

COMPLAINT RESOLUTION PROCEDURES

The Virginia Department of Education (VDOE) has established procedures for receiving and resolving complaints which allege a violation of Federal and State laws and regulations pertaining to the education of children with disabilities, in accordance with the Individuals with Disabilities Education Act (2004) and its implementing regulations, 34 C.F.R. §300.151, et. seq.; the Code of Virginia, §22.1-214, E., and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective July 7, 2009, 8 VAC 20-81-200.

The purpose of the State procedures is to provide a system required by law which is responsive to individual citizens and agencies, meets the spirit and letter of the law, and provides an opportunity for school divisions and complainants to mutually resolve differences. The VDOE maintains and operates a complaint system that provides for investigation of and issuance of findings regarding violations of the rights of parents or children with disabilities. The Office of Dispute Resolution and Administrative Services (ODRAS) is responsible for the investigation and resolution of all valid special education complaints.

I. FILING A COMPLAINT

- A. A complaint may be filed by any individual, organization, or an individual from another state. The complaint must:
1. Be in writing and submitted via postal mail, delivery service, facsimile, by hand, or email.
 2. Include the signature and contact information of the complainant. Complaints received via email will be considered as received with an electronic signature.¹
 3. Contain a statement that the local educational agency (LEA) or VDOE has violated a requirement of federal and/or state law(s) and/or regulations that apply to special education.
 4. Include the facts on which the complaint is based.
 5. Address an action that occurred not more than one year prior to the date the complaint is received.
 6. Contain all relevant documents and supporting information.
 7. Be forwarded to the LEA at the same time the complaint is forwarded to the VDOE.
 8. If alleging violations with respect to a specific child include:
 - a. The name of the child;
 - b. The address of residence for the child;
 - c. The name of the school the child is attending;

¹See 8 VAC 20-81-170 I for definition of electronic signature. An electronic submission to ODRAS is deemed to be “received” when it is opened by the recipient during the regular course of business.

- d. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - e. A description of the nature of the problem of the child, including the facts relating to the problem; and
 - f. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- B. All relevant documents must be forwarded to ODRAS, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, or faxed to the same office at (804) 786-8520.
- C. Upon the filing of the first state complaint in a school year, the LEA is responsible for providing the parent with notice of the procedural safeguards. A copy of the procedural safeguards is also available on-line at:
http://www.doe.virginia.gov/VDOE/Instruction/Sped/proc_safe.pdf.

II. INITIATION OF COMPLAINT and SUBMISSION OF LEA RESPONSE

- A. Within seven (7) business days of the receipt of the complaint, ODRAS reviews the complaint and supporting documentation and proceeds as follows:
- 1. ODRAS sends written notification of receipt of the complaint (Notice of Complaint) to both the complainant and the school division, with copies to the Division Superintendent and the Special Education Director of the LEA which is involved in the complaint.
 - 2. ODRAS provides the Division Superintendent and the Special Education Director a copy of the letter of complaint with the supporting documentation and offers technical assistance to resolve the complaint.
 - 3. A copy of these Complaint Resolution Procedures is also sent to all parties to the complaint.
 - 4. If ODRAS determines that the complaint is insufficient for any reason, the complainant and LEA are notified in writing. The complainant is given directions for resubmission of the complaint to ODRAS. Resubmitted complaints are treated as new complaints.
 - 5. If any individual other than a parent, a student who has reached the age of majority, or their attorney, files a complaint, ODRAS notifies the complainant that it will inform such parent or student of its receipt of the complaint and will provide copies of the complaint; relevant correspondence, if any; and this Complaint Resolution Procedures document to the complainant and the parent or adult student. Unless a release of information is on file with ODRAS, the complainant receives no further written communication resulting from the complaint process.
- B. In the Notice of Complaint, ODRAS identifies the relevant issues, in reference to the applicable laws and regulations, and requests that the LEA respond in writing.
- 1. The LEA's written response must be submitted within ten (10) business days of receipt of the Notice of Complaint from ODRAS.
 - 2. A copy of the LEA's response, along with all submitted documentation, must be simultaneously sent by the LEA to the complainant, if the complaint was filed by the parent of the child, the student who has reached the age of majority, or their attorney.

3. If the complaint was filed by another individual, the LEA must simultaneously send the response and submitted documentation to that individual if a release signed by the parent or student who has reached the age of majority has been provided.
- C. The Notice of Complaint sent to the complainant and the LEA must provide the complainant and the LEA with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. ODRAS establishes a timeline in the Notice of Complaint for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.
 - D. If the LEA fails to submit its written response within the first ten (10) business days following their receipt of the Notice of Complaint, ODRAS sends a second notice to the LEA advising that failure to respond within seven (7) business days of the date of such notice may result in appropriate sanctions.

III. EARLY RESOLUTION and MEDIATION

- A. With the initial notification, ODRAS advises both the complainant and the LEA that the LEA has ten (10) business days after their receipt of the Notice of Complaint to resolve the complaint on the local level, or to submit the LEA's written response to ODRAS.
 1. The LEA has the opportunity to propose, at the LEA's discretion, a resolution of the complaint within this time period.
 2. ODRAS may grant an extension of this ten (10) business day timeline if necessary for the parties to resolve the complaint on the local level. ODRAS notifies both parties of the extension.
 3. Any extension, when granted, must not affect the 60 calendar day timeline for VDOE to resolve the complaint.
 4. Also, an extension of the early resolution period does not affect the obligation of the LEA to submit its written response within ten (10) business days of receipt of the Notice of Complaint, unless the time period is otherwise extended.
- B. Early resolution may include use of the Virginia Special Education Mediation system, available at no cost to the parties through the VDOE. Parties may call (804) 786-0711 for more information regarding mediation, or visit VDOE's website at: <http://www.doe.virginia.gov/VDOE/Instruction/ssems.html>.
- C. If the LEA is able to resolve the complaint, then the LEA must provide documentation of the resolution. The resolution statement must state the details of the resolution and must indicate that the parent and the LEA have agreed to the resolution and that all issues raised in the complaint have been satisfactorily resolved. For complaints not involving a specific student, the resolution statement must state the details of the resolution and must indicate that the complainant and the LEA have agreed to the resolution and that all issues raised in the complaint have been satisfactorily resolved. Upon receipt of such documentation of resolution, ODRAS closes its investigation of the complaint.
- D. If the LEA is unable to resolve the complaint, the LEA must provide ODRAS with a written response to the alleged violation(s) of federal and state law and regulations, and must provide

the documentation requested by ODRAS within the ten (10) business day timeline noted above.

IV. COMPLAINT INVESTIGATION

- A. ODRAS conducts an investigation of the complaint, which includes a complete review of all relevant documentation and may include an independent on-site investigation, if deemed necessary.
- B. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, ODRAS:
 - 1. Sets aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - 2. Resolves any issue in the complaint that is not a part of the due process hearing involving the same parties. (Note: Issues that are separate and distinct from the due process hearing are investigated and resolved within the mandated timeline).
- C. A time limit of 60 calendar days is allowed after receipt of the written complaint in order to carry out the investigation and to resolve the complaint. An extension of the 60 calendar day time limit may occur if:
 - 1. Exceptional circumstances exist with respect to a particular complaint; or
 - 2. The parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.
 - 3. VDOE notifies both parties to the complaint in writing of the nature of the extension and the extended time limit.
- D. Upon completion of the investigation, ODRAS determines whether the LEA complied with the applicable special education laws and regulations. Determination of compliance or noncompliance on each issue is based upon the facts and applicable law, regulations, or standards. ODRAS notifies the parties in writing of the findings and the basis for such findings.
- E. The VDOE ensures that the final decision of ODRAS is effectively implemented, if needed, through:
 - 1. Technical assistance activities;
 - 2. Negotiations; and
 - 3. Corrective actions to achieve compliance.
- F. Depending on their nature, issues may be referred by ODRAS to legal counsel for VDOE; other VDOE staff; or the U. S. Department of Education for review.

V. LETTER OF FINDINGS

- A. ODRAS sends a Letter of Findings jointly to the parent or student who has reached the age of majority and the Division Superintendent of the LEA that is involved in the complaint. A copy of the letter is also sent to the Special Education Director of the LEA.

- B. The findings are issued only to the parent, the student who has reached the age of majority, and the LEA, unless the complainant has obtained and filed the necessary consent for release of the information.
- C. The Letter of Findings summarizes: the complaint issues; relevant facts; the assessment of facts based on federal and state laws and regulations and applicable case decisions/rulings/opinions; and conclusions.
 - 1. If the LEA is found in compliance, the complaint file is closed if no appeal is requested.
 - 2. If the LEA is found in noncompliance, the Letter of Findings specifies the requested corrective action(s) to be taken. The complaint file remains open until corrective action is obtained and approved by ODRAS.

VI. CORRECTIVE ACTIONS

- A. In resolving a complaint in which a failure to provide appropriate services is found, VDOE addresses:
 - 1. The remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and
 - 2. Appropriate future provision of services for all children with disabilities.
- B. If the Letter of Findings determines that the LEA was not in compliance with the applicable laws and regulations, ODRAS specifies the steps that must be taken by the LEA to bring it into compliance.
- C. When the LEA develops a plan of action to correct the violations (a “Corrective Action Plan”), such plan must include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action also must include a description of all changes contemplated and is subject to approval of the VDOE.
- D. If the LEA does not initiate the necessary corrective action within the time required in the Letter of Findings, the matter may be referred to the Superintendent of Public Instruction and then to the Board of Education for a hearing. A decision may be made that state and federal funds for the education of children with disabilities will not be made available to that LEA until there is compliance with the applicable laws and/or regulations.
- E. ODRAS reviews the LEA’s corrective action plan. Once the corrective action plan is approved, ODRAS notifies the Division Superintendent and the complainant that the complaint file is closed.
- F. VDOE is responsible for ensuring that the LEA has implemented the Corrective Action Plan (CAP). ODRAS tracks and ensures CAP implementation, which includes periodic follow-up activities, either by letter or on-site visit if necessary, in cooperation with the VDOE Technical Assistance Specialist assigned to the LEA.
- G. VDOE reports findings of noncompliance and corresponding recommendations to the Superintendent of Public Instruction or designee for review.

- H. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then the superintendent issues a decision in writing stating that state and federal funds for the education of children with disabilities will not be made available to that LEA until there is full compliance with the applicable laws or regulations.
- I. Under the Freedom of Information Act, and subject to the confidentiality requirements of the Family Educational Rights and Privacy Act and Individuals with Disabilities Education Act - Part B, VDOE may be required to release information relative to the complaint, upon completion of the Letter of Findings and closure of the complaint file.

VII. APPEAL PROCEDURE

Parties to the complaint procedures have the right to appeal the final decision to the Virginia Department of Education in accordance with procedures established by the VDOE.

- A. Appeals must be filed with VDOE within 30 calendar days of the date ODRAS issues its findings.
- B. A copy of the Complaint Appeal Procedures is included with each Letter of Finding.
- C. These procedures are available by contacting ODRAS, or by visiting the VDOE website at: <http://www.doe.virginia.gov/VDOE/Instruction/comappeal.pdf>.

VIII. DISSEMINATION OF THE COMPLAINT RESOLUTION PROCEDURES

ODRAS widely disseminates these complaint resolution procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, including posting the procedures and revisions to VDOE's Web site.

Revised: February 2012
Virginia Department of Education