B. STATE COMPLAINT PROCEDURES

Authority: The requirements for State complaint procedures are found in the regulations at 34 CFR §§300.151-300.153.

Question B-1: Why are States required to have complaint procedures when the IDEA statute does not contain those procedures?

Answer: States have been required to establish and implement their own State complaint procedures, separate from their due process procedures, since 1977, when the initial regulations implementing Part B of the EHA were published (45 CFR §121a.602). The EHA regulations were moved to part 76 of the Education Department General Administrative Regulations (EDGAR) in the early 1980s and were returned to the Part B of the IDEA regulations in 1992 when the Department decided to move the regulations out of EDGAR and place them in program regulations for the major formula grant programs. 71 FR 46600 (August 14, 2006). In responding to public comments questioning the basis for the State complaint provisions in 34 CFR §§300.151-300.153, the Department provided the following explanation when the final Part B regulations were published:

> Although Congress did not specifically detail a State complaint process in the Act, we believe that the State complaint process is fully supported by the Act and necessary for the proper implementation of the Act and these regulations. We believe a strong State complaint system provides parents and other individuals an opportunity to resolve disputes early without having to file a due process complaint and without having to go to a due process hearing. 71 FR 46600 (August 14, 2006).

In addition to the regulations addressing State complaint procedures, there are also a number of statutory provisions in the IDEA that recognize the State complaint process.[15]

Accordingly, through its Part B State complaint procedures, each State has a powerful tool to address noncompliance with Part B of the IDEA and its implementing regulations in a manner that both supports and protects the

[15] The State complaint procedures are referred to in the following three sections of the IDEA: section 611(e)(2)(B)(i), requiring States to expend a portion of Part B funds that they can use for State-level activities for complaint investigation; section 612(a)(14)(E), which provides that a parent is not prevented from filing a State complaint under part 300 with the SEA about staff qualifications; and section 615(f)(3)(F), clarifying that nothing in the Act's due process provisions should be construed to affect the right of a parent to file a complaint with the SEA.

interests of children with disabilities and their parents and facilitates ongoing compliance by the State and its public agencies with the IDEA and its implementing regulations. 71 FR 46601 (August 14, 2006).

Question B-2: What are some differences between a State complaint and a due process complaint?

Answer: Some differences include who can file each type of complaint, subject matter, timing, procedures, and appeal processes. More parties are eligible to file a State complaint than a due process complaint. As explained in Question B-3, a State complaint may be filed by an organization or individual, including one from another State. In contrast, only a parent[16] or a public agency[17] may file a due process complaint.[18] Therefore, while a parent has the option of filing a State complaint or a due process complaint to request a due process hearing, an organization or individual, other than a child's parent may not file a due process complaint to request a due process hearing.

Another difference is the subject matter of each type of complaint. A State complaint must allege that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations, but a due process complaint is available for matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. Therefore, while a matter that could be the subject of a due process complaint could also be the subject of a State complaint, the reverse is not always true.

Next, the time period within which each type of complaint can be filed is not the same. A State complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR §300.151; although States have the option of accepting complaints alleging a violation that occurred within a longer time period (see Question B-19). In contrast, a due process complaint must allege a violation that occurred not more than two years before the parent or public agency knew or should have known about the alleged action that forms the basis for the due process complaint, or, if the State has an explicit time limitation, in the time allowed by State law. 34 CFR §300.507(a)(2). The regulations provide explicit exceptions to the two-year or State-established timeline. 34 CFR §300.511(f). See Question C-5 of this Q&A document for a description of these exceptions.

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[16] See Footnote 5 in Section A of this Q&A document for the definition of the term "parent" and for information about the transfer of rights accorded to parents under Part B of the IDEA to a student who has reached the age of majority under State law.

[17] See Footnote 6 in Section A of this Q&A document for the definition of the term "public agency."

[18] Compare, 34 CFR §300.153(a) with 34 CFR §300.507(a)(1).

Different procedures apply to written decisions for State complaints and due process complaints.[19] For State complaints, the SEA must issue a written decision to the complainant that addresses each allegation in the complaint within 60 days of the date that the complaint was filed, except that certain specific extensions are allowable as described in Question B-21. In contrast, if a parent files a due process complaint to request a due process hearing and the due process hearing occurs, then a hearing decision must be issued not later than 45 days after the expiration of the resolution period described in 34 CFR §300.510. Note though that a hearing officer may grant a specific extension of the 45-day timeline at the request of either party. See Sections C and D of this Q&A document.

The regulations are silent as to whether a decision on a State complaint may be appealed, but see Question B-32 for a discussion of how State appeal and reconsideration procedures can be implemented consistent with Part B. Also, as described in the response to Question B-34, the Part B regulations do not provide for Secretarial review of a final decision on a State complaint. In contrast, a decision reached in a due process hearing is final, unless a party aggrieved by the decision appeals by requesting a State-level review, if applicable, or by bringing a civil action in an appropriate State or Federal court. 34 CFR §§300.514 and 300.516.

Question B-3: Who may file a State complaint?

Answer: Any organization or individual, including one from another State, may file a signed written State complaint that meets the requirements in 34 CFR §300.153. 34 CFR §300.151(a).

Question B-4: Are there any mechanisms that an SEA must provide to assist parents and other parties in filing a State complaint?

Answer: Yes. Under 34 CFR §300.509, each SEA must develop model forms to assist parents and other parties in filing a State complaint; however, the SEA or LEA may not require the use of the model forms. Parents and other parties may use the appropriate model form, or another form or document, so long as the form or document that is used meets the content requirements in 34 CFR §300.153 for filing a State complaint. If the SEA's model form includes content not required by 34 CFR §300.153, the form must identify that content and specify that it is optional.

[19] Compare, 34 CFR §300.152(a) with 34 CFR §§300.507-300.508.

Question B-5: If a parent wishes to challenge a public agency's eligibility determination, may a parent file a State complaint?

Answer: Yes. The Department's long-standing position is that an SEA may not refuse to resolve a parent's State complaint challenging a public agency's eligibility determination through its complaint resolution procedures even though the complaint concerns a matter that could also be the subject of a due process complaint to request a due process hearing.

Question B-6: How should an SEA resolve a State complaint challenging a public agency's eligibility determination?

Answer: In resolving a State complaint challenging a public agency's eligibility determination, an SEA should determine not only whether the public agency has followed the required Part B procedures to reach its determination, but also whether the public agency has reached a determination consistent with Part B requirements governing the evaluation and eligibility determination in 34 CFR §§300.304-300.311, in light of the individual child's abilities and needs. The SEA must determine whether the child was determined eligible based on evidence that he or she met the definition of "child with a disability" under 34 CFR §300.8 and fell within the age ranges specified at 34 CFR §§300.101 and 300.102. To do so, the SEA may need to review the evaluation data in the child's record or any additional data provided by the parties to the complaint. In addition, the SEA may need to review the explanation included in the public agency's prior written notice to the parents under 34 CFR §300.503 explaining why the agency made the challenged eligibility determination (and/or refused to make an alternative determination requested by the parents or others). If necessary, the SEA may need to interview appropriate individuals to determine: (1) whether the public agency followed procedures and applied standards that are consistent with State standards, including the requirements of Part B; and (2) whether the public agency's eligibility determination is consistent with those standards and supported by the evaluation and other data included in the child's record or the information provided by the parties to the complaint. The SEA may find that the public agency has complied with Part B requirements if the public agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data and is consistent with Part B.

If the SEA determines that the public agency's eligibility determination is not supported by the child-specific facts, the SEA can order the public agency, on a case-by-case basis, to reconsider the eligibility determination in light of those facts. In addition, a parent always has the right to challenge the public agency's eligibility determination by filing a due process complaint to request

a due process hearing and may also engage in mediation with the public agency to seek to resolve the dispute.

Question B-7: If a parent wishes to challenge a public agency's decision regarding the provision or denial of FAPE to a child with a disability, may a parent file a State complaint?

Answer: Yes. As is true for State complaints challenging a public agency's eligibility determination, the Department's long-standing position is that an SEA may not refuse to resolve a State complaint alleging a denial of FAPE. This is true even if the SEA believes that the parent should file a due process complaint against the LEA or that the due process hearing process is a more appropriate mechanism to resolve such disputes. If a parent believes that the program offered or provided to his or her child with a disability does not constitute FAPE and files a State complaint instead of a due process complaint, the SEA must resolve the State complaint. This responsibility includes resolving a State complaint by a parent, who has unilaterally placed his or her child in a private school at her or her own expense, alleging a denial of FAPE.

Question B-8: How should an SEA resolve a State complaint challenging a public agency's decision regarding the provision or denial of FAPE to a child with a disability?

Answer: In resolving a State complaint challenging whether a public agency's decision regarding the provision or denial of FAPE to a child is correct, an SEA may need to determine not only whether the public agency has followed the required Part B procedures to reach its determination, but also whether the public agency has properly addressed the individual child's abilities and needs. Thus, the SEA would need to review any data provided by the parties to the complaint and the child's record, including evaluation data and any explanations included in the public agency's prior written notice to the parents under 34 CFR §300.503 as to why the public agency made its decision regarding the child's educational program or services (and/or refused to make an alternative decision requested by the parents or others). If necessary, the SEA may need to interview appropriate individuals to determine: (1) whether the agency followed procedures and applied standards that are consistent with State standards, including the requirements of Part B; and (2) whether the determination made by the public agency is consistent with those standards and supported by the data on the individual child's abilities and needs. The SEA may find that the public agency has complied with Part B requirements if the evidence clearly demonstrates that the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data. 71 FR 46601 (August 14, 2006).

If the SEA finds a violation of FAPE for the child, it must address the violation. This includes, as appropriate, ordering an IEP Team to reconvene to develop a program that ensures the provision of FAPE for that child or ordering compensatory services. See Question B-10 for remedies. In addition, a parent alleging a denial of FAPE has the right to challenge the IEP Team's decision by filing a due process complaint to request a due process hearing and may also engage in mediation with the public agency to seek to resolve the dispute.

Question B-9: May the State complaint procedures, including the remedies outlined in 34 CFR §300.151(b), be used to address the problems of a group of children, i.e., a complaint alleging systemic noncompliance?

Answer: Yes. An SEA is required to resolve any complaint that meets the requirements of 34 CFR §300.153. This includes a complaint alleging that a public agency has not provided FAPE to an individual child or a group of children in accordance with Part B. As noted in the response to Question B-1, State complaint procedures provide a powerful tool to enable a State to fulfill its general supervisory responsibility to monitor implementation of Part B requirements in the State. This responsibility applies to the monitoring of its public agencies' compliance with Part B with respect to both systemic and child-specific issues. 34 CFR §§300.149 and 300.600(a).

A State complaint alleging systemic noncompliance could be one that alleges that a public agency has a policy, procedure, or practice applicable to a group of children that is inconsistent with Part B or the Part B regulations. An example of a complaint alleging systemic noncompliance is a complaint alleging that an LEA has a policy, procedure, or practice that would limit extended school year (ESY) services to children in particular disability categories or the type, amount, or duration of services that can be provided as ESY services.

If the complaint names certain children and alleges that the same violations apply to a class, category, or similarly situated children, the SEA must review all relevant information to resolve the complaint, but would not need to examine additional children if no violations are identified in the policies, procedures, or practices for the named children. However, if the SEA identifies violations for any of the named children, the SEA's complaint resolution must include measures to ensure correction of the violations for all children affected by the alleged systemic noncompliance described in the complaint. Additionally, the SEA would need to examine the policies, procedures, and practices that may be causing the violations and the SEA's written decision on the complaint must contain procedures for effective implementation of that decision, including corrective actions to achieve compliance. 34 CFR §§300.152(b)(2)(iii), 300.149(a)(2)(ii), and 300.600(e).

Question B-10: If there is a finding in a State complaint that a child or group of children has been denied FAPE, what are the remedies?

Answer: In resolving a complaint in which there is a finding that a public agency has not provided appropriate services, whether to an individual child or a group of children, an SEA, through its general supervisory authority under Part B, is required to address: (1) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities. 34 CFR §300.151(b). Thus, an SEA, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children.

Question B-11: How does an SEA resolve a complaint when an organization or individual, other than a child's parent, files a State complaint regarding a specific child?

Answer: An SEA is required to resolve any complaint that meets the requirements of 34 CFR §300.153 filed by an organization or individual, including one from another State. This includes a signed written complaint alleging that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations regarding a particular child with a disability, regardless of whether the State complaint has been filed by the child's parent or by an organization or individual other than the child's parent. Thus, in resolving such a complaint, the SEA would be required to follow the minimum State complaint procedures in 34 CFR §300.152 as it would for any other State complaint that alleges that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations.

If a complaint is filed by an organization or individual other than the parent, parental consent must be obtained before an SEA may provide personally identifiable information about a child to a non-parent complainant as part of the complaint decision. 34 CFR §§99.30 and 300.622.

If parental consent is not obtained, any personally identifiable information about the child who is the subject of the complaint must be redacted from the SEA's written decision on the complaint. Because the complaint resolution would likely involve the child's personally identifiable information, it may not be possible for the SEA's decision to be issued to a non-parent complainant. The SEA must make this determination case by case, but should not withhold relevant nonpersonally identifiable information from the complainant regarding the results of the SEA's complaint resolution. Moreover, even if the SEA would be unable to issue a written decision to the complainant because of its personally identifiable nature, the SEA still must ensure that it resolves the complaint, issues a written decision that addresses each allegation in the

complaint, and ensures timely implementation of its written decision, including, if appropriate, corrective actions to achieve compliance and remedies for the denial of appropriate services. 34 CFR §§300.152(b)(2) and 300.151(b).

Question B-12: How does an SEA resolve a complaint against itself?

Answer: An SEA must resolve a complaint alleging that it has violated a requirement of Part B or the Part B regulations just as it must resolve any other signed written complaint that meets the requirements in 34 CFR §300.153. Under 34 CFR §300.33, the term "public agency" includes the SEA. Therefore, an SEA must resolve a complaint alleging that the SEA (a public agency) has violated a requirement of Part B or the Part B regulations.

In resolving a complaint filed against the SEA, an SEA may either appoint its own personnel or may make arrangements with an outside party to resolve the complaint. Regardless of whether the SEA chooses to resolve the complaint on its own or chooses to use an outside party, the SEA must ensure that all of the procedures in 34 CFR §§300.151-300.153 are followed. Specifically, an independent on-site investigation must be conducted, if necessary, consistent with 34 CFR §300.152(a)(1) and the SEA must take appropriate steps to ensure this occurs. Additionally, the SEA must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency (in this case the SEA) has violated a requirement of Part B or the Part B regulations with respect to the complaint. 34 CFR §300.152(a)(4).

The SEA also must ensure that it or an outside party, whichever resolves the complaint, considers all available remedies in the case of a denial of appropriate services consistent with 34 CFR §300.151(b). Regardless of whether the complaint is resolved by the SEA or by an outside party that the SEA designates to resolve the complaint, the SEA must comply with all corrective actions, including remedies, set out in the final decision. 71 FR 46602 (August 14, 2006).

Question B-13: May States establish procedures permitting a State complaint to be filed electronically?

Answer: Yes. Under 34 CFR §300.153(a), a complaint must be signed and written. This regulation does not address whether States can accept State complaints filed electronically with digital or electronic signatures. Because the IDEA does not prohibit this practice, States considering accepting, or choosing to accept, electronic submissions of State complaints with electronic signatures would need to ensure that there are appropriate safeguards to protect the

integrity of the process. 71 FR 46629 (August 14, 2006) (regarding whether States can accept electronic parental consent).

In developing the appropriate safeguards, States should consider that the Department has addressed criteria for accepting electronic signatures to satisfy the signed written consent requirements in the FERPA regulations in 34 CFR part 99. Under 34 CFR §99.30(d), "signed and dated written consent" may include a record and signature in electronic form that identifies and authenticates a particular person as the source of the consent and indicates such person's approval of the information contained in the electronic consent.

Applying these criteria to electronic complaint submissions, it would be reasonable for States that either are considering accepting, or have chosen to accept, electronic filings of Part B State complaints with electronic signatures to ensure that their process includes safeguards sufficient to identify or authenticate the complainant and indicate that the complainant approves of the information in the complaint. In other words, these safeguards should be sufficient to ensure that an organization or individual submitting a complaint electronically understands that the complaint has the same effect as if it were filed in writing. States would also need to ensure that the same confidentiality requirements that apply to signed written State complaints apply to State complaints filed electronically. 34 CFR §§300.611-300.626. States that are considering or have chosen to accept State complaints filed electronically with electronic signatures also should consult any relevant State laws governing electronic transactions.

Question B-14: Must States have procedures for tracking when State complaints are received, including State complaints filed electronically, if applicable?

Answer: Yes. Each SEA must include in its minimum State complaint procedures a time limit of 60 days after the date that the complaint is filed to resolve the complaint. 34 CFR §300.152(a). This includes all signed written complaints, including complaints filed electronically, if applicable. The Department interprets this requirement to mean that States must ensure that the 60-day[20] time limit for complaint resolution begins on the date that a complaint is received. While a State has some discretion in determining when a complaint is considered received, the SEA must ensure that its procedures allow for the timely resolution of complaints and are uniformly applied, consistent with 34 CFR §300.152(a) and (b). For example, if a State complaint is filed electronically on a day that is not considered a business day (e.g., the weekend), the State could consider the complaint received on the date the complaint is filed or on the next business day.

[20] Under 34 CFR §300.11(a), "[d]ay means calendar day unless otherwise indicated as business day or school day."

Under 34 CFR §300.151(a)(2), the State must adopt procedures for widely disseminating to parents and other interested individuals, including parent training and information centers, community parent resource centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State complaint resolution procedures under 34 CFR §§300.151-300.153. These must include criteria the State uses for determining when the State considers a State complaint to be received.

Likewise, information about filing and timelines for resolving State complaints must also be included in the explanation of State complaint procedures in the procedural safeguards notice to parents in accordance with 34 CFR §300.504(c)(5). The procedural safeguards notice must be provided to parents at least one time a school year, upon receipt of the first State complaint in a school year, and in the other circumstances specified in 34 CFR §300.504(a).

Question B-15: What is an SEA's responsibility to resolve a complaint if the complaint submitted to the SEA does not include all of the content required in 34 CFR §300.153?

Answer: The regulations do not specifically address an SEA's responsibility in this situation. Under 34 CFR §300.153, a complaint must include a statement that a public agency has violated a requirement of Part B of the Act or the Part B regulations; the facts on which the statement is based; and the signature and contact information for the complainant. If the complaint alleges a violation with respect to a specific child, the complaint also must include the name and address of the residence of the child; the name of the school the child is attending; in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending; a description of the problem of the child, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. When an SEA receives a complaint that is not signed or does not include contact information, or any other information required in 34 CFR §300.153(b), the SEA may choose to dismiss the complaint. 71 FR 46606 (August 14, 2006). In general, a State complaint may not be dismissed for not including a proposed resolution of the problem unless an SEA can clearly demonstrate that the resolution is known to the complaining party at the time the complaint is filed.

In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be resolved and the time limit not commence until the missing content is provided. The SEA could also include this information in its written procedures for resolving State complaints pursuant to 34 CFR §300.151(a).

To ensure that a State's complaint resolution procedures are not inconsistent with Part B, in general, an SEA may not adopt procedures that limit or diminish the parent's or other complainant's ability to present a State complaint and obtain timely resolution of the issues presented.

Question B-16: May an SEA dismiss a complaint alleging systemic noncompliance because the complainant did not include a proposed resolution of the problem?

Answer: No. Under 34 CFR §300.153(b)(4)(v), the requirement for the complaint to include a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed applies only to complaints alleging violations with respect to a specific child.

Question B-17: What is an SEA's responsibility to resolve a complaint if the complainant does not provide a copy of the complaint to the LEA or public agency serving the child at the same time the complaint is filed with the SEA?

Answer: Under 34 CFR §300.153(d), the complainant must provide a copy of the complaint to the LEA or public agency serving the child at the same time the complaint is filed with the SEA. The regulations do not specifically address a situation where the complainant only provides the complaint to the SEA and does not forward it to the LEA or public agency serving the child. An SEA should include the actions that will be taken under these circumstances in its complaint procedures established under 34 CFR §300.151(a) and provide proper notice of its procedures. An SEA's complaint procedures should address how the complainant's failure to provide the required copy to the LEA or public agency serving the child will affect the initiation of the complaint resolution and/or the time limit for completing the complaint resolution.

For example, an SEA could adopt procedures that include advising the complainant in writing that the complaint resolution will not proceed and the 60-day time limit will not begin until the complainant provides the LEA or public agency serving the child with a copy of the complaint as required by the regulations. 71 FR 46606 (August 14, 2006). As an additional protection for parents, consistent with 34 CFR §300.199, we encourage States to adopt procedures that ensure that the SEA provides a copy of the complaint to the LEA or public agency serving the child if the complainant does not do so.

To ensure that a State's complaint resolution procedures are not inconsistent with Part B, in general, an SEA may not adopt procedures that limit or diminish the parent's or other complainant's ability to present a State complaint and obtain timely resolution of the issues presented.

Question B-18: May a complaint be filed with an SEA over an alleged violation that occurred more than one year prior to the date of the complaint?

Answer: Prior to October 13, 2006, (the effective date of the August 14, 2006, Part B regulations), States were required to accept complaints that alleged violations that occurred not more than one year prior to the date that the complaint was received, unless a longer period of time was reasonable because the violation was continuing or the complainant was requesting compensatory services for a violation that occurred not more than three years prior to the date that the complaint was received. 64 FR 12465 (March 12, 1999). This provision was removed in the 2006 Part B regulations. Under 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. This requirement applies even if the alleged violation is continuing or if the complainant is requesting compensatory services. However, as described in Question B-19, a State may choose to accept and resolve complaints alleging violations that occurred more than one year prior to the SEA's receipt of the complaint as an additional protection for parents. 71 FR 46606 (August 14, 2006).

Question B-19: Does an SEA have the option to accept and resolve complaints alleging violations of the IDEA that occurred more than one year prior to the SEA's receipt of the complaint? What is the SEA's responsibility if such a procedure is permitted?

Answer: As with other procedural protections, a State may elect to provide more protections for children with disabilities and their parents than those specifically required by the IDEA, provided that the State procedure is not inconsistent with the IDEA. Therefore, an SEA may adopt a policy or procedure to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline in 34 CFR §300.153(c). In general, such a procedure would be treated as an additional protection for children with disabilities and their parents and not inconsistent with Part B. 71 FR 46606 (August 14, 2006).

Pursuant to 34 CFR §300.199(a)(2), the State must identify in writing to LEAs located in the State and the Secretary of Education any rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations. Stakeholders, including parents, parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, must be informed of the State's complaint resolution procedures pursuant to 34 CFR §300.151(a)(2). Therefore, if an SEA adopts a policy or procedure to accept and resolve complaints alleging violations that occurred outside of the one-year timeline, stakeholders must be informed of the policy or procedure through the State's complaint procedures so that they will be able to make

informed decisions about how and when they may use the State complaint procedures. Additionally, a public agency's notice of procedural safeguards, which must be given to parents one time a year and upon receipt of the first State complaint under 34 CFR §§300.151-300.153 in a school year, must include a full explanation of all of the procedural safeguards available to parents. This notice must include an explanation of the opportunity to present and resolve complaints through the State complaint procedures, including, among other information, the time period in which a parent may file a State complaint. 34 CFR §300.504(c)(5)(i).

Question B-20: Must an SEA conduct an independent on-site investigation for every complaint filed?

Answer: No. An SEA is required to conduct an independent on-site investigation only if it determines that such an investigation is necessary. 34 CFR §300.152(a)(1). The standards to be used in determining whether to conduct an on-site investigation are left to each State. If the SEA determines that there is no need to conduct an independent on-site investigation, the SEA must comply with all other applicable requirements in 34 CFR §300.152(a) and (b) in resolving the complaint.

Question B-21: When can the SEA extend the 60-day time limit for resolution of a State complaint? Can OSEP identify examples of situations when States have not been permitted to extend the 60-day complaint resolution time limit due to exceptional circumstances?

Answer: The regulations specify two allowable reasons for extending the 60-day time limit for complaint resolution. Under 34 CFR §300.152(b)(1), the SEA may extend this time limit only if: (1) exceptional circumstances exist with respect to a particular complaint; or (2) the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State. States need to determine case by case whether it is appropriate to extend the 60-day resolution time limit for a particular complaint due to exceptional circumstances.

OSEP has found that the following do not constitute exceptional circumstances that would warrant an extension of the 60-day time limit: State staff shortages or heavy caseloads; school vacations and breaks; the use of mediation or alternative dispute resolution without agreement by the parent (or individual or organization under State procedures) and the public agency to extend the 60-day time limit.

Question B-22: Must an SEA make mediation available when a State complaint is filed?

Answer: Under 34 CFR §300.152(a)(3)(ii), the SEA must provide an opportunity for a parent who has filed a State complaint and the public agency to voluntarily engage in mediation consistent with 34 CFR §300.506. This should provide a potential way of promptly resolving disputes between parents and public agencies at the local level. Resolving a complaint through mediation could also prove to be less costly if it avoids the need for the SEA to resolve the complaint, particularly if the SEA were to determine that an on-site investigation would be necessary. Ultimately, children with disabilities will be the beneficiaries of a local resolution because disputes about their educational programs can be resolved in a more timely manner. 71 FR 46603 (August 14, 2006).

While the IDEA does not require that mediation under 34 CFR §300.506 be made available to parties other than parents, there is nothing in the IDEA or its implementing regulations that would prevent States from offering voluntary mediation, or other alternative means of dispute resolution, if available in the State, to parties other than parents. 71 FR 46603-46604 (August 14, 2006). This matter is also discussed in Question A-4 of this Q&A document. An SEA may not require, but may request, that mediation (under 34 CFR §300.506) or other forms of alternative dispute resolution made available in the State take place before its complaint resolution.

Question B-23: What are the procedures related to an extension of the time limit for resolving a State complaint when the parties are engaged in mediation?

Answer: Under 34 CFR §300.152(b)(1)(ii), the 60-day time limit for complaint resolution may be extended if the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to them under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 CFR §300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State. The SEA may not treat mediation, in and of itself, as an exceptional circumstance under 34 CFR §300.152(b)(1)(i) that would warrant an extension of the time limit for complaint resolution. Rather, the parties engaged in mediation or other alternative means of dispute resolution, if available in the State, must agree to extend the time limit.

If the parties involved agree to engage in mediation once the State complaint is filed but do not agree to the extension of the complaint resolution time limit and the mediation is not successful in resolving the dispute, the State must ensure that the complaint is resolved within 60 days after the complaint was filed, as specified in 34 CFR §300.152(a). At any time that either party withdraws from mediation or other alternative means of dispute resolution, or

withdraws agreement to the extension of the time limit, the extension of the time limit for complaint resolution would end. 71 FR 46604 (August 14, 2006).

Question B-24: If the complainant is a party other than a parent, may the parties use the mediation process to attempt to resolve the issues in the State complaint?

Answer: Under 34 CFR §300.152(a)(3)(ii), an SEA is required to offer the parent and the public agency the opportunity to voluntarily engage in mediation to resolve the issues in a State complaint when the parent has filed a State complaint. The regulations do not require an SEA to provide an opportunity for mediation when an organization or individual other than the child's parent files a State complaint. However, the Department encourages SEAs and their public agencies to consider alternative means of resolving disputes between public agencies and organizations or other individuals, at the local level, consistent with State law and administrative procedures. It is up to each State, however, to determine whether non-parents can use mediation or other alternative means of dispute resolution. 71 FR 46604 (August 14, 2006).

Question B-25: Can an SEA dismiss allegations raised in a State complaint that were addressed in a previous settlement agreement resulting from mediation or the resolution process?

Answer: If a State complaint alleges violations specific to the child who is the subject of a prior settlement agreement resulting from mediation or the resolution process, the SEA may determine that the settlement agreement is binding on the parties as to those issues and inform the complainant to that effect. However, if the State complaint alleges systemic noncompliance or the State has reason to believe that the violations are systemic, it must resolve the allegations through its complaint resolution procedures. If the State finds systemic violations, it must provide for appropriate remedies for all students covered in the complaint, which could include prescribing in its complaint decision remedies for the denial of appropriate services, including corrective actions to address both past violations and future compliance. 34 CFR §§300.151(b) and 300.152(b)(2)(iii).

Question B-26: Can an issue that is the subject of a State complaint also be the subject of a due process complaint requesting a due process hearing?

Answer: Yes. An issue in a State complaint can also be the subject of a due process complaint requesting a due process hearing, as long as the issue relates to a matter regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child, as described in 34 CFR §300.507(a)(1) or to a disciplinary matter as described in 34 CFR §§300.530-300.532. If a due process complaint is filed on an issue

that is also the subject of a pending State complaint, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing officer issues a final decision. However, any issue in the State complaint that is not part of the due process action must be resolved using the 60-day time limit and procedures described in 34 CFR §300.152(a) and (b). 34 CFR §300.152(c)(1).

Question B-27: If a parent has filed a State complaint and the State's resolution is still in process, can the parent request a due process hearing pending resolution of the State complaint?

Answer: Yes. A parent who has filed a State complaint is not prevented from filing a due process complaint on the same or similar issues. However, if a parent files a due process complaint and the hearing officer rules on that issue, the due process hearing decision is binding as to that issue. Therefore, while the State may have begun the process of resolving a State complaint prior to the receipt of a due process complaint, pursuant to 34 CFR §300.152(c)(1), the State must set aside any issues in the State complaint that are being addressed in the due process hearing. As indicated in Question B-26, any issue in the State complaint that is not part of the due process action must be resolved using the State complaint resolution procedures in accordance with 34 CFR §300.152(a) and (b). 34 CFR §300.152(c).

Question B-28: May a State complaint be filed on an issue that was previously decided in a due process hearing?

Answer: Under 34 CFR §300.152(c)(2)(i), if a hearing officer has previously ruled on an issue at a due process hearing involving the same parties, the decision is binding on that issue. If a State complaint involving the same parties is filed on the same issue that was previously decided by the hearing officer, the SEA must inform the complainant that the hearing decision is binding on that issue. 34 CFR §300.152(c)(2)(ii). However, the SEA must use its State complaint resolution procedures to resolve any issue in the complaint that was not decided in the due process hearing. In determining that it will not resolve an issue in a State complaint because that issue was previously decided in a due process hearing, the SEA must ensure that the legal and factual issues are identical.

Question B-29: May the State complaint procedures be used to resolve a complaint that alleges that a public agency has failed to implement a hearing officer's decision?

Answer: Yes. Under 34 CFR §300.152(c)(3), if a State complaint alleges that a public agency has failed to implement a due process hearing decision, the complaint must be resolved by the SEA.

Question B-30: Once an SEA resolves a State complaint, what must the SEA's written decision contain?

Answer: Within 60 days of the date that the complaint was filed, subject to allowable extensions, an SEA is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions; and (2) the reasons for the SEA's final decision. 34 CFR §300.152(a)(5). In addition, under 34 CFR §300.152(b)(2), the SEA must have procedures for effective implementation of its final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. Therefore, if necessary to implement the SEA's final decision, the SEA's written decision must contain remedies for the denial of appropriate services, including corrective actions that are appropriate to address the needs of the child or group of children involved in the complaint. If appropriate, remedies could include compensatory services or monetary reimbursement, and measures to ensure appropriate future provision of services for all children with disabilities. 34 CFR §300.151(b).

Question B-31: What is the SEA's responsibility after a written decision on a State complaint is issued?

Answer: The SEA must ensure that the public agency involved in the complaint implements the written decision on the complaint in a timely manner. The State's complaint procedures must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. 34 CFR §300.152(b)(2).

To ensure corrective action and pursuant to its general supervisory responsibilities in 34 CFR §§300.149 and 300.600, the SEA must inform the public agency that is involved in the complaint of any findings of noncompliance and the required corrective action, and ensure that the corrective action is completed as soon as possible and within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance. 34 CFR §300.600(e).

Question B-32: May a State complaint decision be appealed?

Answer: The regulations are silent as to whether a State complaint decision may be appealed. The regulations neither prohibit nor require the establishment of procedures to permit either party to request reconsideration of a State complaint decision, although as noted below, the parent or public agency may use mediation or file a due process complaint to request a due process hearing to resolve disputed issues.

Under 34 CFR §300.152(a), the SEA is required to issue a written decision on each complaint within 60 days after the complaint is filed, unless the SEA extends the time limit because exceptional circumstances exist with respect to the particular complaint or the parties agree to extend the time limit to engage in mediation, or other alternative means of dispute resolution, if available in the State. This means that, absent an allowable extension of the time limit for a particular complaint, the State must issue a final decision within 60 days of the date the complaint is filed.

A State may choose to establish procedures for reconsideration of complaint decisions that would result in a decision on the reconsideration within 60 days of the date on which the complaint was originally filed. Alternatively, a State may establish procedures for the reconsideration when the reconsideration process would not be completed until later than 60 days after the original filing of the complaint, but only if the public agency's implementation of any corrective action required in the SEA's final decision is not delayed pending the reconsideration process. Therefore, if the reconsideration process is completed later than 60 days after the filing of the State complaint, the public agency must implement any required corrective actions while the reconsideration process is pending.

Also, if the issue is still in dispute, the parent or public agency may, if they have not already done so, use mediation under 34 CFR §300.506 or file a due process complaint to request a due process hearing in accordance with 34 CFR §§300.507-300.508, subject to any applicable exceptions described in Questions C-9 and C-10 of this Q&A document.

Question B-33: Is a State required to make written decisions on State complaints available to the public?

Answer: No. There is no requirement in Part B of the IDEA for a State to make written State complaint decisions available to the public. If the State chooses to do so, through such means as posting on its Web site, it must ensure that the confidentiality of any personally identifiable information in the complaint decision is protected from unauthorized disclosure. 34 CFR §§300.622 and 99.30. An SEA also should consult State law for its public records requirements.

Question B-34: When did the Department remove the Secretarial review provision from the Part B regulations? Is an SEA required to develop a process to replace Secretarial review?

Answer: The prior regulation in 34 CFR §300.661(d), permitting Secretarial review of State complaints filed under 34 CFR §§300.660-300.662 (the predecessor to 34 CFR §§300.151-300.153), was removed when the 1999 final Part B

regulations were published, and took effect on May 11, 1999. Under the prior regulation, an organization or individual who was dissatisfied with the State's complaint resolution had the option of requesting that the Office of Special Education and Rehabilitative Services review the SEA's final decision. The decision whether to grant Secretarial review was discretionary and most requests for Secretarial review were denied because the Department was not in the position to evaluate factual disputes in individual cases. 64 FR 12646 (March 12, 1999). The regulations do not require a State to establish a procedure to replace Secretarial review.

Key regulatory references related to the State complaint process, as cited above, can be found at http://idea.ed.gov/explore/home, and include the following:

- 34 CFR §300.149
- 34 CFR §§300.151-300.153
- 34 CFR §300.199
- 34 CFR §§300.506-300.516
- 34 CFR §§300.530-300.532
- 34 CFR §300.537
- 34 CFR §300.600
- 34 CFR §§300.611-300.626