

DISABILITY JUSTICE

[This is an excerpt from the Education Rights Toolkit]

Tips for Drafting a Complaint

When to File a Formal Complaint

If you believe you or your child’s educational rights have been violated, you can file a formal complaint through the appropriate government agency. Anyone can file a complaint; you don’t necessarily need a lawyer.

If you haven’t already, it may be helpful to formally request in writing exactly what you would like from you or your child’s school and try to resolve your concerns with school administration or district superintendent staff first. If they have repeatedly denied your request, are unwilling to offer a satisfactory resolution, or you have already tried mediation and it was unsuccessful, you may want to file a formal complaint.

If you are already working with an education advocate or attorney, you should check-in with them about your legal options and strategy before filing a complaint.

Jurisdiction and Deadlines

There are several different governmental administrative agencies that you can file a complaint with, but that agency will only consider investigating your complaint if they have jurisdiction over your legal issue.

In some cases, you can file a complaint with more than one agency. It is important to know which agency you should file your complaint with, because each has different complaint procedures and different deadlines. The laws that govern education rights for students with disabilities are the Americans with Disabilities Act (ADA), the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Civil Rights Act, the Colorado Exceptional Children’s Education Act (ECEA), and the Colorado Anti-Discrimination Act (CADA).

See the table below to find out which agency has jurisdiction over your claim and how long you have to file a complaint.

AGENCY	JURISDICTION	DEADLINES	LINK
U.S. Dept of Education, Office for Civil Rights (OCR)	ADA Title II, Sec. 504	Must be filed within 180 days of the alleged violation	https://www2.ed.gov/about/offices/list/ocr/complaintintro.html
CO Dept. of Education (CDE)	IDEA, ECEA, PPRA	Must be filed within 1 year of alleged violation; 2 years for due process	https://www.cde.state.co.us/spedlaw/statecomplaint
Dept. of Justice (DOJ)	Sec. 504, ADA Titles II & III	No specified timeline, but often refers complaints to	https://civilrights.justice.gov/

		OCR which has 180-day limit for filing	
CO Civil Rights Division (CCRD)	CADA	Must be filed within 60 calendar days of the alleged violation	https://socgov07-site.secure.force.com/ColoradoCivilRights/

Process

Although the process and procedure for complaint filing and investigation differ slightly depending on the government agency you file your complaint with, all formal complaints must be in writing – either online or submitted by mail. It is important to carefully read the instructions for each government agency’s complaint process so that you don’t miss a step or deadline. For example, OCR will not even look at your complaint if you don’t submit the required consent form with your complaint.

This is the general process you can expect for most kinds of complaints:

1. **Disagreement:** A student’s educational rights are violated and there is a disagreement about how the school should resolve the issue
2. **Attempted Resolution:** Request made in writing, meeting with school or district staff, mediation but still no satisfactory resolution
3. **File Complaint:** Formal complaint filed with appropriate agency – may send a letter or email confirming receipt of complaint
4. **Response:** In most cases, the school or district will have an opportunity to respond to your complaint. You will receive a copy of their response.
5. **Investigation:** Agency will decide if they are going to begin a formal investigation into your complaint. If they choose not to investigate, you will receive a letter stating their reasoning. In most cases, you can appeal this decision within a specified deadline.
6. **Additional Information:** During the investigation phase, the agency may request additional documents from you or the school, and an investigator may interview you over the phone. Answer any questions truthfully.
7. **Decision:** The agency will write and send you a letter outlining their decision. The decision may include policy changes or recommended services that the school must provide, or it may determine that there was no legal violation.
8. **Appeal:** In some circumstances, you or the school may appeal a decision. If you can appeal, the decision or letter that the government agency sends will give instructions and a deadline that you must follow if you want to appeal.

Elements of a Complaint: The Basics

The easiest way to file a complaint with one of the government agencies mentioned above is to use the online complaint form that can be found at each of the links in the table. The online complaint form has blanks for all the basic information you need to include such as your name, address, date, information about your child and their disability, information about the entity you believe has violated your child’s rights, etc. However, you can also write a letter and send it by mail; just make sure that you include everything listed on the online complaint form.

Elements of a Complaint: The Law

Although you don’t have to be an attorney or an expert to file a complaint, once you have identified which federal agency has jurisdiction over the issue you are writing your complaint about, it will be helpful to

have a basic understanding of the law. You do not need to explain the law in your complaint but understanding your child's rights can help you decide which facts about your case are the most important to include. Reviewing the relevant sections of this Resource Guide is a good place to start.

Elements of a Complaint: The Facts

Informing the government agency about the facts of your case is one of the most important aspects of your complaint. Your complaint can be concise but think of it as telling a story – the investigator will need all the details! There are several parts: the alleged violation of your child's rights, failed efforts to resolve the issue, and your proposed solution for the school to fix the problem.

Describe the violation:

Describe how your child's rights are being violated and the harm that has resulted. For example, if your child is being denied a specific seating arrangement so that she can adequately hear the teacher, describe what it is about your child's disability that necessitates an accommodation (has hearing loss which prevents her from hearing the teacher) and how your child has been harmed due to the school's refusal to accommodate (she has to teach herself the material taught in class and her grades are suffering). The standard that will be used is: if the facts as alleged were true, would there be a violation of the law? This is why it is important to include all relevant facts to show that the school has violated your child's rights.

Detail your efforts to resolve the issue:

Look over any emails, meeting notes, documents, or correspondence you have from your child's school or district. Outline each of your attempts to ask the school to accommodate your child as well as the school's response. Include dates and names of school or district staff you communicated with. It can help to create a timeline to keep track of when the problem started and the school's denial of your requests.

Explain your proposed solution:

Explain how you would like this issue to be resolved and what kind of accommodations, policy changes, or additional services you believe your child is entitled to that would allow them equal access to education at school. The accommodation or change you are seeking must be connected to your child's disability. For example, you could ask that your daughter sit in the front row of each class to ensure that she hears the teacher (connected to her hearing loss disability). Note that even if the government agency investigates your complaint and finds that the school has violated your child's rights, they do not have to adopt or recommend your specific request. They may allow another course of action that is still meant to ensure that your child receives the education they deserve under the law.

TIPS!

- ⇒ Create a timeline
- ⇒ Tell a story
- ⇒ Review meeting notes, emails, and documents
- ⇒ Be specific! Include dates, names of staff, etc.

Thoughts to Consider:

- **Keep track of deadlines!** There are few exceptions that allow you to file a complaint or appeal outside of the given timelines.

- Filing a complaint and waiting for the investigation and decision can be a slow process that takes several months. If you need a fast or immediate resolution for your child, other legal strategies might be a better fit for your situation.
- Double check that you have followed all of the given instructions to file a complaint with the specific government agency. If you miss a step or forget to submit part of the complaint materials, your complaint may be overlooked.
- Don't use legalese or words or terms that you don't understand in your complaint. The facts of your specific case are the most important part.
- Gather and review all the relevant documents, emails, notes, IEP or 504 plans, doctor's notes, and medical records that you have relating to your case. If your complaint is investigated, you may need these documents, and the process will be more efficient if you submit them in a timely manner.
- Filing a complaint with one of the government agencies listed in this handout is free. There are no filing fees.
- **Important!** You or your child may not be retaliated against for filing a complaint. If you file a complaint and believe that your child is being treated poorly by the school because of it, please reach out to an education advocate or staff at the government agency where you filed the complaint.

Disability Justice distributes this material for informational purposes only. It does not constitute legal advice or establish a lawyer-client relationship. For further assistance, contact the phone numbers or internet sites referred to in this publication or seek the counsel of an attorney.