

MAINE STATE LEGISLATURE

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MAINE
COMPLAINT MANAGEMENT SYSTEM
GUIDELINES

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- Commissioner -
Department of Education
State House Station #23
Augusta, Maine 04333

September 10, 1991

1. INTRODUCTION

The Individuals with Disabilities Education Act, PL 101-476, (formerly the Education of All Handicapped Children Act, PL 94-142) establishes the right of parents to challenge any decision made by a school regarding the identification, programming, placement, or provision of a free appropriate public education to their exceptional child.

State Law (Title 20-A MRSA, Section 7206) and Federal Regulations (34 CFR Section 76.780) require that the Maine Department of Education have a process to investigate and resolve any complaint that alleges a public or private school serving exceptional students has failed to comply with the requirements of the State or Federal Special Education Regulations. Copies of Title 20-A, Section 7206 and 34 CFR Section 76.781 are attached to this document as appendix "A" and "B," respectively.

Parents may request either a Due Process Hearing or a Complaint Investigation.

Any request must be in writing, signed by the parent, indicating a desire for a Due Process Hearing or Complaint investigation, and submitted to the Commissioner of the Department of Education. If the Department receives both a request for a Complaint Investigation, as well as a request for a Due Process Hearing concerning the same student, the Department will toll (or postpone) the Complaint Investigation process pending the completion of the Hearing.

This booklet specifies the process to be used by the Department of Education to investigate any complaints received by the Department which allege that a school administrative unit or a private school serving exceptional students has failed to comply with either Maine or Federal Special Education Law or Regulations.

Questions regarding the Complaint process, the requirements of public and private schools to provide special education services, or requests for copies of the Maine Special Education Regulations should be directed to:

Division of Special Education
Maine Department of Education
State House Station #23
Augusta, Maine 04333
(207) 289-5950

2. DEFINITIONS

All terms used in these guidelines shall have the meanings established by applicable state or federal law. The following terms have the definitions specified herein:

Commissioner - The term "Commissioner" means the Commissioner of the Department of Education, or a designee.

Complaint - The term "Complaint" means a signed, written grievance of sufficient detail to indicate a possible failure by a school in complying with Maine or Federal laws and regulations concerning the education of exceptional students.

Complaint Investigator - The term "Complaint Investigator" means an impartial professional trained and appointed by the Department to conduct a Complaint Investigation.

Complainant - The term "Complainant" means the Interested Party who has submitted the Complaint to the Department.

Day - The term "Day" means a calendar day.

Department - The term "Department" means the Department of Education.

Due Process Consultant - The term "Due Process Consultant" means the staff person employed by the Division of Special Education, Maine Department of Education, to administer the Complaint, Mediation and Due Process Hearing System.

Due Process Hearing - The term "Due Process Hearing" means the formal adjudicatory hearing before an impartial Hearing Officer which is guaranteed under Federal and State special education law. Both parties to a Due Process Hearing may be represented by legal counsel, and may present evidence and sworn testimony to be considered by the Hearing Officer.

Exceptional Student - The term "Exceptional Student" is defined in Section 3 of the Maine Special Education Regulations. Generally, an Exceptional Student is a student of eligible school age whose handicapping condition adversely affects the student's educational performance and requires the provision of special education services.

Hearing Officer - The term "Hearing Officer" means an impartial, independent professional trained and contracted by the Department to conduct Complaint Investigations, Mediations, and Due Process Hearings.

Interested Party - The term "Interested Party" means a student's parent, surrogate parent, legal guardian, or other professional with direct knowledge of a failure by the responsible school administrative unit or private school serving exceptional students to comply with Maine or Federal law or regulations concerning the education of exceptional students.

Mediation - The term "Mediation" means an informal, non-adversarial process which strives to achieve an equitable settlement of disputes between parents and school through an exploration of concerns and compromise.

Probable Cause - The term "Probable Cause" means a determination by the Complaint Investigator that a school administrative unit or private school has failed to comply with Maine or Federal law or regulations concerning the education of exceptional students.

Respondent - The term "Respondent" means the superintendent or designee of the school administrative unit or the director or designee of the private school which is the subject of a Complaint.

School - The term "School" means a school administrative unit or a private school which provides educational services to exceptional students.

3. COMPLAINT RECEPTION and REVIEW

A. Complaint Reception

All written Complaints received by the Department will be forwarded to the Due Process Consultant in a timely manner.

The timelines contained in these guidelines will commence on the date upon which the Department receives a Complaint.

B. Complaint Review

Within 15 days of the receipt of a Complaint, the Due Process Consultant will review the Complaint and, if necessary, interview the Complainant to determine:

- 1.) The alleged violations;
- 2.) The timeliness of the allegations;
- 3.) The Complainant's name, address, and telephone number;
- 4.) The responsible administrative unit / private school;
- 5.) The involvement of any other State or Federal agency in the investigation of similar allegations within 180 days of the receipt of the Complaint; and,
- 6.) The name, date of birth, and placement of the exceptional student(s) who is/are the subject of the Complaint.

C. Dismissal of Complaint

The Due Process Consultant will recommend the dismissal of the Complaint if the allegations:

- 1.) are not a violation of Maine or Federal law or regulations concerning the education of exceptional students;
- 2.) have not occurred within 180 days of the receipt of the Complaint; or,
- 3.) were not caused by the actions or failure to act of an administrative unit or private school.

Any determination to dismiss a Complaint will be reviewed and approved by the Director of the Division of Special Education, the Associate Commissioner for the Bureau of Instruction, and the Commissioner.

4. NOTIFICATION OF RECEIPT OF COMPLAINT

Within 15 days of the receipt of a Complaint the Due Process Consultant will:

A. Determine and secure the Commissioner's appointment of the Complaint Investigator to conduct the Complaint Investigation.

B. Notify any other Maine or Federal agency which are or have been involved in the investigation of any similar allegations within 180 days of the receipt of the Complaint. This notification shall include the specifics of the Complaint, a request for copies of the agency's findings, and a request to coordinate any investigation activities between the Complaint Investigator and the agency.

C. Notify the Complainant of the receipt of the Complaint, the Department's Complaint Investigation process, the specifics of the Complaint, and the Complainant's right to submit additional documentation or information to the Complaint Investigator.

The Due Process Consultant will also advise the Complainant of the time and place of the Fact Finding Meeting at which the Complaint Investigator, the Complainant, and the Respondent will discuss the Complaint Investigator's preliminary findings and conclusions, and will develop a corrective action plan to resolve the Complaint if Probable Cause is found.

D. Notify the Respondent of the Department's Complaint Investigation process, the receipt of the Complaint, and the specifics of the Complaint, including a copy of the original Complaint;

The Due Process Consultant will direct the Respondent to review the Complaint and to submit a written response to the Complaint Investigator appointed to conduct the Complaint Investigation.

Additionally, the Due Process Consultant will advise the Respondent of the time and place of the Fact Finding Meeting, at which the Complaint Investigator, the Complainant, and the Respondent will discuss the Complaint Investigator's preliminary findings and conclusions, and will develop a Corrective Action Plan to resolve the Complaint if Probable Cause is found that the Respondent is not in compliance with State and Federal Regulations regarding the education of exceptional students.

5. COMPLAINT INVESTIGATION

Within 45 days of notifying the Complainant and the Respondent of the receipt of the Complaint, an investigation of the allegations shall be completed and a written report shall be submitted by the Complaint Investigator to both parties. The Complaint Investigator appointed by the Commissioner to conduct the Complaint Investigation shall be responsible for gathering sufficient documentation in a timely and professional manner while minimizing any inconvenience or disruption to the student, Complainant, Respondent, or the school staff.

A. Data Collection

The Complaint Investigator, as an agent of the Commissioner, has access to relevant educational records while conducting a Complaint Investigation, (34 CFR Section 99.35(A) of the Family Educational Rights and Privacy Act).

A Respondent shall provide the Complaint Investigator with copies of relevant educational records, in addition to the written response to the Complaint required by the above Part 4(D).

The Complaint Investigator may, if necessary, request copies of additional educational records. Any oral requests for additional records shall also be submitted to the Respondent in writing. The Respondent shall comply with any reasonable request for copies of records within 5 days of the receipt of the written request.

The Complaint Investigator may, in lieu of an on-site visit, conduct telephone interviews of the Respondent, the Complainant, the student, and others with a direct knowledge of the student and/or the allegations.

B. On-Site Visit

The Complaint Investigator may determine that an on-site visit is necessary in order to complete a Complaint Investigation. Classroom observations, interviews with parents, student or staff, review of educational records, etc., are some reasons that might necessitate an on-site visit.

Any on-site visit will be coordinated with the Respondent, and will be conducted in such a manner as to minimize any disruption to the educational process.

C. Fact Finding Meeting

The Complaint Investigator shall meet with the Complainant and Respondent to review the Complaint Investigator's preliminary findings and conclusions. This meeting should occur within 30 days of the notification of the Complainant and Respondent of the receipt of the Complaint (see Part 4).

The Fact Finding Meeting is an opportunity for both parties:

- 1.) to meet with a neutral third party;
- 2.) to review the Complaint and the documentation submitted by each party;
- 3.) to discuss the Complaint Investigator's preliminary findings and conclusions; and
- 4.) to discuss any corrective actions necessary to resolve the Complaint.

The Complainant's participation in the Fact Finding Meeting is voluntary. Either party may invite additional participants, and either party may be represented by legal counsel. If either party plans to be represented by legal counsel, or plans to invite any other participants to the Fact Finding Meeting, they are to advise the Complaint Investigator and the other party.

The Complaint Investigator is permitted to exclude any persons from the Fact Finding Meeting when prior notice of that person's participation has not been provided to all parties.

The Fact Finding Meeting is NOT a special education Due Process Hearing. Additional information or documentation may be presented by either party to the Complaint Investigator upon a showing of just cause as to why the information or documentation was not provided during the data collection phase of the process. No direct or cross examination by the parties will be permitted. Any questions shall be directed to the Complaint Investigator. No sworn testimony will be taken. If the Complaint Investigator decides to tape-record the Fact Finding Meeting, the recording will be solely for the personal use of the Complaint Investigator. No verbatim recording or transcript will be provided to either party.

If the Complaint Investigator believes that Probable Cause may exist that the school is not in compliance with State or Federal Special Education Regulations, the Complaint Investigator shall, in cooperation with both parties, develop a Corrective Action Plan that will resolve the Complaint to the satisfaction of both parties. The Complaint Investigator may elect to meet with each party separately while developing a Corrective Action Plan. If parties cannot agree on a Corrective Action Plan, the Complaint Investigator may specify the corrective action necessary to ensure compliance with Maine or Federal Special Education Law and Regulations.

The Complaint Investigator may elect to cancel the Fact Finding Meeting if the investigator believes that sufficient credible information has been provided to permit the develop the Complaint Investigation Report, if there is no dispute to the facts in the Complaint, or if both parties have agreed to a settlement.

D. Complaint Investigation Report

The Complaint Investigation Report shall be completed by the Complaint Investigator and submitted to both parties, with a copy to the Due Process Consultant, within 10 days of the completion of the investigation, but no later than 60 days after the Department's receipt of the Complaint.

The Complaint Investigation Report will:

- 1.) Summarize the Complaint Investigation activities, including the dates upon which the Complaint was received, the notification to the Complainant and Respondent, the appointment of the Complaint Investigator, the receipt of the Respondent's response to the Complaint, and the date of the Fact Finding Meeting.
- 2.) Specify each allegation made by the Complainant, and the applicable regulation or statute.
- 3.) Specify the Complaint Investigator's findings regarding each allegation. Findings shall be based on relevant documents and statements made by credible individuals with a direct knowledge of the student or of the alleged violation.
- 4.) Conclude whether the majority of the findings indicate that there is or is not Probable Cause to believe that the administrative unit or private school has committed the alleged violation of Maine or Federal Law or Regulations.
- 5.) Identify any ancillary issues (findings of non-compliance which were not part of the original Complaint) which the Complaint Investigator found during the course of the Complaint Investigation.
- 6.) Specify a Corrective Action Plan that will resolve the Complaint to the satisfaction of both parties, and that will ensure compliance with Maine and Federal Law and Regulations. The timeframe for the Corrective Action Plan shall not exceed 30 days from the Respondent's receipt of the Complaint Investigation Report.

6. NOTICE OF APPEAL PROCEDURES

Whenever the Department dismisses a complaint or a complaint investigator issues a complaint investigation report, all parties shall be notified of their right to challenge:

1. the dismissal of a complaint by the Department;
2. the findings of fact, conclusions or corrective action plan contained in a complaint investigation report; or
3. a school's compliance with the corrective action plan.

7. APPEAL OF COMPLAINT INVESTIGATION REPORT

The Complainant or the Respondent may appeal the dismissal of a complaint or the findings, conclusions or corrective action plan contained in the Complaint Investigation Report by filing a request to review the Complaint with the Secretary of the U.S. Department of Education, Federal Office Building, 400 Maryland Avenue, S.W., Washington, DC 20202, Tel. (202) 401-3000.

Either party may request a hearing to challenge the dismissal of a complaint or the findings, conclusions or corrective action plan contained in a Complaint Investigation Report by filing a request for a hearing with the Commissioner of the Department of Education within 30 days of the receipt of the Complaint Investigation Report.

8. COMPLIANCE ACTIVITIES

If the Complaint Investigator has determined that Probable Cause exists to believe that the school has failed to comply with the Federal or State Special Education Laws or Regulations, then the Respondent shall provide the Complaint Investigator, the Complainant, the Commissioner, and the Due Process Consultant with documentation that the school administrative unit or the private school has complied with the Corrective Action Plan within 30 days of the receipt of the Complaint Investigation Report.

The Due Process Consultant may request additional documentation, interview the Complainant or other staff, and/or conduct an on-site visit to verify the compliance activities of the school administrative unit or the private school.

When there is sufficient documentation to believe that the school administrative unit or the private school has complied with the Corrective Action Plan, the Commissioner will notify the Respondent and the Complainant that compliance has been achieved, and that the Complaint has been closed.

9. HEARING ON COMPLIANCE WITH CORRECTIVE ACTION PLAN

If the Commissioner has reason to believe that compliance has not been achieved within 45 days of the receipt of the Complaint Investigator's Complaint Investigation Report, the Commissioner shall notify all interested parties that a hearing will be held to determine whether the school is in violation of the Maine or Federal Laws and Regulations concerning the education of exceptional students.

The Commissioner shall appoint a Hearing Officer to:

- A. Establish the time and place for the hearing;
- B. Conduct the hearing in accordance with Section 11, DUE PROCESS HEARINGS, of the Maine Special Education Regulations. The school shall carry the burden of going forward and of proving that it is in compliance with the corrective action plan;

C. Close the hearing if a parent, surrogate parent, or guardian requests that it be closed to the public; and

D. Make written findings of fact and conclusions of law, and send them to all interested parties within 10 days of the hearing's conclusion.

If the Hearing Officer finds that the school has failed to comply with Federal or Maine Special Education Law or Regulations, then he/she shall specify in writing the steps necessary to achieve compliance. The Hearing Officer shall order the school to take these steps by a certain date.

Either party may appeal the Hearing Officer's order to Maine Superior Court or to the Secretary of the U.S. Department of Education.

The Respondent shall provide sufficient documentation to the Due Process Consultant to demonstrate compliance with the Hearing Officer's order within the specified time periods.

10. ENFORCEMENT

If the unit fails to comply with a Hearing Officer's order issued pursuant to section 7 or section 9, the Commissioner:

A. May withhold financial aid from the school until it complies with the order;

B. Shall refer the matter to the Attorney General, who shall take appropriate action to bring the school into compliance; and

C. May initiate such other remedial actions as may be provided in law or equity.

APPENDIX A.

Title 20A, MRSA, Section 7206
INVESTIGATION OF NONCOMPLIANCE
(Effective Date: September 30, 1989)

The following provisions apply to an investigation of noncompliance with this chapter.

1. COMPLAINT. An Interested Party may file with the commissioner a written Complaint alleging that a school serving exceptional students, within 180 days preceding receipt of the Complaint, has failed to comply with this chapter.

1-A. Determination of jurisdiction. Within 15 days of the receipt of a complete Complaint, the commissioner shall determine:

A. The school serving exceptional students with responsibility for compliance;

B. The specific laws and applicable rules with which the school serving exceptional students allegedly is in noncompliance; and

C. If any other state or federal agency is investigating or has investigated any similar allegations within 180 days of receipt of the Complaint. If the commissioner determines that another state or federal agency is or has been involved in a similar allegation of noncompliance, the commissioner shall coordinate the department's investigation activities with those other agencies.

1-B. Notification. Within 15 days of the receipt of the Complaint, the commissioner shall notify the affected school of the Complaint and all information about the Complaint which is available to the commissioner.

2. INVESTIGATION; written report. The commissioner shall initiate, and complete within 45 days, an investigation and a written report:

A. On receipt of a Complaint and the determinations set out in subsection 1-A; or

B. If the commissioner has reason to believe that a unit is not in compliance with this chapter.

3. POST-INVESTIGATION PROCEDURE. Within 10 days after completion of the investigation in subsection 2, the commissioner shall determine whether Probable Cause exists to believe that the unit is not in compliance with this chapter.

A. Upon determination that Probable Cause exists, the commissioner shall specify in writing the necessary corrective actions and time frames to resolve the matter to the satisfaction of the interested parties.

B. If compliance has not been achieved within 45 days after the determination of Probable Cause, the commissioner shall notify all interested parties of the time and place of a local hearing to be held to determine whether the school is in violation of this chapter.

C. If a local hearing is scheduled, the commissioner shall,

(1) Conduct the hearing in accordance with the due process rules adopted pursuant to requirements of section 7204, subsection 5;

(2) Close the hearing if a parent, surrogate parent, or guardian requests that it be closed to the public; and

(3) Make written findings of fact and conclusions of law and send them to all interested parties within 10 days of the hearing's conclusion.

D. If the commissioner finds that the school administrative unit is in violation of this chapter, then the commissioner shall specify in writing the steps necessary to achieve compliance. The commissioner shall order the school administrative unit to take these steps by a certain date.

4. APPEAL. An Interested Party may appeal the commissioner's order to the Superior Court under the Maine Rules of Civil Procedure, Rule 80B.

5. ENFORCEMENT. If the unit fails to comply with the commissioner's order, the commissioner:

A. May withhold financial aid from the school administrative unit until it complies with the order; and

B. Shall refer the matter to the Attorney General, who shall take appropriate action to bring the school administrative unit into compliance.

6. ADDITIONAL REMEDIES. The remedies provided in this section are in addition to any other remedy in law or equity.

APPENDIX B.

34 CFR, Section 76.780

Education Division General Administrative Regulations (EDGAR)

Complaint Procedures of the State

Section 76.780 A State shall adopt Complaint procedures.

- (a) A State shall adopt written procedures for-
 - (1) Receiving and resolving any Complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;
 - (2) Reviewing an appeal from a decision of a subgrantee with respect to a Complaint; and
 - (3) Conducting an independent on-site investigation of a Complaint if the State determines that an on-site investigation is necessary.
- (b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.
- (c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

Section 76.781 Minimum Complaint procedures.

A State shall include the following in its Complaint procedures:

- (a) A time limit of 60 calendar days after the State receives a Complaint-
 - (1) If necessary, to carry out an independent on-site investigation; and
 - (2) To resolve the Complaint.
- (b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular Complaint.
- (c) The right to request the Secretary to review the final decision of the State.

Section 76.782 An organization or individual may file a Complaint.

An organization or individual may file a written signed Complaint with a State. The Complaint must include-

- (a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and
- (b) The facts on which the statement is based.