FILING AN ADMINISTRATIVE COMPLAINT WITH THE ARIZONA DEPARTMENT OF EDUCATION

A SELF-ADVOCACY GUIDE

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Funding for this document is provided by the United States Department of Health and Human Services, Administration on Developmental Disabilities.

Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

❑ This guide is available in alternative formats upon request.

FILING AN ADMINISTRATIVE COMPLAINT WITH THE ARIZONA DEPARTMENT OF EDUCATION

A. Introduction

The Individuals with Disabilities Education Act ("IDEA") requires the Arizona Department of Education ("AZDOE") to operate a complaint management system for addressing violations of that law and corresponding state law. Any person or organization may file a signed written complaint with AZDOE if they believe that a public educational agency is not in compliance with federal and state laws regarding the provision of special education to students with disabilities. A public educational agency includes a traditional public school, charter school, or state supported school for the deaf and blind. Complaints may be about one student with a disability or a group of students with disabilities.

We recommend that individuals try and resolve their differences directly with the educational agency by speaking or meeting with school personnel prior to the filing of an administrative complaint. However, if these interventions are not successful or if it would be futile to attempt them given past experiences, then filing an administrative complaint with AZDOE is a cost-effective, user-friendly method of remedying an unlawful situation.

The purpose of this guide is to provide general information to individuals regarding a student's right to appropriate educational services. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

B. Commonly Asked Questions

1. What is an administrative complaint?

If a public educational agency appears to have violated federal or state special education laws or

procedures, a parent, individual, or organization may file a signed, written complaint with AZDOE. Examples of violations that might form the subject of a complaint include the failure to assess or refer a child for special education services, the failure to follow time-lines for assessment, or the failure to provide a service that is called for in a child's individualized education program ("IEP"). AZDOE will assign an investigator to review the allegations contained in the complaint. The investigation will include speaking with the complainant, school personnel, and a review of records and policies. The investigation may also include an on-site visit by the investigator to the public educational agency involved. The investigator will make a determination of whether the educational agency is in non-compliance with the law or the student's IEP. AZDOE will then issue a written decision referred to as a "Letter of Findings" which is provided to both the complainant and the school district. If the educational agency is found in either partial or full non-compliance, AZDOE will order the school to cease all illegal activity and to come into compliance with the law by setting forth a corrective action plan that the educational agency will be required to follow. The complaint investigation must be completed within 60 days unless "exceptional circumstances" would warrant an extension.

The IEP of a student with a disability calls for 60 minutes of occupational therapy per week. The therapist informs the parent that she has only been able to work with the student for 30 minutes every other week. The parent may file an administrative complaint regarding the local educational agency's failure to ensure that services on the IEP were provided.

2. Who may file an administrative complaint?

Any individual or organization (such as a parent group) may file a written complaint. The complaint must be signed. Anonymous complaints will not be accepted.

3. How does one file an administrative complaint?

To file an administrative complaint with AZDOE, write to:

Director of Administrative Services
Arizona Department of Education

Exceptional Student Services
1535 West Jefferson
Phoenix, Arizona 85007
(602) 364-4000 or (800) 352-4558

The letter must include a statement that the public educational agency has violated a requirement of the IDEA or Arizona state law, but need not identify the specific law or regulation involved. The letter must also include a statement of the facts on which the allegation of non-compliance is based. You should provide the student's name, age, and school and attach any important documents such as IEPs, notices, or assessments that support your complaint. You may also wish to suggest a particular course of action that you would like AZDOE to order the school to take as a remedy. Be sure to keep a copy of the letter and any attachments for your own files, as well as any correspondence you receive from either the educational agency or AZDOE. Copies of sample letters and forms are included at the end of this guide and may be used as a models when drafting an administrative complaint.

4. When should a complaint be filed?

Complaints must be filed within one year of the date that the violation occurred unless a longer time period is reasonable because the violation is continuing. However, an individual will have up to three years of the date of the violation to file a complaint ***if*** the complainant is seeking compensatory services.

At an IEP meeting held on September 1, 2000, the parent and the school agree to goals and objectives regarding a student's augmentative communication device. The team meets again the following year on September 15, 2001. The parent states that the child has not progressed on her communication goals and the school responds that it is because the speech therapist did not work with the student on her device. The parent files an administrative complaint alleging non-compliance and seeking compensatory services. That complaint is timely.

5. What if the individual who wants to file a complaint does not speak or write English?

If the complainant is unable to put the complaint in written form and/or the home language is other than English, AZDOE will assist the individual in drafting the complaint. For assistance, call Exceptional Student Services at (602) 364-4000 or (800) 352-4558.

6. What types of remedies is AZDOE authorized to award?

If the investigation reveals a failure by the public educational agency to comply with the law, AZDOE has extensive authority to bring the educational agency into compliance.

First, AZDOE will set forth a corrective action plan that the local educational agency is required to follow. The corrective action prescribed shall:

- Require the immediate provision of services, or the immediate cessation of non-compliance, whichever is necessary;
- Outline the necessary steps required to prevent the reoccurrence of non-compliance;
- Require sufficient documentation to ensure that the non-compliance has been addressed; and,
- Eliminate the past effects of the violation(s).

Second, if applicable, AZDOE will order the public educational agency to provide the student with compensatory services and/or monetary reimbursement for costs that should not have been incurred by the family. AZDOE may determine the level of compensatory services or refer that determination to the student's IEP team. If responsibility for determining the level of compensatory services is referred to the student's IEP team, the team must utilize a standard "Compensatory Education Plan" which is attached to this instructional guide.

7. What if the public educational agency does not comply with the corrective action plan set out in the "Letter of Findings?"

AZDOE has the authority to either interrupt or withhold federal and state funding to a

non-compliant public educational agency. Federal funds may be redirected to ensure that a child with a disability is receiving a free appropriate public education. In the case of a public charter school, AZDOE may report a violation to the sponsoring entity and seek additional remedies including the revocation of the school's charter.

8. How is an administrative complaint different from a due process hearing?

A due process hearing is a very much like a trial to an independent hearing officer who is an attorney. Each side presents evidence, calls witnesses, and may make objections. A due process hearing decision is binding, although subject to appellate review. Due process hearings typically involve lawyers and can be very expensive and time consuming. In contrast, an administrative complaint is a very simple process that involves writing a letter. Basically, a due process hearing involves a disagreement over ***what*** should be included in a child's program, while an administrative complaint involves a failure by the educational agency to follow the rules or to do what has already been agreed to in the IEP.

At an IEP meeting, the local educational agency recommends placing a child with a disability in a self-contained classroom. The parents are seeking an inclusive setting. The local educational agency provided the parents with all appropriate notices and a proper statement of their procedural rights. This is a matter for a due process hearing, not an administrative complaint.

The parents of a child with a suspected disability request, in writing, that the school conduct a comprehensive evaluation in order to determine eligibility for special education. The evaluation takes over eight months to complete and the student regresses during that time period. The parents may file an administrative complaint because the local educational agency did not comply with the regulations regarding the time period for an evaluation. The parents may also seek compensatory education for the regression that the student suffered due to the local educational agency's delay.

9. Can a parent file both a request for due process hearing and an administrative complaint?

If a due process hearing has already been requested on an issue that is the subject of an administrative complaint, AZDOE will not investigate that issue until after the conclusion of the hearing. AZDOE ***will*** investigate all issues that are not part of the due process hearing. A due process hearing decision is binding although a parent can complain to AZDOE about a local educational agency's failure to implement a due process hearing decision. A parent may also file a request for a due process hearing regarding an issue about which she or he may have previously submitted a complaint.

10. How is an administrative complaint filed with AZDOE different from a complaint of educational discrimination filed with the United States Department of Education, Office for Civil Rights?

The Office for Civil Rights ("OCR") is responsible for investigating complaints regarding allegations of discrimination on the basis of disability that may constitute a violation of Section 504 of the Rehabilitation Act of 1973 ("Section 504") or Title II of the Americans with Disabilities Act of 1990 ("ADA"). Section 504 prohibits discrimination based on disability in programs or activities receiving federal financial assistance. Title II of the ADA prohibits discrimination based on disability in public entities.

Examples of the types of discrimination prohibited include access to educational programs, denial of a free appropriate public education for elementary and secondary students, and the failure to remove architectural barriers. Section 504 and Title II both prohibit retaliation for filing an OCR complaint or for advocating for a right protected by the two laws, and harassment of students or others because of a disability.

A local educational agency offers an after school program for children ages 6 to 10. The printed materials state that children who are in special education "self-contained" classrooms may not attend the after school program. This is discrimination on the basis of disability and can be redressed by filing a complaint with OCR.

If you wish to file a complaint with OCR, you should write or call:

U.S. Department of Education
Federal Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TTY: 303-844-3417

-or-

Civil Rights Hotline
U.S. Department of Education
Office for Civil Rights
1-800-421-3481

SAMPLE COMPLAINT LETTER

(Parent Name)
(Parent Address)

(Date)

Arizona Department of Education
Exceptional Student Services
Director of Administrative Services
1535 West Jefferson
Phoenix, Arizona 85007

Re: (Student Name and Educational Agency)

To Whom It May Concern:

(INTRODUCTION): Please consider this letter a complaint filed on behalf of (NAME OF STUDENT) against (NAME OF EDUCATIONAL AGENCY) pursuant to 34 C.F.R. §§ 300.660-.662 and Ariz. Admin. Code § R7-2-804. I believe that the School is out of compliance with federal and state special education laws.

(ABOUT YOUR CHILD): My child is _____ years old and is eligible for special education under the category of _____. I have had the following problems with my local educational agency.

(THE FACTS): (State fully the facts that apply to your child's situation. Attach all documents that are helpful to your position.)

(REQUEST RELIEF): I ask that you investigate this matter and on a finding of non-compliance order the educational agency to provide MY CHILD with compensatory education and other remedial action as might be necessary to redress the violations that have occurred.

Please feel free to contact me if you require additional information. Thank you for your prompt attention to this matter.

Very truly yours,

Name of Complainant

SAMPLE COMPLAINT FORM

(Date)

Arizona Department of Education
Exceptional Student Services
Director of Administrative Services
1535 West Jefferson
Phoenix, Arizona 85007

To whom it may concern:

The following is a formal complaint against the _____ School System. My child, A child, or Children I know (circle one), _____ is a student/are students with special needs at _____school.

The following events or practices have taken place, and I believe the school has violated the Individuals with Disabilities Education Act ("IDEA"). These violations occurred (check one) _____ no more than one year before the date you will receive this complaint; _____ more than one year before the date you will receive this complaint because the violations are continuing; or _____ more than one year before the date you will receive this complaint because I am requesting compensatory education for a violation that occurred not more than three years before the date of this complaint. The dates of the violations are provided below.

❒ Area of violation: Failure to identify for special education and related services

Including, but not limited to: **(check all that apply and write in facts that support violation)**

❒ Failure to accept a referral for special education
❒ Failure to meet to consider the need for evaluation
❒ Failure to evaluate in a timely manner. We have been waiting for_____
❒ Failure to assess all suspected areas of disabilities or failure to do a full and complete evaluation
❒ Failure to pay for an independent evaluation when requested
❒ Failure to evaluate for assistive technology needs

SUPPORTING FACTS:

❒ Area of violation: Failure to follow proper IEP Committee procedures

Including, but not limited to: **(check all that apply and write in facts that support violation)**

❒ Failure to have appropriate people at IEP meeting: _____was missing
❒ Failure to schedule IEP meeting at a time and place convenient to parent
❒ Failure to give proper notice of the IEP meeting

SUPPORTING FACTS:

❒ Area of violation: Failure to provide appropriate individualized education program

Including, but not limited to: **(check all that apply and write in facts that support violation)**

❒ Failure to have IEP goals for every weakness
❒ Failure to have appropriate related services on the IEP
❒ Failure to consider individual needs of the child, in particular: _____
❒ Failure to follow the IEP
❒ Failure to keep data on the following: _____
❒ Failure to place child in least restrictive environment with appropriate supplemental aids and services
❒ Failure to have transition plan
❒ Failure to consider for extended school year (ESY)

SUPPORTING FACTS:

❒ Area of violation: Failure to follow proper suspension / expulsion procedures

Including, but not limited to: **(check all that apply and write in facts that support violation)**

❒ Failure to convene an IEP after ten cumulative days of suspension
❒ Failure to consider whether behavior was a manifestation of disability, prior to change in placement (Expulsion/Suspension of more than 10 cumulative days)

SUPPORTING FACTS:

❒ Area of violation: Other

SUPPORTING FACTS:

Please feel free to contact me if you need additional information.

Sincerely,

Your name: _____

Address: _____

_____

Phone number: _____

FORM USED FOR DETERMINING COMPENSATORY SERVICES

Compensatory Education Plan

TO: Educational Agency
FROM: ARIZONA DEPARTMENT OF EDUCATION/
EXCEPTIONAL STUDENT SERVICES
RE: COMPENSATORY EDUCATION SERVICES FOR STUDENT _____
Complaint Reference # _____

The Arizona Department of Education has determined that _____ (educational agency) must provide compensatory educational services to the above-referenced student in order to remedy violations of the Individuals with Disabilities Education Act and corresponding state law. Compensatory education is an in-kind remedy that requires the local educational agency to make up for services that should have been provided to a student. Compensatory education may be required to compensate a student with a disability because of a gap in service, termination, or inadequate amount of services.

In resolution of a complaint filed against the local educational agency, you are required to provide compensatory educational services. The amount, degree, and kind of services will be decided by the student's individualized education program ("IEP") team which includes the parent as a full and equal participant. The award of compensatory education will be reviewed by the Arizona Department of Education in considering whether the local educational agency is in compliance with federal and state law. Failure to comply could result in the interruption or total withholding of federal and state funding.

Attached is a worksheet that must be followed and completed in order to arrive at the IEP team's determination regarding compensatory education. The Arizona Department of Education has supplied the parent with a copy of the worksheet to assist in the planning process. A completed copy will become a part of the student's IEP.

IEP TEAM DETERMINATION OF COMPENSATORY EDUCATION

Student Name: D.O.B:

Address:

1. What programs or services were not provided to the student that should have been as determined by the Arizona Department of Education? (Note: the IEP team may address areas of deficiencies that may not have been considered by the Department.)

2. Calculate in the smallest discrete unit possible (minutes, hours, days, weeks), the amount or quantity of program or service not provided.

3. What quantity or amount of educationally and developmentally appropriate programs or services will be required to compensate for the deprivation identified by the Arizona Department of Education and/or the IEP team?

In answering this question, consider the following factors and check all that apply:

_____ The age and educational developmental levels of the child;
_____ Whether regression occurred as a result of the deprivation (evidence of regression includes anecdotal information);
_____ The intensity of compensatory program or services compared to the intensity of the service not provided;
_____ The environment in which the compensatory program or service will occur compared to the environment in which the service not provided would have occurred;
_____ The time of day, week, or year during which the compensatory program of services will be provided compared to the time or day, week or year during which the program or services not provided would have been;
_____ The training and experience of the compensatory program or service provider compared to that of the provider of the program or service not provided;
The current rate at which the student can be expected, with the provision of compensatory services, to attain skill levels or learning outcomes that he or she would have attained had the program or service been provided when due.