

# **SPECIAL EDUCATION**

## **COMPLAINT RESOLUTION PROCESS**

Questions and Answers

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<http://www.oregon.gov/ODE/Pages/default.aspx>

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**Special Education Complaint Resolution**  
Interim Guidance  
Oregon Department of Education

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## **Introduction**

The Oregon Department of Education (ODE) provides a complaint resolution process for special education complaints under the Individuals with Disabilities Education Act (IDEA). The IDEA is a federal law that requires states to ensure that children with disabilities receive a free appropriate public education (FAPE). Federal regulations require states to investigate written complaints of IDEA violations. Under the IDEA, states have “general supervision” authority to ensure that local school districts follow federal special education law. The complaint resolution process is one tool for carrying out this general supervision authority.

## **What is a special education “complaint”?**

A special education “complaint” is a written, dated, signed statement alleging that a school district, Early Intervention/Early Childhood Special Education (EI/ECSE) program or other public educational agency has violated federal special education law.

## **Who can file a complaint?**

Any person or organization can file a complaint. The person filing the complaint does not have to live in Oregon. The person or organization filing the complaint is called the “complainant.”

## **What must be included in a letter of complaint?**

The complaint must be written, signed, and dated. If the complaint is about a specific child, the complaint must include the child’s name and address, and the name of the school or program the child is attending. If the child is homeless, the complaint should include available contact information for the child. It is also helpful to include the child’s age and disability. The complaint must include contact information for the complainant, such as the complainant’s mailing address, work and home telephone numbers, e-mail address (if available), and fax number (if available).

The complaint must include a description of the nature of the problem, including how you think the school district or EI/ECSE program violated special education requirements. ODE will investigate allegations of IDEA violations -- both procedural (how decisions are made) and substantive (what decisions are made). The complaint must include facts or details about the violation. The complaint must also include suggestions for correcting the violation, to the extent that you have any suggestions at the time you file the complaint.

The complaint must be sent to the school district or EI/ECSE program serving the child at the time of the complaint and to ODE.

A form is provided at the end of this document (Appendix B). This form may help you provide ODE with the necessary information to investigate your complaint. You do not have to use this form.

### **What timelines apply to filing a complaint?**

The violation must have happened not more than one year before the filing of the complaint.

### **What options are available for resolving the complaint?**

ODE will make every effort to resolve complaints with the least amount of conflict possible. A complaint may be resolved by one or more of these options:

#### **(1) Local Resolution:**

- Local Resolution is an opportunity for the complainant and the district or EI/ECSE program to directly resolve the issues prompting the complaint. The complainant and district/program staff do not have to agree on what happened or why, but still may agree on steps to address the concern. ODE's dispute resolution specialist may help the district/program and the complainant to reach this agreement. Typically, the agreement is written and signed by both parties.
- Effective agreements identify:
  - ✓ The date of the agreement and the signatures of the participants
  - ✓ What action will be taken
  - ✓ When the action will be completed
  - ✓ Who is responsible for making sure the action is taken
  - ✓ The time period of the agreement
  - ✓ A process for review when the actions are completed
  - ✓ A plan for making changes to the agreement if needed
  - ✓ What to do if a participant thinks the agreement is not being met
- Typically, ODE will wait ten calendar days before proceeding with the investigation to give the complainant and district or program an opportunity for local resolution. ODE may extend the time for resolving the complaint if the complainant and the district/program request an extension in writing.
- If the complainant and district/program reach an agreement that resolves the complaint, the complainant notifies the Department in writing and the Department will dismiss the complaint. If only some of the complaint issues are resolved, ODE may investigate the remaining issues, depending on the agreement.
- If the district/program and parent do not want to try local resolution, or if the parties do not agree on a solution in ten days and do not request more time in writing, ODE will proceed with the complaint resolution process.

## **(2) Mediation:**

- Mediation is a voluntary process. An impartial third-party mediator assists the complainant and district/program in reaching a mutually acceptable resolution of the dispute. Mediation includes all contacts between the mediator and the parties to the dispute until either the parties agree to a resolution or the mediation process ends.
- ODE encourages the complainant and the district/program to consider mediation and will help select an impartial mediator.
- If the complainant and district/program agree to try mediation, ODE will provide the mediator at no cost to the complainant or district/program.
- The complainant and school district/program may request more time for mediation. ODE requires this request to be in writing.
- If mediation results in a written agreement for resolution of the complaint, the complainant notifies the Department in writing and the Department will dismiss the complaint. If only some of the complaint issues are resolved in mediation, ODE may investigate the remaining issues, depending on the mediation agreement.

**(3) Stipulated Corrective Action:** The district/program may propose corrective action to address one or more of the allegations in the complaint. ODE may accept, reject or negotiate the proposed corrective action or require other corrective actions or time lines to ensure that the district/program is in compliance related to each allegation in the complaint. If this process is not successful, ODE will proceed with the complaint resolution process.

**(4) Investigation:** If necessary, ODE will investigate one or more of the allegations in the complaint by conducting interviews and reviewing student records, correspondence and other information. An on-site investigation will be conducted if necessary to resolve the issues in the complaint.

### **How long does ODE have to resolve a complaint?**

ODE must issue a final order within 60 days from the date that ODE receives the complaint. ODE can only extend this timeline for exceptional circumstances related to the complaint. ODE will notify the complainant and the school district/program if there are exceptional circumstances, and will identify the circumstances and when the final order will be issued. As described above, the complainant and district may request additional time for mediation or local resolution.

## **What are the steps to complaint resolution?**

### **(1) ODE ensures that the school district/program has been notified of complaint:**

The IDEA regulations require the complainant to send a copy of the complaint to the district or program that is currently serving the child. If the complaint involves a different school district or program, ODE recommends that the complainant send a copy of the complaint to the district that is the subject of the complaint. ODE will verify that the school district/program that is the subject of the complaint has received a copy of the complaint. An ODE specialist will contact the school district/program and parent (or other person filing a complaint) to discuss complaint resolution options. ODE will let the complainant know if the complainant needs to submit additional information related to an allegation in the complaint.

### **(2) ODE Identifies the Issues for Complaint Resolution:**

ODE can only investigate allegations of violations of the IDEA. The complaint must state specific issues (or allegations) and include the basis (supporting facts) for the allegation. See Appendix C for examples of allegations and the supporting facts.

- If some of the statements in the complaint are not IDEA allegations, ODE will tell the complainant that those allegations will not be investigated and explain why. Where appropriate, ODE will tell the complainant about other options for addressing these concerns.
- If the complainant has not provided the basis for one or more of the IDEA allegations, ODE will tell the complainant what information is missing. ODE will proceed with the allegations that include supporting facts. The complainant may submit more information related to the unsupported allegations.
- If some or all of the allegations in the complaint are part of a current due process hearing, ODE will only investigate any allegations outside the scope of the due process hearing. ODE will set aside complaint allegations that are part of a due process hearing and will stop the complaint resolution time line for those allegations. When the hearing is resolved, ODE will investigate any allegations that the hearing officer has not resolved. ODE will resolve an allegation that an educational agency has not implemented a due process decision.
- ODE will dismiss the complaint without an investigation if:
  - The complaint includes no allegations of IDEA violations;
  - The complaint includes no timely allegations of IDEA violations<sup>1</sup>;

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<sup>1</sup> An allegation is not timely if it has not yet happened or if it is about a violation that happened more than one year before the filing of the complaint.

- The complaint includes no basis or facts to support any of the IDEA allegations;
- All of the allegations in the complaint have been resolved in a due process hearing; or
- The complainant notifies ODE in writing that the issues have been resolved or otherwise requests that the complaint be withdrawn.

### **(3) Request for Response:**

If ODE is proceeding with the complaint investigation, ODE will send the school district/program a written *Request for Response*. The complainant will get a copy of the *Request for Response* and a letter from ODE inviting the complainant to send any other information about the complaint. The district/program and complainant will both get a copy of this Q & A and information about mediation.

The school district/program will usually have ten business days to respond to ODE. The school district's/program's *Response* includes a written statement by the school district/program about the issues in the complaint, and child's records or other documents requested by ODE.

The district/program must send a copy of its written *Response* to the complainant. The district/program must also provide a copy of the documents to the complainant or make the documents available for the complainant's review when those documents are provided to ODE. If the complainant does not otherwise have access to confidential information about the child, the district/program must only provide the parts of the response and documents that are not confidential.

The complainant will have an opportunity to provide additional information to ODE about the complaint. The complainant must provide a copy of this information to the district/program. If it would be a hardship to do this, ODE will provide the copy to the district/program.

### **(4) Investigation:**

The ODE investigator will review the information from the school district/program and the complainant. ODE may assign an education specialist to work with the investigator. The education specialists and investigators are ODE employees or contractors.

The investigator will gather information through informal fact finding, telephone or personal interviews, and a review of files, documents, correspondence and other information. If the district/program agrees that one or more violations have occurred, additional fact-finding will not be conducted in those areas.

The ODE investigator will decide if an on-site visit is needed to resolve the issues in the complaint. If so, the investigator will make arrangements with the complainant and school district/program for on-site interviews. The investigator may want to interview the child, or observe the child's program. The interviews are informal. Typically, the investigators do not record the interviews but do take notes. The investigator submits the information to ODE for final resolution of the complaint.

#### **(5) Written Decision:**

ODE will issue a written decision (called a Final Order) to the complainant and district/program. The ODE investigator and other ODE staff are involved in reviewing and developing the Final Order.

The Final Order includes:

- An introduction with the date ODE received the complaint, a description of the investigation process, and a description of any extension of the 60 day timeline and the exceptional circumstances that warranted the extension;
- The complaint allegations and ODE's conclusions;
- ODE's findings of fact;
- A discussion (explanation of how the findings of fact and law support ODE's conclusions); and
- If ODE substantiates a violation of the IDEA that has not already been corrected, the required corrective action with due dates.

The Final Order will not include personally identifiable information about the child (e.g. the child's name or birth date, parent's name, address, etc.). ODE avoids using personally identifiable information about personnel.

The Assistant Superintendent reviews and signs the Final Order. The order is mailed to the complainant and school district/program. The Final Order is considered a public record.

#### **How is a complaint investigation different from a due process hearing?**

A **due process hearing** is a formal administrative hearing with an impartial administrative law judge who is not an employee of ODE or any school district/educational program. The parties have an opportunity to bring and cross-examine witnesses, to have a record of the proceedings, and to enter and object to evidence. Parties can subpoena witnesses and testimony is under oath. Parties have an opportunity to provide testimony by experts. When a due process hearing is filed, the child must "stay put" in the current placement pending the results of the hearing, and sometimes longer. The Final Order can be appealed to state or federal court. The court will look at the hearing record, along with the Final Order. Parents who are successful in an administrative hearing may ask the court to order reimbursement for the parents' reasonable attorney fees.

The **complaint process** is a review of the situation by ODE staff, usually with the assistance of contractors. ODE staff or contractors will review the paperwork, talk to parents and staff, and look to see whether the school district/program's actions comply with the IDEA. There is no formal testimony by experts or others and no formal record of the proceedings. There are no oaths, subpoenas, or other formal due process protections. Students do not "stay put" in their current placement while ODE is investigating a complaint. A complaint investigation is like a program audit or review. The complaint process is intended to be less adversarial than the more formal due process hearing procedures.

### **What should I expect from a complaint interview?**

Usually, an ODE specialist or investigator will do a short telephone interview with the complainant and special education director. A more detailed interview will usually come later, after the investigator has reviewed the documents. Sometimes the investigator will conduct interviews by telephone, and sometimes in person. If ODE interviews school/program staff in person, parents will also have a chance to be interviewed in person. If the parents are interviewed in person, school/program staff will have the same chance.

The investigator will often have specific questions about what happened, when, and with whom. The investigator may want to know what has happened since the complaint was filed. The investigator may want to interview the child, or observe the child's program. Complaint interviews are not conducted under oath, but participants are expected to respond truthfully and accurately to questions asked.

Participants may provide additional information (even if the interviewer doesn't ask) so that the interviewer has all the important information related to the issues. Participants may contact the interviewer later if the participant remembers important information not shared in the interview.

### **How should I prepare for a complaint interview?**

- Re-read the letter of complaint and ODE's "Request for Response" to review the issues to be investigated in the complaint.
- Bring information (including documents) that will help the investigator understand the issues.
- Bring calendars or date books to help you remember when events took place.

### **How does ODE decide if there has been a violation of the IDEA?**

ODE looks at all the information that is available to determine whether the school district /program met the requirements of the IDEA.

### **What if the investigator finds evidence supporting the school district/program and the parent?**

ODE will substantiate an allegation (confirm that it is true) if the evidence supporting it is more persuasive than the evidence denying it. If the evidence on both sides is equally persuasive, ODE will not find a violation.

### **How does ODE resolve a dispute involving the appropriateness of an eligibility determination, or IEP or placement decision?**

ODE will first look at whether the district/program followed the required procedures to reach its determination, and second, whether the district/program reached a decision that is consistent with the IDEA in light of the child's abilities and needs. ODE will find that the district/program has complied with the IDEA if the district/program has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child specific data and is consistent with the IDEA.<sup>2</sup>

### **What corrective action will ODE order if ODE finds a violation?**

It depends. ODE may require the school district/program to conduct an evaluation or take other specific action to correct the violation for the individual child. ODE may require the school district/program to hold an IEP or IFSP meeting to consider certain child needs. OSEP has provided the following guidance:

“Although decisions of the IEP team cannot be overturned by the SEA, the SEA can, on a case-by-case basis, if it concludes that what has been offered does not meet the definition of FAPE, order the IEP team to meet to determine FAPE for the child. In addition, parents always have the right to challenge the IEP team's decision by filing for a due process hearing and may seek to resolve their disputes through mediation.”<sup>3</sup>

If the violation resulted in a lack of appropriate services for the child, ODE may order compensatory services or reimbursement for educational expenses. ODE may require the school district/program to meet or confer with the parent to work out the details of compensatory services or reimbursement.

ODE may require staff training, a change in policies or practices, self-assessment, periodic monitoring or reporting on implementation.

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<sup>2</sup> See *Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act*, Memorandum 00-20 (OSEP, July 17, 2000).

<sup>3</sup> *Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act*, Memorandum 00-20 (OSEP, July 17, 2000). “OSEP” is the federal Office of Special Education programs. “SEA” means “state educational agency”. ODE is the SEA for Oregon. “FAPE” means “free appropriate public education.” Children age 3 through 21 who are participating in early childhood special education programs or school-age special education programs have a right to FAPE. Infants and toddlers with disabilities participating in an early intervention program have the right to services that are designed to meet the child's developmental needs as identified by the child's IFSP team.

The purpose of “corrective action” is to correct the violation. ODE does not charge penalties or fines as part of corrective action. However, if a school district/program refuses to take the corrective action, ODE may withhold money from the school district/program.

### **What is “reimbursement”?**

“Reimbursement” means paying back. ODE may order reimbursement for services that the parent purchased privately because the school district did not give appropriate services to the child.

### **What are “compensatory services”?**

Compensatory services are services provided at a later date to make up for services that should have been but were not delivered at an earlier time.

### **How does ODE ensure effective implementation of the Final Order and Corrective Action?**

- **Technical assistance:** ODE will provide technical assistance when necessary to ensure compliance and, when possible, at the request of a district/program.
- **Negotiations:** ODE will negotiate with districts/programs to resolve any differences of opinion or confusion about corrective action before proceeding with any enforcement actions.
- **Corrective actions to achieve compliance:** ODE staff will monitor implementation of the corrective action to ensure that corrective actions are completed in a timely manner.

### **How do parents find out about ODE’s complaint investigation process?**

The *Notice of Procedural Safeguards* has information about complaint investigations and other dispute resolution procedures. School districts and EI/ECSE programs must give parents copies of the *Notice of Procedural Safeguards* when their child is first referred for special education, once a year while the child is receiving special education services, and at other times.

Contact ODE for copies of the *Notice of Procedural Safeguards* in other languages (Spanish, Russian, Vietnamese and Chinese) or in Braille. This information will also be available at <http://www.ode.state.or.us/search/results/?id=261>.

ODE’s website includes more information about special education dispute resolution, including mediation and due process hearings. See <http://www.ode.state.or.us/search/results/?id=125>.

### **Where can I go if I have a complaint that is not an IDEA complaint?**

For other types of concerns, see the chart in Appendix E.

## What can I do if I find a mistake or disagree with ODE's final order?

**Correction to Final Order.** If you believe that the final order includes mistakes, you should inform ODE in writing of these mistakes within 30 days of the date of the complaint order. Your letter should clearly identify the mistake, why you think it is a mistake, and include any documentation to support your position. ODE will immediately forward your concerns to the other party, unless you have done so already. ODE will resolve this matter by either clarifying or correcting the order or writing a letter explaining why ODE is taking no further action.

**Appeal.** A special education complaint final order is considered an “order in other than a contested case” under the Oregon Administrative Procedures Act, ORS 183.480. This type of order may be appealed in Marion County Circuit Court or in the county in which the petitioner resides or conducts business. The petition for review must typically be filed within 60 days after service of the challenged order.<sup>4</sup>

**Due Process Hearing.** Filing state complaints does not prevent complainants from requesting a due process hearing. A parent may request a due process hearing when he or she does not agree with the identification, evaluation, educational placement or provision of a free appropriate public education to a child who may be disabled. This hearing must be filed within two years of the events giving rise to the hearing request. Typically, filing a complaint with ODE is not considered “exhaustion of administrative remedies” and, in most cases, a parent must use the due process hearing procedures before filing an action in court related to special education rights.

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<sup>4</sup> For more information, see the *Oregon Attorney General's Administrative Law Manual and Uniform Model Rules of Procedure under the Administrative Procedures Act* (January 1, 2006), p. 192-194.

## Appendix A

### GLOSSARY

**Allegation of IDEA violation** - A statement describing how a district/program has violated the IDEA.

**Compensatory services** - Services provided at a later date to make up for the lack of appropriate services at an earlier time.

**Complainant** - The person or organization filing the complaint.

**Evidence** – Documents, objects, pictures and verbal statements.

**FAPE** - A free, appropriate, public education, one of the key parts of the Individuals with Disabilities Education Act (IDEA).

**Final order** – ODE’s findings of fact, conclusions and final order (including corrective action, if necessary) based on the allegations in the complaint.

**IDEA** - The Individuals with Disabilities Education Act.

**Investigator** – The person(s) assigned by ODE to conduct the investigation related to the allegations. The investigator may be an ODE employee or contractor.

**Mediation** – A voluntary process in which an impartial third-party mediator assists and facilitates the complainant and district/program in reaching a mutually acceptable resolution of the dispute.

**ODE** - The Oregon Department of Education.

**OSEP** – Office of Special Education Programs for the U.S. Department of Education.

**Reimbursement** – Paying back.

**SEA** -The state educational agency. ODE is the SEA for Oregon.

## Appendix B - Request for a Complaint Investigation

Parents, and other individuals and organizations may file a complaint if they believe a school district or other educational agency has violated the Individuals with Disabilities Education Act (IDEA). See OAR 581-015-2030 for complaint procedures.

### 1. Person filing the complaint.

Name(s) \_\_\_\_\_

Relationship to child \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Email address \_\_\_\_\_

\* Is an Agency provided interpreter required for this investigation?  yes  no. Language \_\_\_\_\_

### 2. The Local School District/ ESD or EI/ECSE Program against whom the complaint is made.

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone \_\_\_\_\_

### 3. The child involved.

Name of Child \_\_\_\_\_ Date of Birth \_\_\_\_\_ Grade \_\_\_\_\_

Home Address (if different from above) \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Disability (*optional*) \_\_\_\_\_

**4. Number and list each allegation separately.** Describe the violation and the specific facts that relate to that violation. The complaint must describe a concern(s) that happened within the last 12 months prior to the date that the complaint is received. Include dates, names and locations. (Attach additional pages if needed.)

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**5. Proposed Solution.** For each of the above allegations, what is your proposed solution? You can attach additional pages if needed.

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**6. Mediation (check all applicable boxes)**

Mediation is available to parents at no cost and can be entered into with the agreement of the School District. Mediation may proceed concurrently with the complaint investigation process.

- I request mediation and authorize the school district and ODE to share educational information with the mediator about my child's identity, educational needs, and information pertinent to the mediation. I understand the mediator will keep this information confidential.
- I would like more information about mediation.
- I agree to extend the Complaint timeline if the District/Program also agrees and an extension is necessary to engage in Mediation.

**The Complainant must sign and mail, email or fax to both:**

**AND:**

Assistant Superintendent – Student Services  
Public Service Building  
255 Capitol Street NE  
Salem, Oregon 97310-0203  
Email:  
[ODE.DisputeResolution@ode.state.or.us](mailto:ODE.DisputeResolution@ode.state.or.us)  
Fax: 503-378-5156

**Local School District,  
ESD or EI/ECSE Program**

Name: \_\_\_\_\_

Superintendent: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip: \_\_\_\_\_

\_\_\_\_\_  
**Signature (required)**

\_\_\_\_\_  
**Date**

## Appendix C

### Examples of Allegations and Supporting Facts

| <b>Allegation</b>   | <b>Supporting Facts</b>   | <b>Proposed Solutions</b>  |
|---|---|--|
| The school district/program did not implement my child's IEP/IFSP.                          | My child's November 2005 IFSP includes 30 minutes per week of speech-language services, and I heard at a parent-teacher conference that he hadn't seen the speech therapist all year.   | Provide make-up services to my child.  |
| The district/program has refused to provide appropriate reading instruction for my child.   | My child is in the fourth grade and is still at a beginning reading level. At the last IEP meeting (in January 2006) I asked for more (or a different type) of reading instruction and the district refused.  | Provide different, more effective reading instruction.   |
| The district/program does not complete special education evaluations within 60 school days. | I asked for a special education evaluation because my 6 <sup>th</sup> grade son has had a difficult transition to middle school, he is failing his classes, and he has been suspended several times. I signed a consent form when I met with the counselor in October 2005. It is now April 2006, I never got the results of the testing, and my son is still having trouble in school. | Send me a copy of the completed evaluation and have an evaluation eligibility meeting to consider the results. |
| The regular education teachers refuse to accommodate my child's disability.                 | My 11 <sup>th</sup> grade daughter has a specific learning disability. Her October 2006 IEP says teachers will let her have extra time to complete assignments and she can take tests in the resource room so they can be read to her. Her teachers lower her grade on assignments when she takes extra time to complete them, and won't let her go to the resource room to take tests. | Provide training to the regular education teachers and make sure they implement my child's IEP.                |

## Appendix D

### IDEA 2004 Regulations – State Complaint Procedures

#### 34 CFR 300.152

#### Minimum State complaint procedures.

- (a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--
- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
  - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
  - (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--
    - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
    - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
  - (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
  - (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
    - (i) Findings of fact and conclusions; and
    - (ii) The reasons for the SEA's final decision.
- (b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--
- (1) Permit an extension of the time limit under paragraph (a) of this section only if--
    - (i) Exceptional circumstances exist with respect to a particular complaint; or
    - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and
  - (2) Include procedures for effective implementation of the SEA's final decision, if needed, including--
    - (i) Technical assistance activities;
    - (ii) Negotiations; and
    - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.
- (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State 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 action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
  - (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
    - (i) The due process hearing decision is binding on that issue; and
    - (ii) The SEA must inform the complainant to that effect.
  - (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)  
(Authority: 20 U.S.C. 1221e-3)

#### 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) 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.

- (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

## Appendix E

### Options for Complaints that are not within the IDEA

| Type of Concern  | Where to Turn   |
|--|---|
| Discrimination (age, disability national origin, race, sex, marital status, religion)  | <p>File a complaint with school district or program equal educational opportunity or Section 504 compliance officer; ODE review under OAR 581-021-0049.</p> <p>File a complaint with Office for Civil Rights,<br/>           U.S. Department of Education<br/>           915 Second Avenue Room 3310,<br/>           Seattle, WA 98174-1099<br/>           Telephone: 206-220-7900<br/>           FAX: 206-220-7887; TDD: 877-521-2172<br/>           Email: <a href="mailto:OCR.Seattle@ed.gov">OCR.Seattle@ed.gov</a><br/>           (within 180 days of alleged discrimination).</p>   |
| Section 504 issue related to identification, evaluation, and provision of a free appropriate education or educational placement of student with a disability.  | <p>Request a hearing under OAR 581-015-0109.</p> <p>File a complaint with district or program equal educational opportunity or Section 504 compliance officer; ODE review under OAR 581-021-0049.</p> <p>File a complaint with Office for Civil Rights,<br/>           U.S. Department of Education<br/>           915 Second Avenue Room 3310,<br/>           Seattle, WA 98174-1099<br/>           Telephone: 206-220-7900<br/>           FAX: 206-220-7887; TDD: 877-521-2172<br/>           Email: <a href="mailto:OCR.Seattle@ed.gov">OCR.Seattle@ed.gov</a><br/>           (within 180 days of alleged discrimination).</p> |
| <p>School records violation</p> <p>Complaint about inaccurate, misleading, or private information in the child's educational record</p> <p>Violations of the Family Education Rights and Privacy Act (FERPA)</p> | <p>File a complaint with the custodian of student records at the school district or program.</p> <p>Request an amendment to the child's educational record under OAR 581-021-0300 to 0320.</p> <p>File a complaint with the Family Policy Compliance Office,<br/>           US Department of Education,<br/>           400 Maryland Ave SW<br/>           Washington DC 20202-5920.</p>   |
| <p>Complaint about specific teacher or administrator</p> <p>Serious violations that may affect teacher or administrator licensure</p>  | <p>School district/program complaint procedure.</p> <p>Contact Teacher Standards and Practices Commission,<br/>           465 Commercial St NE<br/>           Salem, OR 97301</p>   |
| Complaint about ODE school standards (including TAG)   | Use the school district complaint procedure; ODE appeal under OAR 581-022-1940.   |