

New York State Complaint Procedures

4. Can a State complaint be filed to enforce the decision of an impartial hearing officer?

Yes. A State complaint may be filed if a school district or public agency fails to implement the decision of an impartial hearing officer.

Filing a State Complaint

5. Who can submit a State complaint?

Any individual or organization, including an individual or organization from another State may submit a State complaint.

6. Where would a State complaint be filed?

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Services at the following address:

New York State Education Department
Office of Special

12. Is an individual/organization required to file a State complaint using **Sample State Complaint Form**?

No. While use of the *Sample New York State Complaint Form* is recommended, it is not required. An individual or organization submitting a State complaint who does not use the *Sample New York State Complaint Form* must use the *Sample New York State Complaint Form* to ensure all the required information is provided.

Review of a State Complaint

13. What actions does NYSED take when it receives a State complaint?

When NYSED receives a State complaint, it first determines:

have not been provided and that an investigation of the identified allegation will not be initiated.

- e. Whether any of the State complaint allegations are currently being addressed in an impartial hearing. Under federal and State requirements, NYSED must set aside any part of a State complaint that is currently being addressed in an impartial hearing or an appeal of the hearing decision. If it is determined that any of the allegations are the subject of a pending¹ or ongoing impartial hearing, NYSED must set aside (i.e., will not proceed with an investigation of) those issues. Upon completion of the impartial hearing, if the issue(s) has not been addressed in the impartial hearing the State complaint investigation on the issue(s), thus establishing a new 60 calendar day investigation timeline.
- f. Where an issue raised in a State complaint has been previously decided in an impartial hearing conducted pursuant to Education Law section 4404 and involving the same parties, the decision of the impartial hearing officer is binding regarding that issue and therefore NYSED will not investigate.

CONDITIONS THAT PRECLUDE THE INVESTIGATION OF A STATE COMPLAINT

14.

15. Under what circumstances will NYSED "set aside" an issue in a State complaint?

20. Can the issues in the State complaint be resolved through mediation?

Yes. The complainant and the school district or public agency may agree to voluntarily engage in mediation to attempt to resolve the State complaint. If parties agree to mediation, the school district or public agency will implement its procedures for mediation established pursuant to section 200.5(h) of the Regulations of the Commissioner of Education. NYSED may extend the 60 calendar day timeline to issue its State complaint decision if the parties agree to engage in mediation and written notification of such agreement is provided to NYSED.

21. What written information must the school district or public agency provide NYSED if the issues in a State complaint have been resolved or corrected before the State issues its findings?

If the school district or public agency and the complainant reach a local resolution of any or all issues identified in the State complaint prior to the date NYSED issues its findings, the complainant should contact NYSED, in writing or by telephone, to request that the State complaint be withdrawn or that specific issues be dismissed from the State complaint. If there are any remaining issues identified in the State complaint that were not resolved, NYSED will investigate only those allegations. If all issues have been resolved and

24. Can the complainant re-file a withdrawn State complaint?

Yes. Withdrawal of a State complaint does not preclude the complainant from submitting a State complaint at a later date, provided that it is received by NYSED not later than one year after the alleged violation occurred.

Investigation of a State Complaint

25. What is the State complaint process?

The State complaint process includes the following steps. NYSED will:

- a. Determine if the complaint includes the required information identified in Question 13.
- b. Review additional information provided either orally or in writing from the complainant.
- c. Decide whether the school district or public agency must submit a written reply³.
- d. Review the school district or public agency's response to the complaint, if applicable.
- e. At the discretion of NYSED, conduct additional fact finding, including an on-site investigation if NYSED determines such investigation is necessary.

After review of all relevant information, NYSED will issue a written final decision. The decision will address each allegation in the complaint, contain findings of fact and conclusions, and set forth the reasons for the final decision.

Upon a finding of a violation of federal or State law or regulation relating to the education of students with disabilities, the written findings may include technical assistance activities, negotiations and corrective actions if they are necessary to implement the decision and to achieve compliance.

Upon a finding of failure to provide appropriate services to an individual student with a disability, the final written decision must include remediation of the denial of services and appropriate future provision of services for all students with disabilities.

Timeline for a State Complaint

26. How long will it take for NYSED to investigate a State complaint and issue its findings?

NYSED will issue a letter with findings and conclusions from the investigation to the complainant within 90 days of the date of the complaint.

30. Who receives the letter of findings?

The letter with the findings of the investigation will be sent to the complainant and the superintendent or lead administrator of the school district or public agency involved in the State complaint.

31. Will the student be named or otherwise identified in the report if the State complaint was filed by a third party?

No. If the State complaint is filed by a

34. May a school district or public agency propose a corrective action to correct a compliance issue?

Yes. The school district or public agency may propose to correct a compliance issue related to a State complaint allegation at anytime during an investigation to resolve one or more of the allegations. NYSED may accept, reject or modify the proposal to ensure that the district will achieve compliance.

35. What happens after NYSED issues its findings and corrective action to the school district or public agency?

NYSED ensures effective implementation of its decision through actions which include, but are not limited to, technical assistance activities and monitoring of corrective actions the district has taken to demonstrate compliance. NYSED will determine when the school district or public agency completed the corrective action and achieved compliance. The State complaint file will remain open until proof of compliance with the corrective action is obtained and approved by NYSED. Upon approval of proof of compliance with the corrective action(s), NYSED will send a closure letter to the school district or public agency and the complainant who initiated the investigation indicating that the complaint has been closed.

Disagreement with the Findings of a State Complaint

36. Can the findings of a State complaint be appealed? (Rev. July 2011)

No. Except as explained in questions 38 a Q G E H O R Z 1 < 6 (' ¶ V G H F L V L R Q State complaint is final and cannot be appealed to the State Education Department. NYSED will, however, correct any errors that have been made in the Statement of Facts presented in the written final decision. If either party believes that any facts presented

NYSED will issue an amended decision to both parties, including, if appropriate, revised corrective actions. The timeline for implementing the corrective actions the school district or public agency must take to achieve compliance specified in the original final written decision cannot be delayed while the request for correction is being reviewed.

37. Can the complainant request an impartial hearing regarding issues raised in a State complaint if he/she disagrees with the State complaint findings of fact and conclusions?

Yes. Where the State complaint involves the rights of an individual student, upon receipt of an adverse decision rendered in a State complaint, the complainant or the school district may initiate an impartial due process hearing to address the issues raised in the State complaint, provided that the subject of the complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings has not expired.