



New Hampshire Department of Education  
Bureau of Special Education

Complaint Procedures Manual  
For Special Education Complaints



Updated October 1, 2011

December 12, 2011

The Department would like to thank the following individuals for providing input in the development of this manual:

Brian Balke  
Assistant Superintendent,  
Goffstown School District

Bonnie Dunham  
Parent Consultant,  
Parent Information Center

Edwina Lovett  
Pupil Personnel Services,  
Timberlane Regional School District

P. Alan Pardy  
Executive Director,  
New Hampshire Association of Special Education Administrators

Sandy Plocharczyk  
Director,  
New Hampshire School Administrators Association –  
Special Education Support Center

Peter Smith  
Attorney

Gerald Zelin  
Attorney

# COMPLAINT PROCEDURES MANUAL

## Table of Contents

<b>Introduction</b> .....	i
<b>Definitions</b> .....	ii-iii
<b>Complaint Process:</b>	
• Who Can File.....	1
• Why File.....	1
• How and What to File.....	1
• When to File.....	1
• Where to File.....	1
• Timelines.....	2
• Investigation.....	2
• Decision.....	3
• Corrective Action Plan.....	3
• Reconsideration.....	3
• Enforcement.....	4
<b>Responsibilities:</b>	
• Complainant.....	4
• School District.....	4-5
• Investigator.....	5-6
• Department of Education.....	7
<b>Checklists:</b>	
• Complainant.....	8
• School District.....	9
• Investigator.....	10

## **Appendices:**

### **A. Complaint Procedures – PART Ed 1121**

### **B. Frequently Asked Questions.**

### **C. Other Resources Available to Complainants**

- 1) NH's Parent Training and Information Center – Parent Information Center
- 2) NH's Protection and Advocacy Center – Disability Rights Center
- 3) Teacher Misconduct – Office at the NH Department of Education
- 4) ADA – ADA, Non-Discrimination and Title IX Coordinator at the NH Department of Education
- 5) Section 504 and Non-Discrimination – Office for Civil Rights – Boston

### **D. Model Letters and Forms**

- 1) “How to File a Special Education Complaint” Document with Form to use to file complaint
- 2) Acknowledgement Letter (acknowledges receipt of complaint)
- 3) Allegation Information Document (documents allegation(s))
- 4) Complaint Intake Form (internal department form)
- 5) Parent Notification Letter (letter giving information on process and name of investigator)
- 6) District Notification Letter (letter giving information on process and name of investigator)
- 7) Complaint Screened Letter (letter to inform the parent that we are unable to process complaint)
- 8) Complaint Set-Aside Letter (letter notifying all parties involved that an Administrative Due Process has been filed and complaint is set aside)
- 9) Withdrawal of Complaint Form (document to withdrawal complaint signed by parent)
- 10) Complaint Corrective Action Continuum

## INTRODUCTION

The decisions parents make regarding their children should be based upon knowledge and understanding of their rights and procedural safeguards. This requires open communication and trust between parents and their school district. If problems do arise, there are several options parents have for resolution.

Working with your school district is of course your first and most readily available option. If that fails, or if parents or school district wishes to use more formal procedures, the following options are available:

- “*IEP Facilitation*” - a process designed to assist parents and school districts to reach agreement on their child’s program within the IEP Team process.
- “*Neutral Conference*” - a voluntary and nonbinding formal process with an impartial person designed to assist parties in reaching agreement.
- “*Mediation*” - a voluntary process designed to assist parties in reaching a mutually agreeable solution.
- “*Due Process Hearing*” - the most formal process in which attorneys can be present, evidence and sworn testimony can be given and the Hearing Officer’s decision is binding.

The “*Complaint Process*” is one method parents or others have to resolve an issue if they believe a public agency (LEA or SEA) has not complied with a special education law. Because most differences are successfully resolved at the local level, parents may wish to notify their school district to give them the opportunity to resolve the issue at the local level before filing a complaint.

The “*Complaint Process*” is one of the Procedural Safeguards afforded to parents under Federal and State laws. The New Hampshire Department of Education is required to make available to parents and other individuals the ability to file formal complaints against a school district if they believe the school district violated a federal or state special education law.

This manual will provide information regarding definitions; a description of the process for filing a complaint; a list of the responsibilities of the complainant, school district, investigator and the New Hampshire Department of Education throughout the process; checklists, model letters and forms; and frequently asked questions regarding the process.

For more information regarding federal and state laws see Appendix IV - Regulations Regarding the Complaint Procedure. For additional information please feel free to contact the Complaint Office at (603) 271-3730.

## DEFINITIONS

**Allegation** – *A statement describing how a district has violated a special education law.*

**Bureau** – *Bureau means the Special Education Bureau – a part of the New Hampshire Department of Education.*

**Compensatory Services** – *Special education, related services or other services provided to compensate for services included in the student’s IEP but that were not provided.*

**Complainant** – *The person(s) or organization filing the complaint.*

**Complaint** – *A signed, written document, which includes all required information that alleges that a school district or other public agency has failed to meet the requirements of one or more special education laws.*

**Complaint Officer** – *The individual designated by the Commissioner of Education to administer the complaint process and provide to the Commissioner proposed decisions and possible activities to resolve substantiated written special education complaints.*

**Day** – *Day means calendar day, unless otherwise specified.*

**Disability / Child with a Disability** – *A child who has been evaluated by a school district and determined to have one of the 15 identifiable categories of disability, and who, because of that disability, needs special education and related services.*

**Due Process Hearing** – *A formal process (guaranteed under federal and state education law) before an impartial Hearing Officer in which both parties may be represented by legal counsel and present evidence and sworn testimony to be considered by the Hearing Officer. A final written decision on the disputed issues will be issued.*

**Evidence** – *Documents, facts, objects, pictures, and verbal statements supporting or rebutting an allegation.*

**Facilitated IEP Meeting** – *A meeting with an impartial person, trained by the New Hampshire Department of Education to assist parties in the process of IEP development and meetings.*

**FAPE** – *Free appropriate public education – one of the essential parts of the IDEA. Special education and related services designed to meet the needs of the individual student and provided at public expense in accordance with the standards set by the State.*

**IDEA** – *Individuals with Disabilities Education Act – the Federal special education statute 20 U.S.C. 1400. et seq.*

**IEP** – *Individualized Education Program designed for a child with a disability that is developed, reviewed, implemented and revised by a group of people in accordance with the New Hampshire Rules for the Education of Children with Disabilities.*

**Inquiry** – *NH uses this term –it is the same meaning as Investigation.*

**Investigation** – *The process by which the NHDOE gathers information and reaches a decision concerning alleged noncompliance with special education law.*

**Investigator** – *The person assigned by the New Hampshire Department of Education to conduct the investigation related to the allegations made in the complaint.*

**LEA** – *Local Education Agency. In NH this is generally a local school district.*

**Mediation** – *A voluntary process in which an impartial mediator assists and facilitates the two sides (usually the parent and district) in reaching a mutually acceptable resolution.*

**Neutral Conference** – *A process in which parties present facts and issues to an impartial person (Neutral) in order to determine the strengths and weaknesses of the case. The “Neutral” then offers a recommendation to resolve the issue(s) in dispute. The recommendation is non-binding on the parties.*

**NHDOE** – *New Hampshire Department of Education.*

**OCR** – *Office for Civil Rights for the U.S. Department of Education.*

**OSEP** – *Office of Special Education Programs for the U.S. Department of Education.*

**Reconsideration** – *A process whereby either party to the complaint investigation may request reconsideration if they believe an error was made in the findings, decision, or order.*

**Reimbursement** – *Paying a parent back for services they obtained at their cost for their child with a disability, which the complaint substantiates should have been funded by the school district.*

**Related Services** – *Developmental, corrective and support services, including special transportation that are required by the student with a disability in order to benefit from their special education program.*

**SEA** – *State Education Agency – the New Hampshire Department of Education is New Hampshire’s state education agency.*

**Special Education** – *Specially designed instruction to meet the needs of an individual child with a disability, and provided at no cost to the parent.*

**Special Education Law(s)** – *Includes the federal statute, the IDEA(U.S.C. 1400 et seq.), the U.S. Department of Education’s regulations implementing that statute(34 CFR Part 300), the New Hampshire laws (RSAs) and the New Hampshire Board of Education Rules for the Education of Children with Disabilities(Ed 1100).*

## **COMPLAINT PROCESS**

### **WHO CAN FILE**

Any person, including students, or organization can file a complaint. The person filing the complaint does not need to live in New Hampshire, but there are specific requirements that need to be met for filing. The person or organization filing the complaint will be referred to as the “complainant.”

### **WHY FILE**

The complaint process is one of the rights parents, other individuals and organizations have if they believe the school district has violated federal or state special education laws. The complaint is a formal request to the state agency (New Hampshire Department of Education) to investigate the allegation(s) of noncompliance with the federal or state laws.

### **HOW AND WHAT TO FILE**

The complaint is usually a written letter including all the information below or you may use the Complaint Form that is available on the New Hampshire Department of Education website – [www.education.nh.gov/instruction/special\\_ed/complaint.htm](http://www.education.nh.gov/instruction/special_ed/complaint.htm). However, a complaint may be submitted in any alternative format such as; audio or video recording. The complaint must be signed and mailed or hand delivered. E-mail complaints are not accepted. Faxed requests will not be acted upon until an original, regularly mailed or delivered copy is received by the New Hampshire Department of Education.

*You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*

The complaint must contain the following information:

1. The name and address of the child. (If the child is homeless provide contact information).
2. The complainant’s, address and how to reach the complainant.
3. The name of the school the child is attending.
4. A statement that the school district has violated a federal or state special education law.
5. Facts that will support the allegation(s).
6. An Allegation that the violation occurred within one year prior to the complaint being filed.
7. A proposed resolution.
8. The complainant’s signature.

### **WHEN TO FILE**

The violation must have happened within one year prior to the complaint being filed.

### **WHERE TO FILE**

Complaints must be sent to the:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, NH 03301-3860

*You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*



## TIMELINES

There are several timelines that apply to the complaint process. The following is a breakdown of those timelines:

1. The complaint itself must be filed within (1) year of the alleged violation.
2. The complaint will be investigated and resolved within sixty (60) calendar days of the receipt of the complaint. This time limit may be extended due to exceptional circumstances in relation to the complaint – or if the complainant and the school district agree in writing to extend the time limit to engage in mediation or other dispute resolution proceedings.
3. Additional timelines apply if reconsideration of a decision is requested. See “RECONSIDERATION” for more detailed information.

## INVESTIGATION

The New Hampshire Department of Education will assign an independent investigator to the complaint if the complaint is found appropriate. The investigator will contact the complainant and the school district cited in the complaint. The investigator will investigate the complaint by completing a series of procedures to determine the truth of the allegations. These procedures, when circumstances warrant, may involve, but may not be limited to the following:

- Interviews with the complainant, school district staff and administrators, the student if appropriate and others as necessary:
  - a. The school district’s attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney’s presence.
  - b. The teacher or staff’s attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney’s presence.
  - c. When attorneys are present during the interview, they may not participate in the interview process.
  
- A review of service provider logs and schedules
- A review of evaluations
- A review of the student’s IEP
- A review of IEP Team meeting minutes
- A review of written prior notices
- A review of disciplinary slips/reports

The investigator will examine the allegation(s), gather facts specific to the allegation(s) and determine if the allegation(s) is substantiated or unsubstantiated. The investigator will cite the source of his/her facts in the language used by or in the source.

The investigator will then prepare his/her report and develop a conclusion based upon those facts. The investigator will state whether the allegation(s) is substantiated or unsubstantiated. The report will contain the following information:

- Introduction
- Background Information
- Statement of Alleged Violation(s)
- Findings of Fact
- Conclusion
- Sources of the Information Gathered

## DECISION

Once the investigator has completed his/her report, he/she submits it to the New Hampshire Department of Education. The NH Department of Education Complaint Officer will review the report and will write a proposed decision based upon the findings of fact and the special education law that was allegedly violated.

The Commissioner of Education then reviews/edits the findings and makes a determination of what corrective action, if any needs to be made. The Commissioner of Education signs the decision and copies are sent to the parent and school district. If the complainant was a third party, a copy will be sent to the complainant only if the New Hampshire Department of Education has on file a notarized signed release from the guardian, surrogate parent, or adult student, as applicable, granting permission for the complainant to receive a copy.

## CORRECTIVE ACTION PLAN

If the Commissioner of Education issues an order that includes a Corrective Action Plan, the school district will have a designated amount of time to correct the violation and indicate the procedures they undertook and/or changes they made to ensure the violation would not occur again. A Corrective Action Plan can take a variety of forms. Depending upon the violation, the New Hampshire Department of Education will determine what that corrective action may be. The following is **a sampling** of what might occur:

1. The NHDOE may require the school district to convene a new IEP meeting.
2. The NHDOE may require that the school district conduct further evaluations.
3. The NHDOE may ask the school district to submit a plan within a designated time frame outlining what they propose to do to correct the violation and what monitoring procedures they plan to initiate to ensure the violation will not occur in the future.
4. The NHDOE may require that the school district initiate training activities for designated personnel in the areas of the violations.
5. The NHDOE can make available to the school district Technical Assistance Consultants to provide training, support and monitoring.
6. The NHDOE may require the school district to provide compensatory services or reimbursement.
7. The NHDOE may require that the school district review and revise its procedures and practices to comply with federal and state laws.
8. The NHDOE may require the school district to take part in periodic monitoring and reporting activities.

## RECONSIDERATION

In the event that either party (complainant or public agency) is not satisfied with the decision of the New Hampshire Commissioner of Education that party may seek reconsideration of the decision.

Within ten (10) calendar days of receipt of the Commissioner's decision, the dissatisfied party may make a written request to the Commissioner for reconsideration of the decision.

Within twenty (20) calendar days of the receipt of that request, the Commissioner will:

- Review the investigator's report
- Review the evidence presented at the investigation
- If necessary, gather and/or review additional information
- Review the decision
- Issue a final written decision

At that point, if any party is still dissatisfied with the final written decision of the Commissioner, they may appeal the decision in accordance with RSA 541.

## **ENFORCEMENT**

If a school district fails to comply with the corrective action required in the decision, the New Hampshire Department of Education may ensure compliance by initiating one or more of the procedures detailed in Ed1125 “State Department of Education Enforcement.”

## **RESPONSIBILITIES**

### **COMPLAINANT**

The complainant has certain responsibilities in filing a complaint that must be followed in order to have the complaint reviewed and investigated. The following are the responsibilities of the complainant:

- Be sure to follow the process outlined in this document for filing a complaint
- Be sure the complaint is made in writing (or any alternative format) and that all required information is provided
- Allege that the violation occurred within one (1) year prior to filing the complaint
- Sign and date the complaint
- *You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*
- Mail – or deliver - DO NOT FAX or E-MAIL – the complaint to the:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, New Hampshire 03301

## **RESPONSIBILITIES**

### **SCHOOL DISTRICT**

If you are a school district preparing for a complaint investigation against your school district, the New Hampshire Department of Education recommends the following in order to have the process run efficiently and productively for all involved. The Complaint Process has designated timelines for completion of activities. Your cooperation is needed and appreciated in this process.

1. Prior to the investigator arriving, have all materials s/he will need to review in relation to the filed complaint. These items could be but are not limited to:
  - The student’s IEP
  - Evaluation reports
  - Progress reports
  - Teacher and Related Service Provider contact logs and schedules
  - Written Prior Notice
  - Notification/Invitation to meetings
  - IEP Team meeting minutes
  - LEA Procedures Manual
2. Arrange for a quiet place that the investigator can use to work and review the materials s/he requires.

3. Arrange for administrators, staff, service providers and other personnel as needed to be available to the investigator for interviewing.
  - a. The school district's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - b. The teacher or staff's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - c. When attorneys are present during the interview, they may not participate in the interview process.
4. Provide a private space for the interviews to occur.
5. Make *every* effort to keep scheduled appointments with the investigator.
6. Contact the investigator if, for unforeseen and exceptional circumstances, an appointment needs to be rescheduled (inclement weather, absenteeism, etc.)

## **RESPONSIBILITIES**

### **INVESTIGATOR**

The following is a list of key procedures an investigator should follow and be aware of during a complaint investigation.

1. Review the Complaint
  - Determine what material you will need to review
  - Determine who you will need to contact
  - Review the student's file
  - Determine what special education laws are at issue and review those laws
2. Interview the Complainant
  - Make note of date and method used – in person, by phone
  - Keep accurate notes
  - Interview may be conducted by phone, face-to-face or on-site at the discretion of the investigator
3. Contact the School District
  - Discuss what materials you will need to review and ask to have the materials available
  - Discuss who you will need to interview and ask to make them available
  - Ask for a space to work to review the materials and conduct interviews privately
  - Schedule dates and times for visits
4. Review pertinent documents
  - IEP
  - Evaluations
  - Meeting Notices
  - Written Prior Notice
  - IEP Team meeting minutes
  - Permissions
  - LEA Procedures Manual

5. Conduct Interviews of School Personnel:

- Service Providers
- Administrators
- Other Personnel as necessary
- Interview may be conducted by phone, face-to-face or on-site at the discretion of the investigator.
  - a. The school district's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - b. The teacher or staff's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - c. When attorneys are present during the interview, they may not participate in the interview process.
- Prepare the Report
- Includes each alleged violation raised in the complaint and a determination of whether each was substantiated or unsubstantiated as well as the reasons for the investigator's conclusions. The report must also include an introduction, background information, findings of fact and a list of the sources of the information gathered.

**DO'S AND DON'TS**

**DO:**

- Be mindful of the timeline
- Remain objective
- Remain factual
- Complete each section of the Investigator's Report
  - Introduction
  - Background Information
  - Alleged Violation(s)
  - Findings of Facts
  - Conclusions
  - List of the sources of the information gathered

**DO NOT:**

- Agree to attend a joint meeting between the complainant and school district.
- Agree to delay the investigation due to school vacations and staff availability.
- Attempt to act as a communicant or mediator between the parties.
- Attempt to solve the problem.
- Allow the complainant or school district to view the report prior to it being submitted and the decision issued.
- Require the complainant to "prove" his case.
- Allow the school district to shift the focus of non-compliance to having the complainant *prove* non-compliance.
- Reach conclusions based on your view of the efforts of the school district to resolve the issue or that it acted in good faith. (*The Commissioner always considers the efforts of the district in the decision and orders.*)
- Include your thoughts or analysis of the IEP, evaluation, etc.
- Offer your opinion or advice.

## **RESPONSIBILITIES**

### **NEW HAMPSHIRE DEPARTMENT OF EDUCATION**

The NHDOE gives due consideration to each complaint received. The NHDOE has the following responsibilities in the Complaint Process:

- Review the complaint and determine if it is a viable complaint to be further investigated.
- Inform the complainant and school district of receipt of the complaint.
- Assign an investigator to the complaint.
- Adhere to timelines – unless exceptional circumstances require an extension.
- Review the investigator’s report.
- Write a proposed decision based upon the investigator’s findings of fact and conclusions – including orders of corrective action if applicable.
- Submit the proposed decision to Commissioner of Education for review and signature.
- Send copies of the decision to the parent and the school district; also to the other party who filed the complaint, but only if a notarized release is signed by the parent (or other person authorized to act on the student’s behalf) and on file at the NHDOE, giving permission to disclose the decision to the complainant and a copy of the release retained by the NHDOE.
- Provide technical assistance to school districts for corrective actions to achieve compliance with decisions.
- Implement procedures for reconsideration of the decision if either party is aggrieved by the decision.
- Retain all documents and artifacts relevant to the complaint investigation.

## CHECKLIST FOR FILING A COMPLAINT

### COMPLAINANT CHECKLIST

The following information is required to process a special education complaint. All information can be provided in any alternative format.

- \_\_\_\_\_ The name of the child.
- \_\_\_\_\_ The address of the residence of the child.
- \_\_\_\_\_ Your name.
- \_\_\_\_\_ Your address.
- \_\_\_\_\_ A method (phone number) in which to contact you.
- \_\_\_\_\_ The name of the school the child is attending.
- \_\_\_\_\_ A statement that the school district has violated a special education law.
- \_\_\_\_\_ Facts upon which the above statement is made.
- \_\_\_\_\_ Allege that the violation occurred not more than one year prior to when the complaint is being filed with the New Hampshire Department of Education.
- \_\_\_\_\_ Provided a proposed resolution.
- \_\_\_\_\_ The complaint is signed.
- \_\_\_\_\_ The complaint has been mailed or hand delivered.
- \_\_\_\_\_ *You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*

Mail complaint to the:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, NH 03301

\* A *Complaint Form* is available from the NH Department of Education website – [www.education.nh.gov/instruction/special\\_ed/complaint.htm](http://www.education.nh.gov/instruction/special_ed/complaint.htm) - though use of that form is optional.

## CHECKLIST FOR FILING A COMPLAINT

### SCHOOL DISTRICT CHECKLIST

In preparing for a complaint investigation against your school district, the New Hampshire Department of Education recommends the following checklist to help you prepare.

\_\_\_\_\_ Materials the investigator may require:

- IEP
- Evaluation Reports
- Progress Reports
- Teacher and Related Service Provider contact logs
- Written Prior Notice
- IEP Team meeting minutes
- Notification/Invitation to Meetings
- Permissions/Consent forms
- LEA Procedures Manual
- Other information as warranted by the complaint
- Administrative reports
- Attendance
- Discipline

\_\_\_\_\_ Space for the investigator to review materials.

\_\_\_\_\_ Availability of personnel for interviews:

- Administrators
- Staff
- Service Providers
- Others

\_\_\_\_\_ Private space for conducting interviews.



## CHECKLIST FOR FILING A COMPLAINT

### INVESTIGATOR CHECKLIST

\_\_\_\_\_ Complainant Interview: *(repeat process as often as necessary)*

- Date
- Method of Contact
- Interview may be conducted by phone, face-to-face or on-site at the discretion of the investigator

\_\_\_\_\_ School District Interview: *(repeat process as often as necessary)*

- Date
- Name
- Role and if applicable, title
- Method of Contact
- Interview may be conducted by phone, face-to-face or on-site at the discretion of the investigator
  - a. The school district's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - b. The teacher or staff's attorney may be present when an employee of the school district is being interviewed, so long as the interviewee consents to that attorney's presence.
  - c. When attorneys are present during the interview, they may not participate in the interview process.

\_\_\_\_\_ Review of pertinent documents: *(repeat review as often as necessary for each document)*

- Date
- Document
- Method

\_\_\_\_\_ Section Completion: *(for each allegation)*

- \_\_\_\_\_ Introduction
- \_\_\_\_\_ Background Information
- \_\_\_\_\_ Alleged Violation(s)
- \_\_\_\_\_ Findings of Facts
- \_\_\_\_\_ Conclusion
- \_\_\_\_\_ List of the sources of the information gathered

# Appendix A

## PART Ed 1121 COMPLAINT PROCEDURES

### Ed 1121.01 Filing a Complaint.

- (a) Individuals or organizations may report alleged violations of a public agency which are contrary to the provisions of state and federal requirements regarding the education of children with disabilities by filing a complaint.
- (b) A complaint shall be filed according to the provisions of 34 CFR 300.153.

#### **§300.153 Filing a complaint.**

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- b) 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) The signature and contact information for the complainant; and
  - (4) If alleging violations with respect to a specific child—
    - (i) The name and address of the residence of the child;
    - (ii) The name of the school the child is attending;
    - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
    - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
    - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) 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 §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

- (c) Complaints filed pursuant to 34 CFR 300.136(b) relative to private school consultation shall be investigated, reviewed, and resolved using the process detailed in Ed 1121.02 and Ed 1121.03.

#### **§300.136(b) Procedure.**

- (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
- (2) The LEA must forward the appropriate documentation to the SEA.
- (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
- (ii) The SEA must forward the appropriate documentation to the Secretary.

- (d) Complaints shall be directed to the:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, New Hampshire 03301

## Ed 1121.02 Investigation of Complaints and Complaint Procedures.

(a) The Commissioner of Education shall assign an employee of the department or, if an employee of the department is not available, an independent investigator to:

- (1) Investigate the alleged complaint including conducting an on-site investigation if necessary; and
- (2) Issue a written report with recommendations to the Commissioner.

(b) The Commissioner shall issue a written decision that addresses each allegation in the complaint and contains:

- (1) Findings of fact and conclusions; and
- (2) The reasons for the department's decision.

(c) If the Commissioner finds there has been a failure to provide appropriate services, the Commissioner's order shall 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 or the children; and
- (2) Appropriate future provision of services for all children with disabilities.

(d) The Commissioner of Education shall mail the written decision and a copy of the independent investigator's report to the public agency named in the complaint, including, if necessary, orders to the agency with specific timelines for the corrective actions if such actions were found necessary in order to attain compliance. If the complaint filed under Ed 1121.01 concerns a specific child, the parent of that child shall receive copies of the decision, the investigator's report, and any orders issued.

(e) Complaint procedures shall be in compliance with 34 CFR 300.151- 153.

### **§300.151 Adoption of State complaint procedures.**

(a) General. Each SEA must adopt written procedures for--

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--
  - (i) Providing for the filing of a complaint with the SEA; and
  - (ii) 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 procedures under §§300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--

- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- (2) Appropriate future provision of services for all children with disabilities.

### **§300.152 Minimum State complaint procedures.**

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 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) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--
  - (i) At the discretion of the public agency, a proposal to resolve the complaint; and

- (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
- (4) 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
- (5) 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) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--
  - (1) Permit an extension of the time limit under paragraph (a) of this section only if--
    - (i) Exceptional circumstances exist with respect to a particular complaint; or
  - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and
  - (2) Include procedures for effective implementation of the SEA's final decision, if needed, including-
    - (i) Technical assistance activities;
    - (ii) Negotiations; and
    - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.
  - (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, 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 paragraphs (a) and (b) of this section.
  - (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties-
    - (i) The due process hearing decision is binding on that issue; and
    - (ii) The SEA must inform the complainant to that effect.
  - (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

**§300.153 Filing a complaint.**

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) 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) The signature and contact information for the complainant; and
  - (4) If alleging violations with respect to a specific child--
    - (i) The name and address of the residence of the child;
    - (ii) The name of the school the child is attending;
    - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
    - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
    - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) 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 §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

### **Ed 1121.03 Resolution of Complaints.**

(a) All complaints shall be resolved within 60 days of receipt of the written complaint. The 60-day time limit may be extended consistent with 34 CFR 300.152(b)(1).

**For §300.151-300.153,**

**see – Ed 1121.02 Investigation of Complaints and Complaint Procedures.**

**Page #145**

(b) The sanctions described in Ed 1125 shall be applied as needed to enforce compliance with orders issued to resolve findings and achieve compliance with respect to the provision of FAPE for children with disabilities.

### **Ed 1121.04 Reconsideration and Appeals.**

(a) Any party to the complaint may, within 10 days of receipt of the commissioner's written decision under Ed 1121.02(b), make a written request to the commissioner for reconsideration of the decision.

(b) Within 20 days of the receipt of the written request for reconsideration, the Commissioner shall:

- (1) Review the investigator's report;
- (2) Review the evidence presented in the investigation;
- (3) If necessary, gather additional evidence;
- (4) Review the decision; and
- (5) Issue a final written decision.

(c) Any party who is aggrieved by the final written decision of the commissioner under Ed 1121.04(b)(5) may appeal in accordance with RSA 541.

## Appendix B

### Special Education Complaint Process

1/25/11

#### FAQs

The Department will respond to questions that we are frequently asked concerning the Special Education Complaint Process as detailed in Ed 1121. We hope that these FAQs become an ongoing dialogue that provides information concerning the complaint process.

#### 1. What is a special education "complaint?"

A special education "complaint" is a written, signed statement alleging that a school district or other public agency has violated a state or federal special education law.

#### 2. Why does the New Hampshire Department of Education (NHDOE) investigate special education complaints?

The federal regulations that implement IDEA require states to investigate written complaints of IDEA violations.

#### 3. Who can file a complaint?

Any individual or organization can file a complaint. The individual filing the complaint may live out of state. If the individual is not the parent, guardian, surrogate parent, or adult student the complaint decision will not be sent to the complaining party unless the Department receives a notarized release of information form signed by the parent, guardian, surrogate parent, or adult student.

#### 4. Is there a special form for filing a complaint?

Although NHDOE does have a form available on its website, it is not required. A complaint must be in writing, dated and signed, or provided in any alternative format. The complaint must identify how the school district or program violated special education requirements. The complaint also needs to include facts or details about the violation.

If you choose to use the form, it can be found on the Department's website

[www.education.nh.gov/instruction/special\\_ed/complaint.htm](http://www.education.nh.gov/instruction/special_ed/complaint.htm) - or by calling the Department: 603-271-3730.

#### 5. What needs to be in a complaint?

- Your name, address and how to reach you (your contact information)
- Your signature on the complaint
- If the complaint concerns a specific child:
  - The name and address of the child, or if the child is homeless, contact information
  - The name of the school the child is attending
- A statement that the school district has violated a federal or state special education law
- A description of the problem/allegation(s)
- Facts that support the allegation(s)
- A statement that the violation occurred within one year prior to the complaint being filed
- A proposed resolution of the complaint, to the extent known to you at the time you filed the complaint
- *You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*

## **6. Are there timelines that apply to filing a complaint?**

Yes - Under the federal regulations, the violation must have happened within one year of the date the complaint is filed with the NH Department of Education.

## **7. What are the steps to resolving a complaint?**

1. After receiving your letter, the New Hampshire Department of Education will date stamp it and send an acknowledgement letter.
2. Next, it will be reviewed by the NHDOE Special Education Complaint Officer.
3. If the issues raised cannot be processed as a complaint – a letter will be sent stating the reasons.
4. If the issues are appropriate for the complaint procedures, we will:
  - a. Assign an independent investigator to the case.
  - b. Send a letter to both the complainant and the school district giving them the name of the investigator and will include a copy of the complaint letter identifying what federal and/or state special education laws are involved.
5. If necessary, the person filing the complaint may contact the complaint officer or investigator to correct any errors made in summarizing the issues.
6. The investigator will review appropriate educational records and interview both the parents and school district officials and staff to determine the facts. When the investigation is complete, the investigator will submit his/her findings to the NHDOE.
7. The NHDOE Special Education Complaint Officer will review the investigator's findings and write a proposed decision based upon the investigator's finding of facts and the relevant state and federal rules and regulations.
8. The New Hampshire Commissioner of Education reviews the proposed decision and reaches a decision and determines what corrective action, if any, is warranted. The Commissioner signs the decision. The decision will be issued no later than 60 calendar days after the complaint was received by NHDOE. The timeline may be extended if the Department determines that exceptional circumstances exist that warrant delaying the decision.
9. If any party is aggrieved by the decision, he or she has 10 calendar days from the date the decision was received to request reconsideration. Within 20 calendar days of receiving a request for reconsideration, the Commissioner will determine whether reconsideration is merited and will issue a final determination. Any party still aggrieved may request a due process hearing or file an appeal in accordance with Ed 541.

## **8. How is a complaint investigation different from a due process hearing?**

A due process hearing is a formal administrative hearing before an impartial hearing officer. The parties to a hearing have an opportunity to present and cross-examine witnesses, to have a record of the proceedings, and to enter and object to evidence. Parties can subpoena witnesses and testimony is under oath. Due process hearings provide for detailed due process rights. The final order can be appealed to state or federal court. The court will look at the hearing record, along with the final order. The IDEA includes an attorney fees provision so that parents who prevail in an administrative hearing may ask the court to order reimbursement for reasonable attorney fees.

The complaint process is a review of the situation by NHDOE staff and independent investigators. The investigators will review the paperwork, talk to parents and school staff, and look to see whether the school district's actions comply with the IDEA. There is no formal testimony or record of the proceedings. There are no oaths, subpoenas or other due process protections.

## 9. How does NHDOE resolve the complaint issue?

NHDOE looks at all the information that is available to determine whether the school district or other program met the requirements of the IDEA. Some examples are:

<b>If the issue is:</b>	<b>NHDOE will look to see:</b>
Disagreement about a specific service or amount of service.	The team's decision is supported by student-specific data and consistent with IDEA requirements.
Disagreement about placement (or "least restrictive environment" for the student).	The IEP team followed proper procedures, the placement was based on the student's written plan, and the team's decision is supported by student-specific data.
Implementation of the student's IEP.	The school district or program implemented the student's IEP as it was written.
Lack of progress toward the student's annual goals.	The school district or program implemented the student's plan as it was written and made a good faith effort to assist the child in meeting the child's annual goals.

As this chart indicates, the student's IEP is an important consideration in the complaint investigation process. Parents are important members of the team that develops this plan. As children get older (especially in high school), they become important members of the team, also.

## 10. What if the investigator finds some evidence supporting the school district and some evidence supporting the parent?

NHDOE will find that an allegation is substantiated if there is more credible evidence supporting it than denying it.

## 11. What happens if, based on a complaint investigation, the NHDOE determines that a school district has violated a special education law?

The NHDOE may require the school district to hold an IEP meeting to consider certain student needs. The NHDOE may require the school district to conduct an evaluation or take other specific action to correct the violation.

If the violation resulted in a lack of appropriate services for the student, the NHDOE may order compensatory services or reimbursement. Sometimes, the NHDOE will require the school district to meet with the parent to work out the details of the compensatory services or reimbursement. The district may, at any time, choose to submit a voluntary corrective action plan to resolve the issues in the complaint.

If it appears that the violation was systemic, the NHDOE may require the school district to revise its policies or practices. NHDOE may require staff training in specific areas. The NHDOE may require periodic monitoring or reporting of implementation/compliance.



The purpose of “corrective action” is to correct the situation. The NHDOE does not impose “penalties” or fines as part of corrective action. However, if a school district fails to comply with the corrective action required in the Commissioner’s order, the NHDOE may ensure compliance by initiating one or more of the procedures detailed in Ed 1131 “State Department of Education Enforcement.”

**12. What are “compensatory services”?**

Under the federal regulations, if a State finds that a violation results in the failure to provide appropriate services to a student, the State must address how to remediate (or correct) the denial of those services. Compensatory services are services provided at a later date to correct the denial of services.

**13. Does a complaint have to be signed?**

Yes.

**14. May a complaint be e-mailed?**

No.

**15. May a complaint be faxed?**

Yes – but a hard copy with original signature must be provided to NHDOE before any action will be taken. Upon receipt of the hard copy, the timeline will start.

**16. Where do I send the complaint?**

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, NH 03301

*You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.*

**17. Do I need legal representation to file a complaint?**

No.

**18. May I file a complaint for any problem I might be having with a school district?**

No, the complaint must relate to a violation of a special education law.

**19. May I add to my complaint as time goes on?**

Since the NHDOE is required to complete the investigation within 60 calendar days, the Department limits adding to a written complaint. If the Department feels that it is not practical to add additional allegation(s) to an in-process complaint, the Department retains the option of determining that the new allegation(s) constitutes a new complaint that will be processed according to the process described in this document.

**20. May I continue to work with my school district while the complaint is being investigated?**

The NHDOE always encourages parents and school districts to work together to resolve issues.

**21. Who investigates the complaint?**

The Department contracts with 10 – 14 individuals to investigate complaints. They are educators, attorneys, and administrators who have many years of experience in the field of education and who receive training from the NHDOE. Complaint investigators may not have a conflict of interest regarding the complaint he/she is investigating, or with the school district or parent involved in the complaint.

**22. How is the investigation conducted?**

The investigator will review appropriate educational records and interview the parent(s) and school district officials and staff, as well as any other relevant individuals to determine the facts.

**23. Am I involved in the investigation process?**

Yes. You will be contacted by the investigator and interviewed.

**24. Who makes the decision regarding the complaint?**

The NHDOE Special Education Complaint Officer will review the investigator's report and write a proposed decision based on investigator's findings of fact and a review of relevant state and federal special education laws. The Commissioner of Education reviews the proposed decision, reaches a decision and determines what corrective action, if any, is warranted. The decision will be issued no later than 60 calendar days after the complaint was received by the NHDOE.

**25. Will I get a copy of the final decision?**

Yes, you will get a copy if you are the parent, legal guardian, surrogate parent or adult student. If the complaining party was not one of the people listed above, the decision will not be sent to the complaining party unless the NHDOE receives a notarized release of information form signed by the parent, legal guardian, surrogate parent or adult student.

**26. Who else gets a copy of the final decision?**

The student's school district will get a copy of the decision. The NHDOE will also retain a copy of the decision and all materials generated by the investigator.

**27. What if I do not agree with the decision?**

If either party is not satisfied with the decision that party may file for reconsideration with the Commissioner of Education within 10 calendar days of the date that party received the decision. The Commissioner will determine if reconsideration is warranted and issue a final determination within 20 calendar days of receiving the request for reconsideration.

**28. What if I'm still not satisfied?**

If either party is still not satisfied that party may file for a due process hearing or file an appeal in accordance with Ed 541.

**29. What is corrective action?**

Corrective action is required activities ordered by the Commissioner of Education to correct substantiated violations of special education laws.

**30. Does the school district have a certain time frame to correct the violation?**

If the school district has been found in violation of a state or federal regulation, the NHDOE will determine a time frame in which the school district must remedy the violation that has occurred.

**31. Does the NHDOE follow-up and monitor the school district so the violation will not occur again?**

Yes. The NHDOE may require ongoing monitoring and reporting of the implementation of the corrective action.

**32. What if the school district does not follow the corrective action order?**

If a school district fails to comply with the corrective action required in the Commissioner's order, the NHDOE will ensure compliance by initiating one or more of the procedures detailed in Ed 1125, "State Department of Education Enforcement."

**33. What are compensatory services?**

Under the federal regulations, if a State finds that a violation results in the failure to provide appropriate services to a student, the State must address how to remediate (or correct) the denial of those services. Compensatory services are services provided at a later date to compensate for the denial of services.

**34. May I file a complaint after a due process hearing has been settled?**

You may, but it cannot be about a violation that has already been settled in a due process hearing.

**35. May I file for due process or go into mediation during the time I filed a complaint?**

Yes, but during that time, the complaint process will be suspended pending the outcome of the due process hearing or mediation. If not all matters are part of due process, that portion of the complaint investigation may proceed.

**36. May I withdraw my complaint at any time?**

Yes.

**37. May I or the private school where I have placed my child, file a complaint regarding the provision of special education services in the private school.**

Generally you **cannot** file a complaint concerning the services that the district provides or offers to provide to your child when you place your child in a private school based on 34 CFR 300.132. The limited exceptions concern equitable services (34 CFR 300.138) and child find requirements.

A private school official has the right to file a complaint if he/she believes they have not been included in a timely and meaningful consultation process or that the LEA failed to give due consideration to the views of the private school.

### **38. How is a complaint closed?**

A complaint is closed by one of the following actions:

1. The complaining party withdraws the complaint;
2. A decision is reached in the complaint and all activities ordered by the commissioner have been completed;
3. A decision is reached and all allegations were unsubstantiated;
4. The parties reached an agreement to end the complaint;
5. The issues in the complaint were included in an active due process hearing;
6. The district offers a voluntary corrective action plan – the plan is accepted by the NHDOE – and all activities in the voluntary corrective action plan have been completed;
7. The allegations, upon preliminary investigation, are found to not be subject to review in the complaint process (rare but does happen).

### **39. Where can I get more information about the complaint process?**

In addition to the information contained in this Complaint Manual” additional information about the complaint process can be provided by calling the New Hampshire Department of Education at 603-271- 3741 or 603- 271-3730.

### **40. What is a “Voluntary Corrective Action Plan?”**

A voluntary corrective action plan is a written plan developed by the school district that acknowledges that the allegation has merit and proposes district action that it believes will resolve one, some, or all allegations in the complaint, i.e., Allegation #1 - “The XYZ school district proposes to make-up 6 hours of individual speech therapy that was detailed in the student’s IEP but not provided between September 1, 2010 and October 7, 2010. The district proposes adding 15 minutes per session until all missed time has been made-up. The district will provide the Department with documentation, detailing the date, time, and provider of the compensatory service.”

### **41. What are the benefits of a voluntary corrective action plan?**

The Department has found that many complaints are breakdowns of trust and communication between parents and the school district. When a district acknowledges that mistakes were made and **voluntarily initiates a plan to correct those mistakes**, parents will often maintain or improve the relationship with the district and focus on providing an appropriate and successful program for the student.

### **42. What if the district doesn’t comply with the Commissioner’s order?**

If you believe the district is not complying with the Commissioner’s orders contact the Bureau of Special Education at 603-271-3741. It is not necessary to file a second complaint for this issue.

### **43. What are school districts doing or have in place to keep their number of complaints low?**

The Department’s limited feedback indicates that districts that create active and ongoing communication and trust with parents have very few if any complaints filed.

## Appendix C

### Other Resources Available to Complainants

Any party who feels that their or their child's rights are being violated may file a complaint stating their allegation. While it is always most beneficial to work through difficulties at the local district level, there are times when resolution cannot be achieved at that level and other steps need to be taken.

The list below, while not exhaustive, provides some resources that may be sought to help resolve the difficulty you are experiencing.

1) NH's Parent Training and Information Center – Parent Information Center

PO Box 2405  
Concord, NH 03302 - 2405  
603-224-7005  
[www.parentinformationcenter.org](http://www.parentinformationcenter.org)

2) NH's Protection and Advocacy Center

Disabilities Rights Center  
18 Low Avenue  
Concord, NH 03301  
603-228-0432  
[www.drcnh.org](http://www.drcnh.org)

3) Teacher Misconduct

Dr. Judith Fillion  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301  
603-271-3855

4) Non-Discrimination

Aprylle Desrosiers  
ADA/Title IX Coordinator  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301  
603-271-0055

5) Section 504 and Non-Discrimination

Office for Civil Rights  
US Department of Education  
33 Arch Street  
Boston, MA 02110-1491  
617-289-0111  
TDD: 877-521-2172

## **Appendix D**

### **Model Letters and Form**

#### **Model Letters and Forms**

1. “How to File a Special Education Complaint” Document with Form to use to file complaint
2. Acknowledgement Letter (acknowledges receipt of complaint)
3. Allegation Information Document (documents allegation(s))
4. Complaint Intake Form (internal department form)
5. Parent Notification Letter (letter giving information on process and name of investigator)
6. District Notification Letter (letter giving information on process and name of investigator)
7. Complaint Screened Letter (letter to inform the parent that we are unable to process complaint)
8. Complaint Set-Aside Letter (letter notifying all parties involved that an Administrative Due Process has been filed and complaint is set aside)
9. Withdrawal of Complaint Form (document to withdraw complaint signed by parent)
10. Complaint Corrective Action Continuum



**Virginia M. Barry, Ph.D.**  
Commissioner of Education  
Tel. 603-271-3144

**Paul K. Leather**  
Deputy Commissioner of Education  
Tel. 603-271-3801

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900**

## HOW TO FILE A SPECIAL EDUCATION COMPLAINT

The following information is required for a complaint to be processed. It must be written and signed, unless communications mode of the complaining party precludes a written signed complaint. All information can be provided in any alternative format.

The notice must include:

1. Your **name, address** and **daytime phone number**.
2. The name of the **child**.
3. The **address** of the **residence** of the **child**, if different than yours – or contact information if the child is homeless.
4. The **name** of the **school** the child is **attending**.
5. A **statement** that the school district **violated a state or federal special education law**.
6. The **facts** upon which the **statement** is made and how it has affected the child.
7. Allege that the **violation occurred within one year before** the date the complaint is filed with the New Hampshire State Department of Education.
8. A statement of the **resolution or outcome** you would like to see.
9. The **complaint must be signed** and a **copy must be sent to the child's school district** at the same time you send the complaint to the New Hampshire State Department of Education.
10. *You must send a copy of the complaint to the school district (preferably to the special education director and/or the superintendent of schools) at the same time that you send it to the NHDOE. **If you do not know the name of the Special Education Director or Superintendent, please contact the Bureau of Special Education at 271-3741 and we will provide that information to you.***

Mail or deliver the completed complaint to:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord NH 03301-3860

## MODEL COMPLAINT FORM

The use of this form is optional. Complainants may submit a complaint on plain paper, stationery, etc., or all information can be provided in any alternative format.

No other documentation should be submitted at this time.

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

Relationship to Student:

Parent     Guardian     Citizen     Attorney     Advocate     Student

Student's Name:	
Address, if different than yours:	
(If the student is homeless, please provide available contact information)	
Date of Birth:	Grade:
School Attending:	
School District:	

A copy of the New Hampshire Department of Education, Bureau of Special Education's "Complaint Procedures Manual for Special Education Complaints" can be found on our website at:  
[http://www.education.nh.gov/instruction/special\\_ed/complaint.htm](http://www.education.nh.gov/instruction/special_ed/complaint.htm)

A hard copy of the "Complaint Procedures Manual for Special Education Complaints" can also be obtained by request at (603) 271-3741.

According to federal regulations, a complaint must:

1. Be in writing, or all information can be provided in any alternative format;
2. Be signed;
3. Include a statement that a public agency (usually a school district) has violated a federal or state special education law;
4. Include the facts on which the allegation is based, how it has affected the student and the outcome or resolution sought; and
5. Must allege a violation that occurred within one year before the date filed with the NH Department of Education.



1. Statement of the violation.

You do not have to quote the specific law that you believe was violated, but you must explain what you believe the school has done wrong, for example, “the teachers are not following my/the child’s IEP.”

2. Facts upon which the allegation is based.

Describe what happened to lead you to believe the school has violated a special education law and how that affects your /the child, for example, “My/The child’s IEP says he will be seated in the front of the classroom, but on numerous visits to my child’s classroom, he was seated in the back of the classroom. Because of his vision and hearing problems, he needs to sit close to the blackboard and the teacher.”

3. Resolution or Outcome desired.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please send the completed form to:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, NH 03301-3860

If you have any questions, please contact the Special Education Complaint Office at (603) 271-3730

**Virginia M. Barry, Ph.D.**  
Commissioner of Education  
Tel. 603-271-3144



**Paul K. Leather**  
Deputy Commissioner of Education  
Tel. 603-271-3801

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900**

Date

Parent Name  
Street  
City

Dear Parent(s):

The Department of Education received your complaint on behalf of (child's name) on (DATE), alleging violations of state or federal special education laws. We will determine whether or not the issues you raised can be processed as a complaint. If so, your complaint will be processed in a timely manner so that it may be completed within the 60 calendar day timeline.

Once your complaint has been processed:

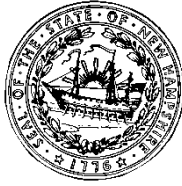
- You will receive a Certified Letter from the Bureau of Special Education with a summary of the complaint allegations as we understand them. The summary of this complaint allegation will reflect the state and federal regulations.
- Once the summary of the complaint allegations is completed, the NHDOE will assign an independent investigator to your complaint.

If it is determined that the issues you raised cannot be resolved by the complaint process, you will receive a letter that will explain the reasons.

If you have any additional questions please call me at (603) 271-3730.

Sincerely,

Education Consultant  
Bureau of Special Education



**Virginia M. Barry, Ph.D.**  
Commissioner of Education  
Tel. 603-271-3144

**Paul K. Leather**  
Deputy Commissioner of Education  
Tel. 603-271-3801

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900**

## **ALLEGATION INFORMATION**

To ensure that all parties to a Complaint are given the opportunity to provide the New Hampshire Department of Education investigator with relevant information the Department has synthesized Complaint 12-XX into the following Allegations:

**Allegation #1** – The \_\_\_\_\_ School District has failed to

**Allegation #2** – The \_\_\_\_\_ School District has failed to

**Allegation #3** – The \_\_\_\_\_ School District has failed to

To ensure both a timely resolution and orderly processing of the Complaint the Department has established procedures for amending the Complaint.

Within 10 calendar days of the Department receiving the Complaint the Department will, upon the request of the complaining party, amend the Complaint. All parties to the complaint will receive a copy of an amended “Allegation Information” form and the complaining party’s written request to amend the Complaint. There will be no change in the timeline.

After 10 calendar days, the Department, at its discretion, may revise the existing Complaint or open a new Complaint. In either instance, it will begin a new 60-day timeline for investigation and decision. All parties to the new Complaint will receive a copy of the amended “Allegation Information.”

If in the course of investigating the Complaint the investigator uncovers other potential violations of Federal or State Special Education laws, the potential violation will be treated as a new Complaint. All parties to the Complaint will receive a copy of the “Allegation Information” form and a copy of the complaining party’s allegation of violation document. This new Complaint will be assigned to a different investigator.

**COMPLAINT INTAKE FORM:**

COMPLAINT #: 12-XX  
DATE RECEIVED:  
INVESTIGATOR ASSIGNED:

**COMPLAINANT:**

NAME:  
RELATIONSHIP TO STUDENT:  
ADDRESS:  
CITY: STATE: NH ZIP:  
PHONE: OTHER PHONE:

**PARENT(S)**

NAME:  
RELATIONSHIP TO STUDENT:  
ADDRESS:  
CITY: STATE: ZIP:  
PHONE: OTHER PHONE

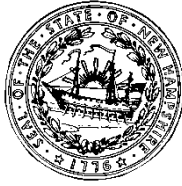
**STUDENT:**

NAME:  
BIRTHDATE:  
SCHOOL ATTENDING:  
GRADE:

**SCHOOL DISTRICT:**

SCHOOL DISTRICT: SAU:  
CONTACT PERSON:  
TITLE:  
ADDRESS:  
CITY: STATE: NH ZIP:  
EMAIL:  
PHONE: FAX:  
SUPERINTENDENT:  
ADDRESS, if different:  
CITY: STATE: NH ZIP:  
EMAIL:  
PHONE: FAX:

Allegations:



Virginia M. Barry, Ph.D.  
Commissioner of Education  
Tel. 603-271-3144

Paul K. Leather  
Deputy Commissioner of Education  
Tel. 603-271-3801

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900

DATE

Parent name  
Address  
City

RE: COMPLAINT REFERENCE NUMBER FY 12-XX

Dear parent:

The Department of Education received your complaint on behalf of \_\_\_\_\_ on (DATE), alleging violations of state or federal special education laws. Enclosed you will find a summary of the complaint allegations as we understand them. This has been restated to reflect the language of state and federal regulations. Please review this summary and let us know if you would like any changes made. \_\_\_\_\_, an investigator with the Department will be contacting you shortly to give you the opportunity to provide additional information, either orally or in writing, about the allegations in the complaint.

The Department of Education has 60 calendar days from the receipt of a complaint to complete an investigation and issue a decision. Within 10 calendar days of receipt of the Commissioner's decision, any party to the complaint may request the Commissioner to reconsider the decision. Within 20 calendar days of the receipt of the request for reconsideration, the Commissioner will issue the **final** written decision. Any party still aggrieved by the final decision of the Commissioner may appeal according to Ed 1121.04 (c).

If any party to the complaint requests a due process hearing relative to any of the issues contained within the complaint, the investigation relative to those matters will be placed on hold pending conclusion of the due process hearing. Upon notification that the due process hearing has concluded, the complaint may be reactivated to deal with any allegations that remain unresolved.

The Department always encourages parties to work cooperatively to resolve their differences. If the parties to a dispute decide to resolve their dispute by an alternative dispute resolution process, the Department will suspend the complaint if:

- The Department receives a signed request to suspend the complaint from the party that filed the complaint. The form, "Suspension of Special Education Complaint – Ed 1121," may be used for this purpose, but is not required, and
- Suspension would not jeopardize the student's educational progress or well-being.

COMPLAINT REFERENCE NUMBER FY 12-XX

Page 2

DATE

The Department will reactivate the complaint when:

- The Department receives notification that one or more of the issues in the complaint have not been resolved at the alternative dispute resolution process (Facilitated IEP meeting, Mediation, Neutral Conference, Due Process Hearing).

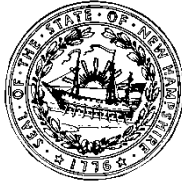
A decision issued by the hearing officer is binding upon the complaints office and is the final decision of the Department. Agreements reached through alternative dispute resolution processes will be given due consideration, but are not enforceable by the Department of Education unless they have been made an explicit part of the student's IEP.

If you have any questions, please contact the Special Education Complaint Office at 603-271-3730.

Sincerely,

Education Consultant  
Bureau of Special Education

Enclosure



Virginia M. Barry, Ph.D.  
Commissioner of Education  
Tel. 603-271-3144

Paul K. Leather  
Deputy Commissioner of Education  
Tel. 603-271-3801

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900

DATE

Name  
Superintendent / SAU  
Address

SPED name  
SPED Director / SAU  
Address

RE: Complaint # 12-XX

Dear Superintendent \_\_\_\_\_ and Mr. / Ms.:

Enclosed please find a copy of a complaint #12-XX filed with the Department of Education against the \_\_\_\_\_ School District, SAU #\_\_ on behalf of \_\_\_\_\_, and a summary of the allegations contained therein. This investigation has been referred to \_\_\_\_\_, an investigator for the Department. Mr. / Ms. \_\_\_\_\_ will be contacting you shortly to arrange for any interviews and document reviews \_\_\_\_\_ deems necessary to prepare \_\_\_\_\_ report.

The Department of Education has 60 calendar days from the receipt of a complaint to conduct an interview and issue a decision. In order to meet this deadline, our investigators have been instructed to base their findings and conclusion on the information submitted by the district within **three weeks** of their first contact with you. We suggest that you review the allegations and complaint letter carefully and begin compiling the information necessary to demonstrate your compliance with the relevant rules and regulations.

Within 10 calendar days of the receipt of the Commissioner's decision, any party to the complaint may request the Commissioner to reconsider the decision. If requesting reconsideration, it will be necessary to submit additional evidence to demonstrate that the original decision was in error. Within 20 calendar days of the receipt of the request for reconsideration, the Commissioner will issue the final written decision. Any party aggrieved by the final decision of the Commissioner may appeal according to Ed 1121.04 (c).

If, upon reviewing the Complaint documents and educational records, the District agrees with the complaint party's allegations, you may stipulate to the allegation(s) and submit a voluntary corrective action plan to the Commissioner for review and approval. This will stand in place of a full on-site investigation. If you opt to file a voluntary corrective action plan, you must notify us of your intent to do so within five days of the receipt of this letter.

Complaint #12-XX  
Page 2  
DATE

If either of the parties request a due process hearing relative to any of the issues contained within the complaint, the investigation relative to those matters will be placed on hold pending conclusion of the due process hearing. Upon notification that the due process hearing has concluded, the complaint may be reactivated to deal with any allegations that remain unresolved.

The Department always encourages parties to work cooperatively to resolve their differences. If the parties to a complaint decide to attempt to resolve their dispute by an alternative dispute resolution process the Department will suspend the complaint if:

- The Department receives a signed request to suspend the complaint from the party that filed the complaint. The form, "Suspension of Special Education Complaint – Ed 1121", may be used for this purpose, but is not required.
- Suspension would not jeopardize the student's education progress or well-being.

The Department will reactivate the complaint when:

- The Department has notice that one or more of the issues in the complaint have not been resolved at the alternative dispute resolution process (Facilitated IEP Meeting, Mediation, Neutral Conference, Due Process Hearing).

A decision issued by the hearing officer is binding upon the Special Education Complaint Office and is the final decision of the Department. Agreements reached through alternative dispute resolution processes will be given due consideration.

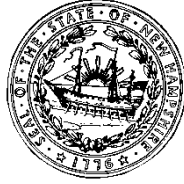
If you have any questions, please contact the Special Education Complaint Office at 603-271-3730.

Sincerely,

Education Consultant  
Bureau of Special Education  
New Hampshire Department of Education  
101 Pleasant Street  
Concord, NH 03301

Enclosures





**Virginia M. Barry, Ph.D.**  
Commissioner of Education  
Tel. 603-271-3144

**Paul K. Leather**  
Deputy Commissioner of Education  
Tel. 603-271-3801

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900**

DATE

Parent  
Address  
City

Dear Parent or Complainant:

The New Hampshire Department of Education received your letter of (DATE) and is unable to determine if the issues included meet the standards of a violation of special education law.

In order for the Department to investigate a violation, the complaining party must state:

- “The special education law that has been violated;
- The facts on which the statement of violation is based;
- The date(s) the violation occurred;
- How you would like the dispute resolved and;
- You must sign the complaint letter and send a copy to the school district.”
- All information required to initiate a complaint may be provided in any alternative format.

To provide you guidance in fulfilling this requirement we are enclosing a packet of information. If we can provide more information concerning the filing of a complaint you may contact us at (603) 271-3741 and ask to speak to a consultant. You may also find information concerning filing a complaint on the New Hampshire Department of Education’s Website at:  
[www.education.nh.gov/instruction/special\\_ed/complaint.htm](http://www.education.nh.gov/instruction/special_ed/complaint.htm)

The Department will activate this complaint if you provide additional information as to what special education law or rule has been violated.

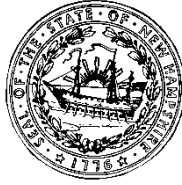
If you have any questions, please contact the Special Education Complaint Office at 603-271-3730.

Sincerely,

Education Consultant  
New Hampshire Department of Education  
101 Pleasant Street  
Concord, NH 03301

Enclosures

**Virginia M. Barry, Ph.D.**  
Commissioner of Education  
Tel. 603-271-3144



**Paul K. Leather**  
Deputy Commissioner of Education  
Tel. 603-271-3801

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
FAX 603-271-1953  
Citizens Services Line 1-800-339-9900**

DATE

Parent  
Address  
Town

Name  
Superintendent / SAU  
Address  
Town

Name  
SPED Director / SAU  
Address  
Town

RE: Complaint #12-XX

Dear Ms. /Mr. /Mrs. Parent, Superintendent and SPED Director:

On (DATE), a request was received for an Administrative Due Process hearing on behalf of (child's name). Pursuant to 34 CFR 300.152(c)(1) and Ed 1121.02(e), we must set aside the above-referenced complaint or those parts of the complaint that are not subject to the due process hearing until such time as the due process hearing has concluded and a decision has been rendered. Allegation raised in the complaint that are not part of the due process hearing will continue to be addressed through the NH DOE's complaint process and completed within the 60-day timeline. If issues raised in the complaint are left unresolved by the due process hearing, the complaint may be reopened at the request of one or more of the parties, and the investigation recommenced and/or a voluntary corrective action plan offered by the School District be reviewed for approval.

Complaint #12-XX

Page 2

Date

Please note that all decisions of the hearing officer are binding upon the complaint process. Parties dissatisfied with a decision of the hearing officer must use the appeal process set forth in Ed 1123.20.

If you have any additional questions or concerns about this matter, please feel free to contact me at 603-271-3730.

Sincerely,

Education Consultant  
Bureau of Special Education

cc: Complaint Investigator

**Withdrawal of Special Education Complaint - Ed 1121**

I \_\_\_\_\_ wish to withdraw my complaint at this time. I have reached an agreement with the school district on the issue(s) in the complaint.

I reserve the right, at any time, to file a complaint if I believe that a school district has violated state or federal laws regarding the education of children with disabilities.

If you have any questions, please contact the Special Education Complaint Office at 603-271-3730.

**DATE** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

Please mail to:

New Hampshire Department of Education  
Attention: Special Education Complaint Office  
Hugh Gallen Office Park  
101 Pleasant Street  
Concord, NH 03301

## COMPLAINT CORRECTIVE ACTION CONTINUUM

1. Review and revise, if necessary, policies and procedures
2. Review and revise policies and procedures
3. Provide professional development in the area of non-compliance
4. Provide professional development to ensure and demonstrate that all, or certain, providers or case managers appropriately complete their responsibilities
5. Require specific actions (always time-lined) to correct noncompliance
6. Random review of compliance (many levels and ways to do)
7. Ongoing annual, semi-annual, quarterly, weekly monitoring to include unannounced on-site visits
8. Require entitlement funds be spent to ensure FAPE to District student(s)
9. Other Commissioner sanctions as deemed necessary

- All professional development or other corrective action may be time-line with individuals or groups of individuals designated to attend and required to document attendance
- Department will monitor for future complaints/compliance in an area found to be in noncompliance
- Department will include “compliance is demonstrated by...” activities or results that are measurable and sufficient

If you have any questions, please contact the Special Education Complaint Office at 603-271-3730.