

Appeal to the Deputy Superintendent of Public Instruction

For complaints that allege violation of Oregon Division 22 Standards, restraint and seclusion or retaliation as defined in Oregon Revised State (ORS) 659.852, the complainant may have appeal rights for a complaint with the Deputy Superintendent of Public Instruction, if the complainant has exhausted the local complaint procedures and one of the following occurred:

1. The ESD failed to render a written decision within 30 calendar days of the submission of the complaint at each step identified in the ESD's complaint process; or
2. The ESD failed to resolve the complaint within 90 calendar days of the initial filing of the written complaint with the ESD, unless the ESD and the complainant have agreed in writing to a longer time period.

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

1. The complaint upon which the appeal is based, must have filed with the ESD by the later of the either stated below:
 - a. Filed the complaint within 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; or
 - b. One year after the affected student has graduated from, moved away from or otherwise left the ESD.
2. The appeal shall be in writing submitted by mail, in person or electronically, and contain:
 - a. The name and address of the person bringing the appeal;
 - b. The name and address of the ESD which is alleged to have violated the statute or administrative rule; and
 - c. A statement of the facts on which the appeal is based.
3. Upon receipt of the appeal, the Deputy Superintendent will determine whether the appeal alleges a violation of a statute or administrative rule for which the Deputy Superintendent has jurisdiction and whether the requirements contained in section 2. of OAR 581-002-0040 have been satisfied.

After these determinations, the Deputy Superintendent will either, not accept the appeal and will notify the complainant and the ESD, or will accept the appeal and notify the complainant and the ESD that the appeal has been accepted.

4. If the Deputy Superintendent has accepted an appeal and made notification to the complainant and the ESD involved as described in OAR 581-002-0040, the ESD shall submit a written report within 30 days of receipt of the notice which shall include:
 - a. A statement of facts;
 - b. A statement of ESD action, if any, taken in response to the complaint; if none was taken, the reason(s) why no action was taken;
 - 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.
5. The Deputy Superintendent may for good cause extend the time for the filing of a report by the ESD.
6. Upon receipt of the ESD's report, the Deputy Superintendent will conduct an investigation that will include a review of the written materials submitted by the complainant and ESD and may also include, but not be limited to:
 - a. Onsite investigations;
 - b. Interviews;
 - c. Surveys; and
 - d. Reviewing documents.
7. The Deputy Superintendent will issue a written final order that addresses each allegation in the complaint that was accepted for appeal and contains the reasons for the Deputy Superintendent's decision on whether or not the ESD is deficient. The final order will be issued within 90 days of the date the Deputy Superintendent receives the ESD's report,¹ or the Deputy Superintendent may extend the time period for issuing a final order pursuant to OAR 581-002-0040(7)(b),(c).
8. If a violation is found, the Deputy Superintendent's final order will include any necessary corrective action to be taken by the ESD as well as any documentation to be supplied by the ESD to ensure that the corrective action has occurred.
9. Corrective action ordered by the Deputy Superintendent must be completed within the timelines established in the final order.

¹If the 90-day period for issuing the final order would conclude during the time when the schools of the ESD are closed for the summer, the final order will be issued within 90 days of the date the Deputy Superintendent received the ESD's report exclusive of the time the schools are closed for the summer. The Deputy Superintendent of Public Instruction may extend the time period with agreement from the complainant. The Deputy Superintendent shall prepare a timeline and plan for investigation and provide copies to the complainant and the ESD within two weeks of receiving the ESD's report.