

**PENNSYLVANIA DEPARTMENT OF EDUCATION
DIVISION OF SCHOOL FACILITIES
CITIZEN COMPLAINT AND HEARING PROCEDURES
November 14, 2007**

I. PURPOSE

The purpose of this document is to explain to school districts and citizens about the role of the Pennsylvania Department of Education in the approval of school district construction projects, including the Department's investigation of complaints about a project and the circumstances under which the Department will conduct a public hearing concerning a project.

II. INTRODUCTION

The laws of this state grant broad powers to local school boards in school construction matters. As the body elected to govern a school district, the school board determines which construction projects to undertake, when to proceed with the projects, how to pay for the projects, and whether to seek Commonwealth reimbursement. Official school board action related to the construction process takes place at open public meetings. The Department encourages citizens to attend school board meetings to express any concerns they may have to the school board.

When a school district undertakes a construction project and seeks reimbursement from the Commonwealth, a process known as PlanCon is initiated. PlanCon, an acronym for Planning and Construction Workbook, is a set of forms and procedures school districts use to apply for Commonwealth reimbursement. The forms are designed to: (1) document a school district's planning process; (2) provide justification for a project to the public; (3) ascertain compliance with state laws and regulations; and (4) establish the level of state reimbursement for the project. PlanCon is administered by the Department.

The regulations of the State Board of Education require that the Department approve a school district's construction plans as long as the plans conform to laws and regulations, and the school district obtains all necessary approvals from local, regional, and state agencies. *See*, 22 Pa. Code §§ 21.71 and 21.81.

However, the Public School Code also authorizes the Department "to receive and investigate complaints from the public or other source concerning any school building construction project" and to "hold hearings on any and all projects." 24 P.S. § 7-731. The Department routinely receives and investigates complaints from citizens regarding school district construction projects.

III. CITIZEN COMPLAINTS

If a citizen has a reasonable belief that a school district is proceeding with a construction project in violation of law, regulation or other applicable Departmental

requirement, has raised those concerns with the local school board, and those concerns have not been satisfactorily addressed, he or she may file a written complaint with the Department. In order to be considered by the Department, a complaint must comply with the following requirements:

(1) A complaint must be in the form of a letter or fax addressed to the Department in which the complainant is identified. Complaints made via e-mail will not be accepted. Also the Department will not investigate matters communicated to this agency over the telephone where a written complaint has not been filed; and

(2) A complaint must contain specific facts explaining why the construction project at issue is alleged to violate applicable laws, regulations or Departmental requirements.

IV. THE COMPLAINT INVESTIGATION PROCESS

If a complaint that meets the criteria described above is submitted, the Department will review the information provided and exercise its discretion to determine whether to investigate the matter further. If an investigation is warranted, the Department will request a written response from the involved school district. Depending on the nature of allegations raised, Departmental processing of a PlanCon project may cease until the investigation is completed.

Based on the information gathered during the investigation, the Department will determine if the project at issue complies with the laws, regulations and Departmental requirements applicable to the project. If the Department determines that a school district has failed to comply with any applicable law, regulation or Departmental requirement, PlanCon approval(s) will be appropriately withheld, withdrawn or denied.

Prior to the completion of a Department investigation, no information regarding the investigation will be provided to the complainant or other interested parties. When the Department investigation is complete, the complainant will be advised in writing regarding the results of the investigation and subsequent actions, if any, that will be taken by the Department.

V. DEPARTMENTAL HEARINGS

In some unique circumstances, the Department's internal complaint investigation process may be insufficient to gather the specific information needed to make a determination that the project is in compliance with applicable laws, regulations and Departmental requirements. Under these unique circumstances, the Department is authorized by regulation, 22 Pa. Code § 349.14, to conduct a hearing regarding a school building project. Such hearings regarding school building projects are governed by Section 349.14 and applicable parts of 1 Pa. Code chs. 31-35.

A Department-convened hearing will not be held unless the Department, at its discretion, determines that information submitted at the hearing could make a *significant contribution to the quality of Department deliberations regarding a project*.

- A Department-convened hearing shall be in the nature of a legislative hearing to receive public comment and shall not be considered an adjudication.

- *Only if the Department denies or withdraws approval of any parts of PlanCon may a full adjudicative hearing be necessary. In this way, the school district's rights under the Administrative Agency Law will be preserved as the legislative hearing process moves forward.*

If a Department-convened hearing needs to be held, the Secretary of Education will appoint an impartial Hearing Officer to preside at the hearing. The Hearing Officer's authority shall include addressing procedural matters, scheduling, regulating the course of the hearing and issuing a proposed report for consideration by the Secretary. The Hearing Officer will preside with assistance from the Department's Office of Chief Counsel. Once the Hearing Officer is appointed, no discussion concerning the project may occur between the Hearing Officer and any employee of the Division of School Facilities. The hearing will be informational in nature—akin to a legislative committee hearing. Therefore, it will *not* be held in accordance with 1 Pa. Code ch. 35 subch. B. Only the Hearing Officer will ask questions of those who provide public comment or written information relevant to the project. In addition, at the close of the hearing, although the Hearing Officer may request that the participants submit written statements stating their positions (similar to legal briefs), those statements are not formal briefs and must be in the form and filed in accordance with the deadlines established by the Hearing Officer.

A. Notice of Hearing

Approximately 20 calendar days, but not less than 14 calendar days prior to the date of a hearing, the Department will cause legal notification to be published in at least one newspaper with general circulation in the school district where the construction project at issue is being planned and/or in an appropriate legal journal. The legal notice will contain: (1) the date, time, and location of the hearing; (2) the purpose of the hearing and the issues to be addressed; (3) the agenda topics; (4) the time and place of availability of brief Board position statements upon the agenda topics; (5) the method by which a citizen may gain placement upon the agenda; and (6) the conditions for submission of testimony without agenda placement.

B. Participation in the Department-Convened Hearing and Petitions to Intervene

1. General Scope of Participation – Citizens, including the complainant, shall have the opportunity to provide public comment

at the hearing relevant to the issues in the matter as determined by the Hearing Officer, but no person will be given the status of a Participant, Intervener, or Party to a proceeding unless such status is granted by the Hearing Officer. *See* 1 Pa. Code § 31.3.

2. Formal Intervention - In order to formally intervene in a proceeding, a complainant who is not representing a school district also must file a Petition to Intervene in accordance with 1 Pa. Code §§ 35.27-35.30. Entities whose interests are adequately represented in a proceeding will not be permitted to intervene. However, Petitions to Intervene will be granted when an entity's participation is determined to be in the public interest as it relates to the project under review.

The Hearing Officer will consider Petitions to Intervene that are filed in a timely manner. The Hearing Officer generally may grant "limited participation" status under 1 Pa. Code § 35.31(b) to petitioners for intervention in an informational hearing, if appropriate. The Hearing Officer may grant a different status or deny the petition if there is a clear legal reason to do so. Such matters will be considered on a case-by-case basis, as they may affect the way the hearing is structured.

C. The Proposed Report and the Secretary's Order

After the Department-convened hearing has been held, the following steps generally will take place in accordance with deadlines determined by the Hearing Officer:

- The Hearing Officer—with the assistance of the Office of Chief Counsel—will prepare a proposed report for consideration by the Secretary of Education, in accordance with 1 Pa. Code § 35.202. The proposed report shall include a statement of findings and conclusions, along with the Hearing Officer's recommendation, supported by the facts and the applicable law, regarding whether PlanCon approval should be withheld, withdrawn or denied. *See* 1 Pa. Code §§ 35.202, 35.205.
- The Hearing Officer shall serve a copy of the proposed report upon the Division of School Facilities and make the proposed report available publicly. In addition, the Hearing Officer will ensure that the record developed at the hearing and the participants' written statements, if any, are on file and available for the Secretary's consideration.
- Department personnel in the Division of School Facilities will review the Hearing Officer's proposed report and will determine if any supplement to the proposed report is necessary. The Division shall

forward the proposed report and any supplement thereto to the involved school district.

- It shall be the responsibility of the school district's board of directors to study the proposed report and any supplement provided by the Division of School Facilities in order to determine if reconsideration should be accorded the project or any part thereof. Following its study of the proposed report, the Board shall inform the Hearing Officer and the Division of School Facilities in writing of its official actions, if any, concerning the proposed report.

Following the completion of these steps, the Hearing Officer will compile the record and forward it to the Secretary. The record will include the Hearing Officer's proposed report and any supplement thereto from the Division of School Facilities as well as any written statements by the school district and interested citizens including the complainant. After reviewing the record in its entirety, the Secretary will issue an order determining whether the Department will adopt the Hearing Officer's proposed report. Neither the Secretary's order nor the proposed report shall be adjudications as to the complainant.