

160-1-3-.04 SCHOOL LAW TRIBUNALS AND APPEALS.

(1) **PURPOSE.** The purpose of this rule is to specify the procedures for appeals from local boards of education (LBOEs) to the State Board of Education on issues respecting the administration or construction of school law.

(2) **ROLE OF THE VICE CHAIRPERSON.**

(a) The vice chairperson for appeals of the state board or a hearing officer contracted with or employed by the state board shall conduct a review of appeals to the state board and shall acquaint state board members with the matters to be considered.

(b) The vice chairperson for appeals or the hearing officer shall draft the ruling of the state board.

(3) **PROCEDURES BEFORE THE LOCAL BOARD OF EDUCATION.**

(a) LBOEs shall hold hearings when required by law. The LBOE shall adopt, except as otherwise provided for by law, the following hearing procedures:

1. The LBOE shall notify the parties of the time and place of the hearing.
2. The LBOE shall sign and issue subpoenas.
3. All witnesses shall testify under oath and shall be subject to cross-examination.
4. The LBOE shall require the testimony and other evidence to be transcribed by a court reporter or recorded by other appropriate means.
5. The strict rules of evidence prevailing in courts of law shall not be applicable to hearings before LBOEs.
6. At the conclusion of the hearing, or within 15 days thereafter, the LBOE shall notify the parties of its decision in writing and shall notify the parties of their right to appeal the decision to the State Board of Education.

(4) **APPEALS TO THE STATE BOARD OF EDUCATION.**

(a) After a hearing by the LBOE when held in accordance with state law and/or state board policies, regulations or rules, any party aggrieved by a decision of the LBOE rendered on an issue respecting the administration or construction of school law may appeal to the state board by filing the appeal in writing with the local school

superintendent. The appeal shall set forth:

1. The question in dispute;
2. The decision of the local board; and
3. A concise statement of the reasons why the decision is being appealed.

(b) The party making the appeal shall file with the appeal the complete record, including a transcript of testimony certified as true and correct by the local school superintendent or a request that the superintendent transcribe and prepare such transcript. The party making the appeal shall assume the costs of such preparation.

(c) When any party is unable to pay the cost of a transcript of the hearing because of indigence, the party shall be relieved from paying the cost if said party provides to the local school superintendent an affidavit to that effect. The party's rights shall be the same as those had the party paid the cost of the transcript. Upon receipt of an affidavit, the local school superintendent may inquire into the ability of the applicant to pay the cost of the transcript. After a hearing, the local school superintendent may order the party to pay the cost of the transcript by a certain date. Such decision of the local school superintendent may be appealed by the party to the State Board of Education in the same manner as other issues. If a party appeals the order of the local board to pay the cost, the local school superintendent shall submit to the State Board of Education a transcript of the hearing on indigence that is certified by the local school superintendent. If no appeal of the issue of indigence is filed and the cost is not paid as ordered by the LBOE, or if an appeal is filed and the State Board of Education affirms the local board decision, the appeal shall not be docketed.

(d) The appeal to the State Board of Education shall be filed with the local school superintendent within 30 days of the decision in question.

(e) Transmission to the State School Superintendent. The local superintendent shall within 10 days after the filing of the appeal, transmit to the state school superintendent a copy of the appeal, together with the transcript of evidence and proceedings, the decision of the local board and other matters in the file relating to the appeal. All materials should be certified as true and correct. The appeal may be amended and a transcript filed any time prior to transmission to the state board.

160-1-4-.03 (Continued)

(f) **Notice.** After a determination by the state school superintendent or designee that the appeal is in proper form for hearing, the appeal shall be docketed and placed on the calendar for review before the hearing officer of the state board at the earliest practical time.

(g) The party requesting the appeal shall file a brief with the state board discussing the party's position within 20 days of the date of docketing. The opposing party shall have 40 days from the date of docketing to file a brief.

(h) Oral arguments shall not be heard unless requested by a party or requested by the hearing officer. Oral arguments must be requested by a party within 10 days of the date the appeal is docketed.

(i) **Procedure at Oral Argument.** If oral argument is ordered or granted, the appellant may be represented by counsel. The argument shall be confined to the issues in the record and the evidence transmitted from previous proceedings. No new evidence shall be received. The state board shall not consider any question not specifically raised in the written appeal or the statement of contentions.

(j) **Decision of State Board.** The state board shall render its decision in a written order within 25 days after it hears the case and shall notify the parties in writing of its decision and of their right to appeal the decision to the Superior Court of the county wherein the LBOE is located.

(k) **Dismissal of Appeal.** Failure to comply with any of the provisions herein may be grounds for dismissal.

(l) **No Supersedeas.** No appeal shall act as a stay of a local board's order unless so ordered by the local board or by the vice chairperson for appeals of the state board.

(5) **SEVERABILITY.** The provisions of this rule are hereby declared to be severable, and the invalidation of any part hereof shall not affect or invalidate any other part.

Authority O.C.G.A. § 20-2-240; 20-2-940; 20-2-1160.

Adopted: May 14, 1998

Effective: June 15, 1998

Code: BCAEA(2)

160-1-3-.07 CONSOLIDATED HEARINGS UNDER INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) AND SECTION 504.

(1) REQUIREMENTS.

(a) A local board of education (LBOE) may request that a hearing officer, appointed by the department in an IDEA due process hearing under Rule 160-4-7-.05 Procedural Safeguards/Parent Rights, serve as the hearing officer in a hearing requested under Section 504 of the Rehabilitation Act of 1973 and consider matters under IDEA and Section 504 at the same hearing.

(b) If the hearing officer conducts a consolidated hearing under both IDEA and Section 504 of the Rehabilitation Act of 1973 as provided in paragraph (a), the costs attributable to the Section 504 hearing shall be borne by the LBOE. The hearing officer shall apportion the costs on a pro rata basis.

(c) A party seeking review of a decision in a hearing under Section 504 of the Rehabilitation Act of 1973 shall file a notice of appeal to the State Board of Education with the local school superintendent. Rule 160-1-3-.04 School Law Tribunals and Appeals shall otherwise apply with respect to the appeal.

Authority O.C.G.A. § 20-2-1160.

Adopted: February 14, 2002

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