

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
VDOE Toll Free: (800) 292-3820
ODRAS@doe.virginia.gov
[Special Education Complaint Resources](#)

COMPLAINT RESOLUTION PROCEDURES

Revised: January 2022

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 Improvement 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, and reissued on January 25, 2010, and on July 29, 2015, (8VAC20-81-200) (the *Virginia Regulations*).

The purpose of the State procedures is to provide a system required by law that 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 dispute resolution system that provides for investigation of complaints and issuance of findings regarding alleged violations of federal and/or state special education laws and regulations; as well as the rights of parents or children with disabilities outlined in such regulations. 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 with the Virginia Department of Education by any individual, organization, or an individual from another state and shall:
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 the 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 by ODRAS.
 6. Contain all relevant information and supporting documentation.

¹See 8 VAC 20-81-170.I.

7. Be provided simultaneously, by the complainant, to the LEA at the same time the complaint is submitted 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 local educational agency (school division) the child is enrolled in;
 - d. The name of the school the child is attending;
 - e. In the case of a homeless child or youth (within the meaning of § 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;
 - f. A description of the nature of the child's problem, including the facts relating to the problem; and
 - g. 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 submitted to ODRAS, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; emailed to ODRAS@doe.virginia.gov; or faxed to the same office at (804) 786-8520. If being submitted by hand or delivery service, the physical address is: 101 N. 14th Street, James Monroe Building, ODRAS - 20th Floor, Richmond, VA 23219.
- C. The LEA is responsible for providing the parent with a copy of the [procedural safeguards](#) notice upon receipt of the first state complaint in a school year.

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 the complainant, the Division Superintendent, and the Special Education Director of the LEA involved in the complaint.
 2. ODRAS provides the Division Superintendent and the Special Education Director a copy of the complaint with the supporting documentation and offers technical assistance to resolve the complaint.
 3. A copy of these Complaint Resolution Procedures is 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. Directions for resubmission of the complaint to ODRAS are provided to the complainant. Resubmitted complaints are treated as new complaints.
 5. If an individual other than a parent, a student who has reached the age of majority, or their attorney files a complaint, ODRAS notifies the individual of VDOE's receipt of the complaint and informs the individual that the parent or adult student will be informed of its receipt of the complaint and will be provided copies of the complaint, relevant correspondence, if any, and this Complaint Resolution Procedures document.

Unless a release of information is on file with ODRAS, the individual 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 an individual other than the parent or student who has reached the age of majority, the LEA must simultaneously send the response and any submitted supporting 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 parties an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. ODRAS establishes a timeline, at its discretion, 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 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 will result in a review by the Superintendent of Public Instruction or designee regarding 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 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 its 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 and provides a specific date upon which the extension period will expire and when the LEA's response to the complaint or notice of resolution is due.
 - 3. Any extension, when granted, does 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. Also within the initial notification, ODRAS shall include notification of the opportunity for the parties to engage voluntarily in mediation. The Virginia Special Education Mediation

system is available at no cost to the parties through the VDOE. Parties may call (804) 786-0711 for information regarding mediation, or visit [VDOE's website](#).

- C. If the LEA successfully resolves 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 laws 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 or the due process request is dismissed or withdrawn; 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).
 - 3. If an issue in the complaint has already been decided in a due process hearing involving the same parties, ODRAS informs the parties that the due process hearing decision is binding and, as such, the complaint will be dismissed.
- 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 circumstances² 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.

² See APPENDIX regarding “exceptional circumstances.”

- 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 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 necessary consent for release of the information to another individual or organization has been obtained and filed.
- 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 and an appeal is not requested, the complaint file is closed.
 - 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 provided to and approved by ODRAS.

VI. CORRECTIVE ACTIONS

- A. The VDOE is tasked with resolving complaints and issuing corrective action to achieve full and appropriate remedies for LEA's noncompliance with special education laws and regulations. VDOE corrective actions will 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.
- 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 Corrective Action Plan (CAP) (plan of action to correct the violations), 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 by 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 CAP. Once the CAP 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 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 written decision advising 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 the 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 established VDOE procedures

- A. Appeals must be filed with VDOE within 30 calendar days of the date ODRAS issues its findings.
- B. The request for appeal shall be made on the basis of: (i) newly discovered information, or (ii) an error in fact or law on which the findings were based.
- C. A copy of the Complaint Appeal Procedures is included with each Letter of Finding.

D. These procedures are also available by contacting ODRAS, or by visiting the VDOE website.

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 Website.

IX. TRANSMISSION AND RECEIPT OF DOCUMENTATION

- A. The Virginia Regulations and these complaint procedures set forth timelines for the issuance and receipt of various materials relative to the state complaint process. To ensure compliance with these timelines and to facilitate timely processing and thorough review of complaint materials, this office shall determine its "receipt" of complaint submissions, the school division response, additional information, corrective action plan, and appeals submitted via postal mail, delivery service, facsimile, by hand, or via email to ODRAS pursuant to this section.³
- B. In processing complaint submissions filed electronically, ODRAS shall accept electronic signatures as having "the legal effect and enforceability of an original signature" (8VAC20-81-170.I) and may, as may be consistent with federal and state laws and regulations, implement safeguards and practices sufficient to identify or authenticate the complainant and indicate that the complainant approves of the information in the complaint submission.⁴
- C. For the purposes of these Complaint Resolution Procedures, unless the context requires otherwise:
1. "Business day" and "calendar day" shall have the definitions set forth in 8VAC20-81-10. More specifically, "business day" means Monday through Friday, twelve months of the year, exclusive of federal and state holidays (except when another statute or regulation specifically designates a holiday as a business day. "Calendar days" means consecutive days, inclusive of Saturdays and Sundays, subject to certain exceptions when a time period calculated in calendar days ends on a Saturday, Sunday or federal or state holiday.
 2. "Regular business hours" means 8:30 a.m. through 5:00 p.m., Monday through Friday, excluding federal and state holidays and dates upon which state agencies are closed for inclement weather or other reasons.
 3. "Receipt" by this office of any complaint submission, school division response, additional information submitted by either party, corrective action plan, or appeal

³ U.S. Department of Education, Office of Special Education Programs, Memorandum (July 23, 2013).

⁴ *Id.*, at Question B-13.

submitted to this office at the addresses or numbers set forth in Section I.B, above, is accomplished:

- a. If sent via email to ODRAS at ODRAS@doe.virginia.gov, on the date the email is received by ODRAS staff during regular business hours.
- b. If sent via email to individual ODRAS staff, on the date the email is received by ODRAS staff during regular business hours, or, if received outside regular business hours, on the next business day.
- c. If sent via facsimile to ODRAS (804-786-8520), when the facsimile was received and printed during regular business hours, as determined by the time stamp on the facsimile. If the facsimile was received at ODRAS outside regular business hours, the date of receipt shall be the next regular business day.
- d. If sent via postal mail, delivery service, or by hand, on the business day upon which ODRAS receives the material. If the materials are left at ODRAS outside regular business hours, the date of receipt shall be the next business day.
- e. If an email, postal delivery, facsimile, hand or other service delivery has been sent or delivered to another office or division within VDOE, the Office of the Governor, the Office of the Secretary of Education, or other Virginia state official or agency, the date of receipt by ODRAS shall be the regular business day upon which ODRAS received the submission, as set forth in items 1 through 3, above.⁴
- f. Any information provided to ODRAS must be submitted in a format that ODRAS can access within the parameters of the VDOE information security protocols. If a submission is received in a format that is not accessible, the sender will be advised within a timely manner and asked that the information be resubmitted in another format.⁵
- g. If a submission is received pursuant to more than one of the methods described above, the receipt date shall be the earliest date upon which receipt is satisfied as outlined above.

D. “Transmission,” “issuance,” or “sending” by ODRAS of complaint documentation, including, but not limited to, Notices of Complaint, Letters of Inquiry, Letters of Findings, and other complaint investigation materials, is accomplished:

1. If sent via e-mail or facsimile, on the business day upon which the e-mail or facsimile is sent by ODRAS staff, as identified on the face of the e-mail transmission or

⁴ In such instances, the date the complaint is received by ODRAS will be the date upon which the 60 calendar day time period for completing the complaint investigation is established and will not have a direct impact on determining if the complaint satisfies the one-year timeline for submission of complaints as outlined in Section IA.5 above. In determining whether the complaint satisfies that requirement, the date that the complaint was received by an entity other than ODRAS will be used as the benchmark date.

⁵ In such instances, the date the complaint is received by ODRAS in an acceptable format will be the date upon which the 60 calendar day time period for completing the complaint investigation is established and will not have a direct impact on determining if the complaint satisfies the one-year timeline for submission of complaints as outlined in Section IA.5 above. In determining whether the complaint satisfies that requirement, the date that the complaint was initially submitted to ODRAS, albeit in an inaccessible format, will be used as the benchmark date.

facsimile, whether during or outside regular business hours, without regard to the date upon which the recipient opened or received the transmission.

2. If sent via postal mail, on the business day upon which ODRAS places the materials in the outgoing mail receptacle at ODRAS.
 3. If sent via courier or other external delivery service, on the business day upon which ODRAS releases such documentation by (i) physically placing the materials in a delivery service receptacle; or (ii) leaves such materials for retrieval by such delivery service in a location established for such purpose.
 4. If to be retrieved by an addressee or his designee pursuant to a verbal or written agreement with ODRAS, on the business day upon which ODRAS releases such documentation for retrieval by the addressee or his designee, regardless of the date upon which the addressee or designee retrieves the documentation. In no case shall this mode of transmission be construed to grant the addressee or designee the right to retrieve such documentation after regular business hours.
- E. ODRAS is not responsible for errors, omissions, or failures in the transmission, delivery, or receipt of any complaint materials via (i) U.S. Postal Service or other carriers; (ii) e-mail transmission; or (iii) facsimile.
- F. In establishing the date of receipt and transmission of complaint documentation and materials, ODRAS retains discretion to determine that special circumstances exist and flexibility is warranted to ensure fairness to the parties and compliance with applicable laws and regulations.

X. CONSTRUCTION AND INTERPRETATION; SEVERABILITY

ODRAS retains discretion in the construction and interpretation of these Complaint Resolution Procedures to ensure fairness to the parties and to effectuate the purposes of relevant federal and state laws and regulations and other authority.

The provisions of these complaint procedures or their application to any person or circumstances that is held invalid shall not affect the validity of those provisions or applications that can be given effect without the invalid provisions or applications. The provisions of these procedures are severable unless (i) the provision specifically provides that it is not severable, or (ii) it is apparent that two or more provisions must operate in accord with one another.

APPENDIX

Extension of 60-day timeline for “exceptional circumstances.” Special education regulations (34 C.F.R. § 300.152(b)(1)(i); 8 VAC 20-81-200.D.4.c.2) permit the extension of the 60-day timeline for “exceptional circumstances with respect to a particular complaint.” Neither federal nor state special education regulations define what constitutes “exceptional circumstances.”

Generally, an “exceptional circumstance” may occur when an event or series of events, beyond the control of ODRAS, reasonably justifies an extension of time in which to complete an investigation. In the absence of a regulatory definition, ODRAS will determine whether “exceptional circumstances” exist based upon (i) the facts and circumstances surrounding a particular complaint; and (ii) OSEP guidance and findings.

In its July 2013 *Questions and Answers on IDEA Part B Dispute Resolution Procedures*,^[1] US ED did not identify what constituted “exceptional circumstances,” but, rather, indicated what **did not**. The OSEP directed that these determinations be made on a case-by-case basis.

OSEP has advised that the following do **not** constitute exceptional circumstances warranting an extension of the 60-day time limit:

- State staff shortages^[2] or heavy caseloads;
- School vacations and breaks; and
- Use of mediation or alternative dispute resolution without agreement by the parties to extend the 60-day timeline (see 8 VAC 20-81-200.D.4.c.2).

Upon determining that exceptional circumstances warrant the extension of the 60-day timeline, ODRAS will:

1. Advise the parties of the extension before the expiration of the 60-day timeline;
2. Document the extension and the reasons therefor in the associated Letter of Findings; and
3. Maintain documentation of the length and reasons for each timeline extension and provide this documentation quarterly to the Superintendent of Public Instruction/designee.

[1] U.S. Department of Education, Office of Special Education Programs, *Questions and Answers on IDEA Part B Dispute Resolution Procedures* (July 23, 2013) <<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>>

[2] In 2020 guidance regarding the COVID-19 pandemic, the OSEP stated that while it had “previously concluded that unavailability of SEA staff generally is not an exceptional circumstance..., conditions related to the [COVID-19] pandemic could be deemed an exceptional circumstance with respect to a particular complaint if, for example, a

large number of SEA staff are unavailable or absent for an extended period of time as a result of the pandemic, or where the SEA cannot access specific information from school/agency staff or the child's education records needed to resolve the complaint due to conditions related to the pandemic." U.S. Department of Education, Office of Special Education Programs, *Questions and Answers on IDEA Part B Dispute Resolution Procedures During COVID-19* (June 22, 2020) <<https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/#Q2>> See also, U.S. Department of Education, Office for Civil Rights and Office of Special Education and Rehabilitative Services, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elem., and Secondary Schs. While Serving Children with Disabilities* (March 21, 2020) <<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/tr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>>