

Feb. 19, 2019

Complaint Procedures for Elementary and Secondary Education Act Programs and Grants

I. Authority and Purpose

The Office of the State Superintendent of Education (OSSE) was established by the Public Education Reform Amendment Act of 2007 to “serve the state education agency and perform the functions of the state education for the District of Columbia.”ⁱ As the District’s State education agency (SEA), OSSE is responsible for administration of most U.S. Department of Education (ED) programs funded by the Elementary and Secondary Education Act of 1965,ⁱⁱ as amended by the Every Student Succeeds Act,ⁱⁱⁱ collectively referred to herein as “ESEA.”

An SEA must adopt written procedures for the receipt and resolution of complaints alleging violations of the law in the administration of ESEA programs.^{iv} The complaint process is available for parties that believe an ESEA program was not administered in accordance with federal law and regulations. Prior to submission of a written complaint, the concerned party is encouraged to first communicate concerns with the specific authority most familiar with the matter to attempt to reach a resolution (e.g., the school where the incident arose). The concerned party may also contact the OSSE office assigned to that program with questions or concerns. While OSSE encourages the concerned party to first attempt to resolve the matter informally, such attempts are not legally required, and the concerned party may always submit a written complaint using the processes outlined in this document.

II. Covered Programs

The complaint procedures described in this policy apply to complaints arising from and related to the following ESEA programs as they are administered by the District of Columbia, including:

1. Title I, Section 1003: School Improvement
2. Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies (LEAs)
3. Title I, Part D: Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk
4. Title II, Part A: Supporting Effective Instruction
5. Title III, Part A: Language Instruction for English Learners and Immigrant Students
6. Title IV, Part A: Student Support and Academic Enrichment Grants
7. Title IV, Part B: 21st Century Community Learning Centers

III. What Types of Complaints

The types of complaints that may be filed regarding ESEA programs are outlined below, as well as the corresponding filing deadline.

1. Program Administration Complaint

ESEA establishes several different funding programs. The non-fiscal, programmatic requirements for each funding program are found, first, in the language of ESEA itself. For some funding programs, the U.S. Department of Education (ED) has also promulgated program-specific regulations (e.g., 34 CFR Part 200, the implementing regulations for Title I). Finally, ED's General Administrative Regulations (EDGAR) establish general programmatic regulations that are applicable to all of ED's funding programs.^v These laws and regulations form the parameters to which OSSE, as the State educational agency with oversight responsibility for state-administered federal funding programs, and OSSE's subgrantees, as recipients of federal financial assistance, must conform.

A *Program Administration Complaint* alleges that the SEA, LEA, or another recipient of state-administered federal financial assistance violated one of the programmatic requirements established by federal statute or federal regulation during the administration of an affected program. These complaints may be filed by any aggrieved person or entity, including parents, teachers, school officials, LEA officials, organizations, and members of the public. A program administration complaint must be filed within calendar 90 days after the end date of the grant project period, as indicated in the grant award notice.

2. Subgrant Administration Complaint

OSSE, as the SEA, is responsible for grant-making activities.^{vi} The State Superintendent, as the chief school officer, is responsible for representing OSSE and the District of Columbia in all matters before ED.^{vii} As a result, OSSE administers all of ED's State-administered grant programs.^{viii}

Grant administration is governed by EDGAR. These rules establish how ED awards grants to SEAs, how SEAs make subgrants to eligible applicants, and the requirements that apply after a grant award has been made. A *Subgrant Administration Complaint* alleges that during the administration of a grant under a covered program, the SEA took one of the following actions in violation of federal statute or regulation:

- a. Disapproved or failed to approve an application or program in whole or part.^{ix} Please note that grant applications that are not accepted for filing by OSSE due to failure to comply with the technical requirements of a Request for Application (RFA) are not subject to approval or denial.
- b. Failed to provide funds in amounts in accordance with the requirements of statutes and regulations,^x including but not limited to:
 - i. Failure to provide statutory formula allocation;
 - ii. Suspension or temporarily withholding of payment of grant funds under an approved subaward pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the pass-through entity;^{xi}
 - iii. Disallowance of all or part of the costs of an activity under an approved subgrant award based on any non-compliance finding by OSSE;^{xii}
- c. Ordered, in accordance with a final State audit resolution determination, the repayment of unallowable or misused Federal funds;^{xiii}

- d. Terminated further assistance under an approved subgrant award,^{xiv} including the withholding of further Federal awards;^{xv}

A *Subgrant Administration Complaint* may only be filed by an OSSE subgrantee upon receiving notice from OSSE of its intent to take one or more of the proposed actions listed above. A subgrant administration complaint must be filed within thirty calendar (30) days of the date on which the SEA proposed to take any of the actions listed above.^{xvi}

3. Equitable Services

In the District of Columbia, the requirement to provide equitable services is not applicable to all recipients of federal financial assistance. With the District of Columbia School Reform Act of 1995 (SRA)^{xvii}, Congress established the public charter school system for the District. Seeking to encourage educational innovation, the SRA provides public charter schools with a good deal of autonomy. Despite this autonomy, the SRA requires charter schools to comply with all provisions of ESEA that are not specifically waived by the SRA.^{xviii} The purpose for these exemptions is to prevent duplicative requirements addressed in both the ESEA and SRA, or to eliminate compliance with ESEA requirements that would conflict with the congressional scheme designed for DC public charter schools in the SRA. This means that regulations promulgated, or policies adopted by OSSE to implement the ESEA are applicable to charter schools receiving ESEA funds, unless a regulation or policy addresses a requirement of ESEA that has been specifically exempted from applicability to charter schools.

Charter schools in the District of Columbia are exempted from ESEA section 1117, which requires an LEA to provide equitable Title I, Part A services to children attending a private school in the area served by the LEA.^{xix} Charter schools are also exempt from the equitable services requirements for Titles II-A, III-A, IV-A, and IV-B. Charter schools have been exempted from this requirement because District charter schools are not defined by geographic jurisdictions. Instead, District charter schools enroll students from across the District of Columbia. This means that the only LEA in the District that has a geographic jurisdiction, and the related requirement to provide equitable services to students attending private schools in its jurisdiction, is the District of Columbia Public Schools (DCPS).

DCPS and private schools engage in regular, ongoing consultation with respect to the provision of equitable services under ESEA entitlement grant funds.^{xx} Meaningful ongoing communication between all parties is crucial. OSSE expects that most differences can be resolved by ongoing consultation without OSSE intervention.

With respect to Title I-A, a private school official shall have the right to file a complaint with the SEA asserting that DCPS did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school students equitably as required by law.^{xxi} A private school official wishing to file a complaint shall provide the basis of the complaint to OSSE, and DCPS shall forward the appropriate documentation to OSSE.^{xxii} OSSE shall resolve the complaint within 45 calendar days.

Section 8503 of the ESEA provides for complaints to be filed with the SEA under other programs providing equitable services (in the District, namely Title II-A, Title III-A, Title IV-A, and Title IV-B) by a parent, teacher, or other individual or organization.^{xxiii} OSSE shall resolve the complaint within 45 calendar days. The resolution may be appealed by the interested party to the ED not later than 30 calendar days after OSSE resolves the complaint or fails to resolve the complaint within the 45-day time limit. The

appeal shall be accompanied by a copy of OSSE's resolution, and, if there is one, a complete statement of the reasons supporting the appeal. ED shall investigate and resolve the appeal not later than 90 calendar days after its receipt of the appeal.^{xxiv} In addition, any dispute regarding low-income data for private school students under Title I-A shall also be subject to the complaint process of Section 8503.^{xxv}

The time limit by which a complaint for equitable services shall be filed with OSSE is 90 calendar days from the end date of the grant project period, as indicated in the grant award notice. The procedures for filing an equitable services complaint with OSSE are set forth in Section IV of this policy.

In addition, to ensure that private school children, teachers, and other educational personnel receive services equitable to those in public schools, OSSE has designated an ombudsman to monitor and enforce the equitable services requirements. The ombudsman is the primary point of contact for responding to and resolving any complaints regarding equitable services that the SEA receives under its ESEA complaint procedures. OSSE's equitable services ombudsman is:

Sheryl Hamilton, Director
Community Learning and School Support (CLASS)
Division of Systems and Supports, K-12
Office of the State Superintendent of Education (OSSE)
1050 1st Street, N.E., 5th Floor
Washington D.C. 20002
(202) 741-6404 (office)
Sheryl.Hamilton@dc.gov

4. Which Programs are not covered by this policy?

Both the McKinney-Vento Homeless Assistance Act of 1987, as amended, and the Individuals with Disabilities Education Act (IDEA), mandate separate complaint resolution procedures. Since the limited purpose of this policy is to implement complaint procedures mandated by ESEA, these coordinated programs are not covered by this policy.

For information on filing a complaint or appealing an LEA decision regarding the provision of educational services to homeless students and parents under McKinney-Vento, please refer to the policies of OSSE's Homeless Children and Youth Program in the Division of Systems and Supports, K-12 at <https://osse.dc.gov/service/homeless-education-program>.

For information on filing a complaint regarding the provision of specialized education services to disabled students under IDEA, please refer to the policies of OSSE's Division of Systems and Supports, K-12 at <https://osse.dc.gov/service/specialized-education-state-complaints>.

IV. Where and How to File a Complaint

1. OAH-Adjudicated Complaints

OSSE has entered into an agreement with the Office of Administrative Hearings (OAH) to adjudicate complaints for which a formal hearing is required. These *OAH-Adjudicated* complaints include *Subgrant*

Administration Complaints only. OAH-Adjudicated Complaints must be filed with the OAH in accordance with OAH's rules, which can be found on OAH's website at <http://oah.dc.gov/>.

OAH-Adjudicated complaints must comply with the formatting requirements established by the Office of Administrative Hearings in Title 1, Chapter 28 of the District of Columbia Municipal Regulations, entitled OFFICE OF ADMINISTRATIVE HEARINGS CONSOLIDATED RULES (<https://oah.dc.gov/node/1123917>).

The OAH must adjudicate Subgrant Administration complaints in accordance with Title 1, Chapter 28 of the District of Columbia Municipal Regulations, entitled OFFICE OF ADMINISTRATIVE HEARINGS CONSOLIDATED RULES (<https://oah.dc.gov/node/1123917>). The decision issued by OAH to resolve an OAH-Adjudicated complaint shall be deemed the Final Agency Decision.

2. OSSE-Resolved Complaints

Program administration and equitable services complaints are not subject to a mandated hearing requirement. As such, these complaints will be resolved by OSSE and must be hand-delivered, sent via first-class mail, or emailed to OSSE at:

ESSAComplaints.OSSE@dc.gov

or

Office of the State Superintendent of Education
c/o Sheryl Hamilton
Division of Systems and Supports, K-12
1050 First Street, NE, 5th Floor
Washington, DC 20002

All OSSE-Resolved complaints filed pursuant to this policy must meet the following requirements:

- a. Complaint must be in writing.
- b. Complaint filed by an organization must identify a single person to act as the complainant's representative for the purposes of resolving the complaint.
- c. Complaint must include the address of the complainant and the entity against whom the complaint is being filed.
- d. Complaint must be signed and attested to by the complainant or its representative.
- e. Complaint must include a statement of the facts upon which the complaint is based.
- f. Complaint must include a statement of the relief/SEA action being requested by the complainant.

- g. Complaint must be accompanied by all supporting documentary evidence in the possession of the complainant.
- h. Identification of the entity alleged to have violated a requirement of a federal statute or regulation that applies to a covered program.
- i. Citation of the specific federal statute or regulation alleged to have been violated.

OSSE-Resolved complaints that do not conform to the formatting requirements of this section cannot be accepted by OSSE and will be returned by OSSE to the complainant. Further, objections that do not conform to these basic requirements, such as objections made informally, in-person, by telephone, and anonymously are not considered complaints and are not subject to the procedures described herein.

V. Resolution of OSSE-Resolved Complaints

1. Calculating Deadlines

- a. The day of the act or event that triggers a deadline is not included when calculating deadline.
- b. The last day of the deadline must be included when calculating the deadline, unless the last day falls on an OSSE non-working day.
- c. Where the last day of a deadline falls on an OSSE non-working day, the last day for the deadline is the next day on which OSSE is open for business.

2. Providing Copies of Complaints

- a. For complaints against OSSE, providing additional copies of the complaint is not required because OSSE will have notice of the complaint upon filing. Instructions on how to file an OSSE-Resolved complaint are found at Section IV.2 of this policy.
- b. For complaints against an LEA, a school, or other recipient of federal financial assistance of a covered program, the subject of the complaint will have no knowledge of the complaint until they are provided with a copy of the complaint by the person filing the complaint. For that reason, copies of Program Administration and Equitable Services complaints alleging violations by an entity other than the SEA must be provided to the entity that is alleged to have violated a covered program.
- c. Copies of the complaint must be provided by sending an exact copy of the document to the other party, or their representative, at their official place of business or residence via hand delivery or first-class mail within two (2) business days of the date on which the complaint was filed with OSSE. Any document submitted with the complaint must be provided to all other parties named in the complaint.

3. Continuances/ Extensions

- a. Extensions and continuances of deadlines established by this policy may only be granted if exceptional circumstances exist.
- b. A party seeking a continuance or extension of a deadline shall file a request with OSSE using the same process for filing an OSSE-Resolved Complaint. The request must describe the exceptional circumstances and how those circumstances warrant a continuance or extension.
- c. OSSE may, at its discretion, extend or continue a deadline based on exceptional circumstances of the SEA *sua sponte*.^{xxvi} OSSE shall issue a notice to both parties describing the exceptional circumstances and how those circumstances warrant a continuance or extension.

4. Responding to a Complaint

- a. An entity who is alleged in a complaint to have violated a covered program may submit a response to the complaint along with any supporting documentary evidence within ten (10) business days of the date on which OSSE sent notice to the entity that a state-level complaint was filed alleging a violation of a covered program by the entity. The responding entity shall be referred to as the respondent. Responses shall be filed with OSSE using the same procedure described in Section IV.2 of this policy.
- b. The respondent shall also provide a copy of the response to the complainant no more than two (2) business days after submitting a response to OSSE.
- c. For any complaint in which a response is not timely submitted, OSSE will resolve the complaint based on the documentary evidence submitted by the complainant and the results of OSSE's investigation, if deemed necessary.

5. Investigation

- a. Upon receipt of a complaint and response, or upon expiration of the time to submit a response if no response is received, OSSE will review the information provided and determine, at its discretion, whether on-site investigation is necessary to permit OSSE to resolve the complaint.
- b. If deemed necessary, OSSE shall notify the complainant of the date and time for the on-site investigation in the Letter of Acknowledgment [section 6(a)]. Such on-site investigation shall be completed within 30 business days of the date of the Letter of Acknowledgment.
- c. Failure to comply with an OSSE investigation of a complaint filed pursuant to this policy will result in enforcement action, up to and including resolution of the complaint based solely on the evidence provided in the complaint, withholding of funds, and withholding of further awards.

6. Letter of Acknowledgment, Letter of Decision and Corrective Action Plan

a. Letter of Acknowledgement

OSSE shall issue a Letter of Acknowledgment to the complainant within 10 calendar days of receipt of the written complaint. This letter will contain the following information:

- The date the complaint was received by OSSE;
- A brief statement of how OSSE will resolve the complaint, including investigation if deemed necessary;
- If necessary, a request for additional information regarding the complaint; and
- The name and phone number of a contact person for status updates.

b. Letter of Decision

OSSE will issue a Letter of Decision to the complainant and respondents within 90 days of the filing of the complaint, except in the case of complaints regarding equitable services – which shall be resolved by OSSE within 45 days. (See section III.3 of this policy.)

If the Letter of Decision indicates that a violation has been found, corrective action will be required and timelines for completion will be included. A corrective action plan submitted in response to a Letter of Decision shall be subject to OSSE approval. OSSE shall provide notice to the respondent if the corrective action plan is disapproved. Such notice shall be accompanied by a written explanation of the deficiencies and specific instructions for amending the corrective action plan to obtain OSSE approval.

The Letter of Decision shall be in writing and shall include the following elements:

- Findings of fact upon which the decision is based;
- Conclusions of law;
- Relief ordered; and
- Instructions on how to appeal the Final Agency Decision.

7. Appeal to the U.S. Department of Education

For OAH-adjudicated complaints, complainants or respondents may request a review of the decision by the Secretary of the ED. As described in section III.3 of this policy, for certain equitable services complaints, an appeal may be made to ED if OSSE has either issued a Letter of Decision or failed to do so within 45 calendar days. Appeals to ED shall be in writing and shall include a complete statement of the reasons underlying the request for review and shall be accompanied by a copy of the OAH decision or OSSE's Letter of Decision, as applicable.^{xxvii}

The complainant may send the request with all supporting documents via first class mail to the following address:

Secretary, United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202-4611

The following are the deadlines for filing an appeal to ED depending on the type of ESEA complaint:

- a. An appeal of an OAH-Adjudicated decision regarding a Subgrant Administration Complaint shall be filed within twenty (20) calendar days after notice of the OAH decision.^{xxviii}
- b. An appeal of a Letter of Decision (or failure of OSSE to issue a Letter of Decision within the required 45 day time period) regarding an equitable services complaint governed by ESEA Section 8503 shall be filed with ED within thirty (30) calendar days after notice of the Letter of Decision.^{xxix}

VI. Complaint Reporting, Recordkeeping, and Notice

All LEAs are required to disseminate, free of charge, adequate information about these complaint procedures to parents of students and to appropriate school officials and representatives.^{xxx}

OSSE will maintain complete records of the resolution of each complaint that is properly filed pursuant to this policy for five (5) years from the date on which the complaint is resolved, including any appeals.

VII. Definitions

Unless otherwise defined herein, the terms used in this policy shall have the definitions ascribed to them by EDGAR or in the authorizing statute of an affected program.

“*Adjudicate*” means the same as that term is defined by the District of Columbia Administrative Procedure Act, as codified at D.C. Official Code § 5-502.

“*Complainant*” means the party filing a complaint.

“*Findings of fact*” means a concise statement of the conclusions upon each contested issue of fact that is supported by reliable, probative, and substantial evidence.

“*Non-working day*” means a day on which the Office of the State Superintendent of Education is not open for business, and which does not include Saturdays, Sundays, Federal holidays, District of Columbia government holidays, and emergency closing days.

“*OAH-Adjudicated Complaints*” means a Subgrant Administration Complaint, which are adjudicated by the Office of Administrative Hearings on OSSE’s behalf pursuant to an agreement between OSSE and OAH.

“*Office of Administrative Hearings*” or “*OAH*” means the District of Columbia Government agency established by the Office of Administrative Hearings Establishment Act of 2001, effective Mar. 6, 2002 (D.C. Law 14-76, 48 D.C. Reg. 11442, as codified at D.C. Official Code § 2-1831.02).

“Office of the State Superintendent of Education” or “OSSE” means the District of Columbia Government agency established by the Public Education Reform Amendment Act of 2007, effective Jun. 12, 2007 (D.C. Law 17-9, 54 D.C. Reg. 4102, as codified at D.C. Official Code § 38- 2601).

“OSSE - Resolved Complaints” means a Program Administration or Equitable Service complaint which are adjudicated by OSSE.

“Party” or “Parties” means either the complainant or the respondent individually, or the complainant and respondent collectively.

“Respondent” means the party against whom a complaint was filed.

ⁱ D.C. Code § 38- 2601.01. The majority of ESEA programs are state-administered. However, several ESEA programs are directly granted by ED to local educational agencies, community-based organizations, or other state agencies. OSSE does not directly administer or oversee such direct grants.

ⁱⁱ 20 U.S.C. § 6301 *et seq.*

ⁱⁱⁱ Public Law 114-95, enacted December 10, 2015.

^{iv} 20 U.S.C. 7844

^v EDGAR is comprised of regulations at 34 CFR Parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, 99, 2 CFR Parts 200 and 3474 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), and 2 CFR Parts 180 and 3485 (Non-procurement Debarment and Suspension)

^{vi} D.C. Code § 38-2601.01.

^{vii} D.C. Code § 38- 2601(c).

^{viii} ESEA establishes several grant programs that are not administered by the State. These are direct grant programs, which are directly awarded by the Secretary of the U.S. Department of Education to an educational entity, are not subject to OSSE oversight, and are not included in the list of affected programs in Section II of this policy.

^{ix} 20 U.S.C. § 1231b-2(a).

^x 20 U.S.C. § 1231b-2(a).

^{xi} 2 CFR § 200.338(a), (c).

^{xii} 2 CFR § 200.338(b).

^{xiii} 20 U.S.C. § 1231b-2(a).

^{xiv} 20 U.S.C. § 1231b-2(a).

^{xv} 2 CFR § 200.338(e).

^{xvi} 20 U.S.C. § 1231b-2(a).

^{xvii} D.C. Code § 38-1800 *et seq.*

^{xviii} D.C. Code § 38- 1802.10(a)(5).

^{xix} D.C. Code § 38- 1802.10(a)(6)(D).

^{xx} 20 U.S.C. § 6320(b)(1).

^{xxi} 20 U.S.C. § 6320(b)(6)(A)

^{xxii} 20 U.S.C. § 6320(b)(6)(B)

^{xxiii} 20 U.S.C. § 7883(a).

^{xxiv} 20 U.S.C. § 7883(b).

^{xxv} 20 U.S.C. § 6320(c)(2)

^{xxvi} *Sua sponte* is a legal term and means “of one’s own accord; voluntarily.” It is used to indicate that a court has taken notice of an issue on its own motion without prompting or suggestion from either party.

^{xxvii} 20 U.S.C § 1231b-2; 20 U.S.C. § 7883(b).

^{xxviii} 20 U.S.C. § 1231b-2(b).

^{xxix} 20 U.S.C. § 7883(b).

^{xxx} 34 CFR § 299.11.