

6.08: GRIEVANCE PROCEDURES

(1) Existing Procedures to Remain in Effect Until Amended or Replaced. Upon the effective date of this regulation, the grievance procedure then in effect at an LHA shall remain in effect and shall continue in effect unless and until the Department approves a new or amended grievance procedure. After the effective date hereof each LHA shall compare the provisions of its grievance procedure(s) with the provisions of 760 CMR 6.08(4) and shall initiate measures in order to achieve material compliance with those provisions.

(2) The Purpose of the Grievance Procedure. Each LHA shall have a grievance procedure, approved by the Department, of which the purpose shall be the prompt and reliable determination of grievances. An LHA's grievance procedure shall produce such prompt and reliable determinations of grievances. A grievance procedure, which in operation shall repeatedly fail to produce prompt and reliable determinations, shall be deemed deficient and shall be amended or replaced in the manner specified herein.

(3) Establishment, Replacement, or Amendment of a Grievance Procedure.

(a) Negotiation of Grievance Procedures. If no grievance procedure is in effect at an LHA or if an LHA or affected Local Tenants' Organization (LTO) believes that changes to or replacement of an existing grievance procedure are necessary or appropriate, proposals for establishment, replacement, or amendment of the grievance procedure may be made at any time by either the LHA or an affected Local Tenants' Organization (LTO). Establishment of a new grievance procedure or amendments to an existing grievance procedure shall be negotiated by the LHA and any affected LTOs and shall become effective upon the written approval of the Department.

(b) Approval of a Procedure Which Has Not Been Negotiated. In instances

(i) where the operations of an existing grievance procedure have repeatedly failed to produce prompt and reliable determinations,

(ii) where there is no operative grievance procedure and where the LHA and the LTO(s) have been unable to negotiate a new or amended grievance procedure, or

(iii) where an LTO shall have failed to take necessary steps for the proper functioning of a grievance procedure (such as naming a panel member willing and able to serve), the LHA may request that the Department permit it to implement the three person panel grievance procedure set out in Appendix A. However, if it shall reasonably appear to the LHA that notwithstanding its own good faith efforts, a three person panel would likely not be promptly chosen if the Appendix A procedure were in effect, the LHA may request that the Department permit it to implement the grievance procedure set out in Appendix B which provides for a single hearing officer. [APPENDIX B - ADOPTED BY NHA BOARD 05/22/2008] As part of a request that the Department permit the LHA to implement one of these two unnegotiated grievance procedures, the LHA shall specify

the reason(s) for its request and shall describe its prior unsuccessful negotiations with the affected LTO(s). The LHA shall also specify the reason(s) why it believes that further efforts to negotiate a procedure would likely be unsuccessful. The LHA shall provide the affected LTO(s) with a copy of its request permission to implement one of the two unnegotiated grievance procedures.

Following receipt of the request, the Department shall give the LTO(s) a reasonable opportunity to respond in writing. The Department may also discuss the request with the LHA and the LTO(s). If the Department shall determine:

(i) that the operations of the existing grievance procedure have repeatedly failed to produce prompt and reliable determinations of grievances or that there is no operative grievance procedure,

(ii) that the LHA is not primarily responsible for this deficiency, and

(iii) that further negotiations between the LHA and the affected LTO(s) appear to be unlikely to produce an agreement on a new or amended grievance procedure, the Department may give permission to the LHA to implement the three person panel grievance procedure set out in Appendix A or, if it shall appear to the Department that a three person panel would likely not be promptly chosen notwithstanding good faith efforts by the LHA, the Department may give permission to the LHA to implement the grievance procedure set out in Appendix B, which provides for a single hearing officer.

(4) Requirements for Grievance Procedures. An LHA's grievance procedure shall provide for the following:

(a) Initiation of a Grievance. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to tenant by the LHA.

A grievance regarding whether participation in the MRVP or AHVP should be terminated shall be initiated by a program participant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the program participant by the LHA.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the LHA at its main office, or at a development office, if so specified, no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the LHA shall have discretion to permit a grievance to be initiated late.

The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the LHA.

(b) Informal Settlement Conference. Promptly after the initiation of a grievance, unless otherwise provided, the LHA's executive director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The LHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the LHA. If a matter is not resolved at the informal settlement conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

(c) Hearing Date and Notice of Hearing. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the LHA receives the grievance. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

The LHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). The LHA, the hearing panel, or the hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the LHA that rescheduling is reasonably necessary.

(d) Pre-Hearing Examination of Relevant Documents. Prior to a grievance hearing the LHA shall give the grievant or his or her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

(e) Persons Entitled to be Present. The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing panel or the hearing officer otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the hearing panel or the hearing officer. At the hearing the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall be excluded. If the grievant misbehaves at the hearing, the hearing panel or hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(f) Procedure at Grievance Hearings. The hearing panel or the hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel or the hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape-recorded. The members of the

hearing panel or the hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members or the hearing officer may request the LHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

(g) Written Decision; Effect of Decision. Within fourteen(14) days following the hearing or as soon thereafter as reasonably possible the hearing panel or the hearing officer shall provide the LHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been requested by the panel members or the hearing officer. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the LHA and shall be open to public inspection.

(h) Review by the LHA's Board. In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA believes that (i) the decision of the hearing panel or hearing officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the LHA may request review of the decision by the LHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer or hearing panel to make a presentation. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

(i) Review by the Department. In the event that the LHA's Board shall make a material change in a decision of the hearing panel or hearing officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

(j) Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the LHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

APPENDIX B

Grievance Procedure Provisions for a Single Hearing Officer

(1) Appointment of Hearing Officers and Jurisdiction. This grievance procedure adopted by Newburyport Housing Authority (NHA) requires a hearing and determination of a matter subject to the procedure by a single hearing officer. The hearing officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing in the city or town and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA, except for those persons who are subject to an different grievance procedure.

Under this procedure the LHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five days of receipt of a nomination any affected LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an affected LTO, the LHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the LHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the LHA which shall notify the LTO(s).

Each hearing officer shall annually certify to the LHA that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the LHA shall render the hearing officer's position vacant.

(2) Impartiality of the Hearing Officer. A hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as hearing officer, whether or not he has been requested to do so.

(3) Removal of the Hearing Officer. A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The LHA and the affected LTO(s) may agree on removal after notice to the hearing officer and the opportunity for him or her to be heard. In the absence of agreement, the Department may remove a hearing officer for cause upon a request by the LHA or the LTO. Prior to removing a hearing officer, the Department shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the hearing officer, the LHA and the LTO(s) the opportunity to be heard. The Department's decision whether to remove a hearing officer shall be in writing mailed to the hearing officer, the LHA, and the LTO(s). If a written specification fails to detail good and sufficient cause for removal, the Department shall deny a request for removal without a hearing.

(4) Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA with notice to the affected LTO(s) may request that an interim hearing officer be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim hearing officer, the Department shall name an interim hearing officer. The Department may name a previously disapproved nominee to serve as interim hearing officer if it finds that the LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by an LHA to be hearing officer in the manner set out herein.

(5) Scheduling. The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

(6) Procedural Provisions. The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the requirement of a pre-hearing informal settlement conference between grievant and the LHA about the grievance; (c) the provisions regarding the LHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.