

§ 966.56

24 CFR Ch. IX (4-1-05 Edition)

(i) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

(c) *Failure to request a hearing.* If the complainant does not request a hearing in accordance with this paragraph, then the PHA's disposition of the grievance under § 966.54 shall become final: *Provided*, That failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

(d) *Hearing prerequisite.* All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in § 966.54 as a condition precedent to a hearing under this section: *Provided*, That if the complainant shall show good cause why he failed to proceed in accordance with § 966.54 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where re-

quired by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

(f) *Scheduling of hearings.* Upon complainant's compliance with paragraphs (a), (d) and (e) of this section, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) Any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 65 FR 16731, Mar. 29, 2000]

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also §966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: *Provided*, That a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

(h) *Accommodation of persons with disabilities.* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51580, Oct. 11, 1991]

§ 966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of