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Title 28 EDUCATION

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Title 28 EDUCATION

Part LXI. Bulletin 1573—Complaint Management Procedures

Chapter 1. Terms, Purpose and Mandates

§101. Definitions

A. As used in this Chapter, the following words and phrases have the meaning ascribed to them in this Subsection unless a different meaning is plainly required by the context.

BESE—the State Board of Elementary and Secondary Education.

Bulletin 1706: Regulations for Implementation of the Children with Exceptionalities Act—Louisiana's Law for Children with Exceptionalities.

Child Advocate—an individual or group established to promote the interests and rights of children, especially children with exceptionalities.

Child with an Exceptionality—a child evaluated in accordance with state regulations who is determined to be gifted, talented, emotionally disturbed, learning disabled, hard of hearing, deaf, deaf-blind, speech impaired, severe language disordered, autistic, visually impaired, multi-disabled, orthopedically disabled, traumatic brain injured, or other health impaired.

Complainant—the individual(s) or organization that files a complaint with the State Department of Education on behalf of a child with an exceptionality. This complainant may be a parent, guardian, student, surrogate parent, child advocate or other individual or an organization.

Complaint—an allegation that an educational agency has violated a requirement of federal or state laws and regulations, policies, rights, procedural safeguards or program standards adopted by the BESE.

DSP—Division of Special Populations.

Local Educational Agency (LEA)—a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools including an educational service agency or other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under the state law.

State Department of Education (SDE)—the State Department of Education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools; or, if there is no such officer or agency, an officer or agency designated by the Governor or by state law [Referred to in the Individuals with Disabilities Education Act (ACT) as State Educational Agency (SEA)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1081 (July 2003).

§103. Purpose and Mandates

A. The purpose of the Complaint Management System is to meet the mandates of federal and state laws and regulations that require a mechanism to field, investigate and resolve issues regarding the provision of special education and related services to children with exceptionalities or those children suspected of having exceptionalities.

B. Federal Mandates

1. 20 U.S.C. Chapter 33 Subchapter 1—General Provisions [Public Law 105-17, Individuals with Disabilities Education Act (IDEA)].

a. Section 1412 (a) (11): "State Educational Agency Responsible for General Supervision." In general the state educational agency is responsible for ensuring that:

i. the requirements of this part are met; and

ii. all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency:

(a). are under the general supervision of individuals in the state who are responsible for educational programs for children with disabilities; and

(b). meet the educational standards of the State Educational Agency.

b. Limitation. Subparagraph a above shall not limit the responsibility of agencies in the state other than the State Educational Agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the state.

c. Exception. Notwithstanding Subparagraphs a and b, the governor (or another individual pursuant to state law), consistent with state law, may assign to any public agency in the state the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

2. *Individuals with Disabilities Education Act (IDEA) Section 1415 (b)(6)*. The procedures required by this Section shall include an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child.

3. 34 Code of Federal Regulations (CFR) Section 300.660-662

C. State Mandates

1. The division of special populations shall have the following powers and duties:

a. to receive and investigate complaints, to initiate its own investigations, and to conduct mediations and hearings with power of subpoena, on behalf of an individual child or group of children, regarding failure to comply with federal or state laws for children with exceptionalities;

b. to investigate and conduct hearings upon evidence of denial of equal educational opportunities of children with exceptionalities as defined in this Chapter and to take such action as may be necessary to correct the situation;

c. to investigate and conduct hearings upon evidence regarding failure to comply with federal or state laws and rules and regulations and to take such action as may be necessary to correct the situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1081 (July 2003).

Chapter 3. General Provisions

§301. Adoption of State Complaint Procedures

A. Each SEA shall adopt written procedures for:

1. resolution of any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of 34 CFR §300.662 by:

a. providing for the filing of a complaint with the SEA; and

b. 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; and

2. widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state's procedures under §§ 300.660-300.662.

B. Remedies for Denial of Appropriate Services

1. In resolving a complaint where a failure to provide appropriate services is found, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

a. how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child;

b. appropriate future provision of services for all children with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1082 (July 2003).

§303. Minimum State Complaint Procedures

A. Time Limit; Minimum Procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to:

1. carry out an independent on-site investigation, if the SEA determines that 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:

a. findings of fact and conclusions; and

b. the reasons for the SEA's final decision.

B. Time Extension; Final Decision; Implementation. The SEA's procedures described in Subsection A of this Section also must:

1. permit an extension of the time limit under Subclause (a) of this Section only if exceptional circumstances exist with respect to a particular complaint; and

2. include procedures for effective implementation of the SEA's final decision, if needed, including:

a. technical assistance activities;

b. negotiations; and

c. corrective actions to achieve compliance.

C. Complaints and Due Process Hearings Filed under This Section.

1. If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, 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 limit and procedures described in Subclause (a) and (b) of this Section.

2. If an issue is raised in a complaint filed under this section 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.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1082 (July 2003).

§305. Filing a Complaint

A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations.

B. Complaints may be filed in writing, by telephone call or in person.

C. The complaint must include:

1. a statement that a public agency has violated a requirement of Part B of the Act or of this Part;
2. the facts on which the statement is based;
3. grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

D. 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 §300.660(a) 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 §300.660(a).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1082 (July 2003).

§307. Complaint Criteria

A. Complaints that will be considered for review and investigation are grievances which:

1. allege that a local educational agency (LEA) which provides or is required to provide publicly funded special education is violating federal and/or state laws, regulations, policies, rights, procedural safeguards or program standards adopted by the BESE and administered by the SDE to assure FAPE to children with exceptionalities or children suspected of having exceptionalities;

2. relate to the provision of special education and related services to children with exceptionalities or suspected of having exceptionalities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1082 (July 2003).

Chapter 5. Complaint Intake and Investigative Procedures

§501. Filing Complaints

A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations. Complaints may be filed in writing, by telephone call or in person. A complaint must include not only a statement that a local educational agency (LEA) has violated a requirement of federal/state law or regulation but also the facts upon which the statement has been based.

B. Grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1083 (July 2003).

§503. Treatment of Complaints

A. Upon receipt, the complaint is reviewed; the issues, rules and statutes that may have been violated are identified; and the investigatory procedure is determined. An investigation may consist of telephone contact, requests for submission of written documents, and/or an on-site investigation.

B. Complaints may be resolved by telephone call(s) or other alternative methods such as negotiation, mediation, conciliation, facilitation, and arbitration.

C. The attempt to resolve a dispute through the complaint management procedures does not preclude a person's right to a due process hearing. These processes are mutually exclusive. Complaint procedures may not be used to delay a person's right to a due process hearing.

D. All complaints must be resolved within 60 calendar days of receipt unless an extension is granted. Request for extensions may be made by the complainant, the local educational agency (LEA), or the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1083 (July 2003).

§505. Complaint Intake Procedures Log (SCL)

A. When a complaint is received and accepted by the SDE, the complaint is recorded in the SDE Complaint (SCL).

B. A Complaint Record Form (CRF) is completed; contacts with the complainant are made as the investigation proceeds and are recorded on the complaint record form. The complainant has the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This information is documented on the CRF with all other information pertinent to the investigation.

C. The complainant is sent a letter within five business days of intake, indicating receipt of the complaint, stating the SDE representative handling the complaint and the intent to investigate and report findings within 60 calendar days.

D. The local educational agency (LEA) is sent a letter within five business days of intake indicating receipt of the complaint, a statement of the issues involved, including the applicable statute and rule citation(s), the name of the SDE representative handling the complaint, and the timeline by which the LEA must respond to the complaint.

E. The response from the local educational agency (LEA) should include either documentation to prove that the alleged violation did not take place or a plan of action to correct the violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1083 (July 2003).

§507. Investigation Procedures

A. Investigations may include written communication, telephone call(s) and/or on-site visits. During the course of an investigation, technical assistance consultations are provided, when appropriate, and the complainant is given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

B. If it is determined that an on-site investigation is necessary, an on-site investigation will be scheduled and conducted with technical assistance provided as necessary. Notice will be provided to the school system prior to the on-site investigation.

C. In determining whether a complaint requires an on-site investigation, the complaint investigator will consider, but not be limited to, the following conditions:

1. whether there is a disagreement between the parties as to the presence or absence of a certain program, service, personnel or physical entity that cannot be verified by written documentation or telephone conversation.

2. whether the written documentation requested and/or subsequent communication proves to be inconclusive in documenting the facts pertinent to the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1083 (July 2003).

§509. Report of Findings

A. The SDE reviews all relevant information and makes an independent determination as to whether the local educational agency (LEA) has violated any federal or state law(s), rule(s) or standard(s).

B. A written report of findings is sent to the local educational agency (LEA) and the complainant. The report includes a statement of the complaint, the applicable statutes and rules, findings of fact, conclusions, technical assistance activities and corrective actions to achieve compliance.

C. If corrective action is necessary, the local educational agency (LEA) must submit in writing to the SDE, according to timelines indicated by the SDE, a plan that includes the specific steps, material, personnel, and timelines required to resolve the complaint.

D. This corrective action plan (CAP) is approved and monitored by the SDE with an on-site monitoring review conducted when necessary.

E. When all appropriate documentation has been received by the SDE, the local educational agency (LEA) is sent written notification of complaint closure.

F. The complaint is closed within a 60 calendar day period.

G. The SDE closes the complaint in the SDE complaint log and files the complaint record with all appropriate documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1083 (July 2003).

§511. Extension of Timelines

A. Timelines may be extended only if exceptional circumstances exist with respect to a particular complaint. The complainant and the local educational agency (LEA) will be notified in writing of the need for an extension. Reasons for extensions may include, but are not limited to, circumstances such as listed below.

1. The local educational agency (LEA) is unable to submit documentation within specified timelines because of school closing (i.e., vacation, holidays, natural disasters, school strike, malfunction in the school plant, etc.).

2. The local educational agency (LEA) or parents are unable to respond to the report within the specific timelines because of illness, death, or other extenuating circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1084 (July 2003).

§513. Enforcement Procedures

A. Sixty calendar days after the filing of a complaint and the subsequent failure of the local education agency (LEA) to implement the corrective action plan as determined by the SDE, the Division of Special Populations may, barring an appeal of the findings by the affected LEA, recommend to the State Superintendent that a petition to withhold the LEA's funds be made to the BESE.

B. In resolving a complaint in which it has found a failure to provide appropriate services, the SDE, pursuant to its general supervisory authority, must address:

1. how to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

2. appropriate future provision of services for all children with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1084 (July 2003).