

VIRGINIA DEPARTMENT OF EDUCATION

SPECIAL EDUCATION COMPLAINT APPEAL PROCEDURES

[Revised November 2009]

The Virginia Department of Education (VDOE) has established an appeal process for special education complaint findings. Parties to a complaint, under 8 VAC 20-81-200 E, have the right to appeal a final decision¹ rendered by the VDOE to an independent reviewer in accordance with these procedures.

1. The VDOE's Office of Dispute Resolution and Administrative Services (ODRAS) is responsible for the operation and management of the appeal process.
2. The complainant and/or the local school division may appeal the findings, portion of the findings, and/or any Corrective Action Plan (CAP) rendered by the VDOE in a special education complaint.
3. The request for appeal must be made in writing to the VDOE and submitted to ODRAS by regular mail, hand-delivery, fax, or electronic mail (e-mail). A copy of the appeal request must be delivered contemporaneously by the requesting party to the other party.
 - a. The written request for appeal must include any supporting documentation, articulate specific assignments of error, and articulate the basis for the errors alleged.
 - b. The request for appeal shall be made on the basis of: (i) newly discovered information, or (ii) an error in fact or law on which the findings were based.
 - c. The written appeal request, and all supporting documentation, must be received by the VDOE within 30 calendar days of the date VDOE issues its Letter of Findings. The date of the appeal deadline shall be set forth in the Letter of Findings.
4. VDOE shall select at least two Complaint Appeal Reviewers who are current special education hearing officers to serve for a term of one year. If necessary, VDOE may adjust the number of reviewers to be more than two.
 - a. Terms may be renewed by agreement between the VDOE and the reviewer.
 - b. 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 special education cases for the period of service as an appeal reviewer. The reviewer shall receive training in special education that VDOE provides for the special education hearing officers.

¹ The decision is issued as a "Letter of Findings" to both the complainant (and/or to the parent/guardian of any student whose rights are the object of the Complaint) and the local school division.

- c. During any term of service as a reviewer, the reviewer is precluded from representing clients in special education matters.²
 - d. The reviewer shall not accept an appeal review if the reviewer has a personal or professional interest which would conflict with his/her objectivity in the review.
 - e. By accepting the appointment, the reviewer agrees to complete the review and issue written findings in 30 calendar days from the date of appointment.
 - f. Compensation for services under these procedures shall be at the then current hourly rate for special education hearing officers.
5. Within 3 business days of VDOE's receipt of the request for appeal, ODRAS shall:
 - a. appoint the reviewer;
 - b. provide the reviewer with a copy of the appeal request(s), VDOE's findings, the complaint file, as well as other relevant information the reviewer requests, and
 - c. send the parties a Notice of Appeal(s), including the following information:
 - i. VDOE's receipt of the appeal request(s);
 - ii. the name of the reviewer;
 - iii. the option of the non-appealing party to file a written response to the appeal; and
 - iv. The expected date for issuance of review findings.
 6. The non-appealing party has the option of filing a written response to the appeal. The response shall be filed with the reviewer within 5 business days of the date of the Notice of Appeal (the final submission date shall be stated in VDOE's Notice of Appeal). The response must be submitted by regular mail, hand-delivery, fax, or electronic mail (e-mail).
 7. An appealing party does not have the right to submit additional information or argument in rebuttal to a response to the appeal filed by the other party. The reviewer shall not consider any information submitted for this purpose.
 8. The parties shall not communicate with the reviewer, other than the non-appealing party opting to submit to the reviewer a written response to the appeal. The reviewer shall have the discretion to disregard untimely submissions.

² This provision is consistent with 8 VAC 20-81-210 H.4.c which prohibits a person from serving as a special education hearing officer if the person represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

9. The reviewer shall:
- a. complete the review and issue written findings within 30 calendar days from the date of the appointment. The reviewer may request from the Director of ODRAS an extension of the deadline for good cause.
 - b. identify the basis for the decision by making the findings based on: (i) newly discovered information, or (ii) an error in fact or law on which the complaint findings were based.
 - Only matters specifically articulated in the appeal and any response to the appeal will be reviewed; generalized disagreement with the Letter of Findings or non-specific requests for a generalized review of the Letter of Findings are non-justiciable (not appropriate or proper for consideration or resolution by the complaint appeal reviewer).
 - c. affirm or amend the findings, or remand to ODRAS for further review and reissuance of findings, as well as any corrective action plan to insure that the plan flows logically from the ultimate findings (of the complaint or of the appeal). The reviewer shall adhere to the state regulatory process at 8 VAC 20-81-200 D.5 regarding remedies for denial of appropriate services.
 - d. provide a copy of his/her written findings to the VDOE and the parties.
 - e. comply with VDOE's protocols in maintaining VDOE's complaint file records in a confidential manner, including submissions from the parties as part of the complaint appeal process.
10. The reviewer's findings shall be considered final.³
11. During the complaint appeal process, if VDOE's complaint findings require a corrective action plan (CAP) of the local school division, ODRAS staff shall continue to work with the school division in implementing the CAP. ODRAS staff will initiate whatever action is needed to readjust the CAP if revisions are needed as a result of the reviewer's findings.

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³ Issues in the Letter of Findings and/or the reviewer's decision related to the student's free appropriate public education are reviewable through a due process hearing in accordance with 8 VAC 20-81-210, *et seq.*

