CHAPTER 11: FORMAL COMPLAINT

INTRODUCTION

Formal complaint is one of the methods parents of children with exceptionalities or others have to resolve special education disagreements with a public agency. Although most differences are successfully resolved at the local level, three state processes are available to parents, if they are at impasse with a public agency:

- Formal complaint,
- Mediation (Chapter 10), and
- Due process hearing (Chapter 12).

Formal complaint is one of the parent rights (procedural safeguards, see Chapter 1) afforded under federal and state regulations (K.A.R. 91-40-51; 34 C.F.R. 300.151). The Kansas State Department of Education (KSDE) is mandated to make available an opportunity for individuals or organizations to file formal complaints against a public agency. At the end of the chapter, a flow chart illustrates the steps in the process, and a timeline shows the times and responsible parties for the required steps.

For information about the formal complaint process, contact Families Together (800-264-6343), Kansas Disability Rights Center (877-776-1541), or Special Education Services at the KSDE (800-203-9462). The Formal Complaint form may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution.

This chapter outlines the steps involved in the formal complaint process:

A. Filing a Formal Complaint
B. Investigating the Complaint
C. Following Up on the Complaint
D. Appealing the Decision
E. Sanctions by the State Board of Education

A. FILING A FORMAL COMPLAINT

Any individual or organization may file a formal complaint if they believe that a public agency (e.g., Kansas State Department of Education (KSDE) or local education agency (cooperative, interlocal, or school district providing special education services) is not complying with federal or state laws or regulations relating to special education. The term "public agency" is broadly defined to have the same meaning as specified in Federal regulations at 34 C.F.R. 300.33, which includes: SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

The formal complaint must be for a situation that occurred during the past year. The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the public agency is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations and give the facts upon which the statement is based. When the complaint involves a specific child, the complaint must also include the following:

- The child's name and address of residence, or other contact information if the child is a homeless child or youth;
- the name of the school the child is attending;
- a description of the problem involving the child; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

The party filing the complaint must forward a copy of the complaint to the public agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

The parent of any child with an exceptionality (disabilities and giftedness) including eligible students receiving services in public schools, private schools and other educational settings are entitled to file a formal complaint if they believe appropriate legal procedures have not been followed or implemented.

If a formal complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing, until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved through the formal complaint process.

Forms for filing a formal complaint may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution. The SEA model form is available to assist parents and other parties in filing a State complaint under 34 C.F.R. §§ 300.151 through 300.153 and is not required to be used in submitting a state complaint. Parents and other parties may use the model form, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 34 C.F.R. § 300.153(b) for filing a State complaint. A complaint hand-delivered to the Kansas State Department of Education (KSDE), Special Education Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612 is considered filed when received. Complaints that are mailed to the aforementioned address or e-mailed to formalcomplaints@ksde.gov are filed on the date received, if received on a day and time when the Department is open for business. Complaints that are received after business hours or on a day when the department is not open for business are filed effective the first business day following the date of delivery. The department is not open for business on weekends, state holidays, emergency situations, or officially declared inclement weather. Additionally, a copy of the complaint must be sent to the public agency against which the complaint is filed.

B. INVESTIGATING THE COMPLAINT

The Special Education Services Team at the Kansas State Department of Education must resolve a formal complaint within 30 calendar days from the date the complaint is received in the office, unless exceptional circumstances exist.

When a formal complaint is received a letter acknowledging receipt of the formal complaint is sent to the person making the complaint, the special education director, and the superintendent. A copy of the formal complaint is attached with the letter to the special education director and the superintendent.

The complaint investigator will contact the person making the complaint and the special education director to clarify the issue(s), review all relevant records and documents, and determine whether or not the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of special education laws or regulations.

The investigator will contact the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint. Both parties can provide additional information to the investigator that is relevant to the issue. Generally, neither party can introduce a new issue during the investigation. However, the investigator may allow the complaining party to introduce a new issue during the investigation. The requirements in K.A.R. 91-40-51 apply to any new issue added to the complaint. If the investigator allows a new issue to be added to the investigation, the investigator will give the public agency timely notice of the new issue in order for the public agency to respond to the new issue. KSDE does not consider the addition of a new issue an exceptional circumstance justifying an extension of time to complete the investigation. Therefore, the addition of a new issue alone should not affect the 30-day timeline for resolution of the complaint. If the investigator does not allow a new issue to be added to the investigation, the complaining party may file a separate complaint.

KSDE's working definition for exceptional circumstance extensions of formal complaint timelines: An exceptional circumstance arises when an event or series of events, beyond the control of the agency or the investigator, reasonably justifies an extension of time in which to complete an investigation.

After the investigation, the complaint investigator writes a report of the findings addressing each of the allegations in the complaint and which contains: (a) findings of fact and conclusions; (b) the reasons for KSDE's final decision; and (c) any corrective action or actions that are required including the time period within which each action is to be taken. The report is to be sent to the parties within 30 days of the receipt of the complaint unless there are exceptional circumstances, or the parties agree to extend the 30 day timeline to engage in mediation. Each complaint report is dated. The date of the report coincides with the date the report is mailed. The person mailing the report obtains a post office receipt showing the date the report was mailed. This may be accomplished either by sending the report to the parties by certified mail or by obtaining a Certificate of Mailing. A copy of the receipts showing the date of mailing are forwarded to Special Education Services. If the report is sent to both parties by e-mail, the e-mail serves as the receipt.

C. FOLLOW UP ON THE COMPLAINT

If the report from the formal complaint requires corrective actions, the school shall, within 10 calendar days of the date of the report, submit one of the following to the KSDE Special Education Services Team:

1. Documentation to verify it accepts the corrective action(s) in the report, if any;
2. A written request for more time to complete the required action(s), with justification for this request; or
3. A written notice of appeal.

If the public agency asks for more time to complete one or more of the required corrective actions, a review committee of at least three people at KSDE are appointed to review the request and the justification for an extension. The committee shall make a decision regarding the request within five business days of the date that the request was received, and their decision is final. If the public agency fails to respond to a report within the time allowed sanctions may be invoked.

The KSDE monitors corrective actions to ensure they are completed. When the corrective actions are completed by the school, the Special Education Services Team sends a notice of completion to the school with a copy to the person making the complaint. At that point, the complaint file is closed.

D. APPEALING THE DECISION

After the person making the complaint and the school receive the written report of findings, each has 10 calendar days from the date of the report to file an appeal. The State Commissioner of Education has designated the KSDE Special Education Services Team (SETS) to receive appeals on the Commissioner's behalf. An appeal is filed on the day it is received in the SETS office. Each notice of appeal shall provide a detailed statement of the basis for alleging that the report is incorrect.

The following steps are followed for appeals:

1. An appeal committee of at least three KSDE members shall be appointed to review the report and to consider information provided by the school, the complainant, or others.
2. The hearing process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the appeal notice.
3. A decision shall be rendered within five days after the appeal process is completed, unless the appeal committee determines that exceptional circumstances exist. Then the decision shall be rendered as soon as possible.

If the person making the complaint or the school does not appeal the decision and no corrective actions are required, the complaint file is closed.

E. SANCTIONS BY THE STATE BOARD OF EDUCATION

The Kansas State Board of Education has sanctions available if corrective action required by a formal complaint investigation is not implemented. Additionally, if an appeal committee affirms a compliance report that requires corrective action by a school, that public agency must initiate the required corrective action immediately. If after five days, no required corrective action has been initiated, the public agency will be notified of the sanction(s) that will be taken to assure compliance as determined by the KSDE. Sanctions may include any of the following:

- the issuance of an accreditation deficiency advisement;
- the withholding of state or federal funds otherwise available to the agency;
- the award of monetary reimbursement to the complainant; or
- any combination of the above actions.

K.A.R. 91-40-51. Filing complaints with the state department of education.

(a) Any person or organization may file a written, signed complaint alleging that an agency has violated a state or federal special education law or regulation. Also, a prevailing party in a due process hearing may file a complaint alleging that the other party has failed to implement the hearing decision. The complaint shall include the following information:
(1) A statement that the agency has violated a requirement of state or federal special education laws or regulations;
(2) the facts on which the statement is based;
(3) the signature of and contact information for the complainant; and
(4) if the complaint involves a specific child, the following information:
(A) The child's name and address of residence, or other contact information if the child is a homeless child or youth;
(B) the name of the school the child is attending;
(C) a description of the problem involving the child; and
(D) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

(b) (1) The complaint shall allege a violation that occurred not more than one year before the date the complaint is received and shall be filed with the commissioner of education.
(2) The party filing the complaint shall forward a copy of the complaint to the agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

(c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:
(1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(2) contact with the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint; and

(3) a written report of findings of fact and conclusions, including reasons for the decision, and any corrective action or actions that are required, including the time period within which each action is to be taken. Unless the parent and the agency agree to engage in mediation, this report shall be sent to the parties within 30 days of the receipt of the complaint. If the parties mediate but fail to resolve the issues, the report shall be sent 30 days after the department received notice that mediation has failed.

(d) An on-site investigation may be conducted before issuing a report.

(e) (1) If a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following:

(A) Documentation to verify acceptance of the corrective action or actions specified in the report;

(B) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report, together with justification for the request; or

(C) a written notice of appeal. Each appeal shall be made in accordance with subsection (f).

(2) If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final.

(3) If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

(f) Appeals.(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2).

(g) (1) If a complaint is received that is also the subject of a due process hearing or that contains multiple issues of which one or more are part of the due process hearing, the complaint or the issues that are part of the due process hearing shall be set aside until conclusion of the hearing.

(2) If an issue that has previously been decided in a due process hearing involving the same parties is raised in a complaint, the due process hearing decision shall be binding on that issue and the complainant informed of this fact.

FORMAL COMPLAINT PROCEDURE

Complaint

A complaint alleging a violation of special education laws or regulations is received by the Kansas State Department of Education (KSDE)

Acknowlegement

A courtesy letter acknowledging receipt is sent to complainant and local education agency (LEA)

Investigation by KSDE.

Interview with the complainant and LEA (may or may not include onsite visit)

Written Report of Findings Within 30 Days, unless exceptional circumstances

Contains corrective actions if a violation is substantiated and timelines for completion, mailed to complainant and LEA

IF Appealed

- Either party may file an appeal within 10 days from the date of the report
- Review completed by 3 KSDE staff within 15 days from the date the appeal is received
- Report issued in 5 days

No further appeal

IF Not Appealed

- Corrective actions are accepted and completed by the LEA and notice of completion is given to the LEA and the complainant

OR

- No appeal and no corrective actions

Report Complete
Complaint File Closed

FORMAL COMPLAINT TIMELINE

Timeline	Responsible Party	Action
1st Day	Complainant	Mail or personally deliver a written, signed complaint form requesting a formal complaint investigation to the Formal Complaint Investigator for the Special Education Services Team of the Kansas State Department of Education and to the public agency. Complaints may also be filed electronically via email at formalcomplaints@ksde.gov.
10th Day	KSDE	Contact the complainant and special education administrator acknowledging receipt of the complaint.
15th Day	KSDE	Contact complainant and special education administrator to clarify issues in complaint letter, to solicit relevant information and documents, and to schedule a date and time for the on-site investigation, if necessary.
20th Day	KSDE	Conduct investigation. Review and request copies of student records and IEPs. Interview complainant. Interview special education administrator and other school personnel.
30th Day	KSDE	Finalize and mail written report of findings and corrective action(s) to complainant and public agency special education administrator.
40th Day (unless Extension Granted)	KSDE	Review LEA documentation of implementation of corrective action(s) contained in written report; or Review LEA request for an extension of time within which to complete corrective action(s); or Review LEA written notice of appeal of written report.
40th Day	Complainant or LEA	Within 10 calendar days from the date of the written report– File a notice of appeal to the State Commissioner of Education ATTN: KSDE Special Education & Title Services (SETS) team (designee of Commissioner). An appeal is filed on the day it is received in the SETS office.
41st Day (unless Extension Granted)	KSDE	Pursue sanctions if LEA fails to respond to a written report within the time allowed

QUESTIONS AND ANSWERS ABOUT FORMAL COMPLAINT

1. Who is the contact to file a formal complaint?

Parents, individuals, or organizations who believe that the public agency has violated federal or state statutes or regulations relating to special education should contact the Kansas State Department of Education (KSDE), Special Education Services Team.

Contact information includes:

Phone: 785-296-5608, or 800-203-9462 Email: formalcomplaints@ksde.gov
Address: Kansas State Dept. of Education, Special Education Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612
Homepage: https://www.ksde.gov/policy-and-funding/special-education

2. How long does the investigation of a complaint take?

Unless there are exceptional circumstances, the complaint must be investigated and a report written with the findings of the complaint investigator within 30 calendar days of the date the complaint was received at the KSDE. Upon completion of a written report, the school or the complainant has 10 calendar days from the date of the report to accept the decision or file an appeal. An appeal shall be considered filed on the date the notice of appeal is received in the KSDE Special Education Services office.

3. May parents of children in private schools, who are receiving special education services, file a formal complaint?

Yes. Formal complaint is available to parents (or another individual or organization), even if services provided in a private school are on a Services Plan, and not an IEP.

4. May parents of children who are gifted file a formal complaint?

Yes. The formal complaint process is available to parents of children who are disabled or gifted. In addition, another individual or organization may file a formal complaint.

5. May parents of young children file a formal complaint?

Yes. For young children from birth to age 3, who have a disability, formal complaint is available through the Kansas Department of Health and Environment, 785-296-6135 or 800-332-6262. For young children who have a disability and are eligible for special education services beginning at age 3, formal complaint is available to their parents through KSDE, 785-296-5608, or 800-203-9462. For children who are gifted, the age of eligibility is the age at which the local school district provides general education services to children who do not have a disability.

6. Who can file a formal complaint?

Anyone who suspects that the proper legal procedures were not followed or implemented may file a formal complaint with KSDE. This would include, but is not limited to, parents, parent advocates, the student if age 18, grandparents, foster parents, an individual, or an organization. In addition, it may be that in unusual circumstances, a member of the school team could file a formal complaint.

7. Does filing a formal complaint waive the parents' right to file for a due process hearing?

No. Parents may file a formal complaint before, at the same time, or after filing for a due process hearing. However, if the issue is the same, the formal complaint investigation will be suspended until due process is resolved.

8. Does a Kansas Complaint Investigator investigate the allegations as written in the complaint or do they rewrite the allegations aligned to KSDE and IDEA regulations that capture the Parent's ideas?

KAR 91-40-51(c)(1) requires that upon the initiation of a complaint investigation, the investigator, at a minimum, shall include "*(a) discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified…*". …". The goal of the investigator is to identify the intended issue(s) the complaint is filed about prior to conducting the investigation and sending the report so the complainant feels their actual issue was investigated. The worst thing that can happen is for an investigator to revise issues, conduct an investigation, send out a complainant report and have the complainant say, "That wasn't my issue."

KSDE recognizes the advent of AI generated complaints that may include more issues than historically alleged in Kansas; however, if a complaint lists issues that allege possible violations of special education laws, and the complainant desires to pursue them, the investigator shall include the issues.

34 C.F.R. 300.152 establishes "*Minimum State complaint procedures*," which includes to:

1. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
2. Provide the public agency with the opportunity to respond to the complaint,

When an investigator first or speaks communicates with a complainant, that is the opportunity for the complainant to submit additional information about the allegations as well as to clarify the issues being presented. When an investigator believes and suggests that some of the issue(s) could be better expressed differently, and the complainant agrees, the investigator should always provide the newly worded issue(s) to the complainant and request written confirmation from the complainant that the revised statement of issue(s) accurately reflects the issue(s) the complainant is alleging. Only then should an investigator go forward with newly worded issues.

The next step then is to notify the school district that the issue(s) have been modified and provide the modified issue(s) to the school district so that the school district will have an informed opportunity to respond to the complaint.

As to rewriting "allegations aligned to KSDE and IDEA regulations that capture the Parent's ideas," it is not necessary to state the applicable statute or regulation within each stated allegation. That information may be provided to the parties and in the investigation report separate from the statement of the allegations.