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## Special Education Due Process Hearings and Alternative Dispute Resolution FAQs

The Department will respond to questions that we are frequently asked concerning the Special Education Complaint process as detailed in Ed 1127. We hope that these FAQs become an ongoing dialogue that provides information concerning the complaint process.

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

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

### 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.

### 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.

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

Although NHDOE does have a form that you may use, it is not required. A complaint must be in writing and signed. 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.ed.state.nh.us](http://www.ed.state.nh.us)) or by calling the Department at (603) 271-3741 or 271-3075.

### 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.

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

1. After receiving your letter, it will be reviewed by the Complaints office of the Bureau of Special Education.
2. If the issues are appropriate for the complaint procedures, then:
  - a. An independent investigator is assigned to the case.
  - b. A courtesy telephone call is made to the school district's director of special education stating that a complaint has been filed telling them who filed the complaint and what it is about and what federal and/or state regulations are involved.
  - c. A letter is sent to both the complainant and the school district giving them the name of the investigator, a copy of the complaint letter and identifying what federal and/or state regulations are involved.
3. If necessary, the person filing the complaint may contact the complaint officer and may correct any errors made in summarizing the issues.
4. 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 a written report to NHDOE.
5. The NHDOE Complaints officer will review the report and issue a decision based upon the investigator's finding of fact and the relevant state and federal rules and regulations.
6. The Commissioner of Education reviews the decisions and makes a determination of what corrective action, if any, is warranted. The Commissioner signs the decision. The decision will be issued no later than 60 days after the complaint was received by NHDOE. The timeline may be extended if the Department determines that exceptional circumstances exist that delay the decision.
7. If any party is aggrieved by the decision, he or she has 10 days from the date the decision was received to request reconsideration. Within 20 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 200.

### **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 an informal 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.

**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:

If the issue is:	NHDOE will look to see:
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 placement team followed proper procedures, the placement was based on the student's written plan and whether 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 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.

**What if the investigator finds evidence supporting the school district and the parent?**

NHDOE will substantiate (or verify) an allegation if there is more evidence supporting it than denying it.

**What happens if, based on a complaint investigation, NHDOE determines that a school district has violated federal special education laws or regulations?**

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

If the violation resulted in a lack of appropriate services for the student, NHDOE may order compensatory services or reimbursement. Sometimes, NHDOE will require the school district to meet with the parent to work out the details of the compensatory services or reimbursement. The Department may ask the District to submit a voluntary corrective action plan and may choose to negotiate the terms of that plan.

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

The purpose of "corrective action" is to correct the situation. 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 Order, NHDOE may ensure compliance by initiating one or more of the procedures detailed in Ed 1131 "State Department of Education Enforcement"

**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.

If you have additional questions you would like answered, either individually or added to this list, please send them to [tbrune@ed.state.nh.us](mailto:tbrune@ed.state.nh.us) or contact the Complaints Office at (603) 271-3741.

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