



# State-Level Special Education Complaint Fact Sheet

## State-Level Complaint

The state-level complaint is available to parents/families, third party organizations or individuals that believe a district, school or charter school has not followed federal or state laws or regulations regarding programs for children with disabilities identified under the Individuals with Disabilities Education Act (IDEA). When a state-level complaint is received, the Public Education Department's (PED) Special Education Division (SED) assigns an impartial or unbiased complaint investigator. The SED issues an investigation report, referred to as a "Complaint Resolution Report," within 60 days from the date the complaint was received unless the timeline has been extended. If the district, school or charter school is found to not have followed the laws, the SED will inform it in writing and a Corrective Action Plan (CAP) will be written to address the noncompliance with the laws.

## Alternative Dispute Resolution

Mediation or a Facilitated Individualized Education Program meeting (FIEP) are both considered ways to resolve misunderstandings called alternative dispute resolution (ADR). Both the parent/guardian and the district/charter involved in a state-level complaint are encouraged to participate in ADR in order to try and resolve the misunderstanding or dispute as informally as possible. ADR is offered to both parents/guardians and districts/charter schools at no cost to the parents/guardians. A successful ADR session will result in an agreement and withdrawal of the complaint. If ADR is not successful, the SED will investigate the complaint. ADR is available to a third-party organization or person or to parties alleging systemic noncompliance; however, only a child's parent or legal guardian has the legal right to make decisions about that child's education and, therefore, may participate in ADR on behalf of that child.

## Limits to the Investigation

Federal and state laws limit the investigation of state-level complaints to violations that occurred not more than one year prior to the date the complaint is received by the SED. State-level complaints do not investigate personnel or ethics issues, which should be directed to the New Mexico Public Education Department's Investigations Division. Complaints alleging discrimination should be directed to the U.S. Department of Education's Office of Civil Rights.

## Third Party and Systemic Special Education Complaints

State-level complaints alleging systemic noncompliance affecting a number of children may also be filed with the SED. In both third party complaints and systemic complaints, the complainant is not permitted to review or obtain copies of students' education records without the consent of the child's parent(s).

## How to file a State-Level Complaint

Complaints may be submitted by mail or fax on a state-level complaint form available on the SED website or in a signed letter containing all required information. A complaint must include the following information to be considered a valid complaint:

- Complaints must be in writing;
- Complaints must be submitted to the SED or, in the case of a complaint filed against the PED, the complaint must be filed with the New Mexico Secretary of Education;
- Complaints must be signed by the person filing the complaint or a designated representative;
- Complaints must include contact information for the person filing the complaint;
- Complaints regarding a specific child must state the name and address of the child, the school the child is attending, and a description of the child's problem;
- Complaints must include a description of the facts on which the allegations of violations are based;
- Complaints must include a statement that the district/charter/department has violated an applicable federal regulation or state special education rule, but need not cite which regulation or rule has allegedly been violated;
- Complaints must include a description of a proposed resolution of the problem, to the extent known;
- Complaints must allege violations that have occurred not more than one year prior to the date the complaint is received; and
- The person filing the complaint must provide a copy of the complaint to the district or charter school at the same time the complaint is filed with the SED.

If a complaint does not meet these requirements, the complaint will be declined and a written explanation will be issued. The person filing the complaint may correct the mistakes and resubmit the complaint to the SED.

## I filed a State-level complaint. What happens next?

The SED will send the person filing the complaint and the district or charter school a letter acknowledging that it received the complaint, assigning a complaint investigator, identifying the issues to be investigated, offering ADR options, identifying the issues for investigation and requesting documents and information needed for the investigation. The person filing the complaint may submit additional documents and information in response to the SED's letter. The complaint investigator has the authority to contact the person filing the complaint, the district or charter school for additional information, if needed. Unless the complaint is resolved through ADR, the SED will investigate the complaint, issue a Complaint Resolution Report and, if warranted, impose a Corrective Action Plan. If the person who filed the complaint signs a complaint withdrawal form before the report is issued, the investigation will stop and the SED will dismiss the state-level complaint.

If you have questions about the state-level complaint process, please feel free to contact the Special Education Division at (505) 827-1457.