

VIRGINIA DEPARTMENT OF EDUCATION
Division of Instructional Support Services
Office of Due Process and Complaints
(804) 225-2013

COMPLIANCE PROCEDURES

The Virginia Department of Education 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-Part B and its implementing regulations, 34 Code of Federal Regulations §300.660, et. seq.; the Code of Virginia, Title 22.1-214, E: and its implementing regulations, Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective January 1, 1994, §3.4, C. The purpose of the State procedure is to provide a system required by law which will be responsive to individual citizens and agencies, meet the spirit and letter of the law, and provide for an opportunity for school divisions and complainants to mutually resolve differences.

I. PROCEDURES

- A.** An organization or individual may file a written signed complaint with the Virginia Department of Education (VaDOE). The complaint must include a statement that the local school division (LEA) has violated a requirement of federal and/or state law(s) and/or regulations that apply to a program. The complaint must also include the fact on which the complaint is based. Additionally, all relevant documents must be forwarded to the Office of Due Process and Complaints. Organizations and individuals may file complaints even if they are not located in Virginia (i.e., Congress, the United States Department of Education, residents of other states).

- B.** The Office of Due Process and Complaints is responsible for receiving all complaints. All written complaints are recorded on the date of receipt. A time limit of sixty (60) calendar days is allowed, after the written complaint is received, to resolve the complaint. An extension of the sixty calendar day time limit is allowed if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint must be notified in writing by the Office of Due Process and Complaints whenever exceptional circumstances exist and specify the extended time limit.

- C.** Within seven (7) administrative days of the receipt of the written signed complaint:
 - 1.** The Office of Due Process and Complaints sends written notification of receipt of the 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 the subject of the complaint. A copy of these Compliance Procedures is also sent to the complainant. The Office of Due Process and Complaints also provides the Division Superintendent and the Special Education Director a copy of the letter of complaint and offers technical assistance to resolve the complaint.

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2. An Early Resolution Period of ten (10) days when LEA and complainant are directed to attempt resolution.
 - a. With the initial notification, both the complainant and Division Superintendent are advised that the LEA has ten (10) administrative days after the school division receives the notice of the complaint to resolve the complaint on the local level. An extension of this ten (10) administrative day timeline shall be granted if necessary for the parties to resolve the complaint on the local level. Both parties shall be notified of the extension. The extension, when granted, shall not effect the 60 calendar day timeline identified for resolution of the complaint by VaDOE. If the LEA is able to resolve the complaint then it must provide documentation of the resolution.
 - b. If the LEA is unable to resolve the complaint, the school division must respond to the Office of Due Process and Complaints within fifteen (15) administrative days of the initial letter of notification with a written response to the alleged violation(s) of federal and state law and regulations and documentation as requested by the Office of Due Process and Complaints.
 3. If the school division fails to respond within the fifteen (15) administrative days, the Office of Due Process and Complaints sends a second notice advising that the failure to respond within seven (7) administrative days of the date of the notice will result in the transfer of the complaint to the Superintendent of Public Instruction.
- D.** In the absence of a reply from the LEA within seven (7) administrative days, the complaint is referred to the Superintendent of Public Instruction for sanctions as outlined in the State regulations.
- E.** The Office of Due Process and Complaints reviews the LEA response to the complaint. If necessary, an independent on-site investigation is conducted.
1. Disposition of the complaint rests upon consideration of facts and issues presented and the applicable requirements specified in law, regulations, and/or standards. A determination of noncompliance is made only after such facts and issues related to the complaint are collected and deemed by the Office of Due Process and Complaints to be in violation of applicable law and/or regulations.
 2. Depending on their nature, issues may be reviewed by the Office of Due Process and Complaints with legal counsel for VaDOE; other VaDOE staff; or the U. S. Department of Education.
 3. The complainant may submit additional information, either orally or in writing, about the allegations in the complaint. This additional information may be submitted up until five (5) administrative days following VaDOE's receipt of

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the written response to the allegations from the LEA.

4. A finding of noncompliance requires the Office of Due Process and Complaints to issue a corrective action plan to the LEA.
5. The Office of Due Process and Complaints sends a Letter of Findings jointly to the individual who filed the complaint and the Division Superintendent of the LEA which is the subject of the complaint. A copy of the letter is sent to the Special Education Director of the LEA.
 - a. The Letter of Findings summarizes the complaint issues; pertinent 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, this decision is communicated through the Letter of Findings, and the complaint file is closed.
 - (2) If the LEA is found in noncompliance, this decision is communicated through the Letter of Findings, and a second letter detailing the necessary corrective action is sent to the Division Superintendent, with a copy to the Special Education Director. The complaint file remains open until corrective action is obtained.
- F. If the LEA does not initiate the necessary corrective action within the time required in the notification, the matter is referred to the Superintendent of Public Instruction and then to the Board of Education for a hearing. A decision may be issued that State and Federal funds for the education of children with disabilities shall not be made available to that LEA until there is compliance with the applicable law and/or regulations.
- G. The Office of Due Process and Complaints reviews the LEA's corrective action plan. Once the corrective action plan is approved, the Office of Due Process and Complaints notifies the Division Superintendent and the complainant, and the complaint file is closed.
- H. Should the complaint be filed by anyone other than the parent and/or his/her legal counsel, the complainant is notified that the parent will be informed of the Office of Due Process and Complaints' receipt of the complaint and provided a copy of the complaint, pertinent correspondence, and these Compliance Procedures. At the conclusion of the Office of Due Process and Complaints' review, findings are issued only to the parent and LEA, unless the complainant has obtained and filed the necessary parental consent for release of the information. In that instance, the complainant receives a letter of assurance that any identified areas of noncompliance have been corrected.

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- I. Should the complaint contain issues that are also raised in a due process hearing, complaint resolution as to those issues will be held in abeyance pending completion of the due process hearing procedures. Parties to the complaint are notified of this action. (**Note:** Issues that are separate and distinct from the due process hearing will be investigated and resolved within the mandated timeline.)
- J. 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, VaDOE may be required to release information relative to the complaint, upon completion of the Letter of Findings and closure of the complaint file.

II. PROCEDURES FOR ISSUES INVOLVING MATTERS OF APPROPRIATENESS

Issues of appropriateness, as referenced here, involve disputes between parents and LEAs on matters such as identification, evaluation/eligibility, educational placement, and free appropriate public education (FAPE). While the due process hearing is the forum in which to resolve such disputes, if a complaint is filed regarding the dispute, and the dispute is not being addressed through the due process hearing procedures, the Office of Due Process and Complaints is responsible for reviewing the procedures and standards used by the LEA to reach its decision. Judgements relative to the merit and substance of the LEA decision are beyond the scope of these procedures and rest solely with the Hearing Officer through the due process hearing procedures.

- A. The Office of Due Process and Complaints ensures that inquiries regarding matters of appropriateness are addressed.
 - 1. When complainants call in with an appropriateness issue, they are notified that they may file a complaint with the Office of Due Process and Complaints. When a letter of complaint is received, the complaint is accepted and the complainant is advised that the issue(s) will be investigated to determine if appropriate criteria and procedures have been used by the school division in reaching its decision.
 - 2. The Office of Due Process and Complaints generally recommends the resolution of disputes between parents and local school divisions through the use of the due process procedures when the issues primarily concern the appropriateness of the identification, evaluation/eligibility, educational placement or FAPE. However, these issues can also be the subject of a complaint filed with the Office of Due Process and Complaints.
- B. The Office of Due Process and Complaints initiates the same procedures outlined in Part I, Section C through K.
- C. If procedural errors are found as a result of the investigation, the Office of Due Process and Complaints issues a corrective action plan to the LEA which may require the LEA to reconsider its decision regarding the appropriateness issue.

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- D.** Complainants are informed through the process (including initial phone contact, filing complaint, and receipt of findings) of their right to initiate a request for a due process hearing to resolve the dispute.