



ADMINISTRATIVE RULES OF MONTANA



10.16.3662 STATE COMPLAINT PROCEDURES

- (1) An organization or individual may file a written signed complaint alleging the LEA or public agency as defined in 34 CFR 300.33 violated the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA), or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).
- (2) The state complaint must:
 - (a) allege a violation that occurred not more than one year prior to the date the complaint is filed;
 - (b) state the name and address of the affected child, if applicable, and the name of the school or public agency where the violation allegedly occurred;
 - (c) contain a statement that the agency has violated a requirement of federal or state special education laws or regulations;
 - (d) state the nature of the problem and the facts on which each allegation is based; and
 - (e) state a proposed resolution of the problem to the extent known and available to the complainant.
- (3) The complaint must be filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and a copy provided by the complainant to the LEA or public agency serving the child. An insufficient complaint not meeting the requirements in (2) may be returned to the complainant.
- (4) Within ten calendar days of filing, the dispute resolution office shall send written notice to the complainant and the LEA or public agency that a complaint has been filed.
 - (a) The written notice shall include a copy of the complaint.
 - (b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the written notice shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3508 through 10.16.3531.
 - (c) The written notice shall inform the parties of the Early Assistance Program as set forth in ARM 10.16.3660.

- (5) The EAP shall have up to 15 business days from the filing of the complaint to assist the parties to resolve the dispute. If successful, the complaint will be dismissed. If the EAP process is not successful, the dispute resolution office shall immediately notify the responding party to prepare and submit its written response of the complaint to the dispute resolution office and send a copy to the complainant within ten calendar days. An extension may be granted based on reasonable necessity.
- (6) Upon receipt of the response, the dispute resolution office shall begin an appropriate investigation.
- (7) The complainant will have ten calendar days to submit additional relevant information to the dispute resolution office, either orally or in writing.
- (8) Following an appropriate investigation, the dispute resolution office shall review all relevant information and make an independent determination as to whether a violation of a federal or state statute, regulation, or rule concerning IDEA special education has occurred. A final report shall be issued within 60 days of filing of the complaint unless an extension of the 60-day period is required by exceptional circumstances which exist with respect to the particular complaint or the timeline was modified during the Early Assistance Program process.
- (9) The final report shall address each allegation in the complaint and list findings of fact and conclusions of law, including the reasons for the decision. If the final report concludes that an allegation is true and corrective action is required to comply with federal or state law, corrective action shall be ordered including timelines for implementation of such action. The Superintendent of Public Instruction will provide technical assistance at the request of the local educational or public agency. The Office of Public Instruction shall retain the investigative files as a confidential agency record pursuant to the appropriate retention schedule.
- (10) At any time during this process, if the dispute resolution office determines the complaint has been resolved and compliance is achieved, the parties shall be informed and the complaint dismissed.
- (11) If within the timelines identified in the Final Report the LEA has not implemented the corrective action required by the final report, the Superintendent of Public Instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:
 - (a) recommending to the Board of Public Education withholding state education funds;
 - (b) denial in whole or part IDEA, Part B federal funds; or
 - (c) recommending to the Board of Public Education a change in accreditation status.
- (12) Prior to implementing the final report order, and prior to implementing sanctions against the LEA or public agency, and if the LEA or public agency alleges that the office has violated a state or federal special education statute, regulation, or rule in ordering the corrective action required by the final report, the Superintendent of Public Instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA.
- (13) There is no right to appeal a final report issued as a result of a state complaint.

Authorizing statute(s): 20-7-402, MCA

Implementing statute(s): 20-7-403, 20-7-414, MCA



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History: NEW, 1984 MAR p. 817, Eff. 5/18/84; AMD, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2007 MAR p. 678, Eff. 12/25/07; AMD, 2015 MAR p. 2257, Eff. 12/25/15.