



January 27, 2014

ACTION REQUIRED
 INFORMATIONAL

TO: Individuals with Disabilities Education Act (IDEA) Part B Grant Applicants and Subgrantees

FROM: Jesús Aguirre, Acting State Superintendent of Education 

RE: Individuals with Disabilities Education Act (IDEA) Part B Grant Eligibility and Administration Hearing Process Policy

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AUTHORITY AND PURPOSE

The Office of the State Superintendent of Education (OSSE) was established by the Public Education Reform Amendment Act of 2007 (PERAA) to “serve as the state education agency and perform the functions of the state education agency for the District of Columbia.”¹ As the District of Columbia’s state education agency (SEA), OSSE is responsible for the administration of the Individuals with Disabilities Education Act (IDEA).² To fulfill this role, PERAA empowered OSSE to “[d]evelop and adopt policies that come within the functions of state educational agencies under federal law.”³ It is pursuant to this authority that OSSE adopts this Policy to implement the federal requirements regarding the opportunity for applicants and subgrantees to request a hearing to review alleged violations of federal statute or regulation committed through OSSE’s grant eligibility and administration activities. This Policy is effective as of March 3, 2014.

IDEA PART B GRANT ELIGIBILITY AND ADMINISTRATION

OSSE, as the SEA, is responsible for grant-making activities in accordance with applicable federal law, including without limitation Part B of IDEA.⁴ The State Superintendent, as the chief school officer, is responsible for representing OSSE and the District of Columbia in all matters before the U.S. Department of Education (ED).⁵ Federal grant administration, including administration of IDEA grants, is governed by the Education Department’s General Administrative Regulations (EDGAR).⁶ 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. EDGAR mandates that the SEA develop and implement a hearing review process to address assertions made by an applicant or subgrantee that OSSE took one of the following actions in violation of federal statute or regulation during the administration of a grant:

¹ D.C. Code §38-2601.01; *see generally* Public Education Reform Amendment Act of 2007, D.C. Law 17-9, 54 D.C. Reg. 4102 (June 12, 2007)

² 20 U.S.C. §§1400 *et seq.*

³ D.C. Official Code §38-2602(b)(12)

⁴ D.C. Official Code §38-2601.01

⁵ D.C. Official Code §38-2601(c)

⁶ 34 C.F.R. Parts 74-99



- a. Disapproved a subgrant application, in whole or in part;⁷
- b. Failed to provide funds in amounts in accordance with the requirements of District of Columbia and IDEA statutes and regulations;⁸
- c. Temporarily withheld payment of grant funds under an approved subgrant award;
- d. Disallowed all or part of the cost of an activity under an approved subgrant award;
- e. Withheld further program awards;⁹
- f. Terminated or suspended, in whole or in part, the subgrant award;¹⁰ or
- g. Ordered, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds.¹¹

A request for a hearing to review OSSE IDEA grant administration activities may only be filed by an OSSE applicant or subgrantee regarding one of the above actions taken by OSSE on the applicant's application or subgrantee's own grant award. A request for a hearing to review must identify the basis on which the applicant or subgrantee asserts that OSSE violated statute or regulation.

If OSSE intends to disapprove an application, in whole or in part, or does not provide funding in accordance with amounts required by the IDEA, OSSE shall give notice to the applicant or subgrantee at least 30 days *before* taking the intended action.¹² This notice shall inform the applicant or subgrantee of the opportunity for hearing. For hearing requests regarding the other OSSE grant administration activities listed above, OSSE shall provide an opportunity for hearing either before or after OSSE's final action or determination.

WHEN TO REQUEST A HEARING

An applicant or subgrantee shall request a hearing within thirty (30) calendar days of the date on which OSSE intends to take the action or took the action being contested, either to disapprove a grant application, not provide funds in accordance with statutes and regulations, temporarily withhold payments, disallow a cost, withhold further program awards, terminate/suspend an award, or order the repayment of misspent or misapplied funds in accordance with a final audit. Requests for hearing not received by OSSE within thirty (30) calendar days will be denied as not timely.¹³

WHERE TO FILE A COMPLAINT

OSSE has entered into an agreement with the District of Columbia Office of Administrative Hearings (OAH)¹⁴ to adjudicate all matters for which a formal hearing is required. The term *adjudicate* refers to the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.¹⁵ These "OAH-Adjudicated" matters include hearing requests for review of the OSSE IDEA grant eligibility and administration activities described above. A hearing request shall be filed with the Office of Administrative Hearings in accordance with OAH regulations at Title 1, Chapter 28 of the District of Columbia Municipal Regulations, entitled "OFFICE OF

⁷ 34 C.F.R. §76.401(c)(1)

⁸ 34 C.F.R. §76.401(c)(2)

⁹ 34 C.F.R. §§76.783, 80.43

¹⁰ 34 C.F.R. §76.783(a)(2)

¹¹ 34 C.F.R. §76.783(a)(1)

¹² 34 C.F.R. §300.155; *see also* 34 C.F.R. § 76.401

¹³ 34 C.F.R. §76.401(d)(3)

¹⁴ The Office of Administrative Hearings (OAH) is a 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).

¹⁵ District of Columbia Administrative Procedure Act, as codified at D.C. Official Code §2-502(19)





ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE” (“OAH Rules”),¹⁶ which can be found on OAH’s website at <http://oah.dc.gov>.

RESOLUTION OF REQUESTS FOR OAH REVIEW

OAH shall adjudicate hearing requests in accordance with OAH Rules. OAH will hold a hearing, on the record, reviewing OSSE’s actions, within thirty (30) calendar days after receipt of the hearing request and will issue a written ruling no later than ten (10) calendar days after the hearing.¹⁷ The written ruling will include findings of fact and the reasons for the ruling. If OAH determines that OSSE’s actions were contrary to District of Columbia or IDEA statutes and regulations, OAH shall reverse OSSE’s action.

The decision issued by OAH shall be deemed the final agency decision.

APPEAL TO THE U.S. DEPARTMENT OF EDUCATION

An appeal of the final agency decision ruling may be filed with the Secretary of the U.S. Department of Education. The applicant/subgrantee may file an appeal of the final agency decision.

1. Requests for the Secretary to review a final agency decision shall be in writing, shall include a complete statement of the reasons underlying the request for review, and shall be accompanied by a copy of the final agency decision.
2. Requests for the Secretary to review a final agency decision shall be sent via first class mail to:
U.S. Secretary of Education
Office of the General Counsel
400 Maryland Avenue, SW
Washington, DC 20202
3. A request to review a final agency decision shall be filed within twenty (20) calendar days after the date of the final agency decision.¹⁸

ACCESS TO RECORDS & RECORDKEEPING NOTICE

An applicant or subgrantee who has requested a review or appeal in accordance with this Policy shall be granted access to OSSE records pertaining to the review or appeal, at a reasonable time and place.¹⁹

OSSE shall maintain complete records of the resolution of each request for hearing that is properly filed pursuant to this Policy for three (3) years from the date on which the matter is resolved, including any appeals.²⁰

ADDITIONAL GUIDANCE

This memorandum supersedes all previous policy, memoranda, and guidance issued by the state educational agency (SEA) regarding this topic. Please direct any questions regarding the content of this document to OSSE, Division of Specialized Education at OSSE.DSEPolicy@dc.gov.

¹⁶ 1 DCMR §2800 *et seq.*

¹⁷ 34 C.F.R. §76.401(d)(4)

¹⁸ 34 C.F.R. §§76.401(d)(5), 76.783(b)

¹⁹ 34 C.F.R. §76.401(d)(7)

²⁰ The regular retention period for grant records is three years from the date of the grantee or subgrantee’s single or last expenditure report, as appropriate. See 34 C.F.R. §80.42(b)