

Virginia Department of Education - Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services
Telephone (804) 225-2013, Facsimile (804) 786-8520
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http://www.doe.virginia.gov/special_ed/resolving_disputes/

PRIVATE SCHOOL COMPLAINT RESOLUTION PROCEDURES

[involving the consultation process for parentally placed private school children with disabilities]
[February 2012]

The following procedures are established for the Virginia Department of Education (VDOE) to process complaints received from private school officials in Virginia. These procedures are adopted in part from the complaint resolution system mandated by the federal and state laws and regulations governing special education.¹ The Office of Dispute Resolution and Administrative Services (ODRAS) is responsible for the investigation and resolution of these types of complaints.

Specifically, under the Virginia Regulations, at 8 VAC 20-81-150 C.5, a private school official has the right to file a complaint with the Virginia Department of Education (VDOE) that, during the design and development of special education and related services for parentally placed private school children, a local school division has not (1) engaged in consultation that was meaningful or timely; or (2) given due consideration to the views of the private school official, as set forth in the regulations.

“Private School” includes:

- Private, denominational, or parochial schools in accordance with the *Code of Virginia*, § 22.1-254 that meet the definition of elementary school or secondary school in the Virginia Regulations.
- Preschool facilities that meet the definition of elementary school or secondary school.
- Students who are home-tutored in accordance with the *Code of Virginia*, § 22.1-254.
- Students who receive home instruction in accordance with the *Code of Virginia*, § 22.1-254.1.

The purpose of these State complaint resolution procedures is to provide a system required by law which is responsive to private school officials, meets the spirit and letter of the law, and provides for an opportunity for school divisions and complainants to mutually resolve differences.

I. FILING A COMPLAINT

A. A complaint may be filed by a private school official. The complaint must:

1. Be in writing and submitted via postal mail, delivery service, facsimile, by hand, or email.

¹Federal regulations at 34 CFR § 300.151; 8 VAC 20-81-200 of the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Virginia Regulations); see also the *Code of Virginia* at § 22.1-214 E.

2. Include the signature and contact information of the complainant. Complaints received via email will be considered as received with an electronic signature.²
3. Contain a statement that the local educational agency (LEA) has violated a requirement of federal and/or state law(s) and/or regulations relating to the obligation to engage in consultation with officials of private schools that is meaningful and timely and/or to give due consideration to the views of the private school official.
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. Include 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. E-mail submissions: Sheila.gray@doe.virginia.gov

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, a 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. A copy of these Complaint Resolution Procedures is also sent to all parties to the complaint.
 3. 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.
- 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.
- 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 60 calendar days.

²See 8 VAC 20-81-170 I for definition of electronic signature.

- 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. Within 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 grants 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) 225-2013 for more information regarding mediation, or visit VDOE's website at:
http://www.doe.virginia.gov/special_ed/resolving_disputes/mediation/index.shtml
- 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 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. A timeline of 60 calendar days³ is applied 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.
- C. 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.

V. LETTER OF FINDINGS

- A. ODRAS sends a Letter of Findings jointly to the complainant 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 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. 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.

³The federal and state regulations governing special education are silent regarding timelines for resolving complaints filed by private school officials with the State Educational Agency. For the purposes of these complaint resolution procedures, ODRAS adopts the 60-calendar day timeline mandated for VDOE's resolution of other types of special education complaints. (34 CFR § 300.151; 8 VAC 20-81-200 D.4.c(1)).

- B. 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.
- C. 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 law and/or regulations.
- D. 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.
- E. 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.
- F. VDOE reports findings of noncompliance and corresponding recommendations to the Superintendent of Public Instruction or designee for review.
- G. 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 law or regulation.
- H. 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

The following procedure is mandated for complaints filed by private school officials. 34 CFR § 300.136; 8 VAC 20-81-150 C.5.e(1).

If the private school official is dissatisfied with the decision of the VDOE, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information relating to the alleged noncompliance. The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.

