

# Legal Boundaries for the IDEA Complaint Resolution Process

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Most of the attention to dispute resolution under the Individuals with Disabilities Education Act (IDEA) focuses on the adjudicative avenue, which starts with the impartial due process hearing and culminates in judicial review.<sup>1</sup> Indeed, many of the texts in special education law give negligible or no attention to the alternative, administrative avenue of the complaint resolution process (CRP).<sup>2</sup> Yet, in many states dissatisfied parents of students with disabilities take this route of IDEA dispute resolution avenue,<sup>3</sup> likely because it requires far less, if any, in terms of legal representation, case preparation, and face-to-face adversariness. The process, similar to the primary mechanism for resolving student disputes under Section 504 and the Americans with Disabilities

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<sup>1</sup> See, e.g., Perry A. Zirkel & Anastasia D'Angelo, *Special Education Case law: An Empirical Trends Analysis*, 161 Ed.Law Rep. 731 (2002).

<sup>2</sup> See, e.g., NIKKI MURDICK, BARBARA GARTIN & TERRY CRABTREE, SPECIAL EDUCATION LAW, (2006); PETER LATHAM, PATRICIA LATHAM & MYRNA MANDLAWITZ, SPECIAL EDUCATION LAW (2007); ALLAN G. OSBORNE & CHARLES J. RUSSO, SPECIAL EDUCATION AND THE LAW (2006); LAURA ROTHSTEIN, SPECIAL EDUCATION LAW (2000); MARK C. WEBER, RALPH MADWSLEY & SARAH REDFIELD, SPECIAL EDUCATION LAW (2007); PETER WRIGHT & PAMELA DARR WRIGHT, WRIGHTSTLAW: SPECIAL EDUCATION LAW (2007); MITCHELL YELL, THE LAW AND SPECIAL EDUCATION (2012). The relatively few exceptions provided understandably limited coverage in comparison to the comprehensive and current canvassing in this Article. See, e.g., THOMAS GUERNSEY & KATHE KLARE, SPECIAL EDUCATION LAW 251-252 (2001); **DIXIE SNOW HUEFNER & CYNTHIA HERR, NAVIGATING SPECIAL EDUCATION LAW AND POLICY 152-53 (2012).**

<sup>3</sup> Depending on the year(s) and the method, national studies have found that the number of CRP requests was, within a fairly close range, more or less than the number of due process hearing requests under the IDEA. See, e.g., Jay G. Chambers, Jenifer J. Harr & Aymnah Dhanani, What Are We Spending on Procedural Safeguards in Special Education, 1999-2000 (May 2003) (available from ERIC – access no. ED471888); Judy Schrag & Howard Schrag, National Dispute Resolution Use and Effectiveness 18 (Summer 2004) (available from [www.directionserve.org/cadre](http://www.directionserve.org/cadre)). As another study confirmed, CRP is by far the predominant avenue if the comparison is with the number of due process hearings held rather than the number of hearings requested. U.S. General Accounting Office, Special Education: Number of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts 17 (September 2003) (available at [www.gao.gov](http://www.gao.gov)); cf. Nicole Suchey & Dixie Snow Huefner, *The State Complaint Procedure under the Individuals with Disabilities Education Act*, 64 EXCEPTIONAL CHILD. 529 (1998) (reporting, based on survey of state CRP managers yielding 35 respondents, a modest increase in the number of complaints relative to the special education population from 1992 to 1994 with the perceived effect of lessening number of due process hearings).

Act—filing a complaint with the Office for Civil Rights (OCR)<sup>4</sup>—is based on investigation by an agency official and either an induce settlement or an imposed corrective action.<sup>5</sup> The difference is that the IDEA delegates this process to each state, with variation within a specific regulatory framework.

Although not specified in the IDEA legislation,<sup>6</sup> the applicable framework, since 1992,<sup>7</sup> has been directly in the IDEA regulations.<sup>8</sup> Generally, the current IDEA regulations continue—with limited additions— the state requirement for a formal, well-publicized CRP<sup>9</sup>; specified reference to the CRP in the local procedural safeguards notice<sup>10</sup>; prescribed limitations in terms of time, form, and other overall procedures<sup>11</sup>; and specification for the who and what of complaint filing.<sup>12</sup>

In light of the absence of this information in the professional literature, the purpose of this annotated outline is to synthesize the other pertinent primary sources of law—court decisions,

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<sup>4</sup> See, e.g., PERRY A. ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011).

<sup>5</sup> For a study of the implementation of the process in 10 diverse states, see Joy Markowitz, Eileen Ahearn & Judy Schrag, *Dispute Resolution: A Review of Systems in Selected States 2-6* (June 2003) (available from [www.nasdse.org](http://www.nasdse.org)). For the differences among these alternative avenues under the IDEA and Section 504, see Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Parents of Students with Disabilities*, 23 J. SPECIAL EDUC. LEADERSHIP 100 (2010).

<sup>6</sup> The only mention is the caveat in the provision for due process hearings that the nothing in that provision “shall be construed to affect the right of a parent to file a complaint with the State education agency.” 20 U.S.C. § 1415(f)(3)(F).

<sup>7</sup> For the immediate previous period, the General Administrative Regulations contained the applicable procedures. *Id.*

<sup>8</sup> For a brief overview of the prior history, see Suchey & Huefner, *supra* note 3, at 531. OSEP recently pointed out that “[i]n addition to the regulations addressing State complaint procedures, there are also a number of statutory provisions in the IDEA that recognize the State complaint process.” Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013) (citing 20 U.S.C. §§ 1411(e)(2)(B)(i), 1412(a)(14)(E), and 1415(f)(3)(F)).

<sup>9</sup> 34 C.F.R. § 300.151 (2012).

<sup>10</sup> *Id.* § 300.504(c)(5) (2012).

<sup>11</sup> *Id.* § 300.152 (2012). The time limit is 60 days for the entire process. The new provisions make explicit the opportunity for the “public agency” (e.g., school district) to respond and for parties to resort to mediation (*id.* § 300.152(a)(3)); agreed-upon extensions for mediation or other forms of alternative dispute resolution (*id.* § 300.152(b)(1)(ii)); and the interrelationship with due process hearings, including mandatory deferral (*id.* § 300.152(c)(1)) (2012).

<sup>12</sup> *Id.* § 300.153 (2012).

hearing/review officer decisions, and Office of Special Education Programs (OSEP)<sup>13</sup> policy letters<sup>14</sup>—that fill in the legal boundaries of the CRP.<sup>15</sup> The other acronyms used herein are as follows: EHLR = Education of the Handicapped Law Report, which is the predecessor of the IDELR; IDELR = Individuals with Disabilities Education Law Report; IHO = impartial hearing officer; LEA = local education agency; and SEA = state education agency, which in parentheses for citations represents a hearing officer or review officer under the IDEA. The following topical categories are broadly approximate and not mutually exclusive, merely serving to organize the material into a coherent sequence: 1) jurisdiction, 2) procedures, 3) remedies, and 4) miscellaneous other issues. Moreover, each item within these categories needs to be assessed in terms of the legal weight of its cited authority.

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<sup>13</sup> Analogous to OCR, OSEP is the specialized office within the U.S. Department of Education responsible for administering the IDEA. Both are within the Office for Special Education and Rehabilitation Services, which occasionally issues such policy letters. For the legal force of such administrative interpretations, see Perry A. Zirkel, *Do OSEP Policy Letters Have Legal Weight?* 171 Ed.Law Rep. 391 (2003).

<sup>14</sup> This otherwise comprehensive coverage does not include OSEP letters that either are outdated or add nothing of note to the current regulations. *See, e.g.*, Letter to Garrett, 29 IDELR 973 (OSEP 1997). It also does not include OCR enforcement letters under the overlapping coverage of § 504. *See, e.g.*, Illinois St. Bd. of Educ., EHLR 257:573 (OCR 1984) (ruling that lack of CRP without effective enforcement mechanism violated § 504).

<sup>15</sup> Inasmuch as this purpose is to supplement rather than analyze the aforementioned cluster of IDEA regulations (*see supra* notes 9-12), the reader is advised to review carefully their contents. Except for relatively limited excerpts of or references to selected major subsections, the only regulatory citations in the annotated outline are to relevant subsections of other IDEA regulations.

## 1. Jurisdiction<sup>16</sup>

- In general, the SEA's CRP has overlapping jurisdiction with IHOs (albeit with mandatory deferral).<sup>17</sup> Within the broad area of overlap, a state may not require the complainant to exhaust CRP before filing for an IHO proceeding.<sup>18</sup> Beyond the large overlap, there are areas of exclusive jurisdiction for each forum.
- For example, CRP does not have jurisdiction to review an IHO's refusal to hear or decide an issue at a due process hearing.<sup>19</sup>
- Conversely, the IHO does not have jurisdiction as the appellate forum for the outcome of CRP.<sup>20</sup>
- CRP has exclusive jurisdiction, compared with IHOs, for complaints about the personnel qualifications, such as highly qualified teachers.<sup>21</sup>

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<sup>16</sup> This category focuses on subject matter jurisdiction, whereas personal jurisdiction is reserved herein for the state of the next, overlapping category.

<sup>17</sup> See, e.g., *Grand Rapids Pub. Sch. v. P.C.*, 308 F. Supp. 2d 815 (W.D. Mich. 2004); *Lewis Cass Intermediate Sch. Dist. v. M.K.*, 40 IDELR ¶ 8 (W.D. Mich. 2003); *Wilson v. Sch. Dist. No. 1*, EHLR 556:235 (Or. Ct. App. 1984); *Letter to Douglas*, 35 IDELR ¶ 278 (OSEP 2001); *Letter to Chief State Sch. Officers*, 34 IDELR ¶ 264 (OSEP 2000); *Letter to Anonymous*, 25 IDELR 525 (OSEP 1996); *Letter to Hathcock*, 19 IDELR 631 (OSEP 1993); *Letter to Johnson*, 18 IDELR 589 (OSEP 1991); *Walled Lake Consol. Sch. Dist.*, 40 IDELR ¶ 136 (Mich. SEA 2003); *Spring-Ford Area Sch. Dist.*, 28 IDELR 412 (Pa. SEA 1998); cf. 34 C.F.R. § 300.661(c)(3); *OSEP Memo 94-16*, 21 IDELR 85 (OSEP 1994) (deferral policy). *But see Kuszewski v. Chippewa Valley Sch.*, 131 F. Supp. 2d 926 (E.D. Mich., 2001), *aff'd on other grounds*, 38 IDELR ¶ 63 (6th Cir. 2003); cf. *Newmarket Sch. Dist.*, 40 IDELR ¶ 26 (N.H. SEA 2003); *Sherwood Sch. Dist.*, 25 IDELR 1254 (Or. SEA 1997) (unappealed state complaint decision may not be relitigated via IHO). For the regulatory codification of mandatory deferral, see *supra* note 11. In the commentary accompanying the deferral regulation, OSEP took the position that after the completion of CRP, a party may file for a due process hearing on the same issue if the statute of limitations has not expired. 71 Fed. Reg. 46,607 (Aug. 14, 2006). However, for the reverse situation, the IDEA regulations make clear that the IHO's decision is binding on the same issue in CRP. 34 C.F.R. § 300.152(c)(2).

<sup>18</sup> *Letter to Chief State Sch. Officers*, 34 IDELR ¶ 264 (OSEP 2000). For the regulatory requirement, including the responsibility for timely resolution of any parts not within the scope of the IHO proceeding, see 34 C.F.R. § 300.152(c) (2012).

<sup>19</sup> *Letter to Hathcock*, 19 IDELR 631 (OSEP 1993). More generally, OSEP has cited the respective jurisdictional scope of CRP and IHOs, concluding that "while a matter that could be the subject of a due process complaint could also be the subject of a State complaint, the reverse is not always true." *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*, 113 LRP 30291 (OSEP 2013). Moreover subsequent review, CRP does not serve as a substitute for fulfilling the IDEA requirement. See, e.g., *Christopher W. v. Portsmouth Sch. Comm.*, 877 F.2d 1089, 1099 (1st Cir. 1989) (for judicial action); cf. *Tyler B. v. San Antonio Elementary Sch. Dist.*, 253 F. Supp. 2d 1111, 1118 (N.D. Cal. 2003) (for second-tier review under the IDEA).

<sup>20</sup> See, e.g., *Virginia Office of Protection & Advocacy v. Virginia Dep't of Educ.*, 262 F. Supp. 2d 648 (E.D. Va. 2003).

<sup>21</sup> 34 C.F.R. § 300.156(e) (2012).

- CRP also has exclusive jurisdiction for complaints of private schools re the district's consultation responsibilities for parentally placed private school children, and this matter is appealable to OSEP.<sup>22</sup>
- Additionally, the jurisdiction for complaints of parents of parentally placed children is exclusive to CRP except for child-find issues.<sup>23</sup>
- The IHO, rather than the CRP, has jurisdiction for a district's failure to send a prior written notice to the parent regarding the subject matter of the parent's due process complaint and the failure to provide a response to the complaint within the resulting required 10 days.<sup>24</sup>
- Although not necessarily exclusive, CRP's jurisdiction extends to systemic complaints on behalf of a group of children.<sup>25</sup>
- Student records issues under the IDEA are within the CRP jurisdiction even if also subject to the Family Educational Rights and Privacy Act.<sup>26</sup>
- The proper SEA enforcement procedure of an IHO decision appears to be via the CRP (or a § 1983 suit), not via another due process hearing.<sup>27</sup> However, the prevailing but not uniform view is that parents need not exhaust the CRP before seeking judicial enforcement of an IHO order.<sup>28</sup>

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<sup>22</sup> *Id.* § 300.136 (2012).

<sup>23</sup> *Id.* § 300.140 (2012).

<sup>24</sup> Letter to Inzelbuch, 62 IDELR ¶ 122 (OSEP 2013).

<sup>25</sup> Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013).

<sup>26</sup> Letter to Anderson, 50 IDELR ¶ 167 (OSEP 2008) (including deferral by FPCO).

<sup>27</sup> *See, e.g.*, *Wyner v. Manhattan Beach Unified Sch. Dist.*, 323 F.3d 1026 (9th Cir. 2000); *Gum v. Nevada Dep't of Educ.*, 113 P.3d 853 (Nev. 2005); *Newtown Bd. of Educ.*, 41 IDELR ¶ 201 (Ct. SEA 2004); *Bd. of Educ.*, 47 IDELR ¶ 115 (N.Y. SEA 2006); *cf. Wilson v. McDonald*, 558 EHLR 364 (E.D. Ky. 1987) (including provision of FAPE).

<sup>28</sup> *Porter v. Bd. of Trustees*, 307 F.3d 1064 (9th Cir. 2002). Indeed, using CRP—rather than the IHO process—does not fulfill the IDEA exhaustion requirement. *See, e.g., Jenkins v. Butts Cnty. Sch. Dist.*, 58 IDELR ¶ 282 (M.D. Ga. 2012). *But see T.S. v. Utica Cmty Sch.*, 62 IDELR ¶ 145 (E.D. Mich. 2013) (requiring exhaustion of CRP).

## 2. Procedures<sup>29</sup>

- The regulations allow individuals and organizations to initiate the CRP.<sup>30</sup> Thus, one parent may file a complaint that triggers the SEA's investigation of a district in terms of the children of all similarly situated parents.<sup>31</sup>
- Nonresidents of the state may utilize CRP; the location of the violation, not the complainant, is what counts.<sup>32</sup>
- Similarly, non-parents may file complaints on behalf of students under the CRP.<sup>33</sup>
- If someone other than the parent files a complaint, the SEA may not provide personally identifiable information to said complainant w/o parental consent.<sup>34</sup>
- The IDEA regs specify various criteria, or prerequisites, for a complaint, including supporting facts and a proposed resolution, of the alleged violation(s).<sup>35</sup> Although the regulations do not address failure of the complainant to provide the required contents, OSEP has offered guidance, including the following example: "an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be resolved and the time limit not commence until the missing content is provided."<sup>36</sup>
- Similarly, as OSEP recently pointed out, the regulations require each SEA to develop optional model forms to assist parents and other parties in filing a state complaint.<sup>37</sup>

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<sup>29</sup> For the basic regulatory requirements for the SEA, including timelines, see 34 C.F.R. § 300.152 (2012). For those specific to the complainant, see *id.* § 300.153 (2012).

<sup>30</sup> *Id.* § 300.622 (2012).

<sup>31</sup> *Indep. Sch. Dist. No. 281 v. Minnesota Dep't of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

<sup>32</sup> Letter to Barniser, EHLR 213:172 (OSEP 1988).

<sup>33</sup> Letter to Ash, 23 IDELR 647 (OSEP 1994).

<sup>34</sup> Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

<sup>35</sup> 34 C.F.R. § 300.153(b) (2012).

<sup>36</sup> Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013).

<sup>37</sup> *Id.* (citing 34 C.F.R. § 300.509).

- The filing party must simultaneously provide the district with a copy of the complaint.<sup>38</sup>

OSEP has opined that an SEA should adopt procedures to address such situations that do not “limit or diminish the parent's or other complainant's ability to present a State complaint and obtain timely resolution of the issues presented.”<sup>39</sup>

- The SEA must resolve but not necessarily investigate every complaint that meets the formal criteria.<sup>40</sup>

- However, the SEA is not obligated to investigate premature complaints, e.g., allegation that the district would not implement an IEP during the upcoming school year<sup>41</sup>

- The IDEA regs also require the SEA to provide the district with an opportunity to respond to, including the option of proposing a resolution of, the complaint.<sup>42</sup>

- Mediation, as an option, previously was discretionary for CRP.<sup>43</sup> However, current regulations require states to provide the parent with the opportunity to resolve the complaint under the IDEA’s mediation provision.<sup>44</sup> Moreover, the current IDEA regulations expressly permit as a reason for extending the 60-day deadline the situation where the parties agree to engage in mediation or other state-available voluntary dispute resolution procedures.<sup>45</sup>

Finally, the regulations require that any resulting settlement be in the form of a legally binding agreement.<sup>46</sup>

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<sup>38</sup> 34 C.F.R. § 300.153(d) (2012).

<sup>39</sup> Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013).

<sup>40</sup> Letter to Nann, 36 IDELR ¶ 212 (OSEP 2001). Possible dispositions other than investigation presumably include dismissals, settlements, and voluntary corrective action. OSEP provides wide discretion to SEAs in such matters. Letter to Zimring, 109 LRP 15706 (OSEP 2008) (reasoning that “[t]he removal [in the 1999 IDEA regulations] of Secretarial review was intended to strengthen SEAs' responsibilities for their complaint resolution systems”).

<sup>41</sup> Letter to Siegel, 33 IDELR ¶ 275 (OSEP 2000).

<sup>42</sup> 34 C.F.R. § 300.152(a)(3) (2012).

<sup>43</sup> Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

<sup>44</sup> 34 C.F.R. § 300.152(a)(3)(ii) (2012). Whether this mediation right extends to the LEA is presumably a matter of state law.

<sup>45</sup> *Id.* In the commentary accompanying the regulations, OSEP opined that agreement suffices—and consent is not necessary—to extend the 60-day time limit. 71 Fed. Reg. 46,604 (Aug. 14, 2006).

<sup>46</sup> 34 C.F.R. § 300.506(b)(6) (2012).

- According to OSEP, the IDEA permits SEAs to establish procedures for electronic submission of complaints.<sup>47</sup>
- The SEA’s CRP obligation is not limited to procedural compliance.<sup>48</sup> More specifically, OSEP’s has provided the following interpretation for eligibility cases: an SEA must determine not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with Part B requirement in light of the individual child's abilities and needs.”<sup>49</sup> However, seeming to suggest a more restricted scope of substantive review than the IHO process, OSEP added that “The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data and is consistent with Part B.”<sup>50</sup> Similarly, OSEP has issued this interpretation for FAPE cases: “An SEA resolves a complaint challenging the appropriateness of a public agency's determination regarding a child's educational program or placement by determining not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with Part B requirements in light of the individual child's abilities and needs.”<sup>51</sup> However, overlapping with the Remedies section of this outline, OSEP has provided the accompanying caveat: “Although decisions of the IEP team cannot be overturned by the SEA, the SEA can, on a case-by-case basis, if it concludes that what has been offered does not meet the definition of FAPE, order

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<sup>47</sup> Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013).

<sup>48</sup> Yet, a survey of CRP managers in the late 1990s revealed that slightly less than 80% of the 35 responding states investigated substantive issues. Suchey & Huefner, *supra* note 3, at 535.

<sup>49</sup> Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

the IEP team to meet to determine FAPE for the child.”<sup>52</sup>

- If the complaint is against the SEA, OSEP has offered this guidance: “[A]n SEA may either appoint its own personnel or may make arrangements with an outside party to resolve the complaint. Regardless of whether the SEA chooses to resolve the complaint on its own or chooses to use an outside party, the SEA must ensure that all of the procedures in 34 CFR §§ 300.151-300.153 are followed.”<sup>53</sup>
- The issue of whether an SEA is obligated to provide the public with copies of CRP complaint investigation reports is governed by state law.<sup>54</sup> In contrast to their obligation to make IHO decisions available to the public,<sup>55</sup> the IDEA does not require states to publish CRP decisions. Some state laws reportedly provide this requirement.<sup>56</sup>
- The decision must contain factual findings, legal conclusions, the reasons, and—as covered in the Remedies section *infra*—a specified order in FAPE cases.<sup>57</sup>
- The deadline for a final decision is 60 days after the filing of the complaint unless “exceptional circumstances.”<sup>58</sup> Such exceptional circumstances include a case where the complaint raised system-wide concerns about similarly situated students and the district had received a 10-day extension for responding to the complaint.<sup>59</sup>
- OSEP Commentary: “The regulations neither prohibit nor require the establishment of procedures to permit an LEA or other party to request reconsideration of a State complaint decision. We have chosen to be silent in the regulations about whether a State complaint

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<sup>52</sup> *Id.*

<sup>53</sup> Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 113 LRP 30291 (OSEP 2013).

<sup>54</sup> Letter to Opuda, 22 IDELR 368 (OSEP 1994).

<sup>55</sup> *Id.* § 300.513.

<sup>56</sup> Kathleen B. Boundy, State Complaint Basics (n.d.), <http://www.advocacyinstitute.org/isrcr/considerations.shtml>

<sup>57</sup> 34 C.F.R. § 300.151(b) (2012).

<sup>58</sup> *Id.* §§ 300.661(a)–(b)(1) (2012).

<sup>59</sup> *Indep. Sch. Dist. No. 281 v. Minnesota Dep’t of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law.<sup>60</sup>

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<sup>60</sup> 71 Fed. Reg. 46,607 (Aug. 14, 2006). For example, a New Jersey appellate court ruled that CRP decisions may not be appealed to the state's commissioner of education under its state law. *Bd of Educ. v. New Jersey Dep't of Educ.*, 945 A.2d 125 (N.J. Ct. App. 2008). In contrast, in Michigan, appeals are via the impartial hearing route. *Lewis Cass Intermediate Sch. Dist. v. M.K.*, 40 IDELR ¶ 8 (W.D. Mich. 2003).

### 3. Remedies

- “In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA... must address--

(1) The failure to provide appropriate services, including corrective action 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.”<sup>61</sup>

- general limitations period: one year<sup>62</sup>

- However, while the 2006 regulations dropped the 1999 version’s 3-year period for compensatory services and its reference to possible exceptions for continuing violations.

OSEP commented: “States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline, just as they are free to add additional protections in other areas that are not inconsistent with the requirements of the Act and its implementing regulations.”<sup>63</sup>

- The CRP’s remedial authority extends beyond the child of the complainant to “appropriate future provision of services for all children with disabilities.”<sup>64</sup>

- The CRP’s remedial authority **also** extends to district-wide corrective action based on state law that corresponds with but exceeds the IDEA even though the violation was limited to one

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<sup>61</sup> 34 C.F.R. § 300.151 (2012). In the accompanying commentary, OSEP clarified that the purpose of expressly adding the reference to compensatory education was to show that states have broad flexibility in awarding an appropriate remedy in resolving state complaints. 71 Fed. Reg. 46,602 (Aug. 14, 2006). For examples of CRP compensatory education awards, see, e.g., *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209 (Minn. Ct. App. 2005); *Poudre Sch. Dist.*, 43 IDELR ¶ 16 (Colo. SEA 2004); *Student with a Disability*, 59 IDELR ¶ 27 (Iowa SEA 2012); *Baltimore City Pub. Sch.*, 58 IDELR ¶ 146 (Md. SEA 2011); *Baltimore City Pub. Sch.*, 56 IDELR ¶ 27 (Md. SEA 2010); *Washington County Pub. Sch.*, 53 IDELR ¶ 105 (Md. SEA 2009); *Prince George’s County Pub. Sch.* 52 IDELR ¶ 173 (Md. SEA 2009); *Student with a Disability*, 59 IDELR ¶ 86 (Mont. SEA 2012); *In re Student with a Disability*, 55 IDELR ¶ 299 (Wyo. SEA 2010). However, in Connecticut at least, state law precludes the CRP to order compensatory education or other such relief. *A. v. Hartford Bd. of Educ.*, \_\_\_ F. Supp. 2d \_\_\_, \_\_\_ (D. Conn. 2013).

<sup>62</sup> 34 C.F.R. § 300.153(c) (2012).

<sup>63</sup> 71 Fed. Reg. 46,606 (Aug. 14, 2006).

<sup>64</sup> 34 C.F.R. § 300.151(b) (2012).

parent's child.<sup>65</sup>

- However, CRP's corrective action (here partial tuition reimbursement for tutoring) must have direct, not equivocal, nexus to the IDEA deficiency.<sup>66</sup>

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<sup>65</sup> *Indep. Sch. Dist. No. 281 v. Minnesota Dep't of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

<sup>66</sup> *Indep. Sch. Dist. No. 192 v. Minnesota Dep't of Educ.*, 742 N.W.2d 713 (Minn. Ct. App. 2007).

#### 4. Miscellaneous Other

- The parent must receive notice of their procedural safeguards upon filing, i.e., initiating the CRP, for the first time within the school year.<sup>67</sup> The CRP must be part of said notice.<sup>68</sup>
- CRP decisions are not appealable to court, although their procedures may be, under the IDEA.<sup>69</sup> In some states, it may be appealable via the state's administrative procedures act.<sup>70</sup>
- Similarly, a CRP decision is not appealable to OSEP (except where the IDEA regs specify otherwise).<sup>71</sup>
- The completion of CRP does not substitute for completion of the IHO process for purposes of the judicial requirement of exhaustion.<sup>72</sup>
- A CRP report may constitute stay-put during subsequent IHO proceedings.<sup>73</sup>
- A settlement agreement resulting from the mediation or impartial hearing process is binding on CRP for the same issue specific to the child but not for complaints of alleged systemic violations.<sup>74</sup>

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<sup>67</sup> 34 C.F.R. § 300.504(a)(2) (2012).

<sup>68</sup> *Id.* § 300.504(c)(5) (2012).

<sup>69</sup> *See, e.g.*, *Yolo Cnty. Office of Educ. v. California Dep't of Educ.*, 59 IDELR ¶ 123 (E.D. Cal. 2012); *Fairfield-Suisun v. California Dep't of Educ.*, 59 IDELR ¶ 106 (E.D. Cal. 2012); *Wachlarowicz v. Sch. Bd.*, 40 IDELR ¶ 209 (D. Minn. 2003); *Virginia Protection & Advocacy v. Virginia Dep't of Educ.*, 262 F. Supp. 2d 648 (E.D. Va. 2003); *Bd. of Educ. v. New Jersey Dep't of Educ.*, 945 A.2d 125 (N.J. Ct. App. 2008); *cf. E. Ramapo Cent. Sch. Dist. v. King*, 62 IDELR ¶ 210 (N.Y. Sup. Ct. 2013) (no private right of action for LEA). For the separable but sometimes related issue of the IDEA's exhaustion requirement with regard to impartial hearings, see, e.g., *Rita S. v. Stanislaus Cnty. Office of Educ.*, 384 F.3d 1205 (9th Cir. 2004); *Weber v. Cranston Sch. Dist.*, 212 F.3d 41 (1st Cir. 2000).

<sup>70</sup> Letter to Nann, 36 IDELR § 212 (OSEP 2001); *see also* Questions and Answers on IDEA Part B Dispute Resolution Procedures B-43, 61 IDELR ¶ 232 (OSEP 2013); *cf. Indep. Sch. Dist No. 12 v. Minnesota Dep't of Educ.*, 767 N.W.2d 478 (Minn. Ct. App. 2009) (implicitly appealable).

<sup>71</sup> Letter to Anonymous, 40 IDELR ¶ 262 (OSEP 2003). The 1999 regulations removed the former provision for Secretarial review, and it is not necessary for a state to have a replacement procedure for review. Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

<sup>72</sup> *See, e.g.*, *Manning v. Spillane*, 21 IDELR 845 (E.D. Va. 1994).

<sup>73</sup> *Millay v. Surry Sch. Dep't*, 584 F. Supp. 2d 219 (D. Me. 2008).

<sup>74</sup> Letter to Anderson, 56 IDELR ¶ 270 (OSEP 2010).

- The courts are split as to whether attorney’s fees are available to prevailing parents in CRP?<sup>75</sup>

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<sup>75</sup> Compare *Vultaggio v. Bd. of Educ.*, 343 F.3d 598 (2d Cir. 2003), *Johnson v. Fridley Pub. Sch.*, 36 IDELR ¶ 129 (D. Minn. 2002), and *Megan C. v. Indep. Sch. Dist. No. 625*, 57 F. Supp. 2d 776 (D. Minn. 1999) (no), *with Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023 (9th Cir. 2000), *Upper Valley Ass’n for Handicapped Citizens v. Blue Mtn. Union Sch. Dist. No. 21*, 973 F. Supp. 429 (D. Vt. 1997) (yes); *cf. L.H. v. Chino Valley Unified Sch. Dist.*, 944 F. Supp. 2d 867 (C.D. Cal. 2013) (not where no material change in legal relationship). In its commentary to the 2006 regulations, OSEP opined that attorney’s fees are not available for CRP because a state complaint is not an “action or proceeding brought under [the adjudicatory provision] of” the IDEA. 71 Fed. Reg. 46,602 (Aug. 14, 2006).