

# **NOCSMHS Disability Discrimination Complaint**

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**Complaint Coordinator:**     **Dr. David Trautenberg**  
  **Human Resources**  
  **dtrautenberg@noscihigh.org**  
  **2011 Bienville Street**  
  **New Orleans, La.70119**

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# NOCSMHS Disability Discrimination Complaint

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## I. EVALUATION OF THE COMPLAINT

If NOCSMHS determines that written information provided to NOCSMHS is a complaint, NOCSMHS will establish whether it has sufficient information to proceed to investigation. NOCSMHS will provide complainants with assistance regarding the nature of their rights and of the NOCSMHS investigation process. Additionally, NOCSMHS staff will provide appropriate assistance to complainants who are persons with disabilities, individuals of limited English proficiency or persons whose communication skills are otherwise limited.

To investigate the complaint, NOCSMHS may need to collect and analyze personal information. NOCSMHS does not reveal the name or other identifying information about an individual (including individuals who file complaints or speak to NOCSMHS) unless (1) such information would assist in the completion of an investigation or in corrective activities of NOCSMHS in remedying violations of law; (2) such information is required to be disclosed under the Louisiana's public records laws; or (3) such information is permitted to be disclosed under the Family Educational Rights and Privacy Act and Louisiana laws concerning the confidentiality of student records and NOCSMHS determines disclosure would further an interest of the NOCSMHS.

However, NOCSMHS can release certain information about complaints to the general public, including the date a complaint was filed; the type of discrimination included in a complaint; the date a complaint was resolved, dismissed or closed; the basic reasons for NOCSMHS decision; or other related information. Any information NOCSMHS releases to the general public will not include personally-identifiable information about the complainant or the person on whose behalf the complaint was filed except as noted in the paragraph above.

### A. Determine the Sufficiency of a Complaint

A complaint is a written or electronic statement to NOCSMHS alleging that the rights of one or more students with a disability have been violated and requesting that the NOCSMHS take action. Complaints may be filed online as well as by mail, fax, or in person. Some correspondence that NOCSMHS receives, even if it concerns an alleged civil rights violation, may not be a complaint. Upon receipt, NOCSMHS will determine whether or not the correspondence is a complaint. If a complaint is filed electronically, by e-mail or fax, a signed consent form must be secured in addition to a complaint form.

The following are not complaints:

- (a) Oral allegations that are not reduced to writing;
- (b) Anonymous correspondence;
- (c) Courtesy copies of correspondence or a complaint filed with others; or
- (d) Inquiries that seek advice or information but do not seek action or intervention from NOCSMHS.

The complaint should include a written explanation of what happened; a way to contact the complainant (if the complaint is filed by e-mail NOCSMHS must have the complainant's actual name and address); and identification of the person or group injured by the alleged discrimination.

Complaints should be submitted to NOCSMHS complaint

coordinator:

Dr. David Trautenberg

Director of Human Resources and Finances

dtrautenberg@noscighigh.org

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### **B. Establish a File for Each Complaint**

The case opening date is the date a complaint is received by NOCSMHS chief administrator or a member of NOCSMHS governing board. Complaints received by email or by fax after regular business hours, over a weekend, or on a holiday will be considered received on the next workday. Upon receipt by the appropriate NOCSMHS staff, NOCSMHS establishes a case file for each complaint. The complaint, however it was filed, must be included in the case file.

In cases of multiple complaints, the following guidelines will be applied in determining how many case numbers should be assigned:

(a) Complaints from more than one person against NOCSMHS that contain different allegations are treated as separate complaints.

(b) Complaints filed by more than one person that raise substantially identical allegations against NOCSMHS may be treated as one complaint or, if received later, incorporated into an existing complaint. If the complaints raise distinct allegations, NOCSMHS should treat them as separate complaints.

(c) New allegations filed by the same person against after a complaint investigation has begun are reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint.

### **C. Acknowledge the Complaint**

NOCSMHS will promptly acknowledge receipt of the complaint. The complainant will be informed that the complaint will be evaluated to determine its sufficiency and that further communications about the complaint will be forthcoming. If not already provided by the complainant, a consent form will be included with NOCSMHS acknowledgement letter. The complainant will be informed that the complaint will be closed if written consent is not received within 20 calendar days of the date of the acknowledgement letter. The response will also include a copy of "NOCSMHS Complaint Processing Procedures."

### **D. Determine Whether the Allegations Are Sufficient and Timely**

For NOCSMHS to initiate an investigation, the complaint must allege, or NOCSMHS must be able to infer from the facts given, an allegation of: 1) discrimination based on disability or 2) retaliation for the purpose of interfering with any right or privilege secured by applicable disability rights laws or as a result of making a complaint, testifying, or participating in any manner in a disability discrimination matter before NOCSMHS, the Louisiana Department of Education, or the United States Department of Education.

NOCSMHS will take action only with respect to those complaint allegations that have been filed within 180 calendar days of the date of the last act of alleged discrimination unless the complainant is granted a waiver under Section I.E. Timely allegations may include those where the complainant alleges a continuing discriminatory policy or practice. The person or team evaluating the complaint allegations shall make the determination of the existence of a continuing discriminatory policy or practice.

NOCSMHS will assist the complainant in understanding the information that NOCSMHS requires in order to proceed to the investigation of the complainant's allegation(s). This will include explaining NOCSMHS investigation process and the rights of the complainant under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. NOCSMHS will also, to the extent possible, specifically identify the information necessary for NOCSMHS to proceed to investigation of the complainant's allegation(s). NOCSMHS staff will provide appropriate assistance to complainants who are persons with disabilities, individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

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If NOCSMHS decides not to open a complaint for investigation or to terminate an investigation for any of the reasons identified above, it will dismiss the complaint allegation.

NOCSMHS will also dismiss an allegation for the following reasons:

(a) The allegation fails to state a violation of Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act; or

(b) The allegation lacks sufficient detail (i.e., who, what, where, when, how) for NOCSMHS to infer that discrimination or retaliation may have occurred or is occurring; or

(c) The allegation is so speculative, conclusory, or incoherent that it is not sufficiently grounded in fact for NOCSMHS to infer that discrimination or retaliation may have occurred or is occurring.

Before dismissing a complaint allegation, NOCSMHS will contact the complainant and explain in writing (by letter or via electronic mail) the information necessary for NOCSMHS to proceed to investigation of the complaint allegation, ask the complainant to provide this information to NOCSMHS within 20 calendar days of the date of the written request and advise the complainant that the complaint allegation will be dismissed if the information is not received by that date. NOCSMHS will dismiss the complaint allegation if the requested information is not received within 20 calendar days of the date of the written request.

If a complaint allegation is dismissed, NOCSMHS will issue a letter of dismissal to the complainant explaining the reason for the decision.

### **E. Determine Whether a Waiver of Timeliness Should be Granted**

If a complaint allegation is not filed in a timely manner, NOCSMHS will notify the complainant of the opportunity to request a waiver. The person or team evaluating the complaint allegations may grant a waiver of the 180-day filing requirement for good cause shown, such as under any of the following circumstances:

(a) The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint allegation was filed within 60 days after the complainant became aware of the alleged discrimination;

(b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint allegation was filed within 60 days after the period of incapacitation ended; or

(c) Unique circumstances generated by NOCSMHS action have adversely affected the complainant's ability to file a complaint within the 180-day period.

If a waiver is not requested or requested but not granted, the allegation will be dismissed and the complainant informed of the decision.

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### F. Opening the Complaint for Investigation

When NOCSMHS opens a case for investigation, it will issue a letter of notification to the complainant that contains, at a minimum, the following information:

- the complaint allegations;
- contact information for the NOCSMHS staff person who will serve as the complainant's primary contact during the investigation and resolution of the complaint; and
- a copy of "NOCSMHS Complaint Processing Procedures".

### G. Determine Whether NOCSMHS Will Administratively Close a Complaint

NOCSMHS will close a complaint for the following reasons:

(a) The same allegations have been filed by the complainant against the NOCSMHS with state or federal court. An NOCSMHS complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)

(b) The complaint allegations are foreclosed by previous decisions of the federal courts, the U.S. Secretary of Education, or the U.S. Department of Education's Civil Rights Reviewing Authority.

(c) NOCSMHS obtains credible information indicating that the allegations raised by the complaint have been resolved, and there are no class-wide allegations. In such a case, NOCSMHS will attempt to ascertain the apparent resolution. If NOCSMHS determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

(d) The NOCSMHS determines that its ability to complete the investigation is substantially impaired by the complainant's or injured party's refusal to provide information that is reasonably accessible to the complainant and is necessary for investigation of the complaint.

(e) The NOCSMHS determines that its ability to complete the investigation is substantially impaired by its inability to contact the complainant in order to obtain information that is necessary for investigation of the complaint. NOCSMHS will include documentation in the case file of its efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information. NOCSMHS will not close the complaint until more than 20 calendar days have passed since the date of NOCSMHS attempt to contact the complainant.

(f) The complaint is a continuation of a pattern of complaints previously filed by the complainant or someone other than the complainant involving the same or similar allegations against NOCSMHS that have been found to be without merit by NOCSMHS.

(g) The complainant withdraws the complaint.

(h) The death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party.

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(i) The allegations are moot because:

1. There are no current allegations appropriate for further investigation and resolution;
2. There are no class-wide allegations; and
3. There is no need for the NOCSMHS to change its policies or procedures in order to protect against a future violation.

If NOCSMHS closes a complaint for any of the reasons identified above, it will issue a letter of administrative closure to the complainant explaining the reason for the decision.

## II. INVESTIGATION OF THE COMPLAINT AND ISSUANCE OF FINDINGS

NOCSMHS will ensure that investigations are legally sufficient and that they are dispositive of the allegations raised in the complaint. NOCSMHS corrective action plans should be carefully drafted to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

### A. Case Planning

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the life of every case to ensure high quality decisions, prompt investigations, and efficient use of [LEA] resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to take into account new information obtained during case processing.

The following essential elements of case planning will be addressed in every case and placed in the file (unless inapplicable):

- (a) Allegation(s)
- (b) Legal issue(s)
- (c) Investigation strategy (including obtaining interim relief as appropriate)
- (d) Corrective action plan

### B. Investigative Determinations: Letters of Finding

Within 60 days of the receipt of a sufficient and timely complaint, [LEA] will determine either that:

- there is insufficient evidence to support a conclusion of noncompliance; or
- there is sufficient evidence to support a conclusion of noncompliance.

[LEA] will issue a letter of finding(s) to the complainant. All letters of finding(s) will include a statement that "The complainant may have the right to file a private suit in federal court whether or not [LEA] finds a violation."

#### (1) Insufficient Evidence Determination

When NOCSMHS determines that the evidence does not support a conclusion that NOCSMHS failed to comply with applicable regulations, NOCSMHS will issue a letter of finding(s) to the parties. The letter of finding(s) must include:

1. a statement of the issues raised by the complaint; and

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2. clear explanation of the pertinent legal standard and factual analysis.

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The case file will include an index of the evidence relied upon in making the determination.

### **(2) Non-Compliance Determination**

When NOCSMHS determines that a preponderance of the evidence supports a conclusion that the NOCSMHS failed to comply with applicable regulations, NOCSMHS will prepare a statement of the case. The statement of the case must set out the issues investigated; NOCSMHS basis for adopting a corrective action plan; and an explanation of how the terms of the agreement are aligned with the issues investigated and are consistent with applicable regulations. The provisions of the corrective action plan will be aligned with the identified violation(s) and will be consistent with applicable regulations.

The letter of finding(s) to the parties must include:

1. a statement of the issues raised by the complaint;
2. a clear explanation of the pertinent legal standard and factual analysis; and
3. a statement that, when fully implemented, the corrective action plan will address all of the complainant concerns. The letter will include a copy of the corrective action plan.

The case file will include an index of the evidence relied upon in making the determination.

### **C. Guidelines for Corrective Action Plans**

The complaint will be considered resolved if the NOCSMHS adopts a corrective action plan that, when fully performed, will remedy the complaint or identified violations. A copy of the corrective action plan will be included with letter of finding(s).

Corrective action plans must be signed by a person with authority to bind the corrective action plan and must include:

- (i) specific acts or steps NOCSMHS will take to resolve compliance issues;
- (ii) dates for implementing each act or step; and
- (iii) dates for submission of reports and documentation to the complainant verifying implementation.

### **D. Data Collection and Information Gathering**

Investigations are guided by several fundamental principles. NOCSMHS will undertake a robust outreach to NOCSMHS community to increase its access to relevant information in the conduct of an investigation, as appropriate. In addition, NOCSMHS will determine whether it is appropriate to provide interim relief for the injured party. If interim relief is appropriate, NOCSMHS will contact the complainant as early as possible to secure it pending the outcome of the investigation.

Relevant credible data are invaluable to NOCSMHS in ensuring compliance with the law. As part of its investigations, NOCSMHS will collect data resulting from any methods NOCSMHS uses to track and evaluate their compliance with their legal responsibilities (e.g., climate surveys and other self-assessment tools).

### **(1) Generally**

Generally, NOCSMHS seeks documentary evidence, develops interview questions based upon those data and any other available information, and conducts interviews with the complainant, NOCSMHS personnel, and others as appropriate. The exact approach taken to data/information collection will vary from case to case depending on the issues raised,

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extent to which relevant data are in the control of NOCSMHS or others, and investigation strategies. Some general practices that should be part of decision-making during data collection include:

- Obtain independent written documentation to corroborate oral statements.
- Label all evidence, documents, electronic media, and written records of contact, with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).

### (2) NOCSMHS Authority to Obtain Information

NOCSMHS has no legal authority to require the complainant or any other individual or organization outside of NOCSMHS control to provide information.

### (3) Interviews

Interviews are an integral part of most investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate NOCSMHS defenses. NOCSMHS may conduct individual interviews or focus groups as part of its investigations.

**Notice** – Prior to initiating an interview, NOCSMHS should inform the witness of the following:

- (i) The general purpose of the interview, including NOCSMHS role, what law or laws may be pertinent to the investigation, and where appropriate, a brief explanation of what is under investigation.
- (ii) The potential uses of the information to be obtained from the witness.
- (iii) The witness's right to personal representation during the interview by a person of their choice.
- (iv) If the witness is an employee of NOCSMHS, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
- (v) The regulatory provisions concerning prohibition of intimidating or retaliatory acts by NOCSMHS.

Witnesses shall be interviewed under circumstances that assure privacy. An interpreter may be used if safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.

**Interviews with Minors (Persons Under 18) or Legally Incompetent Individuals** – NOCSMHS shall obtain written consent from a parent or guardian prior to interviewing any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law and are therefore considered to have obtained majority. For persons under 18 who state they are emancipated, NOCSMHS should obtain proof of emancipation.

Parental or legal guardian consent (or proof of emancipation) may not be necessary when the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. If parents or guardians refuse to provide consent for an interview, and [LEA] determines that the child's information is critical, NOCSMHS may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, NOCSMHS will not interview the child.

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**Records of Interviews** – A written record of both telephone and in-person interviews must be kept. Interviewers will notify interviewees if a tape recording is used and tape recording will be done only with the consent of the interviewee. If interviewers use tape recording, the tape becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created.

The record of the interview to be placed in the case file must contain the following information:

(i) case identification (name and case number);

(ii) name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons);

(iii) date, time, and location of interview (including whether the interview was conducted by telephone);

(iv) a record of whether the interviewee was informed of required notifications; and

(v) written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).