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ABSTRACT

This paper outlines procedures for making inquiries or complaints relating to the education of children and youth with disabilities in Arizona. It encourages individuals to first contact the administration of the local public school district or agency and then offers steps to follow to register a complaint with the Arizona Department of Education, Special Education Section. The responsibility of the state agency in investigating and responding to the complaint is outlined. Corrective action that will be taken if areas of noncompliance are found is presented. A memorandum from the Office of Special Education and Rehabilitative Services offers information on the Secretarial Review Process, in which a party to a complaint has the right to request that the Secretary of the U.S. Department of Education review the State education agency's final decision on that complaint. The guidelines address who can request Secretarial review, what information should be submitted, criteria used by the Assistant Secretary in determining whether to grant or deny a request for Secretarial review, and results of Secretarial review decisions. (JDD)

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EC 363837

AZ-TAS

Themes & Issues

A Series of Topical Papers on Special Education

Inquiry and Complaint System

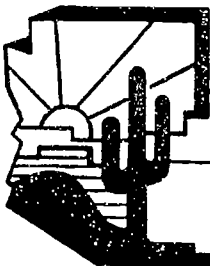
*Relating to the Education
of Exceptional Children*

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Arizona Department of Education

Special Education

Arizona Department of Education
C. Diane Bishop, State Superintendent of Public Instruction
1535 W. Jefferson, Phoenix, AZ 85007

INQUIRY AND COMPLAINT SYSTEM RELATING TO THE EDUCATION OF CHILDREN AND YOUTH WITH DISABILITIES

Anyone who has a question or concern about the education of a child with disabilities is urged to first contact the administration of the local public school district or public agency where the child attends school. Usually the best local person to contact for general information is the person who is in charge of special education for that local school district or agency. Generally, the special education administrator can be contacted through the office of the local superintendent of schools.

In addition, inquiries or complaints about the public education of a child with a disability may be registered Monday through Friday between 8:00 am and 5:00 pm by any individual, organization, or public agency with the Department at the following address:

**Arizona Department of Education
Special Education Section
1535 West Jefferson
Phoenix, AZ 85007
Phone: (602) 542-3084 or 1-800-352-4558**

Such inquiries or complaints may refer to matters relating to the following categories:

Inquiry: a request for information, copies of rules and regulations, clarification, or referral to other more appropriate persons or processes. Inquiries in this category will be handled directly by the Special Education Section, or appropriately referred.

Complaint: an official allegation that a law is not being complied with by a local school district or public agency responsible for the provision of special education. All states are required by federal regulation, under 34 CFR 300.660 through 300.662 of the Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities regulations, and by Public Law 101-476, the Individuals with Disabilities Education Act (IDEA) to have procedures to resolve complaints regarding the provision of special education. Arizona State Board Rules, under Arizona Administrative Code (AAC) R7-2-804, designates the Special Education Section of the Arizona Department of Education (ADE/SIES) as the agency responsible for the investigation.

Individuals or organizations may file signed written complaints with the ADE/SES if they believe a district/agency responsible for the provision of special education programs is not in compliance with state and federal laws or regulations.

The complaint procedures outlined in this document are available for resolving any complaint that meets the requirements of 34 CFR 300.662, which include a statement that a public agency has violated a requirement of Part B of IDEA, and the facts upon which the statement is based. These complaints may raise systemic issues, or may be complaints related to an individual student that are filed by parents.

A complaint:

- must be in writing;
- should be sent to State Director of Special Education, Arizona Department of Education, Special Education Section, 1535 West Jefferson, Phoenix, AZ 85007;
- must be signed by the complainant as anonymous complaints will not be processed;
- need not identify the specific law or regulation involved;
- should clearly identify the concern or the alleged violation;
- must be filed within three calendar years of the alleged violation.

If the complainant is unable to put the complaint in written form and/or if their home language is other than English, assistance will be provided by the Arizona Department of Education.

COMPLAINT PROCEDURES

The complaint will be date stamped upon receipt at the Office of the State Director of Special Education. Within 60 calendar days of this date, the investigation will be concluded, including all of the following:

- An identification number will be assigned to facilitate tracking and monitoring of the complaint.

- A letter of acknowledgment will be sent, within five working days, to the complainant. This letter will inform the complainant of the identification number which has been assigned, and will outline the general procedures that will be followed and the timelines for the investigation.
- A letter will also be sent, within five working days, to the chief administrator of the district/agency against which the complaint has been filed, informing that person of the complaint, outlining the procedures that will be followed, and providing a copy of the complaint letter and any attached documentation. The identifying reference number will also be provided.
- Copies of these letters and of the complaint will be forwarded to the consultant assigned to the district/agency by ADE/SES.
- An investigator will be assigned by the ADE/SES.
- The assigned investigator will make contact with the complainant to ensure that the allegations and facts are clearly understood and to give the complainant the opportunity to submit additional information, either orally or in writing about the allegations. Any additional information or clarifications will be provided to the district/agency under investigation.
- An on-site investigation will be made, if deemed appropriate by the investigator. On-site visits will occur if the complainant/district/agency requests a visit, or if an appropriate investigation cannot be conducted based on available documentation and through phone interviews.
- Any additional complaint issues submitted by the same complainant, more than 30 calendar days after the original complaint received date, may, at the discretion of the Complaint Administrator, be included in the original complaint or be logged as a new complaint.
- The investigation will be based on findings of facts and conclusions specific to the complaint allegations. The reasons for ADE's final decision will be outlined in the Letter of Findings.
- Once the investigation has been completed, the ADE/SES will issue a Letter of Findings to the complainant and to the district/agency, within 60 calendar days of the receipt of the complaint.

The 60 day timeline may be extended by the ADE/SES if exceptional circumstances exist such as:

- The investigation is hindered by the non-availability of any of the necessary parties.

- Additional information is submitted by any of the parties to the complaint which significantly changes the course of the investigation.
- A due process hearing request, mediation request, or court action is filed on overlapping issues that are more appropriately resolved through one of those processes.
- At the request of one of the parties and with the agreement of both parties, (e.g. illness, etc.).

If an extension is required, a letter will be sent to all parties which includes a description of the exceptional circumstances and which provides the date by which the investigation will be concluded and the Letter of Findings issued.

If the district/agency is found to be in compliance, the complainant, the district/agency, and the consultant will be notified.

CORRECTIVE ACTION PROCEDURES

If areas of non-compliance are found, corrective action will be requested with timelines for completion indicated.

- All parties will be informed of the areas of non-compliance.
- Documentation that corrective action has been completed will be reviewed and placed in the master complaint file maintained by the ADE/SES.
- Once the issues raised by the complaint have been resolved, a letter indicating this will be sent to the chief administrator of the district/agency, with a copy to the complainant.
- Technical Assistance will be offered through the district consultant, if deemed appropriate.
- Requests for copies of corrective action documents, submitted to ADE by a complainant, as a result of a non-compliance finding, will be directed to the district/agency's special education coordinator.

If the district/agency does not respond to the complainant's request within a reasonable period of time, an appointment may be arranged, through the Complaint Administrator, to review the corrective action documents at ADE.

Any corrective action documents, submitted by a district/agency, which contain personally identifiable information about other students besides the complainant's child, will be copied and edited by ADE prior to the complainant's scheduled access, according to regulations concerning confidentiality of records.

If, for any reason, the agency fails to follow through with all required corrective actions, appropriate steps will be taken by the State Director of Special Education. These steps may include the withholding of federal special education assistance to the agency.

All parties will be informed of the right to request a review of the final decision of the Department by the Secretary of the United States Department of Education. Additional information on the Secretarial Review Process is attached.

Complaints which are not covered by the Assistance for the Education of Children With Disabilities Program and Preschool Grants for Children With Disabilities Regulations will be acknowledged. Where possible, information about other methods for resolving the concerns will be provided. These methods include, but are not limited to, information about mediation, due process, and advocacy procedures.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 6 1994

Contact Person
Name : Lois Taylor
Telephone : (202) 205-8830

OSEP - 95-2

MEMORANDUM

TO : Chief State School Officers

FROM : Judith E. Heumann, Assistant Secretary
Office of Special Education
and Rehabilitative Services *Judith E. Heumann*

SUBJECT: Information on the Secretarial Review Process

The complaint procedures applicable to complaints involving Part B of the Individuals with Disabilities Education Act (Part B), contain a provision giving a party to a complaint the right to request that the Secretary of the U.S. Department of Education review the State educational agency's (SEA) final decision on that complaint.¹ 34 CFR §300.661(d). A copy of these State complaint procedures, at 34 CFR §§300.660-300.662, is enclosed for your information.

The Secretary has delegated the administration of Part B to the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS). This includes responsibility for reviewing requests for Secretarial review of complaints involving Part B. In recent years, there has been a significant increase in the number of requests for Secretarial review received by OSERS, which has, in part, caused significant delays in the handling of these requests. There has also been an increasing number of requests for clarification on what the

¹Secretarial review is a process through which the final decision of a State educational agency (SEA) on a complaint filed under 34 CFR §§300.660-300.662 can be reviewed at the Federal level. Decisions resulting from due process hearings conducted at the public educational agency level or appeal decisions of SEA level review officials issued under 34 CFR §§300.506-300.515 are not subject to Secretarial review.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Secretarial review process is, particularly with regard to the discretionary nature of the process and the criteria used for granting or denying requests for Secretarial review. To address these and other concerns, the attached general information has been prepared in a question and answer format to provide clarification on applicable procedures for handling requests for Secretarial review and to respond to some of the most-frequently asked questions.

We urge you to ensure that this information is disseminated throughout your State to a wide range of individuals and organizations, including parents and other interested individuals, so that they can be fully informed about the Secretarial review process. We note that in some instances, the Department has been unable to process requests for Secretarial review because the SEA has a two-part complaint process, and requesters are not being informed that they cannot request Secretarial review of the decision of the public agency when the SEA has yet to issue its final decision on the complaint. SEAs with two-part complaint procedures must inform individuals and organizations in the State that they cannot request Secretarial review until after the SEA has issued its final decision on the complaint. In connection with the Office of Special Education Program's (OSEP) periodic SEA monitoring, OSEP intends to focus on each SEA's implementation of the State complaint procedures, including the steps the SEA is taking to disseminate information to parents and other interested individuals about the availability of complaint procedures, including information about the Secretarial review process. See 34 CFR §300.660(d).

We hope that this information is of assistance to you, members of your staff, and parents and other interested individuals in your State. For further assistance, you or members of your staff should feel free to direct any further questions to Lois Taylor the contact person named in this memorandum.

Attachment

cc: State Directors of Special Education
RSA Regional Commissioners
Regional Resource Centers
Federal Resource Center
Special Interest Groups
Parent Training Centers
Independent Living Centers
Protection and Advocacy Agencies

QUESTIONS AND ANSWERS
ON THE
SECRETARIAL REVIEW PROCESS

QUESTION 1: What is Secretarial review?

ANSWER

Secretarial review is a process through which the final decision of a State educational agency (SEA) on a complaint filed under 34 CFR §§300.660-300.662 can be reviewed at the Federal level. A copy of the complaint procedures applicable to complaints involving Part B of the Individuals with Disabilities Education Act (Part B), at 34 CFR §§300.660-300.662, is attached. The decision of whether to grant or deny Secretarial review is discretionary and is made on a case-by-case basis based on the facts and circumstances of the specific case. Decisions resulting from due process hearings conducted by the SEA or public agency directly responsible for the education of the child or appeals of those decisions under 34 CFR §§300.506-300.515 are not subject to Secretarial review.

QUESTION 2: What is the SEA's final decision on the complaint?

ANSWER

Under 34 CFR §300.660(a), each SEA must have procedures for resolving signed written complaints that allege that a public agency is violating a requirement of Part B and contain statements of the facts on which the allegation is based. The procedures can provide either for the filing of a complaint with the SEA directly, or at the SEA's discretion, provide for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint. If the SEA has a one-part complaint procedure, Secretarial review can be requested after the SEA has issued its final decision resolving the complaint. If an SEA has a two-part complaint procedure, a request for Secretarial review cannot occur until after the SEA has reviewed the public agency's decision on the complaint and issued its final decision.

QUESTION 3: Who can request Secretarial review?

ANSWER

An individual or organization that was a party to a complaint that is the subject of the SEA's final decision may request Secretarial review of that decision. Individuals or organizations that were not parties to the complaint that resulted in the SEA's final decision do not have the right to request Secretarial review of that decision.

QUESTION 4: What information should an individual or organization requesting Secretarial review of an SEA's final decision on a complaint transmit to the Department? To whom should a request for Secretarial review be directed?

ANSWER

A request for Secretarial review of an SEA's final decision on a complaint should include the following:

1. A copy of the SEA's final decision on the complaint;
2. A copy of the complaint filed with the SEA that resulted in the SEA's final decision; and
3. A letter that outlines the specific aspects of the decision with which the requester disagrees, the basis for that disagreement, and the relief that the requester is seeking.

Requests for Secretarial review should be directed to:

Judith E. Heumann
Assistant Secretary
Office of Special Education and
Rehabilitative Services
330 C St. S.W.
Suite 3006
Switzer Building
Washington, DC 20202-2500

QUESTION 5: Does the U.S. Secretary of Education participate directly in the Secretarial review process?

ANSWER

No. The administration of IDEA, including Part B, has been delegated to the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS). This responsibility includes determining whether to grant or deny requests for review of final SEA decisions on complaints involving Part B and issuing decisions in instances where the request for Secretarial review is granted.

QUESTION 6: Is the Assistant Secretary for OSERS required to grant all requests for Secretarial review?

ANSWER

No. The decision of whether to grant or deny Secretarial review is discretionary. This means that the Assistant Secretary for OSERS may, but is not required to, grant review of the SEA's final decision on the complaint. Therefore, the fact that the request was made, or even that the request contains all of the required components, does not mean that the request will be granted, or that the relief sought will be obtained if the request is granted.

QUESTION 7: What steps will be followed once a request for Secretarial review is received by the Office of Special Education and Rehabilitative Services (OSERS)?

ANSWER

The request is assigned for handling to a staff member of the Office of Special Education Programs (OSEP), and a determination is made as to whether the information described in response to question 4 above has been provided. A letter acknowledging receipt of the request is sent to the requester. If one or more of the documents specified in the response to question 4 above has not been provided, the requester is notified in writing of the additional document(s) that must be provided. Once all necessary documents have been provided, the documents will be reviewed.

QUESTION 8: What are the general criteria that the Assistant Secretary uses in determining whether to grant or deny a request for Secretarial review?

ANSWER

Generally, review will be granted:

1. If the issue presented by the request raises principally an issue of legal interpretation of Part B, the pertinent facts do not appear to be in dispute, and it appears that the SEA may have applied an incorrect legal standard in resolving the complaint;
2. If the issue presented raises an issue of national or Statewide significance for the education of children with disabilities;
3. If the issue raised is one on which State complaint decisions, due process hearing officers, or courts have issued a variety of interpretations, some of which are in conflict, and granting the request would give OSERS the opportunity to clarify its interpretation of the applicable legal standard; or
4. If the issue raised by the request is new, and granting the request would give OSERS the opportunity to issue relevant policy that would assist the requester as well as other students with disabilities and their parents, public agencies, and individuals and organizations advocating for the rights of students with disabilities.

Generally, review will not be granted:

1. If the issues presented by the request focus on allegations that are primarily factual. (This is so even in a situation where the issue presented raises a mixed question of law and fact). Review generally will not be granted if resolution of the legal issue is largely dependent on resolution of a disputed factual issue. This is because the Secretarial review process is not designed to provide the Assistant Secretary with the type of information needed to resolve a factual dispute;
2. If the relief sought goes beyond the requirements of the Part B statute and regulations; or

3. If it appears that the final SEA decision on the complaint is appropriate and that the SEA followed applicable procedures, applied appropriate legal standards, and ordered any necessary corrective actions.

QUESTION 9: What is the effect of a decision granting Secretarial review?

ANSWER

The decision to grant a request for Secretarial review means that the issue presented will be reviewed. This does not mean that an independent investigation will be conducted. Instead, a decision will be based primarily on the facts set forth in the SEA's final decision and the additional information submitted by the parties.

QUESTION 10: What relief could be granted if a decision is made to grant Secretarial review?

ANSWER

The result of the decision to grant Secretarial review usually will be either to affirm the SEA's final decision on the complaint or to set aside that decision (in whole or in part) and to order any appropriate corrective action.

QUESTION 11: Are there any other options that OSERS will employ in handling a request for Secretarial review?

ANSWER

Yes. Based on the analysis of the final SEA decision on the complaint, if OSERS determines that the SEA failed to address all relevant issues in resolving the complaint, OSERS will remand the complaint to the SEA and request that the SEA resolve all issues not previously addressed or resolved and issue a new decision. If the requester still disagrees with the SEA's final decision, the requester may request Secretarial review of that decision.

QUESTION 12: When a request for Secretarial review is denied, will OSERS provide the requester with a reason for the denial?

ANSWER

Generally, yes. OSERS will advise the requester, in general terms, as to why the decision to deny the request for Secretarial review has been made.

QUESTION 13: What is the effect of a decision denying a request for Secretarial review? May the requester challenge a decision denying Secretarial review?

ANSWER

A decision to deny Secretarial review means that OSERS has exercised its discretionary authority not to review the final SEA decision on the complaint. Denial of Secretarial review ends the administrative complaint review process. However, denial of Secretarial review will not impede the right of a parent or public agency to initiate a due process proceeding under Part B on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

Attachment

children with disabilities; and appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to ensure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on the State plan and rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618 of the Act.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

State Complaint Procedures

§ 300.660 Adoption of State complaint procedures.

Each SEA shall adopt written procedures for:

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and

(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint.

(b) Informing parents and other interested individuals about the procedures in §§ 300.660-300.662.

(Authority: 20 U.S.C. 2831(a))

§ 300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(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) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the SEA's final decision.

(Authority: 20 U.S.C. 2831(a))

§ 300.662 Filing a complaint.

An organization or individual may file a signed written complaint under the procedures described in §§ 300.660-300.661. The complaint must include—

(a) A statement that a public agency has violated a requirement of part B of the Act or of this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

Subpart G—Allocation of Funds; Reports

Allocations

§ 300.700 Special definition of the term State.

For the purposes of § 300.701, § 300.702, and §§ 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the *average per pupil expenditure in public elementary and secondary schools in the United States*, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the

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20 U.S.C. 1221e-3(a)(1)

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