

Title 5, Section 4650 - Basis of Direct State Intervention

- (a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exist:
- (i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;
 - (ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims;
 - (iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;
 - (iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;
 - (v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;
 - (vi) The local agency refuses to respond to the Superintendent's request for information regarding the complaint;
 - (vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.
 - (viii) For complaints relating to special education the following shall also be conditions for direct state intervention:
 - (A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code Section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free, appropriate public education to handicapped individuals;
 - (B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;
 - (C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened;

- (D) The complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP);
 - (E) The complaint involves a violation of federal law governing special education, 20 U.S.C. Section 1400 et seq., or its implementing regulations.
- (b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that a direct filing to the state is being made.

Note: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code.

Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

Exhibit adopted: May 29, 2001