

## FILING A COMPLAINT WITH THE TEXAS EDUCATION AGENCY

### Introduction

Parents, and others, who have complaints about the special education services being provided by a school district may file a complaint with the Texas Education Agency (TEA). TEA is required to operate a complaint process for addressing any violation of the Individuals with Disabilities Education Act (IDEA) involving the identification, evaluation, or placement of a student with a disability, or the provision of a free appropriate public education (FAPE) to the student. They must also investigate complaints that a district has violated a state special education law or rule.

Organizations may also file complaints. Complaints may be about services being provided to one student with a disability or to a group of students with disabilities. While a parent, an organization, or any other interested person may file a complaint, this handout will refer to the person sending the complaint as “parent.”

IDEA 2004 also uses the term “complaint” to describe the process for filing for a special education due process hearing. That is NOT the type of complaint discussed in this handout. This handout describes the filing of a complaint with TEA asking for an investigation by TEA staff of an allegation that a school district has violated the federal or state special education requirements. The complaints process discussed here is an easier alternative (as is mediation) to filing a request for a due process hearing. There is no cost for a TEA complaint and you do not need an attorney.

The parent should try to resolve the complaint with the school district by going to an Admission, Review and Dismissal (ARD) meeting before filing a complaint with TEA. For example, if the parent believes that the school district staff is not implementing the modifications called for in the Individualized Education Program (IEP), the parent should bring that to the attention of the ARD Committee and complain to TEA if it continues to be a problem.

To file a successful complaint, you need good documentation. Parents should always make sure that the ARD Committee documents any requests they make at the meeting, or any disagreements that occur over services or placement. For example, if the parent requests an assistive technology evaluation for their child and the district denies this request, the parent needs to make sure that the denial is made in writing and is either included in the IEP or written into the discussion notes (or minutes) that are attached to the ARD document. The parent must remember to sign that they “disagree” with the decision made. If the parent only disagrees with part of the IEP, for example a refusal to provide speech therapy, then the parent can write on the IEP that they disagree with that decision and that they agree with all of the other decisions. It is also a good idea to specifically write into the discussion notes the reasons why the parent disagrees. The school district then must provide the parent with written notice that it is refusing to provide the requested service or placement.<sup>1</sup>

The complaint must be about a violation that occurred not more than two years prior to the date of the complaint. However, it can involve continuing violations that began more than two years ago. For example, if the student's IEP has required that the student be provided with two hours per week of occupational therapy and the student has only been receiving one hour per week during the last two and a half years, then the complaint can be about the entire time that the district has been failing to provide occupational therapy. Also, if the parent is requesting compensatory services, the complaint can be about violations that have occurred during the past three years. (Compensatory services are discussed later in this handout.)

## **How Are Complaints Filed?**

Complaints are filed by writing a letter to TEA or by using a form available on the TEA website. Whether you write a letter or use the TEA form, you must sign it or it will not be processed as a complaint. IDEA requires that the complaint be in writing; therefore, a telephone call to TEA will not be considered a complaint. However, parents can call TEA at 1-800252-9668 to discuss problems they are having; TEA however, will NOT consider these to be actual complaints until they receive a complaint in writing. TEA's address is:

Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, Texas 78701  
Fax: 512-463-9560

You may want to send the letter by certified mail so that you have a record of when it was received by TEA. However, you can also fax it. You must also send a copy of the complaint to the school district. In your complaint, be sure to include the name and title of the school district employee you sent the complaint to and how it was sent (hand delivery, fax or mail). Parents should keep a copy of the letter as well as copies of TEA's responses. Also, parents should keep copies of any letters that they send to the district and any letters that the district sends to them, as well as copies of all of their child's records. Parents should also keep notes about any phone conversations they have with TEA or district staff.

At the end of this handout are three sample TEA complaint letters.

## **What Does TEA Do with the Complaint?**

TEA has 60 calendar days to investigate the complaint and decide whether the district is violating IDEA. TEA may extend its time limit only if exceptional circumstances exist with respect to a particular complaint. Usually, TEA sends a letter to the parent telling them that TEA has received the complaint and summarizing the issues in the complaint. It is important to read this letter carefully to make sure that TEA understands the complaint correctly. Some of the issues that the parent put into the complaint may not have been correctly summarized by TEA. If this is the case, immediately send a follow-up letter pointing out the misinterpretation and restating your complaint.

Most investigations are done by a TEA investigator in Austin. However, TEA can make an independent on-site investigation, if it determines that an investigation is necessary. During the investigation process, TEA must give the parent an opportunity to submit additional information, either orally or in writing, about the issues in the complaint. Additionally, it must review all relevant information and make an independent determination as to whether the school district violated IDEA.

## What Should the Complaint Say?

1. If you write a letter rather than use the TEA form, make sure you say specifically that this is a complaint and that you are requesting a TEA investigation.
2. Provide the student's name, age, school he/she attends, school district, and the disability.
3. Be specific about the facts. Provide dates, names, etc. If you believe that the issue is a systemic one (a problem that affects other students with disabilities in the district), state that in the complaint (e.g., "The Smalltown ISD has not had an occupational therapist since last year and none of the students are receiving occupational therapy," or "The district does not make individual determinations of least restrictive environment. All students who have medical support needs are educated in the self-contained classroom at John Doe Middle School.>").
4. Attach any important documents (e.g., ARD documents, letters, evaluations, and/or progress reports) that will help TEA understand your complaint. If you do not have copies of the documents, at least refer to the names and approximate dates of documents in the letter. For example:
  - "I disagree with the speech evaluation conducted by the school district in April, 2005."
  - "My child's current IEP (enclosed) requires that she receive two hours of occupational therapy per week and she is only getting one hour per week."
  - "The teacher wrote in my child's communication notebook (page enclosed) that my child did not go on the field trip in March of 1999 because the bus was not wheelchair accessible."

TEA must obtain and review all relevant information, including the documents described or provided in the complaint, as a part of its investigation.

5. If you know what you want TEA to do to resolve the complaint, request a specific action that you would like TEA to take. For example:
  - "I request that TEA order the district to provide compensatory services to my child because of the school's failure to implement the reading program required in his IEP. I also request that the compensatory services include a reading tutor."
  - "I request that TEA order the district to conduct an ARD meeting to consider the recommendations found in the independent evaluation conducted by Dr. Smith, including the recommendation that my child be educated in the regular fourth grade classroom."

## How Does TEA Notify the Parent about its Decision?

TEA will send the parent and the school district a letter that addresses each issue (allegation) in the complaint and that states:

- TEA's findings in its investigation of each allegation,
- TEA's conclusions on whether the district violated the law as alleged by the complainant on each issue, and
- TEA's reasons for its final decision(s).

If TEA decides the information obtained during the investigation supports the allegation (i.e., that the parent was right), it will “substantiate” the allegation. If TEA decides the information does *not* support the allegation (i.e., that the parent was not right), it will deny or “not substantiate” the allegation. Each allegation that is substantiated (i.e., is in favor of the parent) should be followed by directives to the district on what it must do. This section is usually referred to as the “required corrective actions.” The letter should also give a time by which the district must implement any corrective actions.

### **What Does TEA Require the District to Do If it Decides That the District Has Violated IDEA?**

If TEA concludes that the school district violated IDEA, it has the authority to order the district to provide compensatory services, monetary damages, or other corrective action appropriate to the needs of the student. Compensatory services are services that TEA requires the district to provide in order to “make up” for failing to provide appropriate services in the past. For example, TEA could order a school district to provide extra therapy services to a student who did not receive needed therapy services in the past, or could order a school district to provide additional tutoring or summer services for a student who has not been provided appropriate academic services during the school year. TEA could also order the district to convene an ARD meeting to determine an appropriate placement for the student, using the correct legal standards for making the placement determination.

If the complaint is about services to a group of students or, if the complaint or investigation indicates there is a district-wide problem, TEA must address appropriate future provision of services for all children with disabilities in the district. For example, if TEA finds that the district fails to make individual determinations of least restrictive environment for many of its students, then TEA will require the district to take a corrective action that remedies the problem across the district, such as holding new ARD meetings for all of the students affected in order to reconsider the least restrictive environment determination.

Additionally, TEA must see that the district gets any needed technical assistance with implementing the corrective actions. Technical assistance includes information and training provided to district staff. Currently, most technical assistance is provided by the regional education service centers (ESCs). There are twenty education service centers in Texas, and each ESC not only provides services to the districts in its region, but also provides information and training regarding specific issues outside their region. Districts can also get technical assistance from other sources, if it is needed to implement a corrective action plan.

### **Can the Parent Still File a Request for a Due Process Hearing?**

Yes, however, if a due process hearing has already been requested on an issue in the complaint, TEA will not investigate that issue until after the conclusion of the hearing.

*1 Anytime the school district proposes to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student, the district must provide the parent with written notice of the action proposed or refused by the district. The notice must provide a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of any other options that the district considered and the reasons why those options were rejected; a description of each evaluation, procedure, test, record, or report the agency used as a basis for the proposed action or refused action; a description of any other factors that are relevant to the district's proposal or refusal; a statement about the procedural protections available; and sources for parents to contact to obtain assistance in understanding the notice.*

Disability Rights Texas' goal is to make each handout understandable by and useful to the general public. If you have suggestions on how this handout can be improved, please contact Disability Rights Texas at the address and telephone number shown on the agency's website home page [[www.DisabilityRightsTx.org](http://www.DisabilityRightsTx.org)] or send an e-mail to [info@DisabilityRightsTx.org](mailto:info@DisabilityRightsTx.org). Thank you for your assistance. This handout is available in Braille and/or on audio tape upon request. Disability Rights Texas strives to update its materials on an annual basis, and this handout is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. The handout is not intended to and does not replace an attorney's advice or assistance based on your particular situation.

## Sample Letter 1

Date  
Parent name  
Address

Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, Texas 78701

To Whom it May Concern:

I write to file a complaint against the \_\_\_\_\_ ISD (**name of your school district**). (**Next, describe your child: name, age, school, disability.**) My daughter, Amber, is twelve years old and attends the seventh grade at City Middle School. Amber qualifies for special education services as a student with another health impairment.

Amber has a degenerative muscle condition that, among other things, causes weakness in her hands and wrists. Because of this, she has difficulty writing with a pen or pencil, and it takes her a long time to complete writing assignments. Also, she becomes very sore and tired.

**(Next, describe the problem.)** In November of 2004, I requested an assistive technology evaluation for Amber. The district's occupational therapist evaluated Amber's handwriting skills. The OT evaluation is enclosed. **(Remember to enclose copies of any documents that you want TEA to review.)** In the evaluation, the occupational therapist said that Amber doesn't need assistive technology because her handwriting is legible. At the ARD meeting on January 17, 2005, I disagreed with the evaluation and asked for an independent evaluation. The special education director, Ms. Smith, told me that the district doesn't think another evaluation needs to be done because Amber doesn't need assistive technology to benefit from her education. I signed that I disagreed to the ARD report. The report is enclosed. **(Remember always check that you "disagree" on the ARD form if you ask the district for something and they say "no.")** I have not received any correspondence from the district saying they want a hearing to show their evaluation is adequate. They are just ignoring my request for an independent evaluation.

**(Next, describe what you would like TEA to do.)** I request that TEA investigate this complaint and order the district to provide an independent assistive technology evaluation.

If you have any questions, please call me at my daytime phone number, (555) 555-5555. I look forward to your decision.

Sincerely,

Parent's name  
e-mail address (optional)

CC: \_\_\_\_\_, Superintendent of \_\_\_\_\_ ISD (by fax at XXX-XXX-XXXX)

## Sample Letter 2

Date  
Parent name  
Address

Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, Texas 78701

To Whom it May Concern:

I write to file a complaint against the \_\_\_\_\_ ISD (**name of your school district**). (**Describe your child: name, age, school, disability.**) My son, Jason, is almost three-years-old and is supposed to start receiving school services in \_\_\_\_\_ ISD next school year. Jason has cerebral palsy. He uses a wheelchair, and he is learning communicate with others.

**(Next, describe the problem.)** On April 10, 2005, we had an ARD meeting and the district told me that they want to put Jason in a self-contained PPCD class. Enclosed is a copy of the ARD report. **(Remember to enclose copies of any documents that you want TEA to review.)** PPCD is a class for only kids with disabilities. Currently, Jason goes to Little Ones pre-school, and he gets physical therapy and speech therapy services there from the Early Childhood Intervention program.

I like the Little Ones pre-school because Jason gets to play with non-disabled kids and he is learning to communicate with them. Our family has tried very hard to treat Jason like any other kid and he has a lot of friends in the neighborhood.

At the ARD meeting, I told the district that I do not want Jason segregated in a class with just kids with disabilities. The staff at the Early Childhood Intervention program agrees that it would be best if Jason continued to be educated with non-disabled children. Enclosed is a copy of the letter that ECI wrote to the District, saying that it wouldn't be good for Jason to be in a class where all of the students have disabilities. However, the special education director, Ms. Smith, told me that the school district does not have anything other than PPCD for three-year-olds. I checked on the ARD report that I disagree with the decision to put Jason in the PPCD class. **(Remember always check that you “disagree” on the ARD form if you ask for something to be in the IEP and they say “no.”)**

**(Next, describe what you would like TEA to do.)** I want TEA to require the school district to provide education services to Jason at Little Ones or in some other setting that does not have only students with disabilities. I would like TEA to require the school district to have options for children like Jason other than PPCD classes.

Please call me at my daytime phone, (555) 555-5555, if you have any questions. Thank you for your assistance.

Sincerely,

Parent's name  
e-mail address (optional)

CC: \_\_\_\_\_, Superintendent of \_\_\_\_\_ ISD (by fax at XXX-XXX-XXXX)

### Sample Letter 3

Date  
Parent name  
Address

Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, Texas 78701

To Whom it May Concern:

I write to file a complaint against the \_\_\_\_\_ ISD **(name of your school district)**. **(Next, describe your child: name, age, school, disability.)** My son, Scott, is eight-years-old and attends the third grade at City Elementary School. Scott qualifies for special education services as a student with an orthopedic impairment.

**(Next, describe the problem.)** Scott's IEP, dated May 11, 2004 states that he will receive two hours of occupational therapy every week. The IEP is enclosed. **(Remember to enclose any documents that you want TEA to review.)** When I went to Scott's annual ARD meeting on May 14, 2005 I found out that the occupational therapist went on maternity leave at the beginning of February and that a teacher's aide has been doing Scott's occupational therapy. The aide is not an occupational therapist and is not qualified to provide therapy. I told the ARD Committee that I want the school district to give Scott compensatory services for the time that he has missed occupational therapy. The special education director, Ms. Smith, told me that the Scott hasn't really missed any therapy because the occupational therapist trained the aide before she left and that the aide was under the occupational therapist's supervision. However, the therapist is on leave. I signed that I disagreed with the ARD report. The report is attached. **(Remember always check that you "disagree" on the ARD form if you ask for something to be in the IEP and they say "no.")**

**(Next, describe what you want TEA to do.)** I want TEA to order the school district to provide Scott and all of the other students in the district who have missed occupational therapy with compensatory services. Since the school year is almost over, these services should begin in the summer. I also want TEA to order the district to develop a plan for hiring replacement therapists when its therapists take leave time.

If you have any questions, please call me at my daytime phone number, (555) 555-5555. I look forward to your decision.

Sincerely,

Parent's name  
e-mail address (optional)

CC: \_\_\_\_\_, Superintendent of \_\_\_\_\_ ISD (by fax at XXX-XXX-XXXX)