

POLICY STATEMENT
Complaint Resolution Procedures

A state policy has been established to provide due process for resolving complaints from parents and other individuals or organizations regarding the educational placement of homeless children and youths pursuant to the McKinney-Vento Homeless Education Assistance Improvement Act as well as the administration of the following programs contained within the Elementary and Secondary Education Act (ESEA):

- Part A of Title I (Improving Basic Programs operated by Local Educational Agencies);
- Subpart 3 of Part B of Title I (Even Start Family Literacy Programs) (other than federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives and a prison that houses women and children);
- Part C of Title I (Migrant Education);
- Part D of Title I (Children and Youth Who Are Neglected, Delinquent or At Risk of Dropping Out);
- Part A of Title II (other than Section 2151);
- Subpart 1, Part D of Title II (State and Local Programs for School Technology Resources);
- Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than Section 4114);
- Part A of Title V (Innovative Education Program Strategies);
- Title III (Language Instruction for Limited English Proficiency (LEP) and Immigrant Students); and
- Section 9503 (Equitable participation of private school students in public school programs).

I. GENERAL

The Arkansas Department of Education, the State Education Agency (SEA), shall receive complaints directly or review appeals from local education agency (LEA) decisions with respect to complaints concerning violations arising out of the administration of the programs listed above. Complaints may be made in a signed statement or in a certified recorded deposition or statement in which the complainant is identified. Complaints may be received directly from the complainant, referred from other state or federal agencies or come on appeal from an LEA.

II. REFERRAL AND DISPATCH

All complaints shall be referred for investigation and resolution to the Federal Programs Liaison (Liaison). Within ten (10) working days from receipt of a complaint, the Liaison shall have arranged to have the complaint investigated either by the LEA in some cases of direct complaint or the SEA in other cases of direct complaints and in all cases of appeal from an LEA decision.

- Appeals

The Liaison in consultation with the Coordinator for School Improvement (Coordinator) shall review appeal records. If he/she finds sufficient information to resolve the complaint without further investigation, he/she will draw up the preliminary report described in Part IV and continue the resolution from that point. If he/she finds that records accompanying the appeal obtainable from the appellant are insufficient to resolve the complaint, he/she shall proceed under Section II B below.

- Direct Complaints

The SEA policy is that complaints received by the SEA which have not been submitted to the LEA or state agency will be referred to the LEA or state agency for processing through its procedures for resolution of complaints if such procedures exist at that level. The Liaison may determine that a direct complaint should be investigated by the SEA if he/she determines that (1) delay in resolving the complaint may result in serious and immediate harm to the complainant, (2) the allegations and supporting information together with readily available crosscheck data in the files of the SEA provide sufficient evidence to show probable success of the complaint on its own merits or (3) there is evidence that the LEA or state agency probably is aware of the alleged violation and has failed to act to resolve it. When direct complaints are referred to an LEA or state agency for resolution, 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 SEA due to unusual circumstances. The transmittal shall also provide information on the rights of the complainant to appeal the final written report of the applicant agency to the SEA. A copy of the transmittal letter shall be sent to the complainant.

- Investigating Team

Within ten (10) working days from receipt of a direct complaint to be resolved by the SEA, the Liaison shall have arranged for a team to make an investigation. The team shall include no less than two (2) persons or more than five (5) persons, and shall include either the Liaison or the Education Program Analyst (Analyst) in whose territory the complaint originated or both. Either the Liaison or the Analyst for the area involved shall be named team leader. Other persons on the investigating team may include representatives from any division of the SEA including the Commissioner of Education's Office or any other person whom the Liaison deems can best expedite the investigation and resolve the issue of the complaint. The team leader shall be charged with making a full investigation of the complaint and writing a report of the findings according to the provisions hereinafter set out.

- Expenses

Travel costs and other expenses for members of the investigating team shall be reimbursed by the SEA according to the legal rate set for Arkansas state employees.

III. CONDUCTING THE INVESTIGATION

All investigations shall be conducted professionally, ethically and judiciously in a manner to avoid prejudicial statements and confrontations. The SEA shall endeavor to gain the cooperation of the LEA officials and others at the local level. It is not generally necessary that the complainant's identity be revealed before the investigation is completed, but the preliminary report must name the complainant.

- Time Limits

The investigation shall begin within ten (10) days following the team assignment or within twenty (20) days from receipt of the complaint. Unless the investigating team leader can cite unusual circumstances which require additional time, the investigation shall be completed, and a preliminary written report of the findings and recommendations made within twenty (20) days after the investigation begins, or no more than forty (40) days following receipt of the complaint. The investigation may be conducted at the SEA if the team leader decides that a site visit is not necessary. Otherwise, an on-site investigation shall be made.

- Records

During the course of the investigation, sufficient notes shall be made or statements recorded on each pertinent conversation with the person interviewed to enable the team leader to write a full report. In cases where complaints are received on appeal, a copy of the unedited records of the LEA proceedings and decision shall be made a part of the SEA report as an attachment or appendix to it.

- Team Interviews

In addition to interviewing and accepting testimony from the complainant and his witness, the team may investigate the allegations further by interviewing and questioning the local Federal Programs Director and staff, the school administrator and faculty, school board members, advisory council members or other persons who may be able to give information to expedite the investigation and resolution of the complaint.

- Hearings

If requested by the complainant or person charged in the complaint, and if deemed advisable by the team leader, an informal hearing may be used as a part of the investigation. The team leader or designee must preside with all members of the team being present. The hearing should be conducted primarily for the purpose of trying to bring divergent viewpoints closer together or to clarify, and, to the fullest extent possible, resolve issues of disagreement or misunderstanding. The complainant or complainant's representative, or both, may have the opportunity to present evidence and to question parties to the dispute and any of their witnesses. No person, however, shall be compelled to give testimony or answer questions during such an informal hearing.

IV. REPORTS

- Interim Reports

In cases where the team is not able to complete the investigation within twenty (20) days, it shall file an interim report with the Coordinator. The interim report shall state the progress made during the twenty-day period and state plans for completing the investigation in not more than ten (10) additional days, or cite exceptional circumstances that may delay the final report.

- Preliminary Report

At the close of the investigation, a preliminary report shall be prepared in cooperation with the Liaison and submitted by him/her to the LEA or other applicant agency and the complainants. The report shall include:

- A. A summary of the substance of the allegations in the complaint and the names of the individual, group or agency making the complaint.
- B. A summary of the activities engaged in by the investigating team.
- C. A summary of the findings concerning each alleged violation or implied violation.
- D. A statement of the corrective actions, including a recommendation for an independent audit if deemed appropriate, needed to resolve the issues involved in each allegation and finding of the complaint.

The LEA and the complainant(s) in their responses may accept the findings and corrective actions of the preliminary report, or may reject part or all of the report, and supply information to support rescinding or altering some or all of the findings and corrective actions. The LEA or other applicant agency and complainants shall have twenty (20) days in which to formulate and submit responses. Failure to respond within the time limit shall be considered by the SEA as an acceptance of all parts of the preliminary report.

- Final Report

The final report to the LEA or other applicant agency shall be made not less than ten (10) days following the response period (unless exceptional circumstances affecting the equity of the LEA or complainant are cited). This report will be prepared by the Liaison in consultation with the Coordinator of the SEA, reviewed by the director of the SEA and transmitted over his/her signature. It will restate the substance of the preliminary report, include the applicant agency and complainant responses, and the final determinations as they may have been altered or rescinded by the SEA after review of the responses to the preliminary report. If the final report includes an audit of the accounts as a corrective action, that part of the resolution shall follow the procedures established for audits and audit resolutions.

- Dissemination

- A. Reports

Copies of the final SEA report shall be sent to the appropriate LEA and the complainant(s). Each copy of the final report and complaint resolution decision shall include information on the rights of appeal.

- B. Procedures

A copy of these SEA complaint procedures shall be provided to all LEAs as one of the policy statements of the Liaison's Office. Sufficient quantities shall be prepared and be available from the SEA Liaison's Office to any interested person or group upon request. Complete duplicate copies may be produced and distributed by any interested person or group.

V. APPEALS TO THE SECRETARY OF THE U.S. DEPARTMENT OF EDUCATION

The complainant has a right to request the Secretary of the United States Department of Education (Secretary) to review the final decision of the SEA, at the Secretary's discretion. In matters involving allegations of violations of Sections 1120 and 9501 (participation of private school children) of the ESEA, the Secretary shall investigate and resolve the appeal within one hundred and twenty (120) days after receiving the appeal.

POLICY STATEMENT Hearing and Review Procedures

This policy statement delineates the due process procedures for local education agencies (LEAs) and other applicants or recipients (hereinafter, "LEA") who believe and allege that the Arkansas Department of Education, the State Education Agency (SEA) has violated applicable state or federal laws, rules, regulations or guidelines in an action affecting any program administered by the United States Department of Education (USDE) in which funds are provided to or through the SEA in accordance with a plan approved by the USDE.

I. GENERAL

An LEA may request a hearing if it is aggrieved by any of the following actions of the SEA:

- Failure to approve an LEA's federal programs project application in whole or in part;
- Termination of funding of an approved federal programs project in whole or in part;
- Failing to provide funds in amounts in accord with the requirements of laws and regulations; or
- An audit resolution requiring repayment of expended federal program funds from non-federal sources.

Any LEA, upon request, shall be granted a hearing by the SEA when that LEA believes and alleges that the SEA has violated applicable state or federal laws, rules or guidelines regarding A, B, C or D, above.

The provisions for a formal hearing outlined in this statement are not to be construed as limiting in any way the right of representatives of an LEA and the SEA to work together in an informal manner to comprise or resolve differences of opinion or understanding concerning actions or proposed actions of the SEA. Only final actions taken by the SEA that are no longer subject to negotiation should be resolved under this policy.

II. REQUESTS FOR HEARING

- Request Format

A request for a hearing may be made by any person who has been designated by the LEA governing board to administer its federal programs. The request must be in writing on the official forms or stationery used by the LEA for business letters. The request must be postmarked no more than thirty (30) days following the LEA's receipt of the notice of an action by the SEA from which relief is sought. A request for a formal hearing should include at least the following:

- A. The specific action by the SEA on which a hearing is desired;
- B. The specific sections, paragraphs or pages of the laws, rules, regulations or guidelines allegedly violated by the SEA actions;
- C. Copies of the available documents relating to the matter which may support the LEA's position.

The official request for a hearing should be addressed to the Coordinator for School Improvement, Arkansas Department of Education, State Education Building, #4 Capitol Mall, Room 205-B, Little Rock, AR 72201-1071.

- SEA Action

Upon receipt of an official request meeting minimum information requirements of subsection A above, the Coordinator for School Improvement (Coordinator) in consultation with the Federal Programs Liaison (Liaison) shall select a hearing date that is less than thirty (30) days from the date of receipt of the request.

The Coordinator shall send a notice of the date, time and place, when and where the hearing is to be held, and such notice shall be mailed at least ten (10) days prior to the date set for the hearing.

The notice to the LEA shall include information such as who may participate from the LEA and from the SEA, what types of materials may be presented and any other pertinent information which he deems necessary to expedite the hearing and the findings.

The Coordinator shall request from the Office of the Attorney General of Arkansas that a hearing officer from his/her staff be named to chair the hearing. Should the Attorney General decline, the Coordinator in consultation with the Commission of Education shall name a disinterested person to chair the hearing.

III. CONDUCTING THE HEARING

- Hearing Authority

The hearing officer may act alone or select no more than two other persons to serve as a hearing panel or committee.

- LEA Participants

The LEA coordinator and/or the superintendent of schools, members of the LEA governing body and others not to exceed a total of five (5) persons, not including witnesses, may actively participate in the review hearing. The LEA shall designate a hearing spokesperson to coordinate its presentations who may be an attorney, a teacher, a parent or any other person deemed by the LEA to be able to best represent it during the hearing.

- SEA Participants

The SEA participants shall include the Liaison and the SEA staff person who recommended the SEA action on which the hearing is being held and others not to exceed a total of five (5) persons, not including witnesses. The Liaison or his/her designee shall serve as spokesperson to coordinate the SEA hearing presentations.

- Records

In addition to the hearing participants, the SEA shall arrange to have a non-participating person or persons present who will record and finally transcribe all proceedings of the hearing.

- Public Hearing

All hearings shall be open to the public, except that any testimony relating to privileged matters such as performance of pupils or teachers may be taken in a session closed to the public.

- Location

The hearing officer may conduct the hearing as he/she deems advisable so long as all participants have an opportunity to present views and information bearing on the matter being reviewed. The hearing may be held in whole or in part at the LEA site if, in the opinion of the hearing officer, this would expedite a settlement of the issue.

- Ruling and Notice

No later than ten (10) days following the hearing, the hearing officer shall issue a written ruling including the reasons therefore and a copy of the transcript to the aggrieved LEA.

- Expenses of Hearing Officers

Travel and other expenses incurred by the hearing officer or members of a hearing committee shall be reimbursed from appropriate federal program funds at the rate allowed for employees of the State of Arkansas. At the option of the SEA, a pre-negotiated per diem may be paid in lieu of expenses to persons who are not employed by the State of Arkansas.

IV. APPEALS TO THE SECRETARY OF THE U.S. DEPARTMENT OF EDUCATION

- Any applicant or recipient aggrieved by the failure of an SEA to rescind its final action after a hearing as described in Sections I, II and III of this memorandum may appeal such action to the Secretary of the U.S. Department of Education. An appeal may be taken only if notice of an appeal is filed with the Secretary within twenty (20) days after the applicant or recipient has been notified by the SEA of the results of its hearing. If, on appeal, the Secretary determines the final action of the SEA was contrary to federal law or the rules, regulations and guidelines governing the applicable program, he/she shall issue an order to the SEA prescribing appropriate action to be taken. On appeal, findings of fact of the SEA, if supported by substantial evidence, shall be final. The Secretary may also issue such interim orders to the SEA as he/she may deem necessary and appropriate pending appeal or review.
- The SEA shall make available at reasonable times and places to each applicant or recipient involved in the appeal all records pertaining to the review or appeal including the records of other applicants.

References

1. The following U.S. Department of Education (USDOE) policy guidance documents may be found at <http://www.ed.gov/policy/elsec/guid/edpicks.jhtml?src=ln>. The U.S. Department of Education will place others on their website as they become available.
 - A. *Improving Teacher Quality Guidance* – (for Title II state grant programs) focuses on preparing, training and recruiting high quality teachers and principals.
 - B. *LEA and School Improvement Guidance* – provides overview of district and school improvement under Title I, Part A of the *Elementary and Secondary Education Act* (ESEA), as reauthorized under ESEA.
 - C. *Parental Involvement* – assists states, districts and schools in administering the parental involvement provisions of Title I, Part A of the ESEA.
 - D. *Public School Choice* – highlights key aspects of the public school choice component (option to transfer) of Title I and offers guidance that may be useful in implementing the requirements.
 - E. *Serving Preschool Children under Title I* – provides the rationale for using Title I funds for preschool services, identifies the components of a quality program, and addresses many administrative issues.
 - F. *Supplemental Educational Services* – provides information of additional academic instruction designed to increase the academic achievement of students in Title I schools that have not made adequate yearly progress for 3 years.
 - G. *Title I Paraprofessionals Guidance* – provides questions and answers on requirements for and assessment of paraprofessionals.
 - H. *Title I Services to Private School Children* – addresses a district’s responsibilities in making sure that eligible private school children receive equitable services under Title I, Part A of ESEA. http://www.arkansas.org/programs/pdf/titleI_toolkit_092606.pdf is the link to the “Ensuring Equitable services to Private School Children-A Title I Resource Toolkit”
2. The Stewart B. McKinney-Vento Homeless Assistance Act was the first and remains the only major federal legislative response to homelessness. This technical assistance document is intended to provide an overview of the authorizing statute and should be used in conjunction with the U.S. Department of Education policy guidance *Education for Homeless Children and Youth Program* that may be found at: <http://www.ed.gov/programs/homeless/legislation.html?exp=0> .