN STATE COMPLAINT DECISION INCLUDE?

At the end of 60 calendar days (absent exceptional circumstances), the independent investigator will issue a reasoned decision addressing each of the issues identified in the Issues Letter for State complaint. The decision will include findings of fact and conclusions as to whether the LEA violated Part B of the IDEA or the SpEd Rules.

¹ N.B.: Utah Board of Education Administrative Rules (Board Rules) fall under the Utah Admin. Code under title R277. These rules can be found in two places: the [USBE Administrative Rules webpage](#) or the [Utah Office Administrative Rules webpage](#). Therefore, Board Rules R277-609 refers to the same rule as Utah Admin. Code R277-609. Similarly, though the [Utah State Board of Education Special Education Rules \(SpEd Rules\)](#) appear as a separate set of rules distinguished from Board Rules, they are in fact incorporated into Board Rules by reference ([see Board Rules R277-750](#)).

If the independent State complaint investigator determines that a violation has occurred, the State complaint investigator will almost certainly order corrective action for the LEA. There are two types of violations, procedural and substantive. A procedural violation occurs when the LEA fails to comply with IDEA or USBE SpEd Rules process-based requirements such as meeting required timelines. Substantive violations affect the substance of a student's program such as denying their access to a FAPE. Corrective action may include but is not limited to additional professional learning and technical assistance for LEA staff, compensatory services for student(s), USBE monitoring, a request to draft and implement policy, additional evaluations, express prohibitions from USBE, etc.

- Any corrective action will include a date by which LEA shall meet its obligation.
- Evidence that corrective action has been completed shall be provided to the USBE Dispute Resolution Specialist.

The LEA and the parent(s), guardian, or adult student will receive a copy of the complaint decision. Nonparent complainants will also receive a copy of the decision with personally identifiable information (PII) redacted if possible. PII means information which must be maintained securely and which includes: the name of the student, address of the student, student's social security number or student number. If it is not possible to send a copy of the decision with PII redacted, an executive summary may be provided to nonparent complainants. Once the decision is issued, the investigator's role is complete and any questions relating to the decision and/or corrective action plan should be directed to the USBE Dispute Resolution Specialist.

WHAT IF ONE OR MORE PARTY DISAGREES WITH THE DECISION?

The State complaint decision issued by USBE is the final action and is not subject to an appeal. If either party disagrees with the State complaint decision, their remedy is to file a due process hearing request provided that the aggrieved party

has the right to file a due process complaint on the issue with which the party disagrees.

FREQUENTLY ASKED QUESTIONS ABOUT STATE COMPLAINTS

WHAT SHOULD THE LEA DO IF THEY RECEIVE A STATE COMPLAINT?

When a State complaint arrives at the LEA, the LEA should ensure that a copy of the State complaint has also been received by USBE.

When USBE receives a State complaint, USBE will contact the LEA through the LEA Special Education Director (or equivalent) to verify if the LEA also received a copy.

Upon receipt of a State complaint by either the LEA or USBE, the receiving party shall notify the other agency within one business day, to ensure coordination of the process and copies received by both. The State complaint timeline begins when both parties have received copies.

The LEA Special Education Director is strongly encouraged to review SpEd Rules IV.E. related to State Complaint Procedures upon receipt of the complaint as well as any SpEd Rules related to a particular allegation in the State complaint itself (e.g. placement, child find, prior written notice, identification, parent participation, least restrictive environment [LRE], disciplinary removal, etc.).

The LEA Special Education Director should immediately begin to coordinate with other LEA staff to gather and organize certain information including student files (Individualized Education Plan (IEP), behavior intervention plan (BIP), functional behavioral assessment (FBA), incident reports, grades, relevant communications, written requests, etc.) as well as potential witnesses and others who may be able to provide additional evidence or context. The LEA may also be asked to provide a narrative response to the allegations set forth in the complaint.

WHAT IS USBE'S ROLE IN REVIEWING A STATE COMPLAINT?

When USBE receives a State complaint, USBE's responsibility is to ensure that it meets the requirements outlined in the SpEd Rules. A USBE Dispute Resolution Specialist checks to be sure it contains the required information and is alleging a violation within the one-year time limit. USBE must remain neutral in the process, therefore, USBE cannot make a determination as to whether the LEA or other agency violated the student's or parent's rights under the IDEA.

WHAT IF INFORMATION IS MISSING?

USBE may dismiss a submission purporting to be a State complaint that does not include all of the required content in SpEd Rules IV.2.a-d.

- In the event that the USBE dismisses a submission purporting to be a State complaint, the USBE will notify the complainant, LEA or other public agency, and parent(s) or student who is an adult (if the complainant and contact information is available) within five business days of receipt of the submission. Notification will be in writing and sent via U.S. Mail, if possible.
- If it is not possible for the notification to be sent via U.S. Mail, a USBE Dispute Resolution Specialist will attempt to notify the complainant via email.
- The written notification will specifically identify the missing required content and contain a statement that the written notification does not preclude the complainant from submitting a State complaint in the future that meets the requirements of Part B of the IDEA or USBE SpEd Rules.

A lack of proposed resolution will not be grounds for USBE to dismiss a State complaint that otherwise meets the requirements outlined in USBE SpEd Rules.

DOES A PARENT OR GUARDIAN NEED TO HIRE AN ATTORNEY TO FILE A STATE COMPLAINT?

No, neither a parent or guardian needs to hire an attorney to file a State complaint. Individuals may file themselves. The [Utah Parent Center](#) is an excellent free resource for families that can support families at all stages of the special education process, including when conflict arises, with local education agencies (LEAs). The [Disability Law Center](#) is also a helpful advocacy resource for Utah families. Both resources may be helpful with filing a State complaint but are not necessary or required.

WHAT ADDITIONAL DISPUTE RESOLUTION OPTIONS ARE AVAILABLE?

Both parties should consider voluntary alternative dispute resolution methods early in the State complaint process. Some disputes can be resolved informally with the complaining party. Depending on the circumstances, complaining parties may be amenable to simple conversations with LEA staff to resolve their concerns. If the complaining party is a parent or an adult student, some disputes may benefit from also participating in informal alternative dispute resolution methods, such as mediation or IEP facilitation. Mediation or IEP facilitation can be requested free of charge by submitting the appropriate form or fax to USBE. USBE's [Request for Mediation](#) form and [Request for IEP Facilitation](#) form are linked here.

WHAT IF A PARTY WISHES TO WITHDRAW A STATE COMPLAINT?

Any resolution agreement made by the parties does not automatically dismiss the State complaint. The State complaint process will continue unless and until the State complaint is formally dismissed by the complaining party. If the complainant wishes to withdraw the complaint prior to USBE issuing a decision, the complainant must notify USBE in writing.

ARE THERE DIFFERENT TYPES OF STATE COMPLAINTS?

Yes. Special education State complaints may be about an individual student or instead systemic in nature (meaning that they do not have to link to a particular student; allegations may be linked to a group of students or be “system-wide”). Persons or organizations filing a State complaint do not have to individually know or work with a particular student or group of students so long as the State complaint meets the requirements listed above. However, an IDEA State complaint may not be anonymously filed as the signature and contact information for the complainant are required elements.

WHAT HAPPENS IF A STATE COMPLAINT IS FILED AT THE SAME TIME AS A DUE PROCESS HEARING REQUEST?

SET ASIDE PROCESS

It depends upon the issues in each. If the issues are the same in both, the written State complaint investigation process will be postponed until after a due process hearing decision is made by the due process hearing officer (DPHO).

If the DPHO includes the issue in the decision, USBE will not make a separate decision on the same issue. If the DPHO does not make a decision on the issue, USBE must start or resume the written state complaint resolution process to decide that issue.

Any issue in the written state complaint that is not in the request for a due process hearing must be resolved using the 60 day time limit, unless USBE extends the timeline (exceptional circumstances).

In the event that a related due process hearing request is withdrawn or otherwise dismissed without prejudice (meaning the parties may refile), USBE will

recommence the 60 calendar day timeline on the following business day, and the State complaint or issues previously set aside will be investigated and resolved within this adjusted 60 calendar day timeline.

USBE will notify the parties of the adjusted timeline in writing within three business days of the withdrawal or dismissal without prejudice.

If an issue is raised in a State complaint filed under this section has previously been decided in a due process hearing involving the same parties, the hearing officer's decision is binding on that issue. USBE must inform both parties of this fact. A State complaint alleging an LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by USBE.

PROTECTING PERSONALLY IDENTIFIABLE INFORMATION

If a State complaint is filed by an organization or individual other than a parent or adult student on their own behalf, consent from a parent or adult student must be obtained before USBE may provide PII about a student to a non-parent or non-adult student complainant as part of the State complaint decision. Consent must be written, dated, and signed by a parent or student who is an adult.

If possible, PII and other information relating to specific student(s) shall be redacted prior to issuing a decision to complainants who are not parents or students who are adults unless USBE has received written consent to share such information in accordance with USBE SpEd Rules.

Because the State complaint resolution may involve a student's PII, it may not be possible for USBE's State complaint decision to be issued to a non-parent complainant if USBE does not receive parental consent to share such information. USBE will make this determination on a case-by-case basis but will not withhold relevant information not containing PII from a complainant regarding the results of USBE's State complaint decision.

Even if USBE is not able to issue a written decision to a complainant because of PII, USBE still must ensure that it resolves the State complaint, issues a written decision to the parent of the student in question or the student who is an adult that addresses each allegation in the State 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.

FURTHER RESOURCES

- [Utah State Board of Education Special Education Rules](#)
- [Utah State Board of Education Procedural Safeguards](#)
- [Utah State Board of Education Special Education Student and Family Rights](#)