Gap Analysis: Dispute Resolution, State Complaints

For more information, visit <https://ectacenter.org/topics/gensup/dms-preparing.asp>

# Using this Worksheet

This worksheet is based on the [OSEP Dispute Resolution State Complaints Protocol](https://sites.ed.gov/idea/grantees/#DMS,DMS-2), and can help assess your state’s status on eight of nine Overarching Questions included in the protocol. Use this information to identify gaps in your Dispute Resolution system.

# Dispute Resolution: Component Definition

A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (State complaints, mediation, and due process complaints and due process hearings, including the resolution process required under Part B), consistent with IDEA requirements.

# Instructions

Compile, organize, and make accessible to team members all written documents, including internal and public-facing policies and procedures, for each system assessed. Then, use the gap analysis worksheet to review each overarching question's Protocol Items and complete the following:

* Use the Systems Overview developed in **Step 3** to identify current policies, procedures, and practices related to each Protocol Item.
* Determine if what you are doing aligns with the foundational information in **Step 4**.
* Determine if what you are doing (or need to do) is described in your written procedures. Record the document and page number or section where this information can be found.
* Determine and record a status code: 1, 2, 3, or 4.
* Note anything missing or that needs modification.
* Document your key conclusions for the overarching question.

|  |  |
| --- | --- |
| Status Code | Definition |
| 1 | We are doing it correctly and it is documented. |
| 2 | We are doing it correctly, but it needs to be documented. |
| 3 | We are doing some of it, but not all of it, and documentation needs to be developed or modified. |
| 4 | We need to give this item a lot of attention. |

# Overarching Questions

1. *Overarching Question A is not listed in this worksheet, because it applies only to Part B programs.*
2. How does the State ensure that parents and others have access to general information about the State complaint procedures under IDEA Part C?
3. What are the State’s requirements for filing and accepting a State complaint?
4. What are the State requirements regarding the scope of allegations and relief that may be included in a State complaint?
5. How does the State ensure the timely resolution of State complaints?
6. Under what conditions does the State extend the 60-day State complaint timeline?
7. How does the State resolve a State complaint?
8. How does the State ensure the implementation of the State complaint decisions?
9. How does the State use information from State complaint decisions in its general supervision system?

## **B.** How does the State ensure that parents and others have access to general information about the State complaint procedures under IDEA Part C?

* [34 CFR §303.432 — Adoption of State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.432)
* [34 CFR §303.434 — Filing a complaint](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.434)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The LA must adopt written procedures for resolving complaints, including a complaint filed by an organization or individual from another State, by providing for the filing of a complaint with the LA. |  |  |  |
| 2 | The LA must widely disseminate to parents and other interested individuals, protection and advocacy agencies and other stakeholders, the state’s procedures for filing and resolving State complaints. |  |  |  |
| 3 | The LA must have procedures to ensure the provision of prior written notice that includes information about dispute resolution options including filing the State complaint. |  |  |  |
| 4 | When resolving complaints, the LA must address failures to provide appropriate services and develop correction actions that address the needs of the infant or toddler with a disability who is subject of the complaint. |  |  |  |
| 5 | When resolving complaints, the LA must also address appropriate future provisions for all infants and toddlers with disabilities and their families.  |  |  |  |

### Possible Follow-Up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | How does the LA ensure that parents are informed of their right to file a state complaint through its prior written notice policy and procedures? |  |  |  |
| 7 | Does the LA have written State compliant procedures in place for resolving complaints? |  |  |  |
| 8 | How can stakeholders access these written State complaint procedures?1. Are the State complaint procedures posted on the LA's website?
2. Are links to the State complaint procedures provided through outreach to stakeholder advocacy groups?
 |  |  |  |
| 9 | How does the LA ensure that corrective actions in response to state complaints are executed? |  |  |  |
| 10 | How does the LA widely disseminate the state procedures to parents and other interested individuals, protection and advocacy agencies and other stakeholders? |  |  |  |

### Key Conclusions

## **C.** What are the State’s requirements for filing and accepting a State complaint?

* [34 CFR §303.434 — Filing a complaint](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.434)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State complaint must include:1. A statement that a public agency has violated a requirement of Part B, or the LA, public agency or early intervention service (EIS) provider has violated a requirement of Part C of IDEA.
2. The facts on which the statement is based,
3. Signature and contact information for the complainant and,
4. If alleging violations for a specific child, the name and address of the child, name of the child’s EIS provider or school, in the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act ([42 U.S.C. 11434(a)(2)](https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section11434a&num=0&saved=%7CKHRpdGxlOjQyIHNlY3Rpb246MTE0MzQgZWRpdGlvbjpwcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim)), available contact information for the child, and the name of the school the child is attending, description of the problem, and a proposed resolution.
 |  |  |  |
| 2 | The State cannot require a complainant to provide more information than is outlined in the regulations. |  |  |  |
| 3 | The State cannot require a complainant to go to a specific location to file a complaint (e.g., the SEA or LA, the school or EIS provider’s office). |  |  |  |
| 4 | The State must resolve State complaints that allege violations that occurred within one year of the date the complaint is filed.  |  |  |  |
| 5 | The State has the discretion to accept State complaints filed electronically. |  |  |  |
| 6 | The State cannot require a sworn statement (e.g., an affidavit or notarized complaint). |  |  |  |
| 7 | The State can choose to dismiss a State complaint that does not include all the required content. In such cases, it should have adopted proper notice procedures for such situations. |  |  |  |

### Possible Follow-up Questions

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| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 8 | Does the State choose to accept and resolve a violation that occurred more than one year prior to the filing of a State complaint? If so, what is the State’s timeline? How does the State let the public know the timeline for filing? |  |  |  |
| 9 | How does the SEA/LA respond if a “complaint” does not include all the required content?  |  |  |  |
| 10 | What methods can individuals use to file a State complaint–fax, email, U.S. mail, in-person, etc.? |  |  |  |
| 11 | How does the State ensure the confidentiality of personally identifiable information and authenticate the complainant? |  |  |  |
| 12 | How does the State disseminate information about how a stakeholder can file a State complaint? |  |  |  |
| 13 | What circumstances would warrant the dismissal of a State complaint received by the SEA or LA? |  |  |  |

### Key Conclusions

## **D.** What are the State requirements regarding the scope of allegations and relief that may be included in a State complaint?

* [34 CFR §303.432 — Adoption of State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.432)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State may not refuse to resolve a parent’s State complaint challenging a public agency’s eligibility determination. |  |  |  |
| 2 | **[PART B ONLY]** The State may not refuse to resolve a State complaint alleging a denial of a free appropriate public education (FAPE), including those in which the parent is seeking tuition reimbursement or placement in a private school at public expense. |  |  |  |
| 3 | **[PART B ONLY]** The State must resolve State complaints alleging that a public agency has not provided FAPE to an individual child or a group of children in accordance with Part B. |  |  |  |
| 4 | If an SEA or LA has found a failure to provide appropriate services, it must address:1. the failure to provide appropriate services, including corrective action(s) 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.
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### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 5 | How does the State resolve a State complaint challenging a public agency’s eligibility determination? |  |  |  |
| 6 | How does the State resolve a State complaint that concerns a matter that could also be the subject of a due process complaint? |  |  |  |
| 7 | **[PART B ONLY]** How does the State resolve a State complaint challenging a public agency’s decision regarding the provision or denial of FAPE to a child with a disability? |  |  |  |
| 8 | Does the State resolve State complaints regarding a group of children? |  |  |  |
| 9 | What remedies does the State use to address the denial of appropriate services to an individual child or group of children?  |  |  |  |
| 10 | What are some examples of when the State has dismissed, or would dismiss, a State complaint? |  |  |  |

### Key Conclusions

## E. How does the State ensure the timely resolution of State complaints?

* [34 CFR §303.433 — Minimum State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.433)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State is required to resolve a State complaint within 60 calendar days after the complaint is filed. Exceptions or extensions to the timeline are addressed in Question D of this protocol. |  |  |  |
| 2 | The State must have procedures in place to record the date the State complaint is received and to track the 60-day timeline. |  |  |  |
| 3 | The State must have procedures to track timelines when the parties have agreed to extend the time to use mediation to attempt to resolve the dispute. |  |  |  |
| 4 | The State must have procedures to track the resolution of any due process complaints that contain the same issue if a State complaint is being held in abeyance. |  |  |  |
| 5 | The State can establish an appeal process for a State complaint decision. If the State has an appeal process, the complaint and appeal must be completed within the 60-day timeline (or if not completed within that time frame, the State requires that any corrective actions be implemented, while the appeal is pending). Similarly, a State can establish a reconsideration process which could extend beyond the 60 days but must ensure the LEA/EIS provider implements any required corrective action, while the process is pending. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | How does the SEA/LA calculate the timeline for resolving State complaints? |  |  |  |
| 7 | What mechanism does the State use to record the date of the State complaint submission? |  |  |  |
| 8 | How does the SEA/LA handle State complaints that are submitted over the weekend? When does the State record the State complaint as received? |  |  |  |
| 9 | What staff resources has the State allocated for resolution of State complaints? |  |  |  |
| 10 | Are there peak times for complaints? If so, are additional staff members or resources allotted to ensure State complaints are resolved within timelines during this time? |  |  |  |
| 11 | Does the State have an appeals process? If so, describe how timelines are met. |  |  |  |
| 12 | How does the State manage the timeline if the parties have agreed to extend the timeline to engage in mediation? |  |  |  |
| 13 | What procedures does the State have in place to track the outcome when the parties have agreed to use mediation when a State complaint is filed? |  |  |  |
| 14 | How does the State track the resolution of a due process complaint that includes an issue in a pending State complaint? |  |  |  |

### Key Conclusions

## F. Under what conditions does the State extend the 60-day State complaint timeline?

* [34 CFR §303.433 — Minimum State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.433)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | Extensions of the 60-day State complaint timeline must be made on a case-by-case basis. |  |  |  |
| 2 | The State can extend the 60-day timeline if both parties agree to mediation or other alternative means of dispute resolution if available in the State *and* agree to extend the 60-day timeline to engage in such mediation or alternative means of dispute resolution. |  |  |  |
| 3 | The State can extend the 60-day timeline if exceptional circumstances exist with respect to the particular State complaint. |  |  |  |
| 4 | If the State complaint alleges issues that are the subject of a pending due process hearing, the State complaint resolution is put on hold until the completion of the due process hearing. (If the State complaint includes allegations about other violations that are not at issue in the due process hearing, these allegations must be resolved within the 60-day timeline.)  |  |  |  |
| 5 | The regulations do not specify a limit on the length of an extension of the 60-day timeline. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | How does the SEA/LA determine whether an extension of the 60-day timeline is warranted?1. How are extensions documented and recorded? Does the complaint decision letter document that the extension has occurred with the reasons for the extension?
2. Are the parties notified in advance that the SEA/LA determined an extension of the 60-day timeline is necessary?
 |  |  |  |
| 7 | The State can extend the 60-day timeline if both parties agree to mediation or other alternative means of dispute resolution if available in the State *and* agree to extend the 60-day timeline to engage in such mediation or alternative means of dispute resolution. |  |  |  |

### Key Conclusions

## G. How does the State resolve a State complaint?

* [34 CFR §303.433 — Minimum State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.433)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State must have a process for gathering evidence needed to refute or substantiate the allegation. |  |  |  |
| 2 | The State must have a process that allows the complainant to provide additional information. |  |  |  |
| 3 | The State must issue a written decision that addresses each allegation in the State complaint. |  |  |  |
| 4 | If the State complaint includes allegations that are outside of the State’s jurisdiction, the SEA or LA would not be required to resolve such issues, and therefore those issues would not have to be included in the State’s written decision.  |  |  |  |
| 5 | The State should document how it informs the complainant of any allegations that will not be addressed in the SEA’s resolution of the State complaint and the basis for that decision (e.g., the alleged violations occurred longer ago than the one-year timeline, the complainant’s concerns do not involve an alleged violation of IDEA, etc.). |  |  |  |
| 6 | The State must have a process to determine the appropriate corrective action(s) to address any identified noncompliance, including remedies to the individual infant, toddler, or child with a disability and to ensure the appropriate future provision of services. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 7 | What are the reasons the State may not resolve an allegation? |  |  |  |
| 8 | How are complainants informed that the State will not be resolving a particular allegation? |  |  |  |
| 9 | How does the SEA/LA resolve a complaint filed by a non-parent? What steps are taken to protect the child’s personally identifiable information in this circumstance? |  |  |  |
| 10 | How does the State gather the evidence needed to resolve the allegations? (e.g., on-site visits, does it allow the LEA/EIS provide to provide evidence in writing, phone interviews, etc.) |  |  |  |
| 11 | Who determines the resolution of the allegation based on the evidence? (e.g., individual staff member, a team determination, outside contractors, etc.) |  |  |  |
| 12 | How does the State document the allegation and subsequent evidence collected (e.g., investigation plan, allegation review form, issues chart, regulatory responsibilities, etc.), if applicable? |  |  |  |
| 13 | What is the SEA/LA process for analyzing information collected and making an independent determination for each allegation in the complaint? |  |  |  |
| 14 | What is the process for determining timelines for the corrective actions? |  |  |  |
| 15 | How does the State determine the corrective action(s) necessary to address any identified noncompliance, including remedies to the individual infant, toddler, or child with a disability? |  |  |  |
| 16 | How does the State determine the corrective action(s) to ensure the appropriate future provision of services for all children with disabilities (Part B) or for all infants and toddlers with disabilities and their families (Part C)? |  |  |  |
| 17 | After a finding of noncompliance, how does the State follow up and document completion of corrective action(s) based on the State complaint decision?1. In the case of systemic noncompliance, how does the State document the corrective action(s)?
 |  |  |  |

### Key Conclusions

## H. How does the State ensure the implementation of the State complaint decisions?

* [34 CFR §303.433 — Minimum State complaint procedures](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR2ec0922f15df85d/section-303.433)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State should have an established process for following up with the LEA/EIS provider to ensure any required corrective action(s) is taken within required timelines. |  |  |  |
| 2 | The State must have procedures for effective implementation of the SEA’s/LA’s final decision. These procedures must include technical assistance activities, negotiations, and corrective action(s) (if needed) to achieve compliance. |  |  |  |
| 3 | As part of its system of general supervision, the State must have a system in place to ensure correction of the noncompliance identified in a State complaint decision. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 4 | How does the State require the LEA/EIS provider to demonstrate implementation of the State complaint decisions? |  |  |  |
| 5 | How does the SEA/LA verify the required actions have been taken? |  |  |  |
| 6 | How does the State “close out” State complaints? (e.g., correspondence sent to the parties and to the public agency, documenting in a database or other internal tracking system) |  |  |  |
| 7 | Does the State impose sanctions/enforcement actions on LEAs/EIS providers that cannot demonstrate implementation of State complaint decisions? If applicable, describe these actions and when those could be taken. |  |  |  |

### Key Conclusions

## I. How does the State use information from State complaint decisions in its general supervision system?

* [34 CFR §303.700 —State monitoring and enforcement](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-H/subject-group-ECFRe32b04708514b9c/section-303.700)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State has methods of regularly reviewing issues raised in State complaint decisions to compare to, and inform, its other monitoring information.  |  |  |  |
| 2 | As part of its general supervision system, the State has methods to track the issues identified in State complaint decisions to determine if patterns or trends exist. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 3 | How does the State incorporate information from State complaint decisions in its oversight or monitoring of LEAs/EIS programs and providers? |  |  |  |
| 4 | How does the State determine whether an issue in a State complaint may warrant broader guidance throughout the LEA or State? |  |  |  |
| 5 | How does the State evaluate the effectiveness of any guidance that may result from State complaint decisions? |  |  |  |
| 6 | How does the State ensure whether similar, future situations are resolved consistently with past decisions or guidance? |  |  |  |

### Key Conclusions

## Additional Questions for Consideration on Improving Results

### What outreach efforts has the State conducted to promote State complaints as an effective way for parents and others to resolve their issues?

### What has the State done to try and improve the dispute resolution system in addition to evaluating its effectiveness?

### How does the State provide training and/or share what it has learned with LEAs/EIS providers from State complaint decisions with their stakeholders? How does this evaluation impact changes or improvements to the system?





This worksheet was adapted by ECTA and CADRE from the *DMS Protocols Adapted for TA Centers Use–Dispute Resolution: State Complaints*, developed by the National Center for Systemic Improvement (NCSI).

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