

12.00

COMPLAINT PROCEDURES

12.01 FILING A COMPLAINT

An organization or an individual may file a written, signed complaint with the Arkansas Department of Education, or the complaint may be made in person by recorded deposition or statement. Such complaint may be communicated directly or indirectly via other state or federal agencies. A complaint must include -

- 12.01.1** A statement that a public agency has violated a requirement of Part B of IDEA or its implementing federal regulations, or a requirement of these State regulations; and
- 12.01.2** The specific facts on which the statement is based.
- 12.01.3** The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.660(a) and these regulations unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under 34 CFR 300.660(a) and these regulations.

12.02 PRELIMINARY ACTION

- 12.02.1** Complaints received pursuant to § 12.01 of these regulations shall be referred to the Arkansas Department of Education, Special Education Unit for subsequent investigation and resolution within sixty (60) calendar days after receipt of the complaint, except that an extension of the time line may be granted if it is determined by the Associate Director that exceptional circumstances exist with respect to a particular complaint.
- 12.02.2** Within ten (10) business days of receipt of a written complaint, the Associate Director shall have designated a team to conduct an investigation of the allegations. The complainant and the party under investigation shall be notified in writing of the designated team members and the general investigation process.

12.03 TEAM COMPOSITION

- 12.03.1** Each investigative team shall include -
 - 12.03.1.1** At least two (2) but no more than five (5) persons; and
 - 12.03.1.2** Any person whom the Associate Director deems necessary to expedite the investigation and resolve the issues of the complaint.

12.04 TIME LINE

The investigation shall be completed and a written report issued of the findings, decisions, and corrective actions, if any, within sixty (60) calendar days of receipt of the complaint, unless an extension of the time line is granted by the Associate Director. Should an extension of the time line be necessary, the parties to the investigation shall be notified in writing of the reasons for the time line extension and a projected date for issuance of the report.

12.05 FACT-FINDING ACTIVITIES

- 12.05.1** The complaint investigation team may use any of a variety of fact-finding activities in the course of a complaint investigation, including, but not limited to -
 - 12.05.1.1** On-site data collection;
 - 12.05.1.2** Off-site data collection;
 - 12.05.1.3** Interviews; and/or
 - 12.05.1.4** Personal observation.
- 12.05.2** The complainant shall be provided an opportunity to submit additional information, either orally or in writing, concerning the allegations in the complaint.

12.06 COMPLAINT INVESTIGATION REPORT

- 12.06.1** At the close of a complaint investigation, the relevant information will be reviewed by the investigative team, and the team will make an independent determination regarding the allegation(s) against the agency.
- 12.06.2** The results of the investigation shall be included in a written report, which shall include -
 - 12.06.2.1** A summary of the substance of the allegation(s) in the complaint;
 - 12.06.2.2** The name of the individual, group, or agency that filed the complaint;
 - 12.06.2.3** A summary of the investigative activities conducted by the team;
 - 12.06.2.4** A summary of the findings of fact;
 - 12.06.2.5** The conclusions reached by the team regarding the allegation(s) made by the complainant;
 - 12.06.2.6** The basis for the decision(s);
 - 12.06.2.7** A statement of any necessary corrective action(s) to be taken by the agency against whom the complaint was filed (including, as appropriate, the awarding of monetary reimbursement and appropriate future provision of services

for all children with disabilities), and/or technical assistance activities and negotiations; and

12.06.2.8 The documentation needed to establish that the corrective action ordered in the report have been initiated.

12.06.3 A copy of the written report and decision(s) shall be forwarded to the complainant and the party under investigation within sixty (60) calendar days of receipt of the complaint by the Associate Director, or by the terms of the time line extension if one was granted.

12.07 COMPLAINT SET-ASIDE

12.07.1 Complaints filed under this section, and due process hearings under 34 CFR 300.507 and 300.520 - 300.528 and Section 10.00 of these regulations -

12.07.1.1 If a written complaint is received that is also the subject of a due process hearing under 34 CFR 300.507 or 300.520-300.528 and Section 10.00 of these regulations, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time line and procedures set out in these regulations.

12.07.1.2 If an issue is raised in a complaint filed under this part that has previously been decided in a due process hearing involving the same parties -

- A.** The hearing decision is binding; and
- B.** The SEA must inform the complainant to that effect.

12.07.1.3 A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA.

