

281—120.69(34CFR303) Complaints.

120.69(1) General. The lead agency shall adopt written procedures 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 IDEA or of these rules;

b. Providing for the filing of a complaint with the lead agency or, at the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

c. Widely disseminating the complaint procedures to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers and other appropriate entities. [34 CFR 303.510(a)]

120.69(2) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, the lead agency, pursuant to its general supervisor authority under Part C, must address:

a. How to remediate the denial of those 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 services for eligible children and their families. [34 CFR 303.510(b)]

120.69(3) Procedures for filing complaint. An individual or organization may file a written signed complaint with the lead agency that includes a statement that the state has violated a requirement of Part C of IDEA or these rules and the facts on which the complaint is based. The alleged violation must have occurred not more than one year before the date that the complaint is received by the lead 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 formal complaint is received. [34 CFR 303.511]

120.69(4) Minimum state complaint procedures. There shall be a time limit of 60 calendar days after a formal complaint is filed with the lead agency in which the lead agency shall:

a. Carry out an independent on-site investigation, if the lead agency determines that 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 is violating a requirement of Part C of IDEA or these rules; 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 lead agency's final decision. [34 CFR 303.512(a)]

120.69(5) Time extensions; final decisions. The lead agency's procedures described in subrule 120.69(3) must permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint, and must include procedures for effective implementation of the lead agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. [34 CFR 303.512(b)]

120.69(6) Complaint and due process hearing filed. If a written complaint is received that is also the subject of a due process hearing 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 part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in subrule 120.69(3). If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:

a. The hearing decision is binding; and

b. The lead agency must inform the complainant to that effect.

A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency. [34 CFR 303.512(c)]