

**WEBSTER HOUSING AUTHORITY
STATE AIDED PROGRAMS'
GRIEVANCE PROCEDURE**

Applicability: This grievance procedure is available to state-aided public housing tenants, Mass Rental Voucher Program (MRVP) participants and to individuals who file appeals pursuant to state regulation 760 CMR 8.00 (Privacy and Confidentiality)

(A) The Purpose of the Grievance Procedure. Each local housing authority (LHA) shall have a grievance procedure, approved by the Department of Housing & Community Development, 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 in 760 CMR 6.08.

(B) Definition of a Grievance;

1. Tenancy Related – An allegation by a tenant that the Webster Housing Authority (hereinafter, the Webster HA) or a Webster HA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the tenant or a household member;
2. Personal Data Related – An appeal pursuant to 760 CMR 8.05 by an applicant or current resident who objects, with respect to data held by the Webster HA, to the accuracy, completeness, pertinence, timeliness, relevance, use or dissemination of their personal data; or who objects the Webster HA's denial of access to their personal data.

(C) Except that the following shall not be subject to a grievance:

The meaning of a statute, regulation, or rule;

- ii. A dispute between a tenant on behalf of another tenant or any household member, in which the Webster HA is not involved;
- iii. Any grievance filed by a tenant on behalf of another tenant or any household member of another tenant;
- iv. Termination of tenancy for nonpayment of rent
- v. Termination of tenancy in the event that the Webster HA has reason to believe that tenant or a household member:
 - a. has unlawfully caused serious physical harm to another tenant or an employee of the Webster HA or any other person lawfully on the Webster HA's property;
 - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or a Webster HA employee or any person lawfully on the Webster HA's property

- c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;
- d. has unlawfully possessed, carried, or kept a weapon on or adjacent to the LHA's property in violation of M.G.L. c. 269, § 10;
- e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to the LHA's property or has otherwise violated M.G.L. c. 266, § 101, 102, 102A or 102B;
- f. has unlawfully possessed, sold, or possessed with intent to distribute a class A, B or C controlled substance, as defined in M.G.L. c. 94C, § 31, on or adjacent to the LHA's property;
- g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any person lawfully on the LHA's property; or
- h. has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M.G.L. c. 139, § 19; or
- i. in the event the LHA has reason to believe that a guest of tenant or a guest of a household member has engaged in any of the behavior listed in 760 CMR 6.05(7)(b) and that tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct

(D) Initiation of a Grievance.

1. Lease Termination: 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 Webster HA at its main office within seven days after a notice of lease termination has been given to tenant by the Webster HA.
2. 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 Webster HA at its main office within seven days after a notice of program termination has been given to the program participant by the Webster HA.
3. Redetermined Rent: In the event that a tenant files a grievance as to the amount of a re-determined rent within fourteen (14) calendar days of the Webster HA's notice of the re-determined rent, during the informal settlement conference process the tenant shall continue to pay the existing rent then in effect (unless the re-determined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of re-determined rent or the Webster HA shall credit the tenant with any amounts paid but determined not to have been due
4. Other Matter: A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the Webster HA at its main office, or at a development office, if so specified, no more than 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 Webster HA 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.

(E) 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 Webster HA 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 Webster HA. 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 the right to grievance.

Following the informal settlement conference, a summary of such discussion shall be prepared within fourteen (14) calendar days and one copy shall be given to the tenant and one retained in the Webster HA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reason therefore.

If the grievance is resolved at the informal settlement conference, the Webster HA and grievant shall acknowledge the terms of the resolution in writing, and no formal grievance hearing shall be held.

(F) Hearing Date and Notice of Hearing. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within 14 days or as soon as reasonably practical after the date on which the Webster HA 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 Webster HA 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 Webster HA, or the hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the Webster HA that rescheduling is reasonably necessary.

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

(G) 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 officer otherwise orders. The Webster HA 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 officer. At the hearing the Webster HA 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 officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(H) Procedure at Grievance Hearings. The hearing officer shall conduct the grievance hearing in a fair manner without undue delay. 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 Webster HA 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 hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The hearing officer may request the Webster HA 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.

Treatment of Additional Reasons for Termination – At the formal hearing, any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered:

1. So long as the Webster HA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or
2. If the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three days' notice to consider such reason(s).

Suspension of Eviction Proceedings pending the Hearing – In lease terminations, if the grievant is entitled to request a grievance hearing and has made a timely request, the Webster HA shall not file a summary process Summons and Complaint seeking an eviction pending the hearing and a Decision or other resolution in the Webster HA's favor.

Rescheduling of Hearing – If the grievant or the Webster HA fails to appear at a scheduled hearing, the hearing officer shall determine that the party has waived their right to a hearing. The hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) calendar days if good cause is shown within one business day of the original hearing date. Both the grievant and the Webster HA shall be notified of the determination by the hearing officer; provided however, that a determination that the grievant has waived their right to a hearing shall not constitute a waiver of any right the grievant may have to contest the Webster HA's disposition of the grievance in an appropriate judicial proceeding.

(I) Written Decision; Effect of Decision. Within 14 days following the hearing or as soon thereafter as reasonably possible the hearing officer shall provide the Webster HA 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 hearing officer. The Webster HA 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 Webster HA and shall be open to public inspection.

In a grievance hearing regarding whether good cause exists for terminating a lease, "good cause" shall be found where the Webster HA has provided sufficient grounds upon which to terminate the lease. The Webster HA need not prove a lease violation by a preponderance of the evidence as in a civil proceeding. The preponderance of the evidence standard is understood to be a more rigorous standard than the "good cause" standard.

The three-person grievance panel may render a decision without proceeding with a hearing if it is determined that the issue has been previously decided in another proceedings.

(J) Availability of Review by the Webster HA's Board: In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the Webster HA's Board.

Board review is available, in other cases, in the event that the grievant or the Webster HA believes that:

1. the decision of the hearing officer is not supported by the facts;
2. the decision does not correctly apply applicable laws, regulations, rules and/or policies; or
3. the subject matter is not grievable

Within 14 days of mailing or other delivery of the decision, the grievant or the Webster HA may request review of the decision by the Webster HA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the Webster HA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer 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 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.

(K) Review by the Department. In the event that the Webster HA'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 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.

(L) Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the Webster HA 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 Webster HA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

Except as otherwise provided herein, in the event the hearing officer's decision on a grievance determines that good cause exists for terminating the lease, the Webster HA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no further review by the Board or DHCD

APPENDIX B- Grievance Procedure Provisions for a Single Hearing Officer

(1) Appointment of Hearing Officers and Jurisdiction. This grievance procedure adopted by Webster Housing Authority (LHA) 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) 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. WHERE THERE IS A LOCAL TENANT ORGANIZATION: 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) WHERE THERE IS AN

LTO 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) WHERE THERE IS AN LTO 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 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 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.

The affected LTO(s) IF AN LTO EXISTS 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