



STATE COMPLAINTS: SUMMARY OF HOW STATES APPLY THE EXCEPTIONAL CIRCUMSTANCES EXTENSION

The following short discussion is provided to assist states in making decisions about when to extend timelines for state complaints. This document is not intended to provide official guidance but as a tool to prompt further state discussion. This document is a summary of information gathered from states participating in the Complaint Investigators Workgroup sponsored by the Mountain Plains Regional Resource Center, state complaint coordinators listserv through the Center for Appropriate Dispute Resolution in Special Education (CADRE) and the Regional Resource Center's (RRC) General Supervision Priority Team's Dispute Resolution Workgroup which also includes representatives from the Regional Parent TA Centers.

RELEVANT REGULATION

The Federal regulations outline the requirements for extending the 60-day time limit for investigating state administrative complaints as follows:

The SEA's procedures described in paragraph (a) of this section also must –

- (1) Permit an extension of the time limit under paragraph (a) of this section **only if –**
 - (i) **Exceptional circumstances exist with respect to a particular complaint; or**
 - (ii) The parent (or an individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State.

34 C.F.R. §300.152(b) (*emphasis added*).

DISCUSSION:

Introduction

All state complaints start with the same time frame. The 60-day time limit begins the day the complaint is received by the state. Once the complaint is received

and the timeline commences, the first step the state must undertake is to determine if the complaint meets the requirements of 34 C.F.R. §300.153. Only complaints meeting these minimum requirements will be investigated. Pursuant to 34 C.F.R. §300.152(a) as paraphrased below, an SEA has 60 days after the complaint is filed to:

- (1) Carry out an independent on-site investigation, if necessary;
- (2) Give the complainant the opportunity to submit additional information about the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint;
- (4) Review all relevant information and make an independent determination; and
- (5) Issue a written decision.

Section 152(b) referenced above contains three important elements for understanding how states are interpreting the requirement of exceptional circumstances: “exceptional,” “with respect to a particular complaint,” and “or”.

A. “Exceptional”

“Exceptional” means that extensions to the time limit are the exception rather than the rule. Although “**exceptional circumstances**” is not defined, the term “exceptional” can be understood by its common or ordinary meaning.

Dictionaries define the term “exceptional” as follows:

- “Unusual, not typical,” according to the Oxford American Dictionary.
- “Exceeding: far beyond what is usual in magnitude or degree,” according to the Princeton Web Dictionary.

B. “...with respect to a particular complaint”

The second critical element from the statute is “**...with respect to a particular complaint.**” The phrase “with respect to a particular complaint” further narrows the exceptional circumstances extension to circumstances relevant to the *current* complaint only, and not to circumstances that might potentially affect all complaints. Thus, systems issues, like inadequate staffing or the receipt of unusually high numbers of complaints, would not be considered exceptional circumstances.

In addition, state personnel and workgroup members agreed that submission of additional information by the complainant, in and of itself, is not to be considered an exceptional circumstance, as additional submissions are routinely encouraged in all complaints. However, the Comments to the Federal regulation note, “If the information submitted by the complainant were on a different or unrelated incident, the new information would be treated as a separate complaint”. 71 Federal Register, p. 46603.

The Comments also point out that a public agency's proposal to resolve the complaint does not, in and of itself, appear to meet the exceptional circumstances requirement. "The 60-day time limit to resolve a complaint does not change if the public agency decides to respond to the complaint with a proposal to resolve the complaint. 71 Federal Register, p. 46603.

C. "or"

The third key element in the regulations is the word "**or.**" The word "or" signifies that either paragraph (i) or paragraph (ii) is an acceptable reason to permit an extension of the time limit. States reported that they considered mediation, or other alternative means of dispute resolution, to be a second acceptable reason to extend the timeline.

State personnel and workgroup members differentiated between informal efforts by state agencies to resolve issues raised in a complaint and the statutory reference to mediation and other means of alternative dispute resolution. States reported that informal agency efforts must occur during the 60-day time limit and could not delay the commencement of the timeline. If the parties specifically agree to extend the time limit to engage in mediation or other means of alternative dispute resolution, then states considered this an acceptable extension under paragraph (ii).

SUMMARY:

By definition, "exceptional circumstances" would mean those circumstances that do not normally occur, and "with respect to a particular complaint" would mean circumstances unique to the filed complaint. Some states reported that they maintained sufficient documentation to satisfy both aspects of the extension limitation: exceptional circumstances **and** how they apply to a specific complaint. Although not required, when states extended timelines, the extension was time-specific and clearly stated a new decision deadline date.

The table below is a summary of three examples that states said justified an extension of the time limit, and three examples that states said were insufficient justification for an extension.

3 GOOD REASONS . . .

TO GRANT AN EXTENSION OF THE 60-DAY TIME LIMIT	TO DENY AN EXTENSION OF THE 60-DAY TIME LIMIT
Unexpected unavailability of a party indispensable to the investigation (e.g., a parent becomes unavailable due to illness).	Waiting for a decision in a pending Section 504 complaint.
State complaints that reveal systemic issues of a magnitude necessitating an unusually comprehensive investigation in order to fully and fairly resolve all issues.	State staff shortages or heavy caseloads, school vacations, and breaks.
Short delay due to inclement weather necessitating postponement of already scheduled interviews or on-site visits.	Dispute resolution activities WITHOUT an agreement of the parties.

The General Supervision Priority Team's Dispute Resolution Workgroup developed this document for the Regional Resource Center Program (RRCP) with members from the Regional Resource Centers, Center for Appropriate Dispute Resolution in Special Education, and Regional Parent Technical Assistance Centers .

March 2010