



## Filing a Complaint with the South Carolina Department of Education

Under the IDEA (Individuals with Disabilities Education Act), parents/guardians, students, and school districts are to work out a plan for a student's education at IEP (Individualized Education Program) meetings. If there is disagreement about the student's educational plan or how it is carried out, then filing a complaint with the South Carolina Department of Education (SCDE) is one option available to parents/guardians and adult students.

This fact sheet describes the written complaint system operated by the SCDE.<sup>1</sup>

### What Is a Complaint?

A "complaint" means a written statement to the SCDE detailing a specific violation or violations of the IDEA, the laws of South Carolina, or State Board of Education regulations related to special education.

Complaints filed with the SCDE can raise issues about (1) an individual student's special education services or (2) the special education system in a school district. The complaint procedure can be used to solve disagreements with local school districts over any special education matter including:

- Identification (the district has a duty to identify students who may need special education)
- Evaluation (including the 60-day deadline for completing evaluations)
- Educational placement (type of classroom where a student is taught)
- Provision of a free appropriate public education, also known as FAPE (proper goals for each student and types of services that are provided)

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<sup>1</sup> The SCDE provides additional dispute resolution options for parents/guardians of student's with disabilities, adult students with disabilities, and school districts. For more information, please visit the SCDE Office of Special Education Services' Dispute Resolution Information webpage at <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/>.

The SCDE will consider complaints only about violations that occurred within one year before the date SCDE receives the complaint.

## Who May File a Complaint with the SCDE?

A parent/guardian, an adult student, an organization, or an individual not related to the student may file a written complaint to the SCDE.

## What Information Should I Included in a Complaint?

The IDEA requires specific information which must be included in a complaint:

- the name and address of the student (unless the complaint is not about a specific student),
- name of the student's school
- what the problem is
- what action is needed
- facts the SCDE should know about

Additionally, the individual filing the complaint must sign the complaint and include contact information where he/she/they may be reached about the complaint.

The complaint should include any evidence that documents or proves the problem or the result. Examples of evidence a parent may include are copies of the following documents:

- IEP(s)
- IEP meeting minutes (some school districts have meeting minutes, which are a summary of what was talked about at an IEP meeting; some districts have other names for these summaries such as "committee conference summaries")
- Academic records (like report cards and progress reports)
- Disciplinary records (like discipline reports or referrals)
- Other school records (like psycho-educational evaluations or other test results, attendance records, or any other school documentation)
- Statements or evaluations from the child's physician, counselor, or any other private provider

## How Do I File a Complaint?

The complaint may be filed with the SCDE by using the SCDE's model complaint

form. A copy of the SCDE complaint form and instructions are available on the SCDE website at: <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/state-complaint/scde-complaint-form/>

However, using the SCDE complaint form is not required. A letter, another complaint form, or another document may be used as long as the written correspondence contains the information required by the IDEA for filing a state complaint. If you have any questions about the form you may contact the IDEA Complaint Investigation office by calling 803-734-8224 or by email to [specialservicesoa@ed.sc.gov](mailto:specialservicesoa@ed.sc.gov). After completing the form, you must send it to the SCDE and to the school district at the same time. We suggest that you include a statement on your complaint form that you are sending a copy of the complaint to the school district at the same time you are sending it to the SCDE. In that statement, you should also include the school district office and address where you are sending the copy of your complaint. The SCDE will not begin the complaint investigation unless a copy of the complaint is sent to the school district.

When sending the complaint to the school district, we recommend addressing it to the Director of Special Education. Call the student's school district to obtain the director's name and address. You may also look up this information online at the South Carolina Department of Education's website. The direct link to "Directors of Programs for Students with Disabilities" is at <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/special-education-district-director-coordinator-listing/>.

In addition, to ensure compliance with the requirement that a copy must be sent to the SCDE and the school district at the same time, we recommend that you use the same method to send it to both the SCDE and the school district. For example, if you send the complaint by certified mail to the SCDE, also send it to the school district via certified mail. If you fax the complaint to the SCDE, fax it to the school district too. Methods you may use to send the complaint include email, fax, "regular mail" or certified mail, return receipt requested.

Although all of these methods are acceptable, we recommend that you send the complaint by certified mail, return receipt requested. We recommend this method because you can get a postcard back or get on line tracking to prove the complaint was delivered and the date it was delivered. Ask your post office for details. Keep a copy of the complaint and all enclosures for your files.

When submitting the complaint and supporting evidence by email, the SCDE will send an email reply confirming receipt of the complaint and/or supporting documentation. We recommend also using the "Request a Delivery Receipt" and "Request a Read Receipt" tracking options as well as keeping a copy of these electronic receipts with your records.

## What Happens After Sending a Complaint?

Once the complaint is filed with the SCDE and a copy of the complaint is provided

to the school district, the school district has an opportunity to respond to the complaint. Then, before making a decision, the SCDE may offer the individual/organization an opportunity to submit additional information if it is needed or the SCDE may make a visit to the school or district to investigate the situation. After reviewing all of the information about the problem, the SCDE will make a decision about whether the school district did anything wrong. The decision will be in writing and it will tell the school district what it needs to do to correct any found wrongdoing on its part. The SCDE must issue a written decision within 60 days from the time the complaint was filed (unless the SCDE determines that exceptional circumstances exist).

An important note:

- If a complaint is filed with the SCDE and a due process hearing is requested regarding the same problem, then the problem must be resolved through due process. The SCDE will not be allowed to resolve the issue through the complaint process. However, if the due process hearing ultimately does not give any decision about the problem, then the SCDE may then resolve it.
- If a due process hearing is requested and a complaint is filed about different problems, then the SCDE may resolve the problem in the complaint and the due process hearing would resolve the other problems.

It should also be noted that after a complaint is filed with the SCDE and a copy is provided to the school district, the individual/organization and the school district will have the opportunity to go to mediation if both sides agree to do so. Mediation will not take place unless both sides agree. If the individual/organization and the school district agree to go to mediation, the 60-day deadline for the SCDE to make a decision will be put "on hold" during the mediation process. If the problem is not resolved through mediation, the complaint process will continue and the 60-day deadline will start back up where it left off.

### Additional Dispute Resolution Methods Available:

There are other options available for parents/guardians and adult students who disagree with the student's IEP, how the student's IEP is carried out, or if the parents/guardians or adult student believe the student has been discriminated against by the school district because of a disability. These other options include:

- The impartial due process hearing system. This involves an outside hearing officer who decides the dispute after holding a hearing where parents/guardians or adult students and the school district offer evidence and witnesses.
- The facilitated IEP meeting process where parents/guardians or adult students and the school district meet with a trained facilitator who helps the parents/guardians or adult students and the district reach their own agreement. A facilitated IEP meeting is available only if the district agrees to it.

- The written complaint process available through the United States Department of Education. Please see Disability Rights South Carolina’s fact sheet titled “How to File a Complaint Under Section 504 of the Rehabilitation Act of 1973 for Students in Public Schools” for more information on this type of complaint. This procedure is mainly for use when the district has violated the procedural rights of a student.

Legal Note: The federal regulations about written complaints are found at 34 Code of Federal Regulations 300.151-153.

This publication provides legal information, but is not intended to be legal advice. As the law may change please contact Disability Rights SC for updates. Please let us know if you would like this information in an alternative format.

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## Disability Rights South Carolina

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