

ESEA Complaint Policy and Procedure

(as required by 20 USC 1231 b-2)

This policy and procedure applies to any program under which federal financial assistance is provided to or through the DPI to be expended in accordance with the State Plan approved by the Secretary of Education. This policy and procedures applies to LEAs that applied for or received such funds.

POLICY

1. If an LEA or other applicant or recipient is aggrieved by a final action of the Department of Public Instruction by the DPI's decision to 1) deny applications for federal programs or formula grants in whole or in part, 2) fail to provide funds in amounts in accord with the requirements of laws and regulations, 3) order, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied federal funds, or 4) terminate further assistance for an approved program, the LEA may appeal the final action if it is alleged that DPI violated State or Federal law, rules, regulations or guidances in making its decision.
2. Such appeal must be made by the LEA to the DPI and allege which State or Federal law, rules, regulations or guidances was violated. A complaint or appeal by aggrieved LEA applicants or recipients made under this policy and procedure must be received at the DPI within 30 days of the final action. The LEA may request a hearing on the complaint or appeal. The request for a hearing must be made within 30 days of the final action.
3. The State Superintendent may resolve a complaint or appeal under this policy and procedure with investigation and mediation. If a resolution is not reached, the department will hold a hearing within 30 days of receipt of the appeal or complaint.
4. A Hearing officer will be appointed to preside over the hearing. The hearing shall be informal and may be held in person at DPI or through tele-communications such as telephone conferencing or video conferencing at the discretion of the hearing officer. The hearing will be on the record but strict rules of evidence shall not apply. The hearing officer shall admit all evidence having reasonable and probative value but shall exclude immaterial, irrelevant or unduly repetitious testimony or privileged evidence.
5. No later than ten days after the hearing, the DPI shall issue its written ruling and the reasons for it. If it determines such final action was contrary to federal or state law, or the rules, regulations and guidelines governing such applicable program, it shall rescind such final action.

6. Any LEA aggrieved by a failure of DPI to rescind its final action after a review under this policy, may appeal such action to the Secretary as provided in 20 USC § 1231b-2 (b). Notice of this appeal right shall accompany any DPI decision under this policy.

PROCEDURE

These procedures apply to appeals and complaints made under the policy described above.

1. Complaints made under this policy must be filed with the DPI Office of Legal Services (OLS) within 30 days of the final action being appealed.
2. OLS will acknowledge the request for a hearing within 5 working days of receipt by notifying the appellant or complainant and the Division at the DPI that made the decision being appealed.
3. OLS will appoint an independent hearing officer who shall be responsible for all subsequent hearing notices to all parties, hearings on the record, and the provision of a timely decision to the parties including any appropriate notice of appeal to the Secretary, 20 USC 1231b-2 (b).
4. The hearing shall be held in Madison at the DPI offices. The hearing officer shall have the discretion to allow appearances and testimony to be made by any reasonable means. The hearing shall be tape recorded or some other verbatim record shall be kept. The hearing officer shall admit all evidence having reasonable and probative value but shall exclude immaterial, irrelevant or unduly repetitious testimony or privileged evidence. The hearing officer may establish pre-submission requirements and exclude evidence or testimony that does not comply with pre-hearing submission requirements.
5. Within 10 days of the hearing, the hearing officer shall issue a final decision to all parties. The final decision shall state whether the agency's decision is upheld or overturned and the reason for this decision. The final decision shall inform the LEA that if the LEA is aggrieved by the final decision it may appeal to the Secretary of the United States Department of Education.
6. Upon conclusion of the appeal, the hearing officer shall deliver the complete file to OLS for tracking and storage.
7. Annually, if applicable, the DPI office of legal services will file a report with the departmental ESEA/NCLB coordinator, with a copy to the Deputy State Superintendent, indicating the nature, number, and disposition of complaints received under this procedure.
8. The DPI NCLB coordinator and the office of legal services shall be responsible for providing DPI staff and LEA representatives with technical assistance in the implementation of the complaint policy and these procedures.