

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. “**Homeless** children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children (as such term is defined in Section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as **homeless** for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

E. “School of origin” means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

F. “LEA” means local education agency.

G. “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; A, 11-30-06]

6.10.3.8 FILING A COMPLAINT:

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

(1) be written;

(2) be signed by the complaining party or his or her designated representative;

(3) 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;

(4) contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and

(5) 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.

B. In the case of a complaint filed pursuant to the McKinney-Vento Education for **Homeless** Children and Youth Act relating to a dispute not resolved at the district level, the LEA shall forward the department’s dispute resolution process form along with the LEA’s written explanation of the school’s decision to the department’s **homeless** liaison within 5 calendar days of the LEA’s final decision; The filing of these documents shall be deemed to satisfy the requirements of Paragraphs (1) through (4) of Subsection A of this section. The parent, guardian or student may also initiate the appeal by providing copies of these documents to the department’s **homeless** liaison.

[12-31-98; 6.10.3.8 NMAC - Rn, 6 NMAC 1.5.1.8 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

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. In the case of a complaint filed pursuant to the McKinney-Vento Education for **Homeless** Children and Youth Act, the decision must be issued within thirty (30) calendar days. 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. Informal resolution.

(1) 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.

(2) In the case of a complaint filed pursuant to the McKinney-Vento Education for **Homeless** Children and Youth Act, each district shall have a written **policy** for concerned parties to resolve disputes, and every effort should be made to resolve the dispute at the district level. The district level procedure must adhere to the following parameters:

(a) The dispute resolution process shall be as informal and accessible as possible and the process should be able to be initiated directly at the school of choice as well as at the district level or with the LEA **homeless** liaison. Every LEA is required to have a **homeless** liaison.

(b) When a dispute arises over school selection or enrollment, pending resolution of the dispute, the **homeless** child or youth must be immediately enrolled in the school in which the child or youth is seeking enrollment, and provided all services to which student is entitled.

(c) The district must create and provide a simply stated notice of rights and provide that notice of rights to the student, parent or guardian, in a language the student, parent or guardian can understand. The notice of rights shall contain:

(i) contact information for the LEA **homeless** liaison and the state coordinator, with a brief description of their roles;

(ii) a step by step description of how to make use of the dispute resolution process;

(iii) notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities;

(iv) notice of the right to obtain the assistance of advocates or attorneys;

(v) notice of the right to appeal to the department if the district-level resolution is not satisfactory;

(vi) the timelines for resolving district and department-level appeals;

(vii) notice of the right to provide written or oral documentation to support their position; and

(viii) a simple form that parents, guardians or the student can complete and return to the school to initiate the process.

(d) The school with the dispute must provide notice of the dispute to the LEA's **homeless** liaison using the department's dispute resolution process form which requires the following information:

(i) school name, address, phone and fax number;
(ii) student's name, identification number, grade, and address;
(iii) parent, guardian or complaining party's name, relationship to student, address, and phone number;

(iv) whether student lives in a shelter;
(v) name of school child or youth chooses to be enrolled in pending resolution of dispute;

(vi) whether school enrolled in is school of origin;
(vii) reason for complaint;
(viii) signature of parent guardian or complaining party; and
(ix) the principal's actions on the complaint.

(e) The district will have 10 calendar days to review its initial determination and make a final decision as to the position taken.

(f) The district's final decision must be in writing and must state all factual information upon which it is based and the legal basis in support thereof. If the final decision of the district is adverse to the parent, guardian or student, the decision, along with the department's dispute resolution process form, must be forwarded by the LEA **homeless** liaison to the department's **homeless** liaison within 5 calendar days of issuing its final decision.

[12-31-98; 6.10.3.9 NMAC - Rn, 6 NMAC 1.5.1.9 & A, 11-30-00; A, 10-17-05, A, 11-30-06]

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.