

STATE COMPLAINTS

24:05:15:02. Complaint. A complaint is a written signed statement by an individual or organization, including an individual or organization from another state, containing a statement that the department of education or a school district has violated a requirement of federal or state statutes, rules, or regulations that apply to a program and a statement of the facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the department. The written signed statement shall also include:

- (1) The signature and contact information for the complainant; and
- (2) If alleging violations with respect to a specific child:
 - (a) The name and address of the residence of the child;
 - (b) The name of the school the child is attending;
 - (c) In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
 - (d) A description of the nature of the problem of the child, including facts related to the problem; and
 - (e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:15:02.01. Remedies. In resolving a complaint in which it has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

- (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the student such as compensatory services or monetary reimbursement; and
- (2) Appropriate future provision of services for all students with disabilities.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.

Law Implemented: SDCL 13-37-1.

24:05:15:03. Complaint procedure. An organization or individual may file a written, signed complaint with the state director of special education. The party filing the complaint shall forward

a copy of the complaint to the school district serving the child at the same time the party files the complaint with the department.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, **effective July 5, 2007.**

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:15:05. Complaint against a school district. If the complaint is against a school district, the following steps shall be taken:

- (1) The state director of special education shall appoint a complaint investigation team from the department's special education programs. The team may conduct an independent on-site investigation if it determines that one is necessary;
- (2) The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) The school district shall have the opportunity to respond to the complaint, including, at a minimum:
 - (a) At the discretion of the school district, a proposal to resolve the complaint; and
 - (b) An opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation consistent with this article;
- (4) The complaint team shall make a recommendation to the state director of special education;
- (5) After reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;
- (6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;
- (7) If the complaint is valid, the state director of special education shall find the school district out of compliance with federal and state statutes and rules;
- (8) If corrective action is not completed within the time limit set, including technical assistance and negotiations, the division shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the school district;
- (9) When the school district demonstrates completion of required correction action, the department's Office of Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to the school district; and

(10) Documentation supporting the corrective actions taken by a school district shall be maintained by the department's special education programs and incorporated into the state's monitoring process.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, **effective July 5, 2007.**

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: Department of Education Rules 34 C.F.R. §§ 300.151-153.

24:05:15:06. Time limits. All complaints must be resolved within 60 days after receipt of the complaint by the state director of special education except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances as determined by the state director of special education, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and the school district involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, **effective July 5, 2007.**

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:15:07. Information about complaint procedures. The department's special education programs shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities about the state's complaint procedures by taking the following actions:

- (1) Conducting parent surveys through the state's monitoring process;
- (2) Providing copies of the state's procedures to parent and advocacy groups across the state;
- (3) Notifying local school districts through statewide memoranda;
- (4) Presenting state procedures at statewide conferences; and
- (5) Disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

Source: 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, **effective July 5, 2007.**

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:15:08. Complaints and due process hearings. If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the hearing decision is binding on that issue and the department shall inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the department.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, **effective July 5, 2007.**

General Authority: SDCL 13-37-1.

Law Implemented: SDCL 13-37-1.