

**CONFLICT RESOLUTION**  
**IN SPECIAL EDUCATION**

**COMPLAINTS**

North Dakota Department of Public Instruction  
Office of Special Education  
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Equal education opportunity is a priority of the ND Department of Public Instruction.

## **Complaint Management Procedures**

### **Intake Procedures**

Individuals or organizations may file signed written complaints with the ND Department of Public Instruction, Office of Special Education, if they believe an agency responsible for the provision of special education services is not in compliance with state and federal law or regulations in conjunction with the Individuals with Disabilities Education Act (IDEA) Part B. If an individual or parent contacts the Department with concerns regarding an allegation prior to submitting the required letter of complaint, the Special Education staff can suggest any of the following to assist in seeking a remedy to the situation:

- Help the party identify and frame the issue to discuss with the child's IEP team, case manager, building principal or special education staff/administrator;
- Request the IEP team reconvene to discuss the issue;
- Contact a local advocacy or parent organization for assistance/support;
- Provide guidance document references for questions pertaining to the allegation in question;
- Offer to contact the case manager, building principal or director only if appropriate;
- Discuss the conflict resolution options of mediation, complaints and due process.

For any letter of complaint to initiate the complaint process, the letter must:

- be addressed to the Director of Special Education;
- allege a violation of IDEA, but need not identify the specific law or regulation involved;
- must be signed by the complainant and include an address and phone number (anonymous complaints will not be processed);
- must allege a violation that occurred not more than one year prior to the date the complaint is received unless a longer period is reasonable because the violation is continuing, but no more than three years;
- include what information the complainant believes is relevant to share and can include copies of any student documents.

Once the Office of Special Education receives a formal letter of complaint citing an allegation, the process must be initiated – at that point, technical assistance by staff to resolve the conflict/dispute between parties should be discontinued – the process of complaint resolution by investigation must proceed.

Prior to receiving a letter alleging an IDEA violation, any telephone contact with any party may result in technical assistance from our office. Communication at the local level, using the IEP team process, is strongly encouraged. Often the caller needs assistance framing the issues and knowing who to follow up with and what action may be appropriate to resolve the issue.

Once the investigation timeframe (60 days) has begun, the Regional Coordinator should have no contact with the parties - all inquiries or questions should be addressed to the investigator, as the information may be relevant to the investigation process.

As a general rule, it is desirable to direct concerned persons to those at the local level who can best address their issues. If that has already been done and the party is still concerned, the

conflict resolution options can be discussed. The option of mediation can be requested at any time there is a concern regarding the special education services. The person at the department who is consulting with a concerned party should not impede an individual's right to initiate a formal complaint. Caution must be taken to not inappropriately hinder exercise of this federally guaranteed option.

A complainant may withdraw their letter of complaint at any time prior to the 60 day deadline for investigation. This request must be a written letter to the Director of Special Education and request the original complaint be withdrawn; all investigation will end at that time and all parties notified of such. If the investigation timeframe has revealed any violation, any finding of fact and corrective actions will be prepared and sent to the local unit director under separate cover.

In order to file a formal complaint a person must submit a signed letter to the Office of Special Education. Once received and date stamped, the following steps must be taken without delay by the Portfolio Coordinator:

- Review the letter to verify an IDEA violation is alleged; if not, return to sender with suggestions (consult with complaint investigators and Director if any questions or concerns exist). NOTE: IDEA regulations (34CFR 300.662c) specify that any complaint must allege a violation occurred not more than one year prior to the date the complaint is received unless a longer period is reasonable because the violation is continuing;
- If valid, contact the complaint investigator, noting the 60-day limitation;
- Prepare correspondence as to the complaint and investigation process and send to complainant, school district superintendent, principal and special education director\* (see APPENDIX and Complaint Checklist for sample letters);
- Direct support staff to log complaint, start a file, prepare copies and flag calendar for 20 day (must have initial contact with all parties) and 60 day (investigation timeframe complete) timeframes;
- Create staff team for complaint staffings and notify;

\* A copy of the letter of complaint is shared with the other parties and the Special Education Coordinator. Copies are also kept in the created Special Education file.

Once the State Education Agency (SEA) is made aware of an IDEA violation (as alleged in the complaint letter or determined in the investigation phase) and determines the violation is of essential significance to the education of the individual child, the SEA may exercise their right to issue a preliminary finding of fact and may mandate specified steps towards resolution pending the completion of the complaint investigation under its 60 day timeframe.

### **Complaint Investigation Procedures**

Within 20 working days of receipt of the complaint, the investigator will contact the complainant by phone or in person to give the complainant an opportunity to submit additional information about the allegations in the complaint. The investigator will also contact other parties involved to determine whether an on-site investigation of the complaint is necessary.

A preliminary step in the investigation of the complaint is a careful analysis of the complainant's letter to Special Education. Identification of the issue or issues made in the letter can be done in

consultation with the Director of Special Education and other departmental employees. Subsequent to this task is a determination of which regulations of IDEA Part B have been allegedly violated. The complaint investigator should then thoroughly familiarize herself/himself with the wording and intent of the various regulations and concepts of the law.

As noted above, within 20 working days of receipt of the complaint the investigator will interview by phone or in person the complainant to give the complainant an opportunity to submit additional information about the allegations in the complaint. The investigator will also interview other parties involved and make a determination of whether an on-site investigation of the complaint is necessary. Adhering to time lines is critical in a complaint investigation. It is important to contact the complainant at the earliest possible point within the 60 day limit, and no later than 20 working days after receipt of the complaint according to IDEA regulations. The determination of whether to conduct the investigation on-site or by telephone must be made on a case-by-case basis. If the requested information is readily shared by telephone, mail or facsimile, there may not be a need to conduct an on-site investigation. It is possible to use both telephone and on-site interviews in the investigation of a complaint. A key question for any investigator to address is *do I have all the necessary information to determine the facts of the case and make accurate conclusions?* If the investigator is unable to answer that question satisfactorily, it is advisable to ask additional questions of any party to the complaint or to request additional documents for analysis.

Whenever *any* contacts are made with any party to a complaint, documentation of that contact should occur. It is helpful to record the name of the person contacted, date, time, and notes regarding the discussion that occurred. Each contact should be kept in a log and stored either electronically or in the complaint investigation file, or both.

Prior to formally interviewing any party involved in a complaint it is advisable to arrange the interview in advance. This allows the investigator and the person being interviewed time to focus on the issues of concern without distractions. This practice is recommended for both on-site interviews and those conducted by telephone. Advance arrangements will also alert parties to possible confidentiality issues, such as in teacher request to have a representative from NDEA attend the interview.

It is critical to carefully prepare for an interview by thoroughly analyzing the issues cited by the complainant. From that analysis should come the questions to be answered, and the sequence of those questions. The investigator should decide what information is necessary to provide her/him with the facts to substantiate or refute the allegations of the complainant. The investigator must also determine which individuals to interview and the sequence of those interviews. Generally, it is advisable to begin the interviews with the person who wrote the letter of complaint. Throughout the interviews, if documents such as assessment reports, Individualized Education Programs (IEPs), meeting notes, etc., are cited, it is the prerogative of the investigator to request copies of those documents. As an employee of the state education agency, a complaint investigator does have access to confidential student records held in North Dakota public schools.

It is important to clarify a significant distinction between the complaint process for special education and a due process hearing. The complaint process is not a judicial proceeding and therefore, an individual being interviewed is not under oath. Consequently, the rules of evidence do not truly apply to the complaint process. In a due process hearing individuals present their position under oath before an administrative hearing officer. They are subject to the laws for perjury, and the rules of evidence do apply.

The United States Department of Education Office of Special Education Programs does not have a position regarding who may or may not be present during an interview in a complaint investigation. It is the Department's policy that any interview includes only the investigator and the interviewee. Exceptions may be made on a case-by-case basis, such as for a parent advocate or school administrator. The presence of a third party at the interview may trigger confidentiality safeguards found in IDEA and FERPA. This is to ensure that no pressure is being applied to the one being interviewed by family members or supervisors and associates. The person must be free to respond honestly to questions without fear of consequences should those responses contradict others in a family, school, or special education unit. If there is a request to have others present during an interview, the investigator should address the need to allow the person being interviewed to respond freely and honestly without interruption, and without fear of retaliation.

At any time during an interview it is permissible to stop, obtain additional information or consultation with the Office of Special Education, and resume when appropriate. If the investigator feels it is imperative to obtain documents prior to proceeding with the interview, that is acceptable.

The investigator should maintain a professional and formal demeanor whenever any contacts are made with the parties to a complaint. Although tangential issues may arise during interviews, it is advisable to focus on the issues of concern cited in the letter of complaint.

Upon completion of the interview it is helpful to summarize the investigator's understanding of the concerns as stated by the person being interviewed. Through a paraphrasing of the person's comments the investigator should seek to validate that a clear understanding of a person's position has been established.

### **The Complaint Investigation Report**

Upon completion of interviews and review of pertinent documents, the investigator must write the complaint investigation report. The complaint investigation report will list all interviews, records reviewed and applicable regulations.

It is necessary to include findings of facts in the report. Great care must be taken to be certain that only facts for which there is sufficient evidence be included. The findings of facts are followed by the conclusions. Each conclusion must indicate if there is a violation of IDEA Part B and the regulations and the basis for the conclusion. The conclusions should be written in a straightforward manner reflecting an interpretation of the intent of the regulation. The conclusions must be supported by the facts of the case. The staffing team determines the findings of fact, conclusions and any corrective actions. The staffing team consists of the Director of Special Education (or designee), complaint investigator and the Regional Coordinator.

A complaint investigation report may or may not contain corrective actions depending on the outcome of the investigation. Corrective actions are the procedures necessary for effective implementation of the state education agency's final decision. They may include such activities as technical assistance involving the Department of Public Instruction, in-service instruction for specific individuals or an entire school or special education unit, policy and procedure revision or development, or compensatory services. ND Century Code (15-40.1-07.6) does allow DPI authority to withhold Average Daily Membership (ADM) funds for the child in question as a corrective action. The corrective actions should be prescriptive for the specific violations determined in each complaint. It is important to include in each corrective action the time line for completion of the corrective action, and how completion will be verified and reported to the Department of Public Instruction. If appropriate, the complaint corrective actions can also extend beyond the individual child to include all students in the building, district or unit (IDEA 34CFR 300.660 b2).

A cover letter is prepared for all parties and signed by the Director of Special Education; the complaint investigation report is included. The complaint investigation report is signed and dated by the investigator. The original report and a copy of the cover letter will be placed in the file, with copies to all parties (complainant, special education director, building principal and district superintendent).

As this report concludes the investigation phase of the complaint, any contact with the Department should be directed to the Regional Coordinator who will provide technical assistance to the corrective action process if violations were identified. Should extenuating circumstances prevent completion of corrective actions, a written request for an extension can be sent from the special education unit director to the regional coordinator at least one week prior to the due date. A proposed date for completion of the corrective action should be identified; this request can be approved or denied by the regional coordinator.

For ease in management of the complaint corrective actions by the Regional Coordinator, an internal complaint corrective actions worksheet will be completed which can be used by the Coordinator for notes, etc. This is not a formal part of the Special Education file. All correspondence regarding required corrective action should be shared between the office staff and field personnel via standard mail and not email for the protection of confidential information relative to student name and personal information. Once all complaint corrective actions are completed to the expectation of the Regional Coordinator, the Portfolio Coordinator is notified, who sends the final complaint closure letter to all parties. The log is appropriately documented and the special education file closed.

### **Data Destruction Policy**

Documents obtained or created during a complaint investigation will be kept as part of the DPI complaint file upon completion of an investigation and submission of the report to all parties. Documents may include IEP's, Assessment reports, meeting notes, draft reports that identify exhibit references and interviews and interview notes. The complaint file will be kept for six (6) years according to the policies and procedures of the ND Office of Management and Budget records management department.