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581-~~022002-1940-0040~~

Appeal Procedure

(1) A complainant may ~~direct an~~ appeal ~~of~~ a final decision by a school district to the ~~State~~ Deputy Superintendent of Public Instruction if the complaint alleges:

(a) ~~The complaint alleges a~~ violation of standards of the Oregon Administrative Rules, chapter 581, division 022 (Division 22 Standards); ~~or~~

(b) A violation of ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570 (Restraint and Seclusion); or

(c) A violation of ORS 659.850 (Discrimination); or

(d) A violation of ORS 659.852 (Retaliation).

~~(b) A violation of other statutory or administrative rule requirements for which the State Superintendent has appeal responsibility.~~

(2) The appeal must meet the following criteria~~be in writing and contain~~:

(a) The appeal must be from a final decision by a school district. A decision is final if:

(A) The complainant has exhausted the school district's complaint process except as otherwise allowed by statute;

(B) In a multi-step district complaint process, the district fails to render a written decision within 30 days of the submission of the complaint at each step; or

(C) The district fails to resolve a complaint within 90 days of the initial filing of a written complaint, regardless of the number of steps in the district complaint process, unless the district and complainant have agreed in writing to a longer time period.

(b) The appeal must be received by the Department no later than one year after the date of the final decision by the district or, if the district fails to issue a final decision, no later than two years after the date the complainant first filed the underlying complaint with the district.

(c) The complaint upon which the appeal is based must have been filed with the school district no later than two years after the alleged violation or unlawful incident occurred or after the complainant discovered the alleged violation or unlawful incident. If the alleged violation or

unlawful incident is of a continuing nature, the right to file an appeal exists so long as the complaint was filed within two years of the most recent incident.

(d) The appeal must be in writing, submitted by mail, in person, or electronically, and contain the name and address of the person bringing the appeal, and the name of the district which is alleged to have violated the statute or administrative rule, a copy of the complaint filed with the school district, and a statement of the facts on which the appeal is based district in which that person resides;

~~(b) The name and address of the district which is alleged to have violated standards; and~~

~~(c) A brief statement indicating each standard the district is alleged to have violated and how the district is alleged to have violated it.~~

~~(3) A decision is deemed final if:~~

~~(a) The district has failed to comply with the procedural time limits in its written complaint process;~~

~~(b) In a multi-step district complaint process, the district fails to render a written decision within 30 days of the submission of the complaint at each step; or~~

~~(c) The district fails to resolve a complaint within 90 days of the initial filing of a written complaint, regardless of the number of steps in the district complaint process.~~

(4) Upon receipt of the appeal the State Deputy Superintendent will determine whether a violation of standards has been properly alleged the appeal alleges a violation of a statute or administrative rule for which the Deputy Superintendent has jurisdiction and whether the requirements of section (2) of this rule have been satisfied.

(a) If the State Deputy Superintendent determines that the facts alleged in of the complaint, if true, would be a violation of a statute or administrative rule for which the Deputy Superintendent has jurisdiction standard, and the requirements of section (2) of this rule have been satisfied, the appeal will be accepted, the Deputy Superintendent will give written notice to the complainant and the school district that the appeal is accepted and the procedures in sections (4) through (11) of listed in this rule in the following sections will be applied;

(b) If the State Deputy Superintendent determines that the complaint, even if true, would not be a violation of a statute or administrative rule for which the Deputy Superintendent has jurisdiction or the requirements of section (2) of this rule have not been satisfied violate a standard, the appeal will not be accepted and. In either case, the Deputy State Superintendent will give written notice of the determination to the complainant and the school district.

(54) Within 30 days of receipt of notice of the State Deputy Superintendent's acceptance of the appeal, the district shall submit ~~a written report with to~~ the State Deputy Superintendent a written report which shall include:

(a) A statement of facts;

(b) A statement of district action, if any, taken in response to the complaint, or if none was taken, the reason(s) therefore;

(c) A stipulation, if one was reached, of the settlement of the complaint; and

(d) A list of any complaints filed with another agency by the party, concerning the subject of the appeal.

(65) The State Deputy Superintendent may for good cause extend the time for the filing of a report by the district.

(76) Upon receipt of the district's report, the State Deputy Superintendent will conduct an investigate-investigation~~the allegations of the complaint to determine whether there is substantial evidence of a violation of the applicable statute or administrative rule. The investigation will include a review of the written materials submitted by the complainant and school district and may also include actions to the extent necessary including but not limited to~~such as interviews, on-site investigation, surveys, and document review;

~~(a) Authorizing an on-site investigation; and~~

~~(b) Conducting interviews, meetings and surveys and reviewing documents, data and district procedures.~~

(87) The State Deputy Superintendent will issue a written ~~decision~~final order that addresses each allegation in the complaint that was accepted for appeal and contains reasons for the Deputy Superintendent's decision as to whether or not the district is deficient. The final order will be issued within ~~60-90~~ 90 days of the date the Deputy Superintendent receiving-received the district's report ~~that addresses each allegation in the complaint and contains reasons for the State Superintendent's decision as to whether or not the district is deficient.~~

~~(a) If the 90-day period for issuing the final order would conclude during the time when the schools of the district are closed for summer, the final order will be issued within 90 days of the date the Deputy Superintendent received the district's report exclusive of the time when the schools of the district are closed for summer. If the schools of the district are not open during the 60-day period due to summer vacation, the decision shall be issued within 60 days after the beginning of the school year.~~

~~(9b) Notwithstanding section (8) of this rule, the State Deputy Superintendent may extend the time period for issuing a written decision final order on a complaint to a time period that is more than 60 days if the State Deputy Superintendent has the consent of the complainant and the allegation concerns a comprehensive or widespread deficiency and more extensive investigation is needed than may be reasonably completed within 90 60 days. The State Deputy Superintendent shall prepare a timeline and plan for investigation and provide copies to the complainant and district within two weeks of receiving the district's report before requesting consent for an extension.~~

~~(c) If the complainant and the school district agree in writing to extend the time in order to engage in alternative dispute resolution, the 90 day time period is tolled until the parties notify the Deputy Superintendent that the alternative dispute resolution process has resulted in an agreement or has been unsuccessful.~~

~~(108) If a deficiency violation is found, the State Deputy Superintendent's written decision final order will include any necessary corrective action to be undertaken by the district as well as any documentation to be supplied by the district to ensure that the corrective action has occurred.~~

~~(a) For violations of standards of the Oregon Administrative Rules, chapter 581, division 022, ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570 corrective action must be completed by the beginning of the school year next following the date of the final order unless an extension is granted pursuant to ORS 327.103(3).~~

~~(b) For violations of ORS 659.850 or ORS 659.852, the district must be in compliance within 30 days of the final order. Any additional corrective action must be completed by the beginning of the school year next following the date of the final order unless an extension is granted by the Deputy Superintendent.~~

~~(149) Corrective action ordered by the Deputy Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department. If a deficiency is not corrected within the required time, the provisions of ORS 327.103 will apply;~~

~~(a) For a violation of standards of the Oregon Administrative Rules, chapter 581, division 022, ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570, the provisions of ORS 327.103 apply.~~

~~(b) For a violation of ORS 659.850, the Deputy Superintendent shall order appropriate remedies which may include:~~

~~(A) Withholding of all or part of each quarterly payment of the basic school support fund due the district under ORS 327.095;~~

~~(B) Daily fines assessed against the district;~~

(C) Forbidding the district to participate in interschool activities;

(D) Other appropriate remedies.

(c) For a violation of ORS 659.852, the Deputy Superintendent shall order appropriate remedies which may include:

(A) Withholding of all or part of each quarterly payment of the basic school support fund due a school district under ORS 327.095, a public charter school under ORS 338.185, or an education service district under ORS 327.021;

(B) Withholding all or part of payment of the State School Fund due a Youth Corrections Education Program provider under contract with the Oregon Department of Education;

(C) Withholding all or part of the state funding due a Long Term Care and Treatment facility or the Oregon School for the Deaf under ORS 327.023; and

(D) Other appropriate remedies.

(d) The Deputy Superintendent may not award damages to the complainant or attorney fees.

(10) Notwithstanding sections (2) and (8) of this rule, in discrimination matters alleging a denial of participation in seasonal athletic activities wherein adherence with the local district's grievance procedure would prejudice the interest of complainant, either party may shorten the applicable timelines set forth in this rule by serving notice by first class mail upon the other party and the Superintendent of Public Instruction in substantially the following form:

In the Matter of the NOTICE OF Discrimination Complaint MODIFICATION OF TIME of

You are hereby notified that timelines set forth in OAR 581-002-0040 for this matter are hereby modified for the reason set forth in OAR 581-002-0040(10).

Upon the third day from the postmark of this notice OAR 581-002-0040 shall be modified as follows:

1. In Section (2)(a)(D) "90 days" shall be "10 days".

2. In Section (8)(b) "30 days" shall be "10 days".

In the event that more than one party shall serve the above notice, the notice postmarked first shall control the applicable timeline.

(11)(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) Pursuant to OAR 137-004-0080 and ORS 183.484(2), a party to the complaint may request reconsideration of the final order by the Deputy Superintendent within 60 days after the date of the order. Except as provided in this subsection, the Deputy Superintendent and a party seeking reconsideration shall follow the procedure for reconsideration described in OAR 137-004-0080.

(12) This rule applies to appeals filed with the Deputy Superintendent on or after July 1, 2017.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.103 & 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 31-2007, f. & cert. ef. 12-12-07