

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 10 PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS
PART 3 COMPLAINT PROCEDURE

6.10.3.1 ISSUING AGENCY: Public Education Department
[12-31-98, 07-30-99; 6.10.3.1 NMAC - Rn, 6 NMAC 1.5.1.1, 11-30-00; A, 10-17-05]

6.10.3.2 SCOPE: Public education department, local educational agencies, charter schools, public agencies, or consortia of agencies.
[12-31-98; 6.10.3.2 NMAC - Rn, 6 NMAC 1.5.1.2 & A, 11-30-00; A, 10-17-05]

6.10.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-9-3 NMSA 1978; 20 US Code Sections 1681 et seq; 34 Code of Federal Regulations Parts 106 and 299.
[12-31-98; 6.10.3.3 NMAC - Rn, 6 NMAC 1.5.1.3 & A, 11-30-00; A, 10-17-05]

6.10.3.4 DURATION: Permanent
[12-31-98; 6.10.3.4 NMAC - Rn, 6 NMAC 1.5.1.4, 11-30-00]

6.10.3.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section.
[12-31-98; 6.10.3.5 NMAC - Rn, 6 NMAC 1.5.1.5 & A, 11-30-00]

6.10.3.6 OBJECTIVE: This rule establishes written procedures for:

- A. receiving and resolving a complaint from an individual or organization that the public education department or an agency or consortium of agencies is violating a federal statute or regulation that applies to an applicable or covered program;
- B. reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint;
- C. conducting an independent on-site investigation of a complaint if the public education department determines that an on-site investigation is necessary; and
- D. resolving complaints of discrimination based on sex regarding educational programs of the public education department that are alleged to be a violation of Title IX of the Education Amendments of 1972.

[12-31-98; 6.10.3.6 NMAC - Rn, 6 NMAC 1.5.1.6 & A, 11-30-00; A, 10-17-05]
[Complaints alleging violations of statutes or regulations governing special education and related services for children with disabilities are covered under Subsection H of 6.31.2.13 NMAC.]

6.10.3.7 DEFINITIONS:

- A. "Applicable program" means any of the following Elementary and Secondary Education Act (20 U.S.C. 2701 et. seq.) programs:
 - (1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies);
 - (2) Part B of Title I (Student Reading Skills Improvement Grants);
 - (3) Part C of Title I (Education of Migratory Children);
 - (4) Part D of Title I (Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk);
 - (5) Title II (Preparing, Training, and Recruiting High Quality Teachers and Principals);
 - (6) Language Instruction for Limited English Proficient and Immigrant Students;
 - (7) Title IV (21st Century Schools (other than Subpart 2 of Part A, National Programs);
 - (8) Title V (Promoting Informed Parental Choice and Innovative Programs) (other than Subpart 8 and Subpart 12); and
 - (9) Part A of Title VII (Indian, Native Hawaiian, and Alaska Native Education).
- B. "Covered program" means a federal program not defined as an applicable program for which the State educational agency is required to provide a complaint procedure and for which a complaint procedure is not otherwise provided by public education department rule.
- C. "Department" means the public education department.

D. "Title IX" means Title IX of the Education Amendments of 1972, codified as 20 US Code Sections 1681 et seq, which provides in part that, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
[12-31-98; 6.10.3.7 NMAC - Rn, 6 NMAC 1.5.1.7 & A, 11-30-00; A, 10-17-05]

6.10.3.8 FILING A COMPLAINT: The department will accept and investigate complaints from organizations or individuals with respect to applicable or covered programs. The complaint must:

- A. be written;
- B. be signed by the complaining party or his or her designated representative;
- C. contain a statement that the department or an agency or consortium of agencies has violated a requirement of a federal statute or regulation that applies to the program;
- D. contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and
- E. in the case of Title IX, must contain a statement that the department or any of its employees, has discriminated against the complainant on the basis of sex in regard to an education program or activity operated or managed by the department given that the department is a recipient of federal financial assistance.

[12-31-98; 6.10.3.8 NMAC - Rn, 6 NMAC 1.5.1.8 & A, 11-30-00; A, 10-17-05]

6.10.3.9 COMPLAINTS AGAINST AN AGENCY OR CONSORTIUM OF AGENCIES:

A. Impartial review. Upon receipt of a complaint which meets the requirements of Section 6.10.3.8 of this rule, the department will:

- (1) acknowledge receipt of the complaint in writing;
- (2) provide written notice to the agency or consortium of agencies against which the violation has been alleged;
- (3) conduct an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if determined necessary by the department;
- (4) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- (5) review all relevant information and make an independent determination as to whether the agency or consortium of agencies is violating a requirement of an applicable federal statute or regulation.

B. Decision. A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be issued by the secretary of education or designee and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. Such decision will further include:

- (1) procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the time line for correction and the possible consequences for continued noncompliance;
- (2) a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion; complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the department issues its decision; an appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

C. Failure or refusal to comply. If the agency or consortium of agencies fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal statute or regulation. The department will retain jurisdiction over the issue of noncompliance with the law or regulations and will retain jurisdiction over the implementation of any corrective action required.

D. Nothing herein shall preclude the availability of an informal resolution between the complainant and the agency or consortium of agencies, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation.

[12-31-98; 6.10.3.9 NMAC - Rn, 6 NMAC 1.5.1.9 & A, 11-30-00; A, 10-17-05]

6.10.3.10 COMPLAINTS AGAINST THE DEPARTMENT:

A. If the complaint concerns a violation by the department and meets the applicable requirements of 6.10.3.8 NMAC, the secretary of education or designee will appoint an impartial person or impartial persons to conduct an investigation.

B. Investigation. The person or persons appointed pursuant to this section will:

- (1) acknowledge receipt of the complaint in writing;
- (2) undertake an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if necessary;
- (3) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- (4) review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable federal statute or regulation.

C. Decision. A written decision, including findings of fact, conclusions, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this section and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. The decision will include a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion. Complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the decision is issued. An appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

D. Nothing herein shall preclude the availability of an informal resolution between the complainant and the department, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation.
[12-31-98; 6.10.3.10 NMAC - Rn, 6 NMAC 1.5.1.10 & A, 11-30-00; A, 10-17-05]

6.10.3.11 EXTENSION OF TIME LIMIT: An extension of the time limit under 6.10.3.9 NMAC and 6.10.3.10 NMAC of this rule will be permitted by the secretary of education or designee only if exceptional circumstances exist with respect to a particular complaint.
[12-31-98; 6.10.3.11 NMAC - Rn, 6 NMAC 1.5.1.11 & A, 11-30-00; A, 10-17-05]

6.10.3.12 NOTICE TO PARENTS: Public school districts, charter schools and agencies will disseminate, free of charge, adequate information about the complaint procedures to parents of students, and appropriate private school officials or representatives.
[6.10.3.12 NMAC - N, 11-30-00; A, 10-17-05]

6.10.3.13 CONFLICTS: If any statute or regulation governing any federal program subject to this rule affords procedural rights to a complainant exceeding those set forth in this rule, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of the complaint in such a case, the secretary of education or designee shall identify the procedures applicable to that complaint.
[12-31-98; 6.10.3.13 NMAC - Rn, 6 NMAC 1.5.1.12 & A, 11-30-00; A, 10-17-05]

HISTORY OF 6.10.3 NMAC:

PRE-NMAC HISTORY: The material in this Part is derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 85-1, Complaint Procedure, filed April 17, 1985 and State Board of Education (SBE) Regulation No. 94-4, Complaint Procedure, filed October 3, 1994.