

COMPLAINTS

NCLB SEC. 1120(b)(5)

(5) Compliance

(A) IN GENERAL. – A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(B) PROCEDURE. – If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

ARIZONA DEPARTMENT OF EDUCATION NCLB COMPLAINT PROCEDURES

The Federal No Child Left Behind Act of 2001 (NCLB), Title IX Part C. Sec. 9304(a)(3)(C) requires the Arizona Department of Education (ADE) to adopt procedures for resolving complaints regarding operations of programs authorized under the *Act*, including Title I, Title II, Title III, Title IV (Part A), Title V, Title VI, and Title VII and Title IX, part C.

NOTE: All days stated are calendar days.

Who May File a Complaint

Any agency, consortium of agencies, organization, parent, teacher, or member of the public may file a complaint.

Definition of a Complaint

There are both formal and informal complaint procedures.

A formal complaint must be a written, signed statement that includes:

1. an allegation that a federal statute or regulation applicable to the state educational agency (SEA) or a local education agency (LEA) program has been violated
2. facts, including documentary evidence that supports the allegation.
3. the specific requirement, statute, or regulation being violated.

Alternatives for Filing Complaints

It is federal and state intent that complaints are resolved at a level nearest the LEA as possible. As described below, formal complaints filed with the SEA will be forwarded to the appropriate LEA for investigation and resolution. Informal complaints made to the SEA will be subject of an initial investigation by the SEA, but will be forwarded to the LEA if a formal complaint evolves. Precise processes in both instances are described below.

Informal and Formal Complaints Received by the Local Education Agency

Informal and formal complaints filed with the LEA concerning NCLB program operations in that LEA are to be investigated and resolved by the LEA according to locally developed procedures, when at all possible. Such procedures will provide for:

1. disseminating procedures to the LEA school board,
2. central filing of procedures within the district,
3. addressing informal complaints in a prompt and courteous manner,
4. notifying the SEA within 15 days of receipt of written complaints,
5. timely investigating and processing of complaints within 30 days, with an additional 30 days *if* exceptional conditions exist,
6. disseminating complaint findings and resolutions to all parties to the complaint and the LEA school board. *Such findings and resolutions also shall be available to parents, teachers and other members of the general public, provided by the LEA, free of charge, if requested,* and
7. appealing to the Arizona Department of Education within 15 days

Appeals to the Arizona Department of Education will be processed according to the procedures outlined in sections below.

Informal Complaints Received by the SEA Office

Informal complaints (i.e., verbal and/or anonymous) to the SEA by individuals (who may ask not to be identified to the LEA) concerning program operations in an LEA will be investigated by the SEA, according to procedures deemed most appropriate by the SEA, within 10 days of receipt of the complaint. Findings of this investigation shall be reported to the complainant within 10 additional days. In the event that the complainant requests further investigation or a hearing, the complainant must file a signed written complaint. This formal complaint will be processed according to procedures outlined in sections below.

Formal Complaints Initially Received by the SEA Office

1. *Record.* Upon receipt of a written complaint, a record of the source and nature of the complaint, including the applicable program involved in the complaint, statute violated and facts on which the complaint is based, will be initiated.
2. *Notification of LEA.* Within 15 days of receipt of the complaint, a written communication will notify the district superintendent and the district NCLB coordinator of the complaint filed with the SEA. Upon receipt of the communication, the LEA will initiate its complaint procedures as set forth above. If the complaint is that an LEA is not providing equitable services to private school children, it also will be filed with the U.S. Secretary of Education.
3. *Report by LEA.* Within 20 days of receipt of the complaint, the LEA will advise the SEA of the status of the complaint resolution proceedings and, at the end of 30 days, will submit a written summary of the LEA investigation and complaint resolution. This report is considered public record and may be made available to parents, teachers, and other members of the general public. A copy of this procedure also will be filed with the U.S. Secretary of Education, if it involves equity of services to private school children.
4. *Verification.* Within ten days of receipt of the written summary of a complaint resolution, the ADE office will verify the resolution of the complaint through an on-site visit, letter or telephone call(s). Verification will include direct contact with the complainant. If the complaint is about equity of services to private school children, the U.S. Secretary of Education shall also be given copies of all related communications.

Formal Complaints Regarding Participation of Private School Children

Complaints regarding the participation of private school children in NCLB programs will be handled using the same process, described herein, as any other complaint, but the U.S. Secretary of Education will be notified of such a complaint at the time it is received by the SEA.

Following formal resolution at the SEA level, or lack of resolution within a reasonable period of time, an intended party may appeal the SEA's decision to the U.S. Secretary of Education with 30 days. The Secretary then would investigate and issue a letter of finding within 120 days after receipt of such appeals.

Appeals

Appeal to the SEA

1. *Record.* Upon receipt of a written appeal to a complaint unresolved at the LEA level, a record of the source and nature of the complaint, including the applicable program involved in the complaint, statute violated and facts on which the complaint is based, will be initiated.
2. *Investigation.* The SEA will initiate an investigation within 10 days, which will be concluded within 30 days from receipt of the appeal. Such investigation may include a site visit if the SEA determines that an on-site investigation is necessary. By stipulation of all concerned, this investigation may be continued beyond the 30-day limit.
3. *Hearing.* If required by the SEA, or formally requested by parties to the complaint, this investigation will include an evidentiary hearing(s) before an SEA Division Director acting as chairperson and designated staff personnel. Conduct of such hearings will follow the procedures outlined in the Appendix. The hearing proceedings shall be tape recorded and the recording preserved for preparation of any transcript required on appeal.

Decision

Within 10 days of conclusion of the investigation and/or evidentiary hearing(s), the SEA will render a decision detailing the reasons for its decision and transmitting this decision to the LEA, the complainant, and the district school board. Recommendations and details of the decision are to be implemented within 15 days of the decision being given to the LEA. This 15-day implementation period may be extended at the discretion of the SEA Division Director. The complainant or the LEA may appeal the decision of the SEA.

Appeal to the State Education Agency Hearings Appeal Panel (reference: State Board of Education Rule R7-2-805.C-F.)

1. *Request for Hearing.* A complainant and/or the LEA must request a hearing by notifying the Superintendent of Public Instruction (Superintendent) by certified mail of its decision to appeal an SEA decision or determination. If the complainant is or represents a school district or charter school, authorization to seek the hearing must come from the Governing Board of the district or charter school. The request for hearing must set forth the nature of the complaint and the facts on which the complaint is based. The complainant shall request the hearing within 30 days of the date notice of the SEA decision or determination was sent. For purposes of this process, the date of notice by the SEA is the date of sending notice of the SEA decision or determination.
2. *Hearing Panel.* When a complainant or LEA requests a hearing, the Superintendent shall select a hearings appeal panel from Department staff other than those within the same Division as the program area under which the appeal arose.
3. *Scheduling a Hearing:* A hearing shall be scheduled before the appeal panel within 30 days of the receipt of the request. The appeals panel chairperson shall give at least 10 days notice of the hearing date to the complainant. The parties may submit written materials no later than five days prior to the hearing, such materials to consist of six copies.
4. *Conduct of the Hearing:* At the hearing the parties may present evidence in writing and through witnesses and may be represented by counsel. The length and order of the presentation may be determined by the appeals panel chairperson. The chairperson may request additional evidence through testimony of witnesses or written materials

and, in the event that additional witnesses are called, their testimony shall be recorded and preserved pending any further appeal. If the complainant or authorized representative fails to appear at the designated time, place and date of the hearing, the appeal shall be considered closed and the process terminated.

5. *Decision.* No later than five days after the hearing, the appeals panel shall forward to the Superintendent its recommendation relating to the complainant's or LEA's request for review. Within 10 days after the hearing, the Superintendent shall issue his or her written ruling, including findings of fact and reasons for the ruling. If the Superintendent determines that the SEA's decision, determination, or action was contrary to the statutes and regulations governing the applicable program, the Superintendent shall rescind the action.
6. *Implementation of the Decision.* Any actions required to resolve the complaint and adhere to the Superintendent's decision shall be implemented within 20 days following the Superintendent's decision, unless the complainant appeals to the U.S. Department of Education. An LEA required to implement certain actions will report to the Superintendent on or before the 20th day from the decision all steps taken to implement the decision. In the event that the district's report does not fully comply with the decision, the Superintendent will direct the SEA office to interrupt all, or a portion of, program funds or to take other appropriate sanctions.
7. *Second Appeal:* If the Superintendent does not rescind the SEA decision, determination, or action, the applicant may appeal to the U.S. Department of Education. The applicant shall file a notice of appeal with the U.S. Department of Education within 20 days after the applicant has been notified by the Superintendent of his or her decision by certified mail.

Formal LEA Complaints Against SEA

1. *Record.* The SEA will record the source, and nature of the complaint, including the applicable program involved in the complaint, statute violated and facts on which the complaint is based.
2. *Decision.* The SEA decision will be rendered within 15 days of the complaint receipt. The LEA will be promptly notified of the SEA's decision.
3. *Appeal.* The LEA may appeal the decision of the SEA to the SEA review board within 30 days of receipt of the decision. Procedures under the "Appeal to the State Agency Review Board" section will be followed.
4. *Second Appeal.* An applicant has the right to appeal the decision of the SEA Review Board to the U.S. Secretary of Education. The applicant shall file written notice of the appeal with the Secretary within 20 days after the applicant has been notified by the SEA of its decision.

Complaints Against LEAs Received from the United States Department of Education

1. Complaints against LEAs received from the U.S. Department of Education will be processed as though they had been received initially at the SEA.
2. A report of final disposition of the complaint will be filed with the U.S. Department of Education.
 - ⊞ These procedures shall not prevent the SEA from partially or wholly interrupting funding of any LEA IASA program or taking any other action it deems appropriate.

APPENDIX: NCLB Complaint Hearing Procedures

These procedures for the conduct of the hearings are to prevail to any instance where formal hearings are required or requested during the course of a NCLB complaint investigation. These procedures shall pertain specifically to hearings conducted by the ADE program office or the SEA hearings appeals panel.

NOTICE: Written notice delivered by hand or sent by registered mail is to be given to all parties required to be present at the hearing at least 10 days before the scheduled hearing. Every reasonable effort should be taken to select a mutually convenient time and location for all parties concerned prior to the dissemination of notice.

All hearings shall be open to the public, except that any testimony related to privileged matters such as performance of individual pupils or teachers may be taken in a session closed to the public.

At the Hearing

1. The chairperson, as designated in the complaint procedures, will set forth the purpose of the hearing and the procedures that will govern the conduct of the hearing.
2. The parties may present evidence in writing and through witnesses, and may be represented by counsel.
3. Unless otherwise stipulated by the chairperson in the notice of the hearing date, the representation of the complainant and respondent will be limited to 4 persons each. Counsel for either party will constitute a portion of this allocation for representation.
4. The parties shall have the right to cross-examine witnesses.
5. A summary of the hearing proceedings shall be furnished to each party to the complaint and shall be filed with the SEA and with the U.S. Secretary of Education if required.
6. Upon completion of the hearing, the hearing committee shall provide a written recommendation or decision to the complainant, the respondent and to other parties, as outlined in the IASA complaint procedures.
7. If requested by the complainant, the hearing proceedings shall be translated by one or more interpreters approved by the complainant into a language designated by the complainant.