

281—120.433 (34CFR303) Minimum state complaint procedures.

120.433(1) *Time limit; minimum procedures.* The department must include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—120.434(34CFR303) to:

a. Carry out an independent, on-site investigation, if the department determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the agency or EIS provider named in the complaint an opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the department, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with subrule 120.430(2) and rule 281—120.431(34CFR303);

d. Review all relevant information and make an independent determination as to whether the agency or EIS provider named in the complaint is violating a requirement of Part C of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the department's final decision.

120.433(2) *Time extension; final decision; implementation.* The department's procedures described in subrule 120.433(1) must:

a. Permit an extension of the time limit under subrule 120.433(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation is available to the individual or organization under state procedures) and agency or EIS provider named in the complaint agree to extend the time to engage in mediation pursuant to subparagraph 120.433(1)“c”(2); and

b. Include procedures for effective implementation of the department's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

120.433(3) *Complaints filed under this rule and due process hearings under subrule 120.430(4).* If a written complaint is received that is also the subject of a due process hearing under subrule 120.430(4), or contains multiple issues of which one or more are part of that hearing, the department must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in subrules 120.433(1) and 120.433(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue, and the department must inform the complainant to that effect. A complaint alleging the department's, other public agency's, or EIS provider's failure to implement a due process hearing decision must be resolved by the department.