

581-015-2030

Procedures for Complaints as Required by IDEA Regulations

- (1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.
- (2) The complainant must send a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the Department.
- (3) Upon receipt of a complaint under this provision, the Department will provide a copy of the Notice of Procedural Safeguards to a parent or adult student who files a complaint.
- (4) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant will be informed of alternative procedures that are available to address the complainant's allegations.
- (5) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department
- (6) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant would be considered a violation of the Individuals with Disabilities Education Act:
 - (a) The Superintendent will request the public agency to respond to the allegations. The Superintendent (or designee) may also initiate attempts to resolve the complaint through mediation or alternative dispute resolution, including local resolution.
 - (b) The respondent must respond to the allegations and furnish any information or documents requested by the Superintendent within ten business days from the receipt of request for response from the Superintendent unless another time period is specified by the Superintendent. At the same time, the respondent must send a copy of the response and documents to the complainant. If the complainant does not otherwise have access to confidential information in the response, the respondent must provide the complainant with the non-confidential portion(s) of the response.
- (7) The Superintendent will give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint or the public agency's response. The complainant must provide a copy of any further written information to the public agency that is the subject of the complaint, unless it would be a hardship to do so. In those situations, the Department will provide a copy of the written information to the public agency.
- (8) The Superintendent will review all of the written information submitted by the complainant and the public agency to resolve the allegations in the complaint.
- (9) The Superintendent may conduct further investigation, such as telephone or onsite interviews, to the extent necessary to resolve the complaint allegations.
- (10) If a written complaint is received that is also the subject of a due process hearing under OAR 581-015-2345, or contains multiple issues of which one or more are part of that hearing, the Superintendent will set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing will be resolved using the time limit and procedures in this rule.

(11) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent will inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision will be resolved by the Superintendent.

(12) The Superintendent will issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision within 60 days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and public agency agree in writing to extend the time to try mediation or local resolution.

(13) If the Superintendent finds a violation, the Superintendent's written decision will include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred. If the decision is that a school district has failed to provide appropriate services, the Superintendent will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child; and

(b) Appropriate future provision of services for all children with disabilities.

(14)(a) Parties may seek judicial review of the final order under ORS 183.484. Judicial review may be obtained by filing a petition for review within 60 days of service of the final order with the Marion County Circuit Court or with the Circuit Court for the County where the party resides.

(b) ~~Notwithstanding Pursuant to OAR 137-004-0080 and ORS 183.484(2), a person party may entitled to judicial review of the final order may not request reconsideration of the final order by the Superintendent within 60 days of after the date of the order. Reconsideration requests must follow the standards set forth in the Oregon Attorney General's Administrative Law Manual and the Uniform and Model Rules of Procedure under the Administrative Procedures Act. Except as provided in this subsection, the Superintendent and a party seeking reconsideration shall follow the procedure for reconsideration described in OAR 137-004-0080.~~

(c) ~~Notwithstanding OAR 137-004-0080, the Superintendent may not stay a final order upon request by a party if seeking reconsideration of a Final Order, and any party subject to Corrective Action resulting from the order must commence the Corrective Action according to the final order assigned while pursuing the formal request for reconsideration.~~

(15) Corrective action ordered by the Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department.

(16) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached the Individuals with Disabilities Education Act and that delay may cause irreparable harm, the Superintendent may order interim relief.

(17) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of following actions:

(a) Disapprove in whole or part, the respondent's application for federal funding;

(b) Withhold or terminate further assistance to the respondent for an approved project;

(c) Suspend payments, under an approved project, to a respondent;

(d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and

(e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

(18) Before the Superintendent denies or withholds funding or orders reimbursement as provided in Section (17) of this rule, the Superintendent will notify the respondent of the right to request a hearing in accordance with ORS 183.415.

(a) The hearing request must be made to the Superintendent within 30 days of receiving notice;

(b) The Superintendent will appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;

(c) The burden of proof at the hearing is on the Department;

(d) The Superintendent's decision is final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.

(19) No person may be subject to retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has been subject to retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041, 34 CFR 300.151-153; 34 CFR 300.504(a)(2)

Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93; ODE 15-1999, f. & cert. ef. 9-24-99, Renumbered from 581-001-0010; ODE 29-2000, f. & cert. ef. 12-11-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0054, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 6-2011, f. & cert. ef. 4-22-11