

Complaint Procedures

- I. **The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities.** The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system.
- II. **A complaint may be filed by any individual, organization, or an individual from another state and must:**
 - A. Be in writing;
 - B. Be signed by the complainant;
 - C. Contain a statement that the Division has violated the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) or the Virginia Department of Education special education regulations and include the facts upon which the complaint is based;
 - D. Address an action that occurred not more than one year prior to the date the complaint is received, unless the Virginia Department of Education determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Virginia Department of Education; and
 - E. Contain all relevant documents.
- III. **Upon receipt of a complaint, the Virginia Department of Education shall initiate an investigation to determine whether the Division is in compliance with applicable law and regulations in accordance with the following operational guidelines:**

A. Within seven business days of the receipt of the complaint, the Virginia Department of Education shall send written notification to each complainant and the school division against which the violation has been alleged, acknowledging receipt of a complaint, and shall send copies to other appropriate Virginia Department of Education personnel.

1. The notification sent to the Division shall include:

- a. A copy of the complaint;
- b. An offer of technical assistance in resolving the complaint;
- c. A request that the Division submit within 10 business days of receipt of the letter of notification written documentation that the complaint has been resolved; and
- d. If the complaint was not resolved, a request that the Division submit within 10 business days of receipt of the letter of notification a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the Division to the complainant if the complaint was filed by the parent or parents of the child, the student, or their attorney. If the complaint was filed by another individual, the Division shall simultaneously send the response and submitted documentation to that individual if a release signed by the parent or parents or student who has reached the age of majority has been provided.

2. The notification sent to the complainant and the Division shall provide the complainant and the Division with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.
- B. If a reply from the Division is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the Division advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.
- C. The Virginia Department of Education shall review the complaint and reply filed by the Division to determine if further investigation or corrective action needs to be taken.
1. If no further investigation or action is necessary, the Virginia Department of Education shall notify both parties in writing, stating the grounds for such finding.
 2. If further investigation is necessary, the Virginia Department of Education shall conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

3. 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, the Virginia Department of Education shall:
 - a. Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - b. Resolve any issue in the complaint that is not part of the due process hearing involving the same parties.
 4. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.
- D. During the course of the investigation, the Virginia Department of Education shall:
1. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
 2. Make a determination of compliance or noncompliance on each issue based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the basis for such findings.
 - a. A time limit of 60 calendar days shall be allowed after the written complaint is received to carry out the investigation and to resolve the complaint.
 - b. An extension of 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties

to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances and the extended time limit.

3. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
 - a. Technical assistance activities;
 - b. Negotiations, and
 - c. Corrective actions to achieve compliance.
4. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
5. Notify the parties in writing of any needed corrective actions and the specific steps that must be taken by the Division to bring it into compliance. The Division will be given 15 business days from the date of notice of noncompliance to respond and initiate corrective action.

E. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:

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.

IV. When the Division develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless

circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

- V. If the Division does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for the Virginia Department of Education review and referral to the Virginia Board of Education, if deemed necessary.
- VI. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the Division has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to the Division until there is no longer any failure to comply with the applicable law of regulation.
- VII. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with regulations established by the Virginia Board of Education.
- VIII. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, at parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.