



## **NEW YORK STATE EDUCATION DEPARTMENT**

### **HEARING PROCEDURES FOR SUSPENSION OF PAYMENT OF FEDERAL SCHOOL IMPROVEMENT GRANTS**

#### **1. Authority**

- a. 34 CFR §§76.401(d)(2)-(7), 76.783(b), and 80.43(b) allow a subgrantee to receive a hearing on the record when the subgrantee alleges that the State Education Agency violated a State or federal statute or regulation when disapproving a subgrantee's application and when disallowing, suspending or terminating an award for a grantee's or subgrantee's program.
- b. Education Law §206 allows the Commissioner, the Board of Regents, any deputy commissioner, assistant commissioner or associate commissioner or the counsel to take testimony and hear proofs in any matter which they may lawfully investigate.
- c. The State Administrative Procedure Act ("SAPA") sets forth the requirements governing the procedures of adjudicatory proceedings in New York State.

#### **2. Request for a Hearing**

- a. A request for a hearing shall be made no later than 30 days after a school district ("district") is informed by the State Education Department ("SED") that its School Improvement Grant ("SIG") payments have been suspended due to noncompliance with the terms of the grant award.

- b. In accordance with 34 CFR §76.401(c), a hearing will be provided only if the district alleges a violation of State or federal statute or regulations. SED may decide that a request for hearing does not clearly articulate a violation of State or federal statute or regulations and deny the request for hearing.
- c. The request for a hearing shall be made to Sally Bachofer, Assistant Commissioner for Innovative School Models, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.

3. **Scheduling of Hearing**

Upon receipt of a request for a hearing, the Commissioner shall appoint a person listed in Education Law §206 to serve as the hearing officer. The hearing officer shall set a date and time for the hearing which will be held at SED's offices at 89 Washington Avenue, Albany, New York 12234. The hearing date shall be within 30 days of a timely and sufficient hearing request.

4. **Notice**

Notice of the hearing shall be mailed to all parties. The Notice shall include the date, time and location of the hearing as well as the identity of the hearing officer. The Notice will seek authorization to use email throughout the hearing process and shall inform the district that it may be represented by counsel at its own expense.

5. **Communications**

Subsequent to mailing of the Notice of the hearing, all communications among the district, SED and/or the hearing officer regarding the hearing will be by email, if

authorized by the district, or by facsimile (“fax”). The district will provide either the email address to use for further communications or a fax number and contact name.

6. **Request for Adjournment**

No later than 48 hours prior to the scheduled hearing date, either party may request an adjournment to the hearing officer, who:

- a. may, with the consent of all parties, change the date, or time of the hearing, and shall immediately thereafter provide written notice to the parties; or
- b. may, upon a showing of good cause by either party, reschedule the hearing and shall immediately thereafter provide written notice to the parties.

However, in no event shall the hearing be postponed or rescheduled more than 30 days from the date of the first scheduled hearing date.

7. **Default**

The district’s failure to appear at the scheduled hearing shall be deemed a waiver of its right to a hearing.

8. **Withdrawal from Hearing**

The parties are strongly encouraged to resolve the issues causing the suspension of SIG funding prior to the hearing. A district may submit evidence to the Office of Innovative School Models that it has cured its SIG grant award deficiencies on or before four business days before the scheduled hearing. *No further submissions will be considered by that office after that time.* If, prior to the hearing, SED determines that the district has complied with the terms of its SIG grant award thereby allowing SED to reinstate the district’s SIG funding, the district shall submit a signed

statement withdrawing its request for a hearing. However, the hearing shall not be delayed or canceled because of the possibility of a negotiated agreement unless agreed to by all parties and with permission of the hearing officer.

9. **Right of the District During a Hearing**

The district shall have the burden of establishing that SED violated State or federal statute or regulation in its determination to suspend the district's SIG grant award.

At hearing, the district shall have the right to:

- a. present and establish all relevant facts by oral testimony and documentary evidence regarding its SIG grant award and any changes made to cure its deficiencies up to four business days before the hearing;
- b. advance any pertinent arguments without undue interference; and
- c. question or refute any evidence or testimony, including an opportunity to confront and cross-examine adverse witnesses.

10. **Role of the SED During A Hearing**

- a. SED's response shall be presented by staff of the Office of School Innovation and/or other SED staff as appropriate. SED has the right to the assistance of counsel at the hearing.
- b. SED shall have the right to present oral testimony or documentary evidence, question or refute any evidence or testimony, and confront and cross-examine adverse witnesses.

11. **Duties and Powers of the Hearing Officer**

- a. Prior to the hearing, the hearing officer may confer with the parties jointly to discuss pre-marking of exhibits, stipulations, exchange of witness lists, issues for hearing and any other matter that will assist to expedite the hearing process.
- b. At the hearing, the hearing officer shall define issues raised by the parties; receive and consider all relevant and reliable evidence; insure an orderly presentation of the evidence and issues; oversee the preparation of the record of the proceedings; and make fair and independent rulings, as necessary.
- c. Upon the conclusion of the hearing and closure of the record, the hearing officer shall make a written recommendation to the Commissioner as to whether SED's action violated State or federal statute or regulation and/or any findings of relevant fact(s), as applicable. This recommendation will be based solely on the issues and evidence presented at the hearing and applicable federal and State laws, rules and regulations.

12. **Evidence**

The introduction of evidence shall be governed by standards set forth in §306 of SAPA. All documents and other evidence offered or taken for the record shall be open to examination by the parties. Pre-hearing stipulation of exhibits is highly encouraged. The following documents are part of the record as hearing officer exhibits:

- 1) SED's SIG request for proposals,
- 2) SIG application submitted to SED by the school district,
- 3) SED's letter of acceptance of the school district's application,
- 4) School district's submission of documents by December 31, 2011 deadline to demonstrate compliance with SIG teacher and leader evaluation requirements,
- 5) SED's letter of suspension of SIG grant award, and
- 6) The school district's request for hearing.

13. **Record of Hearing**

A record of the hearing shall be prepared in accordance with the standards of §302 of SAPA.

14. **Form of Decision**

The decision of the Commissioner shall be limited to a determination as to whether SED's action violated State or federal statute or regulation and/or any findings of relevant fact(s), as applicable. The decision shall be a comprehensive statement containing the following elements:

- a. statement of the issue or issues raised by the parties at the hearing;
- b. clear and complete statement of facts that are supported by evidence presented at the hearing;
- c. reference to all laws, regulations and other legal basis for the decision;
- d. a concise statement of the conclusions drawn, and the basis for such conclusions; and

- e. a clear statement of the actions to be taken, if any, to implement the decision.

15. **Record Closure; Time Limit**

Upon receipt of the stenographic transcription or recording of the hearing and the memoranda of law submitted by the parties, the hearing officer shall close the record. No later than 10 days after the record is closed, SED shall issue the Commissioner's written decision, as described in paragraph 14 above.

16. **Appeal to U.S. Secretary of Education**

If the Commissioner's decision does not rescind SED's final action after the hearing, the district may appeal to the U.S. Secretary of Education (34 CFR §76.401[d][5]). The district shall file a notice of appeal with the Secretary within 30 days after the district has been notified of the Commissioner's decision. If supported by substantial evidence the Commissioner's decision is final.