

**New York State Council on the Arts**

**PART 6401 FUNDING DECISION APPEALS**

**(Statutory authority: Arts and Cultural Affairs Law, § 3.05)**

Sec.

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**Section 6401.0 Purpose.**

The purpose of this Part is to set forth the procedure by which an applicant may appeal a New York State Council on the Arts decision denying in whole or in part its program request.

**6401.1 Definitions.**

For the purposes of this Part:

(a) The term council means the New York State Council on the Arts, a State agency.

(b) The term executive director means the executive director of the council.

(c) The term program request means an application to the council to contract for funding for a particular project or program.

(d) The term notification letter means a letter informing the applicant of the decision of the council regarding a program request.

(e) The term formal request to appeal means a written statement from an applicant informing the council that the applicant wishes to appeal a council decision which denied in whole or in part the applicant's program request.

(f) The term materials means the applicant's detailed written statement setting forth the grounds for appeal.

(g) The term reply letter means a letter from the executive director to the applicant in response to the formal request to appeal filed by the applicant.

(h) The term appeals panel means the body of the council which considers, on appeal, program request decisions of the council.

**6401.2 Grounds for appeal.**

(a) Limitation of grounds. There are only three grounds upon which an applicant may base an appeal, as set forth below. An applicant must state in writing which of these grounds it is relying upon in making an appeal. The applicant must state in detail the facts which make applicable the particular ground for appeal. This statement constitutes the materials, within the meaning of section 6401.1(f) of this Part and is to be submitted in accordance with section 6401.3(d). One, two or all three grounds may be alleged. The three grounds are:

(1) Non presentation of information. Information which an applicant made known to the council staff prior to the council's program request decision was not presented to the council and which, if presented, might have altered the council's decision.

(2) Misrepresentation of information. Information which an applicant made known to the council staff prior to the council's program request decision was distorted in its presentation to the council and which, if presented fairly, might have altered the council's decision.

(3) Improper procedure. The two possible bases for asserting this ground are (i) the review of the program request by the appropriate advisory panel was biased; or (ii) the program request decision of the council was arbitrary and capricious.

(b) Single appeal. An applicant is entitled to only one appeal for each program request.

(c) No further appeal. No appeal may be taken from a decision of the council regarding an appeal.

(d) Unresolved appeal. The existence of an unresolved appeal shall not preclude an applicant from making a program request in a subsequent year.

**6401.3 Procedure for appeal.** (a) Obtaining a verbal statement. After receiving the notification letter from the council, the applicant, as a preliminary step to appealing the council's decision, must by telephone or in person request a verbal statement of the basis for the council's decision. The request should be made to the program department referred to in the notification letter, which will then direct the applicant to an appropriate member of the council staff. That staff member will provide the statement over the telephone or, if the applicant arranges for an interview, in person.

(b) Formal request to appeal. Having been informed of the basis for the council's decision, the applicant may then decide to continue the appeals process. The applicant must submit to the executive director a formal request to appeal the council's decision, as defined in section 6401.1(e) of this Part. The formal request to appeal must be received by the executive director within the time limitations specified in section 6401.4 of this Part.

(c) Reply letter. Following receipt of the applicant's formal request to appeal, the executive director will send a reply letter to the applicant. The applicant's appeal will be assigned a date on which it will be considered by the appeals panel. The reply letter will also assign a deadline by which the applicant must submit the materials as defined in section 6401.1(f) of this Part. This deadline will be 14 days prior to the meeting of the appeals panel. For this subdivision only, if the deadline falls on a Saturday, Sunday or public holiday on which the council offices are closed, the deadline will be moved to the next succeeding day which is not a Saturday, Sunday or public holiday on which the council offices are closed.

(d) Materials. The applicant must submit to the executive director the materials, as defined in section 6401.1(f) of this Part, which will then be considered by the appeals panel in reviewing the appeal. The material must be received by the executive director within the time limitations specified in section 6401.4 of this Part.

**6401.4 Time limitations.**

(a) Submission of the formal request. The formal request to appeal, as defined in section 6401.1(e) of this Part, must be received by the executive director not later than 5 p.m. on the 21st day after the date of the notification letter.

(b) Submission of the materials. The materials, as defined in section 6401.1(f) of this Part, must be received by the executive director not later than 5 p.m. on the date specified in the reply letter as the deadline for submission of the materials. This date shall be not less than seven days after the date of the reply letter.

(c) Calculation of days. Saturdays, Sundays and public holidays are to be counted in computing the number of days.

(d) Noncompliance. Failure by the applicant to comply with any deadline will result in the loss of the right to continue the appeal.

#### **6401.5 Appeals panel.**

(a) Membership. The council shall determine the number of members of the appeals panel, which shall be composed of not less than five members. The chairman of the council shall appoint the members of the appeals panel, and set their term of office.

(b) Meetings. The appeals panel shall meet periodically throughout the year, according to the schedule established annually by the executive director. The meetings shall be open to the public pursuant to the Open Meetings Law.

(c) Voting provisions. The appeals panel shall act by an absolute majority of the number of appeals panel members.

(d) Attendance by executive director. The executive director, or the nominee of the executive director, shall attend all meetings of the appeals panel.

(e) Notice. The executive director shall provide written notice to the applicant of the decision of the appeals panel.

#### **6401.6 Council action on appeals.**

(a) Appeals panel recommends that appeal brought on the basis of section 6401.2(a)(1) or (2) or 6401.2(a)(3)(ii) of this Part has merit. Should the appeals panel recommend that the appeal brought on the basis of section 6401.2(a)(1) or (2) or 6401.2(a)(3)(ii) of this Part has merit, the application will be reviewed de novo as soon as practicable by the staff, panel, committee and council, but if the recommendation is received after the disbursement of all council funds, the application shall be reviewed at the first funding meeting of the next year, under the guidelines of the previous year. A council decision on a program request that has been reviewed under this subdivision is final.

(b) Appeals panel recommends that an appeal brought on the basis of section 6401.2(a)(3)(i) of this Part has merit. Should the appeals panel recommend that an appeal brought on the basis of section 6401.2(a)(3)(i) has merit, the application will be reviewed as soon as practicable by the staff who will then forward the appeal directly to the appropriate committee which will then send it to the council, but if the recommendation is received after the disbursement of all council funds, the application shall be reviewed at the first funding meeting of the next year, under the guidelines of the previous year. A council decision on a program request that has been reviewed under this subdivision is final.

(c) Appeals panel recommends that appeal has no merit. A recommendation by the appeals panel that an appeal has no merit shall be presented to the council for action at the next regularly scheduled council meeting, or as soon thereafter as is practicable. Concurrence by the council in the recommendation of the appeals panel terminates the appeal process for that particular program request. A decision of the council, which reverses the recommendation of the appeals panel and finds that the appeal has merit, will result either in the remand of the application for de novo review by staff, panel, committee and council in the same manner as provided in subdivision (a) of this section, or, if the council so selects, in a de novo review and decision on funding by the council, without remand to staff, panel or committee.

#### **6401.7 Severability.**

If any provision of this Part or the application thereof to any person or circumstance is judged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.