STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

APPEAL HEARING PROCEDURES

This policy prescribes procedures to be used for appealing a decision by the South Carolina Department of Education (SCDE) upon receipt of a request by an applicant or subgrantee (hereinafter collectively "applicant") related to federal programs administered by the SCDE and subject to the Education Department General Administrative Regulations (EDGAR), 34 CFR §§ 75 and 76. This policy will also govern other grants by federal agencies, unless inconsistent with other law.[1]

1. Hearing Issues. The SCDE shall provide the applicant with notification of the right to a hearing and the procedures for a hearing if the applicant alleges the SCDE failed to comply with a state or federal statute or regulation as a result of

    a) disapproving or failing to approve an application or project in whole or in part;

    b) failing to provide funds in amounts in accordance with the requirements of applicable statutes and regulations;

    c) ordering, in accordance with a final state audit resolution determination, repayment of misspent or misapplied federal funds; or

    d) terminating further assistance for an approved project.

2. Hearing Appeal Officer/Panel. When an applicant requests a hearing, in writing, the state superintendent of education (Superintendent) shall select a hearing officer or three-member hearing panel to conduct the proceeding. If a hearing panel is selected, the panel shall consist of at least two of the SCDE's deputy superintendents or their designees and one additional individual designated by the superintendent. A hearing panel shall not be composed of SCDE employees who work within the division that implements the federal program which is the subject of the appeal.

3. Hearing Procedures.

    a) An applicant shall request a hearing by notifying the Superintendent by certified mail of its decision to appeal a decision as set forth in these procedures.

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[1] Matters arising under the Individual with Disabilities Education Act will be governed by the procedures outlined in 24 S.C. Ann. Regs. 43–243.

b) The applicant shall include the nature of the request for the hearing, including the reasons for any disagreement with the determinations by the SCDE, and the facts on which the request for the hearing is based.

c) The applicant shall request a hearing within thirty calendar days of the date of the SCDE's notification of the intent to impose the specified sanction. For purposes of these procedures, the date of the notice by the SCDE is the date the notice is received by the applicant.

d) The hearing shall be scheduled before a hearing officer/panel within thirty calendar days from the receipt of the request.

e) The applicant shall receive written notice at least ten days prior to the hearing date. The notice shall include the date, location, and time of the hearing.

f) The applicant and the SCDE may present evidence in writing and through witnesses and may be represented by legal counsel at the hearing. The parties shall exchange the names of proposed witnesses and any written materials they plan to rely upon as evidence during the hearing no later than five days prior to the hearing. The parties shall have a minimum of six copies available of written materials that will be used as evidence during the hearing.

g) The hearing officer/panel may determine the length and order of the presentations by the parties and determine the course of the proceedings. The hearing officer/panel shall take all steps necessary to conduct a fair and impartial proceeding, avoid delays, and maintain order.

h) The hearing officer/panel shall make a formal recommendation, which includes findings of facts, to the Superintendent within five calendar days following the hearing.

i) The SCDE shall keep a record of the proceedings. Any party, at its expense, may obtain a copy of the record of the proceedings.

j) If the applicant or its authorized representative fails to appear at the designated time, location, and date of the hearing, the appeal shall be considered withdrawn and the hearing process terminated.

4. Decision.

   a) The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing by transmitting the written decision to the applicant or authorized representative of the applicant. The written decision shall include the findings of fact and reasons for the decision.

   b) If the SCDE determines that its proposed action was contrary to state or federal statutes or regulations that govern the applicable program it shall rescind its action.

5. Appeal. If the SCDE does not rescind its final action, the applicant may appeal to the Secretary of the United States Department of Education (Secretary). The applicant shall file a notice of appeal with the Secretary within twenty days after it has been notified by the SCDE of the results of the agency's review.