

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter H. School Districts

Part 241. Federal Program Complaint Resolution

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "August 2020".

"Regulatory Purpose & Authority. These Rules shall be known as the Division of Elementary and Secondary Education Rules Governing Federal Program Complaint Resolution. The State Board of Education enacts these Rules pursuant to its authority under Ark. Code Ann. §§ 6-11-105 & 25-15-201 et seq.; 20 U.S.C. §§ 1232c, 7844, 7881, & 7883; and 34 C.F.R. Chapter 2, Part 299, Subpart F."

Subpart 1. Generally

6 CAR § 241-101. Purpose.

(a)(1) The purpose of this part is to provide a procedure for receiving, reviewing, and resolving complaints made by organizations or individuals against:

- (A) The State Board of Education;
- (B) The Division of Elementary and Secondary Education;
- (C) Other state agencies; or
- (D) A local educational agency (LEA).

(2) This part applies only to complaints regarding the administration of the following programs contained within the Elementary and Secondary Education Act (ESEA), 20 U.S.C. § 6301 et seq.:

- (A) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies), 20 U.S.C. §§ 6311-6339;
- (B) Part B of Title I (State Assessment Grants), 20 U.S.C. §§ 6361-6383;

(C) Part C of Title I (Education of Migratory Children), 20 U.S.C. §§ 6391-6399;

(D) Part D of Title I (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk), 20 U.S.C. §§ 6421-6472;

(E) Title II (Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders), 20 U.S.C. §§ 6601-6777;

(F) Title III (Language Instruction for English Learners and Immigrant Students), 20 U.S.C. §§ 6801-7014;

(G) Subpart 2 of Part A of Title III (Accountability and Administration), 20 U.S.C. §§ 6841-6849;

(H) Part A of Title IV (Student Support and Academic Enrichment Grants), 20 U.S.C. §§ 7111-7165;

(I) Part B of Title IV (21st Century Community Learning Centers), 20 U.S.C. §§ 7101-7294;

(J) Title VI (Indian, Native Hawaiian, and Alaska Native Education), 20 U.S.C. §§ 7401-7602;

(K) Title VII (Impact Aid), 20 U.S.C. §§ 7701-7714; and

(L) Part F of Title VIII (Participation by Private School Children and Teachers), 20 U.S.C. § 7881.

(b)(1) In computing any period of time described in this part, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or other day the division is closed, in which event the period runs until the end of the next day that the division is open.

(2) Days shall be counted on the basis of calendar days.

Authority. Arkansas Code § 6-11-105.

6 CAR § 241-102. Complaints against local educational agencies or state agencies.

(a)(1) A complaint against an LEA, or against a state agency other than the State Board of Education and Division of Elementary and Secondary Education, may be made in a statement signed by the complainant.

(2) Complaints may be received directly from the complainant, referred from other state or federal agencies, or come on appeal from an LEA.

(3) Complaints should be mailed to:

Division of Elementary and Secondary Education
Assistant Commissioner for Public School Accountability
Four Capitol Mall, Mailbox 19
Little Rock, AR 72201

(b) A complaint must include:

(1) A statement that the LEA or state agency has violated a requirement of an applicable federal statute or regulation;

(2) The facts on which the statement is based and the specific requirement allegedly violated; and

(3) All relevant documentary or other evidence supporting the allegation.

(c)(1) If the complainant has not previously submitted the complaint to the LEA or state agency, the complaint will be referred by the division to the LEA or state agency for processing through that agency's complaint resolution procedures.

(2) The division may waive this requirement if it is determined that:

(A) Delay in resolving the complaint may result in serious and immediate harm to the complainant;

(B) The allegations and supporting information, together with readily available cross-check data in the files of the division, provide sufficient evidence to show probable success of the complaint on its own merits; or

(C) There is evidence that the LEA or state agency is aware of the alleged violation and has failed to act to resolve it.

(3)(A) 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 division due to exceptional circumstances.

(B) The transmittal shall also provide information on the rights of the complainant to appeal the final written report of the agency to the division.

(C) A copy of the transmittal letter shall be sent to the complainant.

(4)(A) 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.

(B) The division shall conduct any investigative efforts it deems necessary to effectively address the complaint.

(C) Such efforts may include the appointment of an investigative team to:

- (i) Conduct an on-site visit;
- (ii) Review records; or
- (iii) Conduct interviews.

(D) The division may conduct informal fact-finding hearings or mediations to clarify the issues.

(d) Within forty (40) days of the division's receipt of a complaint, the division shall issue to the complainant and to the LEA or state agency a preliminary report stating:

- (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) A summary of the division's investigative activities, if any;
- (3) A summary of the findings concerning each alleged violation or implied violation; and

(4) A statement of the corrective actions, if any, needed to resolve the findings, including a recommendation for an independent audit if deemed appropriate.

(e)(1) 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.

(2) Failure to timely respond to the preliminary report shall be considered as acceptance of every part of the report.

(f)(1) Within ten (10) days of the end of the response period set forth in subsection (e) of this section, the division shall issue to the complainant and to the LEA or state agency a final report.

(2) The final report may:

(A) Affirm and adopt the findings of the preliminary report; or

(B) Make substitute findings.

(g) The division may in exceptional circumstances grant extensions of any time limit in this section on its own initiative or on the request of a party.

(h)(1) The complainant may request the United States Secretary of Education to review the division's final report, at the United States Secretary of Education's discretion.

(2) A request for review must be filed with the United States Secretary of Education, with a copy to the division, within thirty (30) days of the date of the division's final report.

(3) On request, the division will promptly provide the complainant with a copy of the preliminary report and final report and all pertinent exhibits thereto.

(i) Nothing in this section shall prohibit informal disposition of a complaint by:

(1) Stipulation;

(2) Mediation;

(3) Settlement;

(4) Consent order; or

(5) Default.

Authority. Arkansas Code § 6-11-105.

Codification Notes. "LEA" means local education agency.

6 CAR § 241-103. Complaints against the State Board of Education or Division of Elementary and Secondary Education.

(a)(1) Complaints against the State Board of Education and/or Division of Elementary and Secondary Education may be made in a statement signed by the complainant.

(2) Complaints must be filed within thirty (30) days of the action or inaction complained of.

(3) Complaints should be mailed to:

Division of Elementary and Secondary Education
Assistant Commissioner for Public School Accountability
Four Capitol Mall, Mailbox 19
Little Rock, AR 72201

(b) A complaint must include:

(1) A statement that the state board and/or division has violated a requirement of an applicable federal statute or regulation;

(2) The facts on which the statement is based and the specific requirement allegedly violated; and

(3) All relevant documentary or other evidence supporting the allegation.

(c)(1) Within ten (10) days of receipt of a complaint meeting the requirements of this section, the Commissioner of Elementary and Secondary Education shall appoint an investigating officer to adjudicate the complaint.

(2) 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.

(3) Upon the request of any party, the investigating officer shall set a hearing date within sixty (60) days of the request.

(d) The investigating officer shall conduct himself or herself in an impartial manner and shall have power to:

(1) Maintain order to rule upon all questions arising during the course of the complaint resolution process;

(2) To hold conferences for the settlement, clarification, or simplification of issues; and

(3) To regulate and guide the course of the complaint resolution process.

(e) The investigating officer shall conduct the complaint resolution process in such a manner as to preserve privileges and protect privacy rights, consistent with:

(1) The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;

(2) The Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.; and

(3) Any other relevant federal or state law or rule.

(f)(1) All testimony, whether written or oral, shall be given under oath.

(2) Any hearing shall be stenographically recorded at the division's expense by a certified court reporter who shall administer oaths to every witness.

(3) Every party shall have the right to appear in person or by counsel.

(g)(1) 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.

(2) At the option of the division, a prenegotiated per diem may be paid in lieu of expenses to persons who are not employed by the State of Arkansas.

(h)(1) 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.

(2) Copies of the decision shall be served on the complainant and the division either personally or by mail.

(i) The investigating officer may in exceptional circumstances grant extensions of any time limit in this section on:

(1) His or her own initiative; or

(2) The request of a party.

(j)(1) The complainant may request the United States Secretary of Education to review the investigating officer's decision, at the United States Secretary of Education's discretion.

(2) A request for review must be filed with the United States Secretary of Education, with a copy to the division, within thirty (30) days of the complainant's receipt of the investigating officer's decision.

(3) On request, the division will promptly provide the complainant with a copy of:

(A) The hearing transcript; and

(B) All exhibits introduced into evidence at the hearing.

(k) Nothing in this section shall prohibit informal disposition of a complaint by:

(1) Stipulation;

(2) Mediation;

(3) Settlement;

(4) Consent order; or

(5) Default.

Authority. Arkansas Code § 6-11-105.

6 CAR § 241-104. Complaint process for participation of private school children.

(a) A private school official may file a complaint with the Division of Elementary and Secondary Education asserting that the local educational agency did not:

(1) Engage in consultation that was meaningful and timely;

(2) Give due consideration to the views of the private school official; or

(3) Make a decision that treats the private school or its students equitably as required by law.

(b)(1) A complaint under this section must be in writing and signed by the complainant, with a copy sent simultaneously to the local educational agency.

(2) Complaints must be filed within thirty (30) days of the action or inaction complained of.

(3) Complaints should be mailed to:

Division of Elementary and Secondary Education
Assistant Commissioner for Public School Accountability
Four Capitol Mall, Mailbox 19
Little Rock, AR 72201

(c) A complaint must include:

(1) A statement that the local education agency has violated a requirement of an applicable federal statute or regulation;

(2) The facts on which the statement is based and the specific requirement allegedly violated; and

(3) All relevant documentary or other evidence supporting the allegation.

(d)(1) Upon receipt of a complaint meeting the requirements of this section, the division shall appoint an investigating officer.

(2) The investigating officer shall request from the local educational agency appropriate documentation.

(e) The division shall issue a written resolution within forty-five (45) days.

(f)(1) The complainant may request the United States Secretary of Education to review the division's decision, at the United States Secretary of Education's discretion.

(2) A request for review must be filed with the United States Secretary of Education, with a copy to the division, within thirty (30) days of the complainant's receipt of the division's decision or if the division has failed to resolve the complaint within forty-five (45) days.

(3) On request, the division will promptly provide the complainant with a copy of all documentation forming the basis for the division's decision.

(g) The timelines contained in this section shall be subject to an additional three (3) days to account for mail processing.

Authority. Arkansas Code § 6-11-105.