

4 AAC 40.010 is repealed and readopted to read:

4 AAC 40.010. Applicability. The provisions of this chapter apply to a district or applicant seeking review and appeal of actions and decisions of the department regarding money appropriated to the department under AS 14 or AS 44.27, for payment to school districts or other applicants. The provisions of this chapter do not apply if a specific process for appeal of a decision of the department is set out elsewhere in statute or regulation, or if the decision appealed from did not result in money being denied or withheld from a district or applicant. The department will not process an appeal under this chapter that seeks an advisory opinion. (Eff. 10/16/81, Register 80; am 2/11/89, Register 109; am 11/10/2002, Register 164; am __/__/2010, Register __)

Authority: AS 14.07.060 AS 14.17.920

4 AAC 40.020(a) is amended to read:

4 AAC 40.020. Notice of appeal. (a) A district or other applicant that is aggrieved by **an appealable** [A FINAL] action of the department regarding a payment or award of money as described in 4 AAC 40.010 may file a notice of appeal with the commissioner by registered mail **or by electronic submission on a form provided by the department.** The notice of appeal must be postmarked **or received by electronic submission** no later than 30 calendar days after receipt of notice of the final action being appealed.

4 AAC 40.020 is amended by adding a new subsection to read:

(e) In this section, “appealable action of the department” means a final decision (1) made by an employee of the department who is not the commissioner; and (2) denying a request for or withholding, money appropriated to the department under AS 14, or AS 44.27, for payment to school districts or other applicants. (Eff. 10/16/81, Register 80; am 2/11/89, Register 109; am 11/10/2002, Register 164; am __/__/2010, Register __)

Authority: AS 14.07.060 AS 14.17.920

4 AAC 40.030 is repealed and readopted to read:

4 AAC 40.030. Administrative review. (a) No later than five working days after receipt of the notice required under 4 AAC 40.020(a), the commissioner will appoint a designee to review all issues set out in the notice of appeal.

(b) The commissioner’s designee’s review of the decision may include whether

- (1) the process was fair, including whether additional process or opportunity to present evidence to the initial decision maker is necessary to achieve a fair decision;
- (2) the initial decision maker had expertise in the subject matter of the decision;
- (3) the decision is internally consistent and rational;
- (4) the decision is consistent with law;
- (5) the decision contains errors; and
- (6) substantial evidence supports the decision.

(c) No later than 15 working days after appointment under (a) of this section, the commissioner's designee shall issue a written decision. The designee's supervisor may grant the designee a five-day extension. The designee may

(1) affirm the decision;

(2) remand the decision to the initial decision maker for amendment or for consideration of additional evidence or argument;

(3) amend the decision or issue a new decision if the designee has expertise in the subject matter; or

(4) amend the decision or issue a new decision if the amendment or new decision corrects an error that does not require special expertise or knowledge.

(d) An initial decision maker shall issue a new decision after a remand from the commissioner's designee under (c) of this section no later than 15 days after the initial decision maker receives the remand. In the decision, the initial decision maker shall include a written description of the decision maker's resolution of the issues on remand. (Eff. 10/16/81, Register 80; am 2/11/89, Register 109; am 11/10/2002, Register 164; am __/__/2010, Register __)

Authority: AS 14.07.060 AS 14.17.920

4 AAC 40.040 is repealed and readopted to read:

4 AAC 40.040. Formal hearing. (a) If the commissioner's designee affirms the decision of the initial decision maker, a district or applicant may request a formal hearing on the decision of the initial decision maker or the designee. If the designee amends the decision, or remands the decision to the initial decision maker, and the amended decision

or the decision after remand does not grant the relief sought in the notice of appeal, a district or applicant may request a formal hearing on the decision of the initial decision maker after remand or the designee.

(b) The request for hearing must be in writing, must be transmitted to the department by certified mail or in person, and must be postmarked or delivered no later than 15 calendar days after the date the decision under 4 AAC 40.030(c) or the decision of the initial decision maker after a remand was issued. The request must set out

(1) the errors that the district or applicant alleges were made by the initial decision maker or the commissioner's designee;

(2) the relief requested; and

(3) whether the district or applicant will be represented by counsel.

(c) No later than 15 days after receipt of the request for hearing made under (a) of this section, the commissioner will appoint a hearing officer who is not an employee of the department.

(d) No later than five days after appointment, the hearing officer shall schedule a prehearing conference with the parties for the purpose of determining scheduling, requirements for briefing and identification of exhibits, whether an oral hearing is necessary, witnesses, and other administrative matters specific to the hearing. The hearing officer may hold a settlement conference, or may arrange for other alternative dispute resolution, if requested by both parties.

(e) The hearing shall be held no later than 30 days after the date of appointment of the hearing officer unless extended by the hearing officer on request of a party. A

hearing officer may supplement the procedures in this subsection as necessary to conduct a fair and efficient hearing. The following procedures apply to all hearings:

- (1) the hearing must be recorded;
- (2) oral testimony must be under oath or affirmation;
- (3) each party may
 - (A) be represented by counsel;
 - (B) call and examine witnesses;
 - (C) introduce items from the administrative record as exhibits;
 - (D) cross-examine opposing witnesses;
 - (E) impeach a witness regardless of who first called the witness to testify;
 - (F) file motions, including a motion for summary adjudication or to exclude evidence or argument;
- (4) hearsay evidence may be used to supplement or explain nonhearsay evidence, but is not sufficient by itself to support a finding unless it would be admissible in a civil action;
- (5) the rules of privilege are effective to the same extent that they are recognized in a civil action;
- (6) evidence and arguments that were not available to the initial decision maker are not admissible;
- (7) evidence shall be excluded if it would cause undue delay, waste time, or be a needless presentation of cumulative evidence;
- (8) the burden of proof is on the party making the appeal;

(9) the hearing officer shall recommend that the commissioner uphold the initial decision maker or the commissioner's designee unless the hearing officer determines that

(A) the initial decision maker did not have a reasonable basis for the decision, based upon substantial evidence that was available to the initial decision maker at the time of the decision; or

(B) the commissioner's designee abused the designee's discretion in failing to grant the relief requested by the district or applicant, based upon substantial evidence that was available to the designee at the time of the decision.

(f) The hearing officer shall prepare a transcript of the hearing upon the request of a party. The hearing officer shall submit a recommended decision to the commissioner no later than 15 working days after the record closes. The recommended decision must outline the substantive issues presented, and include findings of fact and conclusions of law.

(g) The commissioner may adopt all, part, or none of the hearing officer's recommended decision submitted under (f) of this section, or may remand the matter back to the hearing officer with written instructions for further hearing or directions for further deliberation. No later than 15 working days after receiving the hearing officer's recommended decision, the commissioner will notify the district or applicant by certified mail of the commissioner's decision on the appeal.

(h) The district or other applicant is solely responsible for expenses incurred by the district or other applicant with respect to the hearing.

(i) Unless the commissioner remands the decision to the hearing officer, the commissioner's decision under (g) of this section is a final administrative decision of the department for purposes of appeal to the superior court under the Alaska Rules of Appellate Procedure. (Eff. 10/16/81, Register 80; am 2/11/89, Register 109; am 1/13/95, Register 133; am 11/10/2002, Register 164; am __/__/2010; Register __)

Authority: AS 14.07.060 AS 14.17.920

4 AAC 40.050 is amended by adding new paragraphs to read:

(6) “applicant” means a person or entity that applies for a grant or other thing of monetary value from the department;

(7) “expertise in the subject matter” means having significant experience, training, or knowledge in the issue;

(8) “substantial evidence” (A) means relevant evidence in the record that a reasonable mind might accept as adequate to support a conclusion (B) does not include an evaluation of competing inferences that could be drawn from the evidence (9)

“working day” means a day other than Saturday, Sunday or a state holiday. (Eff. 10/16/81, Register 80; am 11/10/2002, Register 164; am __/__/2010, Register __)

Authority: AS 14.07.060 AS 14.17.920