



NEBRASKA
DEPARTMENT OF EDUCATION

SPED
SPECIAL EDUCATION

The Individuals with Disabilities Education Act (IDEA)

92 NAC 51 (Rule 51)
Part B

92 NAC 52 (Rule 52)
Part C

Guide to Special Education Complaints

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document contact nde.guidance@nebraska.gov.


February 2021

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INTRODUCTION

Although most differences are successfully resolved at the local level, four state processes are available to parents, if they are at impasse with the school district. The four processes are:



IEP Facilitation	A trained facilitator is a neutral party invited to an IEP meeting to promote effective communication and assist parties in discussing issues regarding the IEP
Mediation	92 NAC 51-009.12 A trained mediator assists parties in conflict to communicate and make voluntary, informed choices in an effort to find a mutually acceptable resolution to a dispute
State Complaint	92 NAC 51-009.11 A written allegation by an individual or an organization that a school district has not followed special education law within the last calendar year
Due Process	92 NAC 51-009.14 & 92 NAC 55 A legal process used by parents and districts to make a decision on issues within a hearing, the hearing officer's decision is final and binding unless appealed.
For information about your rights and understanding your dispute resolution options please contact: Nebraska Department of Education Office of Special Education (402) 471-2471 Parent Training Institute (PTI) Nebraska – (800) 284-8520 Disability Rights Nebraska – (800) 442-6691	

As provided for under the *Individuals with Disabilities Education Act (IDEA)* Part B, 34 C.F.R. §§ 300.151 – 300.153 and the Nebraska Department of Education *Regulations and Standards for Special Education Programs, Title 92, Nebraska Administrative Code, Chapter 51 (Rule 51)*; and Part C, C.F.R. 34 §303.434 and the Nebraska Department of Education *Regulations and Standards for the Provision of Early Intervention Services, Chapter 52 (Rule 52)* a State Complaint is one of the options parents or others have to resolve issues related to special education.

This Guide outlines the steps involved in the formal complaint process:

- Filing a State Complaint
- Investigating the State Complaint
- Following up on the State Complaint

FILING A STATE COMPLAINT

An organization or individual may file a State Complaint if they believe that the school district is not complying with Federal or State laws or regulations relating to special education. The complaint must allege a violation that occurred not more than one year prior to the date the complaint is received.

The complaint must be in writing and signed by the person or organization making the complaint. Sending the information via email will be considered electronically signed. The complaint must state:

- That the school district is not complying with the requirements of IDEA, or the Nebraska Department of Education Rule 51 (students ages 3 - 21) or Rule 52 (Birth to age 3).
- Give the facts on which the statement of violation is based.
- When the complaint involves a specific child, the complaint must also include the following:
 - The child's name and address of residence
 - The name of the school the child is attending
 - 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
 - A description of the nature of the problem of the child; and
 - A proposed resolution of the problem, to the extent known and available to the party at the time the complaint is filed.
- The party filing the complaint must forward a copy of the complaint to the public agency (i.e. school district, services coordination agency) against which the allegations are made at the same time the complaint is filed with the Nebraska Department of Education, Office of Special Education.

If a State Complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, then NDE must set aside the State Complaint, or any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State Complaint that is not a part of the due process hearing must be resolved through the State process. 34 C.F.R. §300.152 and 92 NAC 51-009.11C8; and 34 C.F.R. §303.433(c)(1) and 92 NAC 52-009.06E.

To file a State Complaint, an organization or individual may do so in one of the following ways:

1. Complete the optional form available at <https://cdn.education.ne.gov/wp-content/uploads/2021/02/Sample-State-Complaint-Form.pdf>. To complete the form, print and assure all the information requested is completed. The person filing a State Complaint may wish to add additional information or attach additional pages to express the concerns. Copies of any documents that support the allegation of a violation should be sent as well. In addition, in order to assure State Complaints are worked in a timely manner, there are two checklists provided to assure the requirements of filing have been completed by the organization or individual filing the State Complaint.
2. Write a letter including all requested information as follows:

- a. Allegation of how the district has not followed Rule 51/52 or the IDEA
- b. Facts on which the violation is based
- c. Information about the student including:
 - i. Student's name
 - ii. Student's address of residence
 1. If homeless, available contact information
 - iii. School of attendance
- d. Proposed Resolution to the problem

State Complaints may be submitted electronically by sending all the forms and documentation to: amy.rhone@nebraska.gov

INVESTIGATING THE STATE COMPLAINT

The Nebraska Department of Education, Office of Special Education, must resolve a State Complaint within 60 calendar days of receipt of a signed written complaint, unless exceptional circumstances exist. C.F.R. § 300.152 (Part B) and 92 NAC 51-009.11C4 – 009.11C5; C.F.R. §303.433 (Part C) and 92 NAC 52-009.06D - 009.06D2.

Within fourteen (14) calendar days of the receipt of the State Complaint, the assigned complaint investigator notifies, in writing, the complainant(s) what issues and regulations will be investigated. The complaint investigator notifies the school district, in writing, that a complaint has been received. The written notification shall include a copy of the complaint and the regulations that will be the essence of the investigation. In addition, the written notification alerts the school district that they have an opportunity to respond to the complaint, including at a minimum, proposing a resolution of the complaint or engaging the complainant, with their consent, in mediation or alternative means of dispute resolution. The school district has seven (7) days from the date of that notification to notify the investigator of their decision to engage in dispute resolution activities with the complainant. If resolution activities are not conducted, the complaint investigation process will proceed within the sixty (60) day required timeline. If dispute resolution activities are conducted, the investigation may proceed under an extended timeline. If after successful dispute resolution activities, the complainant decides to withdraw the complaint, notification of that decision must be submitted in writing to the complaint investigator.

The complaint investigator will review all documentation submitted by the parties to determine whether there has been a failure to comply with the rules set forth in 92 NAC 51 or 92 NAC 52. The investigator may require additional written or oral submission of information by the parties and may conduct an independent on-site investigation if necessary.

At the conclusion of the investigation, a Complaint Investigation Report is issued. If it is determined that the school district has not fully complied with regulations, the Complaint Investigation Report will include specific actions the school district will be required to complete

in order to be returned to compliance, and the timelines in which the actions must be completed. The school district must also submit a corrective plan of action. The corrective action plan must be submitted within sixty (60) days of the date of the report. The actions required may include, but are not limited to, technical assistance and staff development activities.

The Nebraska Department of Education, Office of Special Education may at its discretion choose to contract with an outside investigator or agency to complete its investigative process. All procedures and timelines will be adhered to with oversight by the NDE Office of Special Education.

WHAT A STATE COMPLAINT CAN/CAN'T DO

A STATE COMPLAINT CAN	A STATE COMPLAINT CAN'T
Ensure that federal and state regulations are followed.	Decide administrative decisions made by the school district, such as: <ul style="list-style-type: none"> ● Promotion or Retention ● Grade Assignment ● School Assignment ● Teacher Assignment
Ensure that the rights of the parent and the child are being observed.	Allegations of abuse should be reported to local law enforcement and the Nebraska Department of Health and Human Services, Child Protective Services
Ensure that the child is receiving all the special education and related services that are a part of the IEP	Allegations of discrimination or violation of Civil Rights (unless they are related to the child's special education services) should be reported to the Office for Civil Rights
If a corrective action plan (CAP) is required, a CAP may specify that: <ul style="list-style-type: none"> ● Professional Development occurs ● Review and revise as necessary any special education policies and procedures ● Reconvene the IEP ● Compensatory services are provided ● Other required activities as needed 	<ul style="list-style-type: none"> ● Address personnel issues and general education issues ● Make IEP decisions regarding goals, placement etc. ● Get a principal, teacher, bus driver, or other school system employee fired ● Get a specific person hired ● Get a student assigned to a specific grade, school or teacher ● Get grades changed

STATE COMPLAINT PROCESS FLOWCHART

State Complaint filed by individual or organization (i.e. parent(s) or agency)

Complaint number is assigned after it is determined the State Complaint procedures per Rule 51 or Rule 52 have been met per 92 NAC 51-009.11B-009.11B6 or 92 NAC 52-009.06 - 009.06B6

Complaint Investigator Lead checks to see if the Complaint meets the requirements

Yes

No

Complaint Investigator Lead contacts the complainant, shares complaint requirements and dispute resolution options.

A Contracted Complaint Investigator is assigned to work with the Complaint Investigator Lead:

- ❖ Determines issues and regulations that will be investigated
- ❖ Within 14 calendar days, district and complainant are notified of receipt of complaint and the substance of the complaint 92 NAC 51-009.11C1
- ❖ Letter of notification to the District requests documentation needed for the investigation, and information on mediation

Once complaint meets requirements

Within 14 calendar days of the District receiving their notification of the complaint the District needs to respond with requested documentation to the Complaint Investigator

Both parties agree to mediation

Right to mediate is waived by one or both parties

An agreement to Mediate must be sent to the Complaint Investigator (attached to the notification letter) highlighting which issues they intend to mediate

****Each issue is considered separately****

Investigation continues within 60 calendar days of receipt of the complaint.

****Extenuating circumstances MAY extend the 60-day timeline, in that event an Extension of Timeline letter is issued**

An agreement is reached for an issue(s)

An agreement is NOT reached for an issue(s)

Issue(s) withdrawn by the complainant.

A letter is sent indicating the issues withdrawn by the complainant

An Investigation Report is mailed to the District and the Complainant.

APPENDIX – A

Federal IDEA Regulations

State Complaint Procedures

Part B

§ 300.151 – Adoption of State Complaint Procedures

<https://sites.ed.gov/idea/regs/b/b/300.151>

§ 300.152 – Minimum State Complaint Procedures

<https://sites.ed.gov/idea/regs/b/b/300.152>

§ 300.153 – Filing a Complaint

<https://sites.ed.gov/idea/regs/b/b/300.153>

Part C

§ 303.432 – Adoption of State Complaint Procedures

<https://sites.ed.gov/idea/regs/c/e/303.432>

§ 303.433 – Minimum State Complaint Procedures

<https://sites.ed.gov/idea/regs/c/e/303.433>

§ 303.434 – Filing a Complaint

<https://sites.ed.gov/idea/regs/c/e/303.434>

Nebraska Rules and Regulations

- Nebraska Title 92, Nebraska Administrative Code Chapter 51
In English: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51_2017.pdf
(Rule 51 Regulations and Standards for Special Education Programs)
92 NAC 51-009.11 – 009.11C10
- Nebraska Title 92, Nebraska Administrative Code Chapter 52
In English: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule52_2014.pdf
In Spanish: https://www.education.ne.gov/wpcontent/uploads/2017/07/Rule_52_Spanish.pdf
(Rule 52 Regulations and Standards for the Provision of Early Intervention Services)
92 NAC 52-009.06 – 009.06D2
- Nebraska Title 92, Nebraska Administrative Code, Chapter 55
In English: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf
In Spanish: <https://www.education.ne.gov/wp-content/uploads/2017/07/Rule-55-Spanish-1.pdf>
(Rules of Practice and Procedure for Due Process Hearings in Special Education Contested Cases)

Parent/Family Information

<https://www.education.ne.gov/sped/parent-information/>

- IDEA Part B Parents' Rights in Special Education (Age 3 – 21) Procedural Safeguards Notice
- IDEA Part C Procedural Safeguards Manual for Parents
Parent Training and Information (PTI) Nebraska, <https://pti-nebraska.org/>