

1303 Appeals - Module Three

*This Head Start Standards Training Module includes parts of 1303.12 - parts of 1303.14
Pages 110 - 112*

§ 1303.13

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) *New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice.* Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension

45 CFR Ch. XIII (10–1–05 Edition)

period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

"Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination."

(m) At the discretion of the funding receiving satisfactory evidence that the

agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may,

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon

at the discretion of the responsible HHS official, be

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Test Questions:

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

1. ***The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.*** (1303.12)

True

False

2. ***After receiving concurrence from the grantee and ACYF, the responsible HHS official may suspend a grant for more than 30 days.*** (1303.13)

True

False

**Office of Human Development Services,
HHS**

§ 1303.14

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

its appeal shall be afforded one by the Departmental Appeals Board. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds.

Any grantee requesting a hearing as part of

Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program. **Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.**

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. **In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.**

"If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds."

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

- (1) The grantee is no longer financially viable;
- (2) The grantee has lost the requisite legal status or permits;
- (3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;
- (4) The grantee has failed to timely correct one or more deficiencies as defined in 45 CFR Part 1304;
- (5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply

(c) A notice of termination shall set forth:

with the Head Start grants administration requirements set forth in 45 CFR part 1301;

- (7) The grantee has failed to comply with the requirements of the Head Start Act;
- (8) The grantee is debarred from receiving Federal grants or contracts;
- (9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

- (1) The legal basis for the termination under paragraph (b) of this section, the factual findings on which the termination is based or reference to specific findings in another document that form the basis for the termination (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.
- (2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a

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Test Questions:

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

3 ***If a grantee is successful on its appeal any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.*** (1303.13)

True False

4 ***Financial assistance may be terminated if the grantee has failed to timely correct one or more deficiencies.*** (1303.11)

True False

copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing shall be afforded one, as mandated by 42. U.S.C. 9841.

- (3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.
- (4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.
- (5) That the grantee’s appeal must meet the requirements set forth in paragraph (d) of this section.
- (6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee’s appeal must:

- (1) Be in writing;
- (2) Specifically identify what factual findings are disputed;
- (3) Identify any legal issues raised, including relevant citations;
- (4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has

or both, but must do so within 10 days of receipt of the additional filings;

- (7) Include a statement on whether the grantee is requesting a hearing; and
- (8) Be filed with the Departmental Appeals Board and be served on the responsible HHS official who issued the termination notice and on the Commissioner of ACYF. The grantee must also serve a copy of the appeal on any delegate agency that would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee’s failure to comply with the provisions of paragraph (d) of this section 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 failures are not substantial, but are 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 (e)(1) and (2) of this section shall not apply if the Departmental

obtained permission from the Departmental Appeals Board to submit fewer copies);

- (5) Include any request for specifically identified documents the grantee wishes to obtain from ACF and a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to obtain the documents from ACF and was unable to do so;

- (6) Grantees may submit additional documents within 14 days of receipt of the documentation submitted by ACF in response to the grantee's appeal and initial submittals. The ACF response to the appeal and initial submittals of the grantee shall be filed no later than 30 days after ACF's receipt of the material. In response to such a submittal, ACF may submit additional documents should it have any, or request discovery in connection with the new documents,

Appeals Board determines that the 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.

(f)

During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(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."

Test Questions:

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

5 ***A notice of termination shall set forth that the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.*** (1303.14)

True False

6 ***During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period.*** (1303.14)

True False

Last Name _____

First _____ Initial _____

Location _____

Answers: 1-T, 2-F, 3-T, 4-T, 5-T, 6-T