



New Hampshire

Department of Education

Special Education Complaint

Procedures Manual



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Introduction to the Special Education Complaint Process

The NH Department of Education (Department) encourages parties to work together to resolve their differences. Parents may wish to notify their school district to give them the opportunity to resolve the issue at the local level before filing a special education complaint. There are other options available for resolution if resolving the issues at the local level is not successful.

Who Can File a Special Education Complaint?

Any person, including adult students or organization can file a special education complaint. The person filing the special education 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 special education complaint will be referred to as the “complainant”.

If the complainant is not the parent, guardian, surrogate parent or adult student, the Department will send an acknowledgement letter to verify receipt of the information. Special education complaint decisions will not be sent to anyone who is not a parent, guardian, surrogate parent or adult student.

When to File a Special Education Complaint

The special education complaint process is a way to resolve disputes and is available to parents, other individuals and organizations if they believe the school district has violated federal or state special education laws. The violation must have occurred *within one year prior to the special education complaint being filed*.

How to File a Special Education Complaint

The special education complaint is usually a written letter. The Department has provided a guidance form to assist you in filing a special education complaint. This form that is available on the New Hampshire Department of Education website.

A special education complaint may be submitted in any alternative format such as; audio or video recording. The special education complaint must be signed and mailed or hand delivered. E-mailed special education complaints will not be accepted. Faxed requests will not be acted upon until an original, regularly mailed or delivered copy is received by the Department.

You must send a copy of the special education complaint to the special education director and/or the superintendent of schools at the same time that you send it to the Department. If you do not know the name of the special education director or superintendent, please contact the Special Education Complaint Office at 271-3196 and we will provide that information to you.

The special education complaint must contain the following information per 34 CFR §300.153:

1. A statement that a public agency has violated a requirement of federal or state law within one year prior to the special education complaint being filed.
2. The facts on which the statement is based.
3. The signature and contact information for the complainant.
4. The name and address of the residence of the child. (If alleging violations with respect to a specific child)
 - a. If the child is homeless, provide contact information.
5. The name of the school the child is attending.
6. A description of the nature of the problem of the child, including facts relating to the problem.
7. A proposed resolution of the problem to the extent known and available.

8. An indication that a copy of the special education complaint was sent to the school district at the same time that it was sent to the NHDOE.

Where to Send the Special Education Complaint

Special education complaints must be sent to the New Hampshire Department of Education, Special Education Director and /or Superintendent of the child's school district.

The NHED address is:

New Hampshire Department of Education
Attention: Special Education Complaint Office
25 Hall Street
Concord, NH 03301

Review of Information Regarding a Special Education Complaint

Once the Department receives the information regarding violations of federal or state special education law, the Department will notify the child's parent(s) and the school district of receipt of the information.

The Department will review the information to determine if it meets the requirements of a special education complaint under federal or state special education law. The Department must also ensure that the allegation occurred within one year of the receipt of the information.

If the information does not meet the requirements for a special education complaint, the complainant and the child's school district will be notified and no further action will be taken.

If the information does meet the requirements for a special education complaint, the Department will notify the parent(s) of the child and the child's school district of the allegations.

Investigation of the Special Education Complaint

The New Hampshire Department of Education will assign an independent investigator to gather the facts regarding the allegation(s). The investigator may contact the complainant and the school district cited in the special education complaint. The investigator may:

- conduct an on-site investigation if necessary;
- interview the complainant, school district staff and administrators, the student (if appropriate) and others as the investigator deems necessary;

The special education complaint will be investigated and resolved within sixty (60) calendar days of the receipt of the special education complaint. This time limit may be extended due to exceptional circumstances in relation to the special education 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.

The Special Education Complaint Decision

The Commissioner of Education reviews the investigator's report, including findings of fact, and makes a written decision identifying whether or not the allegations have been substantiated. Copies of the Commissioner's decision are sent to the parent and the school district.

When allegations are substantiated, the Commissioner's decision will include corrective action. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the child and appropriate future provision of services for all children with disabilities.

If the Commissioner issues a written decision which includes corrective action, the school district must adhere to the specified timeframe as well as provide evidence of the completion of the corrective action. The Department will review the evidence to verify the correction of the substantiated allegation.

Reconsideration of a Special Education Complaint Decision

Any party to the special education complaint may, within 20 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. Any corrective action ordered by the Commissioner for the benefit of a child with a disability shall be implemented and continue until the conclusion of the reconsideration and, unless reversed upon reconsideration or stayed, during any appeal.

Within fifteen (15) 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 additional evidence;
- Review the decision; and
- 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 NH Supreme Court or a NH Superior Court.

Enforcement of the Special Education Complaint Decision

If a school district fails to comply with the corrective action required in a decision, the New Hampshire Department of Education may ensure compliance by initiating one or more of the procedures detailed in Ed 1125 "State Department of Education Enforcement."

A copy of the complete NH Rules for the Education of Children with Disabilities here:
https://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html

Frequently Asked Questions Regarding Special Education Complaints

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 special education complaint process.

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.

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

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

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

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

Are there timelines that apply to filing a special education complaint?

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

How is the special education complaint process different from a special education complaint for a due process hearing?

The special education 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.

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.

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. If there is a substantiated allegation the corrective action may include compensatory services. These are services provided at a later date to correct the denial of services.

Is legal representation required to file a special education complaint?

No, legal representation is not required to file a special education complaint.

May I file a special education complaint for any problem I might be having with a school district?

No, the special education complaint must relate to a violation of a special education law. There are other alternative dispute resolution processes available to resolve other issues.

May I add to my special education complaint as time goes on?

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

May I continue to work with my school district while the special education complaint is being investigated?

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

Who will get a copy of the Commissioner's final written decision?

The parent, legal guardian, surrogate parent or adult student will receive a copy of the Commissioner's written decision. If the complaining party was not one of the people listed above, the decision will not be sent to the complaining party. The student's school district will get a copy of the decision. The NHED will also retain a copy of the decision and all materials generated by the investigator.

May I file a special education complaint after a due process hearing has been settled?

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

May I file for due process or go into mediation during the time I filed a special education complaint?

Yes, but during that time, the special education 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 special education complaint investigation may proceed.

May I withdraw my special education complaint at any time?

Yes. A complainant may withdraw a special education complaint at any time by sending a letter indicating a request to withdraw or by filling out the model form and mailing to the NH Department of Education.

Once a special education complaint has been filed, can a school district reach out to a parent to resolve the issue?

Yes, a school district can reach out to a parent at any time during the complaint process to resolve the issue(s). If a resolution is reached between the school district and the parent, the parent must inform the Department that they are withdrawing the complaint.

Definitions

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

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

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

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

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 13 identifiable categories of disability, and who, because of that disability, needs special education and related services.*

Dispute Resolution Coordinator – *The individual designated by the Commissioner of Education to administer the special education complaint process.*

Due Process Hearing – *A formal dispute resolution 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.*

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 Federal Government and 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 the IEP team in accordance with the New Hampshire Rules for the Education of Children with Disabilities.*

Investigation – *The process by which the NHED 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 special education complaint.*

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

NHED – *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.*

Parent – *Parent means a biological or adoptive parent, surrogate parent, or a guardian. Parent does not mean the state when the state has legal guardianship per Ed 1102.04(h).*

Public Agency – *In NH, the public agencies include the school district, public charter school and state education agency.*

Resolution Proposal- *An LEA's written resolution proposal that addresses allegations in a special education complaint.*

Reconsideration – *A process whereby either party to the special education 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 special education 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 a 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 unique needs of an individual child with a disability, and provided at no cost to the parent.*

Special Education Law(s) and Regulations – *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).*

Other Resources Available

Any party who feels that their or their child's rights are being violated may file a special education 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.

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

The Parent Information Center
54 Old Suncook Road
Concord, NH 03301
(603 224-7005
www.picnh.org

NH's Protection and Advocacy Center

Disabilities Right Center, Inc.
P.O. Box 3660
Concord, New Hampshire 03301
Telephone: (603) 228-0432 or 1-800-834-1721
Fax: (603) 225-2077
E-mail: advocacy@drnch.org

Teacher Misconduct/Restraint and Seclusion

Richard Farrell
NH Department of Education
25 Hall Street
Concord, NH 03301
603-271-8372

Non-Discrimination

Section 504 Coordinator
Danielle Pelletier
NH Department of Education
25 Hall Street
Concord, NH 03301
603-271-3737

Section 504 and Non-Discrimination

Office for Civil Rights
US Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
617-289-0111 TDD: 800-877-8339

Model Special Education Complaint Form

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

Your Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime Phone: _____

Email: _____

Relationship to Student: Parent or Guardian Citizen Attorney
 Student

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

According to federal regulations, a special education 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 requirement 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 the school has done that violated special education requirements and how that affects your 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 to address the alleged violation (to the extent known and available to the party)

****Please check the box to confirm that a copy of this special education complaint has been sent to the School District at the same time you filed the special education complaint with the NH Department of Education.**

Signature: _____

Date: _____

Please send the completed form to:
New Hampshire Department of Education
Attention: Special Education Complaint Office
25 Hall Street
Concord, NH 03301

If you have any questions, please contact the Special Education Complaint Office at (603) 271-3196.

Withdrawal of Special Education Complaint - Ed 1121

I, _____ wish to withdraw my special education complaint at this time.

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

Questions may be directed to the Special Education Complaint Office at (603) 271-3196.

DATE _____

SIGNATURE _____

Please mail to:

New Hampshire Department of Education
Special Education Complaint Office
25 Hall Street
Concord, NH 03301