

(f) Each party shall bear only its own costs in the proceeding.

(Authority: 20 U.S.C. 7704(e))

§ 222.111 What is the authority of the hearing examiner in conducting a hearing?

The hearing examiner is authorized to conduct a hearing under section 8004(e) and §§ 222.109–222.113 as follows:

(a) The hearing examiner may—

(1) Clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the complaint;

(2) Direct the parties to exchange relevant documents or information; and

(3) Examine witnesses.

(b) The hearing examiner—

(1) Regulates the course of proceedings and conduct of the parties;

(2) Arranges for the preparation of a transcript of each hearing and provides one copy to each party;

(3) Schedules the submission of oral and documentary evidence;

(4) Receives, rules on, excludes, or limits evidence;

(5) Establishes and maintains a record of the proceeding, including any transcripts referenced above;

(6) Establishes reasonable rules governing public attendance at the proceeding; and

(7) Is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(Authority: 20 U.S.C. 7704(e))

§ 222.112 What procedures are followed after the hearing?

(a) Each party may submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing, within the time period and in the manner specified by the hearing examiner.

(b) Within 30 days after the hearing, the hearing examiner—

(1) Makes, on the basis of the record, written findings of fact and recommendations concerning any appropriate remedial action that should be taken;

(2) Submits those findings and recommendations, along with the hearing record, to the Assistant Secretary; and

(3) Sends a copy of those findings and recommendations to each party.

(c)(1) Each party may file with the Assistant Secretary comments on the hearing examiner's findings and recommendations.

(2) The comments must be received by the Assistant Secretary within 10 days after the party receives a copy of the hearing examiner's findings and recommendations.

(Authority: 20 U.S.C. 7704(e))

§ 222.113 What are the responsibilities of the Assistant Secretary after the hearing?

(a) Within 30 days after receiving the entire hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a) of this section, the Assistant Secretary sends the parties a copy of that determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint and is subject to judicial review.

(Authority: 20 U.S.C. 7704(e))

WITHHOLDING AND RELATED PROCEDURES FOR INDIAN POLICIES AND PROCEDURES

SOURCE: 62 FR 35416, July 1, 1997, unless otherwise noted.

§ 222.114 How does the Assistant Secretary implement the provisions of this subpart?

The Assistant Secretary implements section 8004 of the Act and this subpart through such actions as the Assistant Secretary determines to be appropriate, including the withholding of funds in accordance with §§ 222.115–222.122, after affording the affected LEA, parents, and Indian tribe or

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tribes an opportunity to present their views.

(Authority: 20 U.S.C. 7704 (d)(2), (e) (8)–(9))

§ 222.115 When does the Assistant Secretary withhold payments from a local educational agency under this subpart?

Except as provided in § 222.120, the Assistant Secretary withholds payments to an LEA if—

(a) The Assistant Secretary determines it is necessary to enforce the requirements of section 8004 of the Act or this subpart; or

(b) After a hearing has been conducted under section 8004(e) of the Act and §§ 222.102–222.113 (IPP hearing)—

(1) The LEA rejects the final determination of the Assistant Secretary; or

(2) The LEA fails to implement the required remedy within the time established and the Assistant Secretary determines that the required remedy will not be undertaken by the LEA even if the LEA is granted a reasonable extension of time.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), (e)(8)–(9))

§ 222.116 How are withholding procedures initiated under this subpart?

(a) If the Assistant Secretary decides to withhold an LEA's funds, the Assistant Secretary issues a written notice of intent to withhold the LEA's payments.

(b) In the written notice, the Assistant Secretary—

(1) Describes how the LEA failed to comply with the requirements at issue; and

(2)(i) Advises an LEA that has participated in an IPP hearing that it may request, in accordance with § 222.117(c), that its payments not be withheld; or

(ii) Advises an LEA that has not participated in an IPP hearing that it may request a withholding hearing in accordance with § 222.117(d).

(c) The Assistant Secretary sends a copy of the written notice of intent to withhold payments to the LEA and the affected Indian tribe or tribes by certified mail with return receipt requested.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), and (e) (8)–(9))

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§ 222.117 What procedures are followed after the Assistant Secretary issues a notice of intent to withhold payments?

(a) The withholding of payments authorized by section 8004 of the Act is conducted in accordance with section 8004 (d)(2) or (e)(8)–(9) of the Act and the regulations in this subpart.

(b) An LEA that receives a notice of intent to withhold payments from the Assistant Secretary is not entitled to an Impact Aid hearing under the provisions of section 8011 of the Act and subpart J of this part.

(c) *After an IPP hearing.* (1) An LEA that rejects or fails to implement the final determination of the Assistant Secretary after an IPP hearing has 10 days from the date of the LEA's receipt of the written notice of intent to withhold funds to provide the Assistant Secretary with a written explanation and documentation in support of the reasons why its payments should not be withheld. The Assistant Secretary provides the affected Indian tribe or tribes with an opportunity to respond to the LEA's submission.

(2) If after reviewing an LEA's written explanation and supporting documentation, and any response from the Indian tribe or tribes, the Assistant Secretary determines to withhold an LEA's payments, the Assistant Secretary notifies the LEA and the affected Indian tribe or tribes of the withholding determination in writing by certified mail with return receipt requested prior to withholding the payments.

(3) In the withholding determination, the Assistant Secretary states the facts supporting the determination that the LEA failed to comply with the legal requirements at issue, and why the provisions of § 222.120 (provisions governing circumstances when an LEA is exempt from the withholding of payments) are inapplicable. This determination is the final decision of the Department.

(d) *An LEA that has not participated in an IPP hearing.* (1) An LEA that has not participated in an IPP hearing has 30 days from the date of its receipt of the Assistant Secretary's notice of intent to withhold funds to file a written request for a withholding hearing with