

XII. STATE LEAD AGENCY PROCEDURES FOR RESOLVING COMPLAINTS

A. POLICY

1. The State Lead Agency ensures that procedures have been adopted for:
 - a. Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part by:
 - (1) Providing for the filing of a complaint with the State lead agency; and
 - (2) At the State lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the State lead agency review the public agency's decision on the complaint.
 - b. Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under Secs. 303.510-303.512. (34 CFR 303.510)
2. The State Lead Agency has a time limit of 60 calendar days after a complaint is filed under §303.510(a) to:
 - a. Carry out an independent on-site investigation, if the State lead agency determines that such an investigation is necessary;
 - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - c. Review all relevant information and make an independent determination as to whether the public agency and/or other participating agency/provider is violating a requirement of Part C of the Act or of this part; and
 - d. 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 State Lead Agency's final decision. (34 CFR 303.512(a))
3. In resolving a complaint in which it finds a failure to provide appropriate services, the State lead agency, pursuant to its general supervisory authority under Part C of the Act, addresses:
 - a. How to remediate the denial of those supports and services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
 - b. Appropriate future provision of supports and services for all infants and toddlers with disabilities and their families. (34 303.510(b))CFR

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B. PROCEDURES

1. General: An individual or organization may file a written, signed complaint with the State Lead Agency. The complaint must include a statement that the State [public or private agency (including a State agency)] has violated a requirement of Part C of the Act or the regulations in this part and the facts on which the complaint is based. (34 CFR 303.511(a))
In Virginia, this is called an administrative complaint.

Limitations: The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because the alleged violation continues for that child or other children; or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.
(34 CFR 303.511(b))

NOTE: The State Lead Agency may assist parents by:

- a. Offering them technical assistance in framing their complaint, including other language interpreters as requested and/or reducing oral complaints to writing;
- b. Informing them of individuals and organizations who provide free or low cost legal or lay assistance to persons who wish to lodge a complaint (such as parent training and information centers, protection and advocacy programs, and legal aid organizations); and
- c. Providing to local lead agencies written filing procedures to be given to parents, as appropriate.

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- 2. Local lead agencies have a procedure for advising families on how to file a complaint with the State Lead Agency.

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- 3. Upon receipt of an administrative complaint, the State Lead Agency completes the following within 60 calendar days:

- a. Sends notification in writing to each complainant and the local lead agency against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate personnel. The notification sent by the State Lead Agency includes:
 - (1) A copy of the complaint;
 - (2) An offer of technical assistance in resolving the complaint; and
 - (3) A request for written response to the complaint within ten days of the date of the letter of notification. When possible, resolution is reached at the local level during this time.

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NOTE: If a reply from the local lead agency is not filed with the State Lead Agency within ten days, the State Lead Agency sends a second notice to the local lead agency and telephones the local lead agency.

- b. Reviews the complaint and the reply filed by the local lead agency.
 - (1) If no further investigation or action is necessary, the State Lead Agency notifies both parties, in writing, stating the resolution.
 - (2) If the reply does not resolve the complaint, the State Lead Agency reviews all documentation presented and conducts an independent onsite investigation, if necessary.
- c. The State Lead Agency resolves the complaint based upon the facts and applicable law and notifies the parties, in writing, of the decision

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<#>The Lead Agency takes action with respect to the response from the agency as follows:¶

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- 4. *An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint.* (34 CFR 303.512(b))

Both parties to the complaint are notified in writing by the State Lead Agency whenever exceptional circumstances (e.g., illness, death) exist and the extended time limit is specified.

- 5. *Procedures for effective implementation of the State Lead Agency's final decision, if needed, include technical assistance activities, negotiations, and corrective actions to achieve compliance. The monitoring of the implementation of these activities is completed through continuous quality improvement and local monitoring activities and efforts and included in the local lead agency's Corrective Action Plan*

(34 CFR 303.512(b)(2))

- 6. *If a written complaint is received that is also the subject of a due process hearing under §303.420, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process*

hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described above. (34 CFR 303.512(c)(1))

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7. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding; and the State lead agency must inform the complainant to that effect. (34 CFR 303.512(c)(2))
8. A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the State lead agency. (34 CFR 303.512(c)(3))

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