

SPECIAL EDUCATION COMPLAINT APPEAL PROCEDURES

The Virginia Board of Education has established an appeal process for special education complaint findings. Parties to a complaint under 8 VAC 20-80-78 have the right to appeal a final decision¹ rendered by the Virginia Department of Education to an independent reviewer in accordance with procedures established by the Board. The Virginia Board of Education has established the following procedures.

1. The Superintendent of Public Instruction or designee is responsible for the operation and management of the appeal process.
2. Either the complainant or the local school division may appeal the findings rendered by the Virginia Department of Education (VaDOE) in a special education complaint.
3. The request for appeal shall be filed in writing with the VaDOE within 30 calendar days of the date VaDOE issues the findings. The date for the appeal deadline shall be stated in VaDOE's findings.
4. The request for appeal, along with submitted documentation, shall be sent simultaneously to the non-appealing party and the VaDOE.
5. The request for appeal shall be made on the basis of: (a) newly discovered information, or (b) an error in fact or law on which the findings were based.
6. VaDOE shall select two Complaint Appeal Reviewers who are current special education hearing officers to serve for a term of one year. Terms may be renewed by agreement between VaDOE and the reviewer. During any year of service as a reviewer, the individual is precluded from serving as a hearing officer and from representing clients in special education matters.² The reviewer shall not accept an appeal review if the reviewer has a personal or professional interest which would conflict with that person's objectivity in the review.
7. Compensation for services under these procedures shall be at the standard rate for special education hearing officers.

¹ The decision is issued as a "Letter of Findings" to both the complainant and the local school division.

² The reviewer shall be retained on the special education hearing officer list maintained by the Supreme Court of Virginia but shall be ineligible to be assigned cases for the period of service as an appeal reviewer. The reviewer shall receive training in special education that VaDOE provides for the special education hearing officers.

8. Within 3 business days of VaDOE's receipt of the request for appeal, VaDOE shall:
 - a. appoint the reviewer;
 - b. provide the reviewer with a copy of the appeal request, VaDOE's findings, the complaint file, as well as other relevant information the reviewer requests, and
 - c. notify the local school division and the complainant of:
 - i. VaDOE's receipt of the appeal request;
 - ii. the name of the reviewer;
 - iii. the option of the non-appealing party to file a written response to the reviewer within 5 business days of the date the parties receive the notice; [the final submission date shall be stated in VaDOE's notification letter]
 - iv. the expected date for issuance of review findings; and,
 - v. VaDOE's action to set aside any requested corrective action plan until the conclusion of the hearing.
9. By accepting the appointment, the reviewer agrees to complete the review and issue written findings in 30 calendar days from the date of the appointment.
10. The reviewer shall identify the basis for the decision by making the findings based on:
 - (a) newly discovered information, or
 - (b) an error in fact or law on which the complaint findings were based.
11. If the source of the appeal is the corrective action plan, the reviewer has the authority to revise the plan. The reviewer shall adhere to the state regulatory process at 8 VAC 20-80-78 C.5 regarding remedies for denial of appropriate services.
12. The reviewer's findings shall be considered final.
13. The reviewer shall provide a copy of the written findings to the VaDOE, the complainant, and the local school division. Within 5 business days of VaDOE's receipt of the reviewer's findings, if applicable, the VaDOE shall notify the complainant and local school division in writing of any required corrective action plan.