

Legal Boundaries for the IDEA Complaint Resolution Process: An Update*

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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.¹ 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).² Yet, in many states dissatisfied parents of students with disabilities take this route of IDEA dispute resolution avenue,³ likely because it requires far less, if any, in terms of legal

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

² See, e.g., NIKKI MURDICK, BARBARA GARTIN & GERARD FOWLER, *SPECIAL EDUCATION LAW* (2014); PETER LATHAM, PATRICIA LATHAM & MYRNA MANDLAWITZ, *SPECIAL EDUCATION LAW* (2007); ALLAN G. OSBORNE & CHARLES J. RUSSO, *SPECIAL EDUCATION AND THE LAW* (2006); MARK C. WEBER, RALPH MAWDSLEY & 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., LARRY D. BARTLETT, SUSAN ETSCHIEDT & GREG R. WEISENSTEIN, *SPECIAL EDUCATION LAW AND PRACTICE IN PUBLIC SCHOOLS* 252–53 (2007); THOMAS GUERNSEY & KATHE KLARE, *SPECIAL EDUCATION LAW* 251-252 (2001); DIXIE SNOW HUEFNER & CYNTHIA HERR, *NAVIGATING SPECIAL EDUCATION LAW AND POLICY* 152-53 (2012); LAURA ROTHSTEIN & SCOTT JOHNSON, *SPECIAL EDUCATION LAW* 255–56 (2014).

³ Depending on the year(s) and the method, national studies have found that the number of CRP requests was within a fairly close range to the number of due process hearing requests under the IDEA. See, e.g., Jay G. Chambers, Jenifer J. Harr & Arynah 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) (<http://www.directionservice.org/cadre/effectiveness.cfm>). 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); 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). For the latest national data, the totals for CRP filings and reports have decreased from 2004–05 to 2011–12 but to a lesser extent than due process hearing filings and adjudications. http://www.directionservice.org/cadre/pdf/DR_Data_Trends_Webinar_13FEB14.pdf

representation, case preparation, and face-to-face adversariness.⁴ The process, similar to the primary mechanism for resolving student disputes under Section 504 and the Americans with Disabilities Act—filing a complaint with the Office for Civil Rights (OCR)⁵—is based on investigation by an agency official and either an induce settlement or an imposed corrective action.⁶ 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,⁷ the applicable framework, since 1992,⁸ has been directly in the IDEA regulations.⁹ Generally, the current IDEA regulations continue—with limited additions—the state requirement for a formal, well-publicized CRP¹⁰; specified reference to the CRP in the local procedural safeguards notice¹¹; prescribed limitations in terms of time, form, and other overall procedures¹²; and specification for the who and what of complaint filing.¹³

⁴ Although the data are limited, the outcomes may well be more favorable to parents. See, e.g., Shrag & Schrag, *supra* note 3, at 30 (reporting for a selected sample of states during 1999–2001 that the outcomes in favor of parents was 72% in CRP compared with 39% in hearing officer decisions).

⁵ See, e.g., PERRY A. ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011).

⁶ 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). 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).

⁷ 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).

⁸ For the immediate previous period, the General Administrative Regulations contained the applicable procedures. *Id.*

⁹ 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, 61 IDELR ¶ 232 (OSEP 2013) (citing 20 U.S.C. §§ 1411(e)(2)(B)(i), 1412(a)(14)(E), and 1415(f)(3)(F)); see also 71 Fed. Reg. 46,606 (Aug. 14, 2006). For a U.S. Department of Education overview of the CRP regulations, see <http://idea.ed.gov/explore/view/p/,root,dynamic,TopicalBrief,22>; for a short parents’ guide, see http://www.directionservice.org/cadre/pdf/WrittenStateComplaintsParentGuide_FINAL_10.24.14.pdf

¹⁰ 34 C.F.R. § 300.151 (2013).

¹¹ *Id.* § 300.504(c)(5).

¹² *Id.* § 300.152. 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).

An earlier article¹⁴ provided, in the form of an annotated outline, a synthesis of the additional various pertinent primary sources of law—court decisions, hearing/review officer decisions, and Office of Special Education Programs (OSEP)¹⁵ policy letters¹⁶—that fill in the legal boundaries of the CRP.¹⁷ 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 purpose of this article is to provide an update of the earlier synthesis **of these pertinent legal sources that supplement the regulations.**¹⁸ It follows the sequence of the same topical categories, which are broadly approximate and not mutually exclusive: 1) jurisdiction, 2) procedures, 3) remedies, 4) reconsideration or appeal, and 5) miscellaneous other issues. The reader needs to assess the items within these categories in terms of the legal weight of their cited authority.

¹³ *Id.* § 300.153.

¹⁴ Perry A. Zirkel, *Legal Boundaries of the IDEA Complaint Resolution Process*, 237 Ed.Law Rep. 565 (2008).

¹⁵ 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).

¹⁶ 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).

¹⁷ Inasmuch as this purpose is to supplement rather than analyze the aforementioned cluster of IDEA regulations (*see supra* notes **10-13**), 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.

¹⁸ *Id.*

1. Jurisdiction¹⁹

- In general, the SEA’s CRP has overlapping jurisdiction with IHOs (albeit with mandatory deferral).²⁰ Within the broad area of overlap, a state may not require the complainant to exhaust CRP before filing for an IHO proceeding.²¹ Beyond the large overlap, there are areas of exclusive jurisdiction for each forum; however, the boundary line between CRP and IHO jurisdiction is not always clear.²²
- For example, CRP does not have jurisdiction to review an IHO’s refusal to hear or decide an issue at a due process hearing.²³
- Conversely, the IHO does not have jurisdiction as the appellate forum for the outcome of

¹⁹ This category focuses on subject matter jurisdiction, whereas personal jurisdiction is reserved herein for the state of the next, overlapping category.

²⁰ 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); Letter to Angelo, EHLR 213: 177 (OSEP 1988); *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 12. 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). Mandatory deferral served as a state education department defense against a recent parental claim predicated on its staying investigation during due process proceedings. *M.M. v. Lafayette Unified Sch. Dist.*, 767 F.3d 842, 861 (9th Cir. 2014).

²¹ Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000); see also Letter to Lieberman, 23 IDELR 351 (OSEP 1995) (aggrieved party may proceed to IHO after CRP on same issues if within IHO’s jurisdiction). 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).

²² See, e.g., *Millay v. Surry Sch. Dep’t*, 707 F. Supp. 2d 56 (D. Me. 2010) (ruling that IHO erred by declining jurisdiction for FAPE claim during the period of the CRP’s corrective action plan).

²³ 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, 61 IDELR ¶ 232 (OSEP 2013). Moreover, for 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).

CRP.²⁴

- CRP has exclusive jurisdiction, compared with IHOs, for complaints about the personnel qualifications, such as highly qualified teachers.²⁵
- 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.²⁶
- Additionally, the jurisdiction for complaints of parents of parentally placed children is exclusive to CRP except for child-find issues.²⁷
- 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.²⁸
- Although not necessarily exclusive, CRP's jurisdiction extends to systemic complaints on behalf of a group of children.²⁹
- Student records issues under the IDEA are within the CRP jurisdiction even if also subject to the Family Educational Rights and Privacy Act.³⁰
- A parent's settlement release does not waive the CRP jurisdiction (and obligation) to investigate and decide a complaint that a non-parent of the child filed.³¹
- The proper SEA enforcement procedure of an IHO decision appears to be via the CRP (or a §

²⁴ See, e.g., Va. Office of Protection & Advocacy v. Va. Dep't of Educ., 262 F. Supp. 2d 648 (E.D. Va. 2003).

²⁵ 34 C.F.R. § 300.156(e) (2013).

²⁶ *Id.* § 300.136.

²⁷ *Id.* § 300.140; see also Questions and Answers on Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 111 LRP 32532 (OSEP 2011) (reciting the regulatory provisions); Letter to Apostle, 60 IDELR ¶ 165 (OSEP 2012) (mentioning jurisdiction while focusing on consultation process and funding beyond proportionate amount).

²⁸ Letter to Inzelbuch, 62 IDELR ¶ 122 (OSEP 2013).

²⁹ Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013); see also *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 48 IDELR ¶ 222 (Minn. Ct. App. 2007) (confirming authority of CRP to address systemic issues).

³⁰ Letter to Anderson, 50 IDELR ¶ 167 (OSEP 2008) (including deferral by FPCO).

³¹ Letter to Contracci, EHLR 211: 380 (OSERS 1986).

1983 suit), not via another due process hearing.³² However, the prevailing but not uniform view is that parents need not exhaust the CRP before seeking judicial enforcement of an IHO order.³³

2. Procedures³⁴

- The regulations allow individuals and organizations to initiate the CRP.³⁵ 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.³⁶
- Nonresidents of the state may utilize CRP; the location of the violation, not the complainant, is what counts.³⁷
- Similarly, non-parents may file complaints on behalf of students under the CRP.³⁸
- If someone other than the parent files a complaint, the SEA may not provide personally identifiable information to said complainant w/o parental consent.³⁹ Yet, the SEA may not refuse to resolve the complaint if the parent refuses consent.⁴⁰
- The IDEA regs specify various criteria, or prerequisites, for a complaint, including supporting

³² See, e.g., *Wyner v. Manhattan Beach Unified Sch. Dist.*, 323 F.3d 1026 (9th Cir. 2000); *T.S. v. Utica Cmty Sch.*, 62 IDELR ¶ 145 (E.D. Mich. 2013); *Gumm v. Nev. 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). For a recent case, where the court dismissed, based on mootness, the claim that the SEA's CRP belated enforcement of the IHO decision violated its legal obligations, see *A.S. v. Harrison Twp. Bd. of Educ.*, ___ F. Supp. 3d ___ (D.N.J. 2014).

³³ *Porter v. Bd. of Trustees*, 307 F.3d 1064 (9th Cir. 2002).

³⁴ For the basic regulatory requirements for the SEA, including timelines, see 34 C.F.R. § 300.152 (2013). For those specific to the complainant, see *id.* § 300.153.

³⁵ *Id.* § 300.622.

³⁶ *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

³⁷ Letter to Barnhisser, EHLR 213:172 (OSEP 1988).

³⁸ Letter to Ash, 23 IDELR 647 (OSEP 1994).

³⁹ Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

⁴⁰ Letter to Tommsini, 38 IDELR ¶ 155 (FPCO 2002).

facts and a proposed resolution, of the alleged violation(s).⁴¹ 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.”⁴²

However, the requirement for a proposal resolution applies to complaints specific to individuals, not those that are systemic.⁴³

- 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.⁴⁴
- OSEP also has opined that the IDEA neither requires or precludes an alternative format to a “signed written complaint”⁴⁵ and, in light of Sec. 504 and the ADA, to provide an auxiliary aid for transcription if the parent has a disability.⁴⁶
- According to OSEP, the IDEA permits SEAs to establish procedures for electronic submission of complaints.⁴⁷
- The filing party must simultaneously provide the district with a copy of the complaint.⁴⁸

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

⁴¹ 34 C.F.R. § 300.153(b) (2012). For a case where OSEP concluded that a state’s letter of finding did not meet the requirement of factual findings and legal conclusions for each allegation, see Letter to Harkness, 35 IDELR ¶ 294 (OSEP 2001).

⁴² Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013).

⁴³ *Id.*

⁴⁴ *Id.* (citing 34 C.F.R. § 300.509).

⁴⁵ 34 C.F.R. § 300.662(a).

⁴⁶ Letter to Anonymous, 103 LRP 49610 (OSEP 2003).

⁴⁷ Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013); *see also* Letter to Copenhagen, 50 IDELR ¶ 197 (OSEP 2008).

⁴⁸ 34 C.F.R. § 300.153(d) (2013).

obtain timely resolution of the issues presented.”⁴⁹

- The SEA must resolve but not necessarily investigate every complaint that meets the formal criteria.⁵⁰
- 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.⁵¹
- The SEA is also not obligated to investigate complaints that do not, despite requests for clarification, provide the requisite information.⁵²
- 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.⁵³
- Mediation, as an option, previously was discretionary for CRP.⁵⁴ However, current regulations require states to provide the parent with the opportunity to resolve the complaint under the IDEA’s mediation provision.⁵⁵ 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.⁵⁶

Finally, the regulations require that any resulting settlement be in the form of a legally binding

⁴⁹ Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013).

⁵⁰ 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”). However, this exception from the investigatory obligation does not extend to issues that did not result in corrective action. See, e.g., Letter to Warkomski, 102 LRP 12928 (OSEP 2001).

⁵¹ Letter to Siegel, 33 IDELR ¶ 275 (OSEP 2000).

⁵² See, e.g., *Larsen v. Indep. Sch. Dist. No. 361*, 39 IDELR ¶ 66 (Minn. Ct. App. 2003) (excusing lack of investigation where parent, despite repeated requests, failed to provide sufficient information to determine the issues in relation to those of parent’s due process complaint).

⁵³ 34 C.F.R. § 300.152(a)(3) (2013).

⁵⁴ Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

⁵⁵ 34 C.F.R. § 300.152(a)(3)(ii) (2013). Whether this mediation right extends to the LEA is presumably a matter of state law.

⁵⁶ *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).

agreement.⁵⁷

- SEAs have broad discretion as to the methods for investigation.⁵⁸
- According to OSEP, “it is not inconsistent” with the applicable regulations for the investigator to send a copy of the issues to be investigated to the advocate upon the complainant’s request and for the parent to have an advocate present during the investigation interview.⁵⁹
- If, in the course of its investigation, the SEA uncovers violations not in the complaint, it must enforced its obligations but need not address them in the resolution of the complaint.⁶⁰
- The SEA’s CRP obligation is not limited to procedural compliance.⁶¹ 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.”⁶² 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.”⁶³ 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

⁵⁷ 34 C.F.R. § 300.506(b)(6) (2013).

⁵⁸ See, e.g., *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209 (Minn. Ct. App. 2005); Letter to Miller, EHLR 213:145 (OSERS 1988).

⁵⁹ Letter to Rutten, 104 LRP 1287 (OSEP 2003).

⁶⁰ Letter to Anonymous (OSEP 2003), <http://www2.ed.gov/policy/speced/guid/idea/letters2003-2/redact062603assess2q2003.pdf>

⁶¹ 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.

⁶² Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000).

⁶³ *Id.*

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.”⁶⁴ 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 the IEP team to meet to determine FAPE for the child.”⁶⁵

- According to OSEP, burden of proof does not apply in CRP cases.⁶⁶
- 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.”⁶⁷
- The issue of whether an SEA is obligated to provide the public with copies of CRP complaint investigation reports is governed by state law.⁶⁸ In contrast to their obligation to make IHO decisions available to the public,⁶⁹ the IDEA does not require states to publish CRP decisions. Some state laws reportedly provide this requirement.⁷⁰
- The decision must contain factual findings, legal conclusions, the reasons, and—as covered in

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Letter to Reilly, 64 IDELR ¶ 219 (OSEP 2014) (“the Department believes that it is not consistent with the IDEA regulation for an SEA to treat a State complaint like a due process complaint and assign the burden of proof to either party”).

⁶⁷ Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013).

⁶⁸ Letter to Opuda, 22 IDELR 368 (OSEP 1994).

⁶⁹ 34 C.F.R. § 300.513 (2013).

⁷⁰ Kathleen B. Boundy, State Complaint Basics (n.d.), [http://www.advocacyinstitute.org/isrcr/considerations.](http://www.advocacyinstitute.org/isrcr/considerations.shtml)

the Remedies section *infra*—a specified order in FAPE cases.⁷¹

- The decision must culminate in a definitive conclusion as to whether the agency violated its obligations under the IDEA, not that the information was insufficient for a determination.⁷²
- The deadline for a final decision is 60 days after the filing of the complaint unless “exceptional circumstances.”⁷³ 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.⁷⁴
- Deferral exception: “A [district’s] filing of a due process complaint after the parent has filed a State complaint on the same issues may unreasonably deny a parent the right to use the State complaint process.... The Department strongly believes that it is in the best interest of parents and school districts to respect the parents’ choice of forum for resolution of their disputes.”⁷⁵
- In the situation where the SEA completed its investigation and ordered one or more corrective actions and the parent in the interim filed a for a due process hearing on some or all of the same issues, OSEP’s view is that the SEA may not postpone enforcement of the correction actions, instead assuring their completion as soon as possible within the regulatory maximum of one year from the identification of noncompliance.⁷⁶

⁷¹ 34 C.F.R. § 300.151(b) (2013).

⁷² See, e.g., *Manalansan v. Bd. of Educ. of Baltimore Cnty.*, 35 IDELR ¶ 122 (D. Md. 2001) (ruling that the conclusion whether the district had implemented the child’s IEP were “equivocal, at best, and downright disingenuous, at worst).

⁷³ *Id.* §§ 300.661(a)–(b)(1). For an example where OSEP found the noncompliance with the 60-day timeline inexcusable, see *Letter to Kapel*, 36 IDELR ¶ 240 (OSEP 2001).

⁷⁴ *Indep. Sch. Dist. No. 281 v. Minn. Dep’t of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

⁷⁵ *Dear Colleague Letter*, 65 IDELR ¶ 151 (OSERS/OSEP 2015). OSEP’s deferral policy extends to complaints filed by non-parents and that are in court. See, e.g., *Letter to Suroviec*, 109 LRP 15074 (OSEP 2008).

⁷⁶ *Letter to Deaton*, 65 IDELR ¶ 241 (OSEP 2015).

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.”⁷⁷
- general limitations period: one year⁷⁸
 - 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.”⁷⁹
 - The CRP’s remedial authority extends beyond the child of the complainant to “appropriate future provision of services for all children with disabilities.”⁸⁰
 - 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

⁷⁷ 34 C.F.R. § 300.151 (2013). 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 early recognition of compensatory education as a CRP remedy, see Letter to Murray, 19 IDELR 496 (OSEP 1992). 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).

⁷⁸ 34 C.F.R. § 300.153(c) (2013).

⁷⁹ 71 Fed. Reg. 46,606 (Aug. 14, 2006).

⁸⁰ 34 C.F.R. § 300.151(b) (2013). For examples of corrective actions that are child specific, see Letter to Deaton, 65 IDELR ¶ 241 (OSEP 2015).

parent's child.⁸¹

- However, CRP's corrective action (here partial tuition reimbursement for tutoring) must have direct, not equivocal, nexus to the IDEA deficiency.⁸²

4. Reconsideration and Appeal

- Reconsideration: "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."⁸³
- Appeal: "We have chosen to be silent in the regulations about whether a State complaint 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."⁸⁴ In comparison to the prevailing pattern,⁸⁵ only a minority of states allow for appeals, with variance as to the particular forum.⁸⁶ However, OSEP is not the proper forum (except

⁸¹ *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008); *cf. Indep. Sch. Dist. No. 623 v. Minn. Dep't of Educ.*, 2005 WL 31111963 (Minn. Ct. App. Nov. 22, 2005) (upholding the SEA's remedial authority under CRP extending beyond IDEA and corollary state special education law where consonant with such state law).

⁸² *Indep. Sch. Dist. No. 192 v. Minn. Dep't of Educ.*, 742 N.W.2d 713 (Minn. Ct. App. 2007).

⁸³ 71 Fed. Reg. 46,607 (Aug. 14, 2006).

⁸⁴ *Id.*

⁸⁵ This majority view is that districts do not have a right to judicial appeal of CRP decisions or, more broadly, to challenge the CRP process. See, e.g., *Fairfield-Suisun Unified Sch. Dist. v. Cal. Dep't of Educ.*, 780 F.3d 968 (9th Cir. 2015); *Wolfe v. Lower Merion Sch. Dist.*, 801 A.2d 639 (Pa. Commw. Ct. 2002); *Loudoun Cnty. Sch. Bd. v. Va. Dep't of Educ.*, 612 S.E.2d 210 (Va. Ct. App. 2005) (ruling that CRP is not an adjudication and, under state law, is not subject to judicial appeal); *cf. E. Ramapo Cent. Sch. Dist.*, ___ N.Y.S.3d ___ (App. Div. 2015) (applying to state's regulatory enforcement authority more generally). Additionally, in most states, the state education commissioner is not the proper forum. See, e.g., *Bd. of Educ. v. N.J. Dep't of Educ.*, 945 A.2d 125 (N.J. Ct. App. 2008).

⁸⁶ In this minority of states, the typical avenue for appeal to state court may be a state administrative procedures act. See, e.g., 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). The clearest example is Minnesota, which accounts for most of the case law in this document. As a variation of this avenue, an occasional state allows appeals to certain state, but not federal, courts. See, e.g., *Loudoun Cnty. Sch. Bd. v. Commonwealth of Va. Bd. of Educ.*, 612 S.E.2d 210 (Va. Ct. App. 2005) (appealable to state circuit court); *Va. Office of Protection & Advocacy v. Va. Dep't of Educ.*, 262 F. Supp. 2d 648 (E.D. Va. 2003) (not appealable to federal court); *cf. Bickford v. State Dep't of Educ. & Early Dev.*, 155 F.3d 302 (Alaska 2007) (upholding jurisdiction to review ambiguous, hybrid complaint). Some states allow appeals via the IHO process. See, e.g., *W. Baton Rouge Parish Sch. Bd. v. Deshotel*, 63 IDELR ¶ 35 (M.D. La. 2013); *Grand Rapids Pub. Sch. v. P.C.*, 41 IDELR ¶ 7 (W.D. Mich. 2004); *cf. Southfield Pub. Sch. v. Dep't of Educ.*, 64 IDELR ¶ 50 (Mich. Ct. App. 2014) (requiring exhaustion via IHO process).

where the IDEA regulations specify otherwise).⁸⁷

- Enforcement: As one, perhaps the primary, alternative, the predecessor of OSEP opined that the SEA's withdrawal of IDEA funding from the LEA upon failure to comply with the CRP order is mandatory.⁸⁸ Additionally, the Third Circuit interpreted the IDEA as providing a private right to sue to enforce a CRP order.⁸⁹

5. 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.⁹⁰ The CRP must be part of said notice.⁹¹
- The completion of CRP does not substitute for completion of the IHO process for purposes of the judicial requirement of exhaustion.⁹²
- A CRP report may constitute stay-put during subsequent IHO proceedings.⁹³
- 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.⁹⁴

⁸⁷ 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). For an example of secretarial review, presumably for a case arising before the effective date of these regulations, see Letter to Warkomski, 102 LRP 12928 (OSEP 2001).

⁸⁸ Letter to Weithers, EHLR 211:329 (BEH 1979). For the proper procedure for exercising this mechanism, see Letter to Dunn, 43 IDELR ¶ 141 (OSEP 2004). For judicial review of SEA compliance efforts, see, e.g., A.A. v. Bd. of Educ., 386 F.3d 455 (2d Cir. 2004); M.H. v. Mount Vernon City Sch. Dist., 63 IDELR ¶ 17 (S.D.N.Y. 2014); Jamie S. v. Milwaukee Pub. Sch., 519 F.Supp.2d 870 (E.D. Wis. 2007); *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209 (Minn. Ct. App. 2005).

⁸⁹ *Beth v. Carroll*, 87 F.3d 80 (3d Cir. 1996).

⁹⁰ 34 C.F.R. § 300.504(a)(2) (2013).

⁹¹ *Id.* § 300.504(c)(5).

⁹² See, e.g., *Southern v. Fayette Cnty. Pub. Sch.*, 63 IDELR ¶ 257 (E.D. Ky. 2014); *Motyka v. Howell Pub. Sch.*, 63 IDELR ¶ 154 (E.D. Mich. 2014); *Jenkins v. Butts Cnty. Sch. Dist.*, 58 IDELR ¶ 282 (M.D. Ga. 2012); *Miller v. W. Felician Sch. Bd.*, 51 IDELR ¶ 46 (M. D. La. 2008); *Manning v. Spillane*, 21 IDELR 845 (E.D. Va. 1994). For the limited exception for challenges to policies or practices of generalized applicability contrary to the law, see *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298 (9th Cir. 1992); *Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, 63 IDELR ¶ 39 (E.D. Cal. 2014).

⁹³ *Millay v. Surry Sch. Dep't*, 584 F. Supp. 2d 219 (D. Me. 2008).

⁹⁴ 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.⁹⁵

⁹⁵ 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) and *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).