

## Chapter 74: Special Education

### *Rule 74.4 Hearing Procedures, IDEA*

1. In the event of funds being withheld in accordance with the regulations in the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA) and state regulations regarding students with disabilities, the State Department of Education will give notice to the appropriate school official (district superintendent, agency head, or director of private school) by certified mail which shall include notification of the right to request a hearing.
2. Within five (5) calendar days after receipt of the notice, the applicant may apply in writing to the Mississippi Department of Education for a hearing before a hearing officer with knowledge of special education federal and state regulations. The hearing officer will be designated by the Mississippi State Board of Education pursuant to Mississippi Code Ann. Section 37-1-5.
3. The hearing officer shall notify the appropriate school official of the time, place, and date of the hearing. The date shall be not less than five (5) calendar days from the receipt of the request for a hearing.
4. It shall be the responsibility of each party to secure the attendance of its witnesses, if any, and any expenses attendant thereto shall be borne by the party calling that witness. Two copies of any written evidence will be submitted: one copy for the hearing officer and one for the opposing party. Evidence submitted by the school official will be labeled P-1, P-2, etc. Evidence submitted by the department will be labeled D-1, D-2, etc. Evidence may be stipulated and entered as S-1, S-2, etc.
5. The hearing officer shall require that all witnesses be sworn before offering testimony. The hearing officer shall not be bound by the Common Law or statutory rules of evidence or by formal or technical rules of procedure and may conduct reasonable questioning of any witnesses. The hearing officer may limit the examination or cross-examination of any witnesses to keep the hearing focused on the issue of withholding of funds and may recess/reconvene the hearing if necessary.
6. The Department of Education shall make a record of the proceedings to include all documents introduced into evidence which shall be available for cost upon the written request of the applicant.
7. Within fifteen (15) working days of the conclusion of the hearing, the hearing officer shall make a recommendation in the following format: (1) purpose of the hearing, (2) summary of evidence presented, and (3) conclusions and recommendations, a copy of which shall be sent to the parties by certified mail.
8. The completed record along with the hearing officer's recommendation shall be certified to the State Board of Education which shall at its next regularly scheduled meeting consider only the record and shall not consider any evidence or material not included within the record in reaching its final determination.
9. If the State Board of Education shall affirm the Department's actions of withholding of Part B and 89-313 funds, the State Board of Education shall make its written findings and issue its order and notice shall be given the school official by certified mail. The decision of the State Board of Education is final.