

# 1303 Appeals - Module Four

*This Head Start Standards Training Module includes parts of 1303.14 - 1303.17  
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## Office of Human Development Services, HHS

## § 1303.15

- (2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.
  - (3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.
  - (4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.
- (g) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.
- (h) If the responsible HHS official initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

- (i) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

**"The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification."**

(j) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(k) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

**"A grantee may waive a hearing and submit written information and argument for the record."**

[57 FR 59264, Dec. 14, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 65 FR 4768, Feb. 1, 2000]

### **§ 1303.15 Appeal by a grantee from a denial of refunding.**

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

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Test Questions:

**Select the correct "True" or "False" option.**

1. ***If a grantee's funding has been suspended, operational funding shall be available during the termination proceedings.*** (1303.14)

True  False

2. ***Appeals from a denial of funding must be filed within 5 days after the grantee receives notice.*** (1303.15)

True  False

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**45 CFR Ch. XIII (10–1–05 Edition)**

**§ 1303.16**

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with § 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) The legal basis for the denial of refunding under paragraph (c) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

(4) A statement that failure of the notice

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, the delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(h) The Departmental Appeals Board

of denial of refunding to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

**"A statement that failure of the notice of denial of refunding to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections."**

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(g) Paragraphs (i), (j), and (k) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

facts and issues. To accomplish these ends, the presiding officer shall have all powers

sanctions with respect to a grantee's appeal of denial of refunding are as follows:

- (1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.
- (2) If the Departmental Appeals Board concludes that the grantee's failure to comply is not substantial, but is confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other "discovery" request not timely made.
- (3) The sanctions set forth in paragraphs (h)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

### **§ 1303.16 Conduct of hearing.**

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the

[65 FR 4770, Feb. 1, 2000]

authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines reasons beyond the control of either party or the Board.

**"If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice."**

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Test Questions:

**Select the correct "True" or "False" option.**

3. ***Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board.*** (1303.15)

True  False

4. ***The termination hearing is not open to the public unless the presiding officer determines otherwise.*** (1303.16)

True  False

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(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

stipulated in a prehearing conference or those agreed to by the parties.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. **The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those Appeals Board may exempt it from the requirement. However, such hardship must**

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When the parties submit prepared written direct testimony, witnesses must be available at the hearing for cross-examination and redirect examination. **If a party can show substantial hardship in using prepared written direct testimony, the Departmental witness be more than difficulty in doing so,**

and it must be shown with respect to each

(e) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the Departmental Appeals Board. This application must be made within 30 days of the grantee's appeal in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee. It must state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(g) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefore. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(h) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

### **§ 1303.17 Time for hearing and decision.**

(a) Any hearing on an appeal by a grantee from a notice of suspension, termination, or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the closing of the record, i.e., 60 days after the Board receives the final authorized submission in the case.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph (a) of this section may be extended if:

- (1) The parties jointly request a stay to engage in settlement negotiations,
- (2) Either party requests summary disposition; or

- (3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for

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Test Questions:

*Select the correct "True" or "False" option.*

5. *When the parties submit prepared written direct testimony, no witnesses are necessary.* (1303.16)

True  False

6. *The final decision in an appeal must be rendered not later than 60 days after the Board receives the final authorized submission in the case.* (1303.17)

True  False

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Last Name \_\_\_\_\_

First \_\_\_\_\_ Initial \_\_\_\_

Location \_\_\_\_\_