

### 3. Appealing the OPI's Decision

#### Montana Office of Public Instruction Grants Handbook

#### Complaints and Hearings

#### 200.4 COMPLAINTS AND HEARINGS<sup>1</sup>

##### CAUSE FOR COMPLAINT OR REQUEST FOR HEARING

At times, a sub grantee may disagree with the OPI's action or decision involving a federal or state grant program. In this case, the sub grantee may ask for reconsideration of the action or decision by using the process outlined in this section.

The following are examples of situations in which a sub grantee may want to enter a complaint and/or request a hearing:

- a) The OPI denied a competitive grant application submitted by the entity or did not make an award for the application;
- b) The OPI requires certain corrective action on an audit finding or as a result of a site visit or other monitoring effort, and the entity does not agree that corrective action is necessary;
- c) The entity feels the OPI has otherwise violated a specific federal statute or program regulation; or
- d) The OPI terminates an approved project or portion of a project.

##### OPI NOTICE -- INTENT TO DENY A COMPETITIVE GRANT AWARD

If the OPI proposes to deny, in whole or part, any sub grantee application for a competitive federal sub grant, the applicant shall be afforded reasonable notice of:

- a) OPI's intent to deny the application and the reasons for denial; and
- b) The applicant's right to request a hearing before the OPI prior to final denial of the application.

The application may be denied, in whole or part, if the applicant fails to request a hearing.

##### COMPLAINT PROCESS

This process is used in cases where a sub grantee feels the OPI or another organization has violated a specific law or regulation.

##### 1. Filing a Complaint

Any individual or organization may file a written, signed complaint with the OPI. The complaint must be addressed to the OPI program director.

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<sup>1</sup> Montana Office of Public Instruction *Montana State and Federal Grants Handbook* (March 2012), 200.4 COMPLAINTS AND HEARINGS

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The complaint must include a statement that the OPI or sub grantee has violated a requirement of a federal statute or regulation or a state statute or administrative rule that applies to the state or federal grant program. The statement must identify:

- a) The specific section of the law, regulation or administrative rule that has been violated; and
- b) The facts upon which the statement is based.

#### 2. OPI's Receipt and Review of Complaint

The OPI will review and act on any complaint within 60 days of the date the complaint was received. The OPI may take one or more of these actions to review and resolve the complaint:

- a) Resolve the complaint based on facts presented;
- b) Request additional data to be used in resolving the complaint; or
- c) Conduct an on-site review to collect data to resolve the complaint.

If an LEA's decision is being appealed, the OPI will resolve the appeal or provide a decision within the 60 days.

If resolution is not possible within 60 days due to exceptional circumstances, the OPI may provide an extension on the time limit for resolution.

The OPI will issue the complainant a written notice of resolution.

If the OPI does not rescind its action, the applicant may file an appeal to the U.S. Secretary of Education within 20 days of the OPI's ruling on the hearing. If supported by substantial evidence, findings of fact of the OPI will be final. The OPI will provide the complainant with the address of the federal contact person at the time the OPI sends the written notice of resolution.

The Secretary may also issue interim orders to the OPI, if necessary, pending appeal or review.

If the Secretary determines that the action was contrary to laws or regulations, the Secretary may issue an order to the OPI to take appropriate action. Failure to comply may cause the loss of all federal assistance to the state.

#### **HEARINGS PROCESS** (34 CFR 76.783, 76.401}

This process is used in cases when the sub grantee disagrees with the OPI's actions, such as the resolution of an audit finding, additional monitoring required of the entity as the result of an on-site visit or other monitoring effort, withholding of a portion or all of an award because of failure to maintain effort, failure to provide a match, disapproval of a non-competitive grant application, etc.

##### 1. Requesting a Hearing

The sub grantee or applicant must submit a written request for a hearing to the appropriate OPI program director. If the request for hearing is related to audit resolution problems, the request must be submitted to the OPI School Finance Division Administrator.

When the cause for the request is a controversy over the acceptability of the entity's response to an audit finding, the request must be received within 30 days of the date of the Department of Administration's notice stating the audit response is not acceptable.

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#### 2. The OPI's Hearing and Review

Within 30 days of receiving the applicant's request, the OPI will hold a hearing on the record and review its action.

Within 10 days after the hearing, the OPI will issue a written ruling, including findings of fact and reasons for the ruling.

If the OPI determines its action was contrary to law or regulations, the OPI will review its action and change its action to be in compliance with law or regulations.

If the OPI does not rescind its action, the sub grantee or applicant may file an appeal to the U.S. Secretary of Education within 20 days of the OPI's ruling on the hearing. If supported by substantial evidence, findings of fact of the OPI will be final. The OPI will provide the entity with the address of the federal contact person at the time the OPI sends the written notice of resolution.

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