

PROCEDURES FOR APPEALING 2008 AYP DETERMINATIONS

I. INTRODUCTION

The purpose of this document is to convey to each school district, comprehensive AVTS and charter school information concerning the process for appealing AYP determinations. In the interest of conciseness, school districts, charter schools and AVTSs will be referred to collectively as “educational entities” throughout this document.

It is important for educational entities to understand that the No Child Left Behind Act requires states to adopt two distinct legal processes for resolving issues that arise under the Act. The first process is the AYP appeal process. This process is intended to ensure that educational entities have the opportunity to present evidence to establish that their AYP determinations are in error for statistical or other substantive reasons. 20 U.S.C. § 6316(c)(5). The Department’s Bureau of Assessment & Accountability is responsible for this process. The other process is the NCLB Complaint Resolution Process. This process is intended to ensure that states have a mechanism for receiving and addressing complaints alleging violations of law in the administration of NCLB programs. 20 U.S.C. § 7844(a)(3)(C). The Department’s Division of Federal Programs, in the Department’s Bureau of Teaching and Learning Support, is responsible for this process.

AYP appeals are filed with the Bureau of Assessment & Accountability. On occasion, educational entities have filed AYP appeals based on issues regarding alleged violations of law in the administration of NCLB programs. For example, some educational entities have raised questions about the amount of NCLB funding that they receive. (Because this is the type of issue that must be addressed by the Division of Federal Programs, the Department has developed a policy that enables the Bureau of Assessment to transfer the appeal, or appropriate parts of the appeal, to the Division of Federal Programs). This transfer policy is intended to protect the due process rights of educational entities and to spare the educational entity the inconvenience of filing a separate complaint with the Division of Federal Programs. The procedures used by the Bureau of Assessment and Accountability and the Division of Federal Programs are set forth below.

II. SUMMARY OF TRANSFER PROCESS

Upon initial review of an AYP appeal, the Bureau of Assessment & Accountability will determine whether it or the Division of Federal Programs possesses the required level of expertise to consider the specific elements of the educational entity’s appeal and the authority to determine and implement a remedy if the complaint is determined to be valid.

For those issues raised in an AYP appeal that the Bureau determines are outside its expertise or its authority to remedy, the Bureau will transfer those complaints and issues to the appropriate office within the Department.

Specifically, complaints regarding the Department's compliance with programmatic or funding requirements of the No Child Left Behind Act (NCLB) that do not govern assessment, calculation of AYP, or AYP reporting will be referred to the Division of Federal Programs. Upon transfer of an educational entity's complaint, the Division of Federal Programs will investigate the compliance issues raised by the educational entity, and if any complaint is found to be valid, the Division will recommend an appropriate resolution or remedy.

An educational entity that is dissatisfied with the Division's determination regarding a complaint about the Department's compliance with NCLB or federal regulations will have the right to appeal the Division's determinations to the Pennsylvania Secretary of Education, who will consider and decide the administrative appeal in accordance with the requirements of due process. If an educational entity is dissatisfied with the decision of the Secretary, the educational entity will have the right under federal law to request review by the U.S. Department of Education and, if authorized by Pennsylvania law, to appeal to Commonwealth Court.

Consistent with the Department's commitment to consider all issues that are raised in an AYP appeal, the procedures for the filing and consideration of AYP appeals are set forth below.

II. REVIEWING AYP DATA AND APPEALING AYP DETERMINATIONS

- On July 1, 2008 educational entities will be able to access the Preliminary AYP Data File and review information concerning the AYP status of the educational entity and, in the case of a school district, its individual schools.
- From July 1, 2008 to July 16, 2008, educational entities may file AYP appeals on their own behalf or, in the case of a school district, on behalf of one or more of their schools.
- Educational entities filing AYP appeals must use the appropriate attached appeal forms. Please note that the forms for appealing district-level and school-level appeals are different.
- Educational entities must submit to the Department completed appeal forms and supporting data by U.S. mail bearing a postmark of July 16, 2008 or earlier. Educational entities must direct completed appeal forms and supporting data to:

Dana Klouser
Pennsylvania Department of Education
Bureau of Assessment and Accountability
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

- The Bureau of Assessment & Accountability will complete its review of all appeals by July 31, 2008. Following its review of each appeal, the Bureau will send a letter to the educational entity indicating how the appeal has been resolved and confirming the status of the educational entity and/or school(s). The letter will also inform the educational entity which, if any, of the issues raised in the appeal were transferred to the Division of Federal Programs or other office, bureau or division within the Department. Please note that when issues are transferred to the Division of Federal Programs, the procedures in Section III of this document will apply.
- An educational entity may appeal the Bureau's determination to the Secretary of Education pursuant to 1 Pa. Code § 35.20. Appeals to the Secretary are governed by Pennsylvania's General Rules of Administrative Practice and Procedure, which are published in Title I of the Pennsylvania Code at chapters 31, 33 and 35. In order to file an appeal to the Secretary, the educational entity must submit a Petition for Appeal within ten (10) days after receipt of the Bureau's determination. An educational entity's appeal to the Secretary should be in petition form. This means that the educational entity should use numbered paragraphs or sentences to state its reasons for the appeal and to provide any facts or references to law that support the educational entity's position. Educational entities that have questions about 1 Pa. Code § 35.20 are encouraged to contact their solicitors. The Petition for Appeal must be sent to:

Gerald L. Zahorchak, D.Ed.
 Secretary of Education
 Pennsylvania Department of Education
 333 Market Street, 10th Floor
 Harrisburg, PA 17126-0333

III. REVIEW BY DIVISION OF FEDERAL PROGRAMS

- Upon receipt of a referral of an issue or issues raised in an AYP appeal, the Chief of the Division of Federal Programs (Division Chief) will send the educational entity a letter acknowledging receipt of the appeal form.
- The Division Chief will investigate the claims made and issues raised in the AYP appeal.
- The Division Chief, in her discretion, may provide the educational entity with the opportunity to present additional information.

- The Division Chief will prepare a summary of the investigation and issue a final report with a recommended resolution or remedy if she has found that the educational entity has made a valid complaint.
- The educational entity may appeal the recommended resolution to the Secretary of Education pursuant to 1 Pa. Code § 35.20. (This appeal is governed by the General Rules of Administrative Practice and Procedure published at Title I of the Pennsylvania Code at chapters 31, 33 and 35.)
- The resolution of the issues transferred by the Bureau of Assessment and Accountability to the Division of Federal Programs should occur within sixty (60) days of the Division's receipt of the referral. (The time limit may be extended for exceptional circumstances.)
- An educational entity that is dissatisfied with the Department's final resolution of its complaint regarding the Department's compliance with NCLB or applicable federal regulations has the right under federal law to file an appeal with the United States Department of Education pursuant to 34 CFR § 299.11(c). The educational entity may also file an appeal to Commonwealth Court, if permitted by Pennsylvania law.