

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING FEDERAL PROGRAM COMPLAINT RESOLUTION
November 8, 2010

1.00 Regulatory Purpose & Authority.

- 1.01 These Rules shall be known as the Arkansas Department of Education Rules Governing Federal Program Complaint Resolution.
- 1.02 The State Board of Education enacts these Rules pursuant to its authority under Arkansas Code Annotated §§ 6-11-105 & 25-15-201 *et seq.*; 20 U.S.C. §§ 1232c, 7844, & 7883; 42 U.S.C. § 11432; and 34 C.F.R. Chapter 2, Part 299, Subpart F.
- 1.03 The purpose of these Rules is to provide a procedure for receiving, reviewing, and resolving complaints made by organizations or individuals against the Arkansas State Board of Education (State Board), Arkansas Department of Education (Department), other state agency, or a local educational agency (LEA). These Rules apply only to complaints regarding the educational placement of homeless children and youths pursuant to the McKinney-Vento Homeless Education Assistance Improvement Act, and the administration of the following programs contained within the Elementary and Secondary Education Act (ESEA):
- (1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies);
 - (2) Part B of Title I (Even Start Family Literacy Programs) (other than the federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives, and a prison that house women and children);
 - (3) Part C of Title I (Migrant Education);
 - (4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out);
 - (5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this Title);

(6) Title III (Language Instruction for Limited English Proficient and Immigrant Students);

(7) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources);

(8) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114);

(9) Part A of Title V (Innovative Programs);

(10) Title VI (Innovative Education Program Strategies);

(11) Part C of Title VII (Emergency Immigrant Education);
and

(12) Section 9503 (Equitable participation of private school students in public school programs).

1.04 In computing any period of time described in these Rules, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or other day the Department is closed, in which event the period runs until the end of the next day that the Department is open. Days shall be counted on the basis of calendar days.

2.00 Complaints Against Local Educational Agencies or State Agencies

2.01 A complaint against an LEA, or against a state agency other than the Arkansas State Board of Education and Department of Education, may be made in a statement signed by the complainant. Complaints may be received directly from the complainant, referred from other state or federal agencies, or come on appeal from an LEA. Complaints should be mailed to:

Arkansas Department of Education
Assistant Commissioner for Learning Services
Four Capitol Mall, Room 306-B
Little Rock, AR 72201

2.02 A complaint must include:

- 2.02.1 A statement that the LEA or state agency has violated a requirement of an applicable federal statute or regulation;
 - 2.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and
 - 2.02.3 All relevant documentary or other evidence supporting the allegation.
- 2.03 If the complainant has not previously submitted the complaint to the LEA or state agency, the complaint will be referred by the Department to the LEA or state agency for processing through that agency's complaint resolution procedures.
- 2.03.1 The Department may waive this requirement if it is determined that:
 - 2.03.1.1 Delay in resolving the complaint may result in serious and immediate harm to the complainant;
 - 2.03.1.2 The allegations and supporting information, together with readily available cross-check data in the files of the Department, provide sufficient evidence to show probable success of the complaint on its own merits; or
 - 2.03.1.3 There is evidence that the LEA or state agency is aware of the alleged violation and has failed to act to resolve it.
 - 2.03.2 When a complaint is referred to an LEA or state agency for resolution under this subsection, a transmittal letter shall direct the resolution of the complaint under the adopted procedures of the LEA or state agency within a time period not to exceed thirty (30) days, unless a longer period is specified by the Department due to exceptional circumstances. The transmittal shall also provide information on the rights of the complainant to appeal the final written report of the agency to the Department. A copy of the transmittal letter shall be sent to the complainant.

- 2.03.3 Every LEA is required to disseminate, free of charge, adequate information about its complaint procedures to parents of students, and appropriate private school officials or representatives.
- 2.04 The Department shall conduct any investigative efforts it deems necessary to effectively address the complaint. Such efforts may include the appointment of an investigative team to conduct an on-site visit, review records, or conduct interviews. The Department may conduct informal fact-finding hearings or mediations to clarify the issues.
- 2.05 Within forty (40) days of the Department's receipt of a complaint, the Department shall issue to the complainant and to the LEA or state agency a preliminary report stating:
- 2.05.1 A summary of the substance of the allegations in the complaint and the name of the individual, group or agency making the complaint;
- 2.05.2 A summary of the Department's investigative activities, if any;
- 2.05.3 A summary of the findings concerning each alleged violation or implied violation; and
- 2.05.4 A statement of the corrective actions, if any, needed to resolve the findings, including a recommendation for an independent audit if deemed appropriate.
- 2.06 The complainant and the LEA or state agency may submit written responses or additional evidence within thirty (30) days of the date of the preliminary report. Failure to timely respond to the preliminary report shall be considered as acceptance of every part of the report.
- 2.07 Within ten (10) days of the end of the response period set forth in section 2.06 above, the Assistant Commissioner of Learning Services shall issue to the complainant and to the LEA or state agency a final report. The final report may affirm and adopt the findings of the preliminary report, or it may make substitute findings.

- 2.08 The Department may in exceptional circumstances grant extensions of any time limit in this section on its own initiative or on the request of a party.
- 2.09 The complainant may request the Secretary of the U. S. Department of Education to review the Department's final report, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education, within thirty (30) days of the date of the Department's final report. On request, the Department will promptly provide the complainant with a copy of the preliminary report and final report, and all pertinent exhibits thereto.
- 2.10 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.

3.0 Complaints Against the Arkansas State Board of Education or Arkansas Department of Education

- 3.01 Complaints against the Arkansas State Board of Education and/or Arkansas Department of Education may be made in a statement signed by the complainant. Complaints must be filed within thirty (30) days of the action or inaction complained of. Complaints should be mailed to:

Arkansas Department of Education
Assistant Commissioner for Learning Services
Four Capitol Mall, Room 306-B
Little Rock, AR 72201

- 3.02 A complaint must include:
 - 3.02.1 A statement that the State Board and/or Department has violated a requirement of an applicable federal statute or regulation;
 - 3.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and
 - 3.02.3 All relevant documentary or other evidence supporting the allegation.

- 3.03 Within ten (10) days of receipt of a complaint meeting the requirements of this section, the Commissioner of Education shall appoint an investigating officer to adjudicate the complaint. The investigating officer shall promptly issue a briefing schedule setting time limits for the submission of briefs, affidavits, declarations, exhibits, or other documents by the parties. Upon the request of any party, the investigating officer shall set a hearing date within sixty (60) days of the request.
- 3.04 The investigating officer shall conduct him- or herself in an impartial manner and shall have power to maintain order to rule upon all questions arising during the course of the complaint resolution process; to hold conferences for the settlement, clarification, or simplification of issues; and to regulate and guide the course of the complaint resolution process.
- 3.05 The investigating officer shall conduct the complaint resolution process in such a manner as to preserve privileges and protect privacy rights, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 *et seq.*; and any other relevant federal or state law or regulation.
- 3.06 All testimony, whether written or oral, shall be given under oath. Any hearing shall be stenographically recorded at the Department's expense by a certified court reporter who shall administer oaths to every witness. Every party shall have the right to appear in person or by counsel.
- 3.07 Travel and other expenses incurred by the investigating officer shall be reimbursed from appropriate federal program funds at the rate allowed for employees of the State of Arkansas. At the option of the Department, a pre-negotiated *per diem* may be paid in lieu of expenses to persons who are not employed by the State of Arkansas.
- 3.08 Within sixty (60) days of the receipt of the complaint, or of the date of the hearing, whichever is later, the investigating officer shall issue a written decision which shall include findings of fact and conclusions of law separately stated addressing every issue raised in the complaint. Copies of the decision shall be served on the complainant and the Department either personally or by mail.

- 3.09 The investigating officer may in exceptional circumstances grant extensions of any time limit in this section on his or her own initiative or on the request of a party.
- 3.10 The complainant may request the Secretary of the U. S. Department of Education to review the investigating officer's decision, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education, within thirty (30) days of the complainant's receipt of the investigating officer's decision. On request, the Department will promptly provide the complainant with a copy of the hearing transcript and all exhibits introduced into evidence at the hearing.
- 3.11 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.