**Section 510.105 Conduct of Hearings**

a) Every proceeding pursuant to this Section is to be confidential and not open to the general public unless requested to be so by the grievant.

b) Procedures set forth in the Code of Civil Procedure [735 ILCS 5], except as provided in subsection (g) of this Section, do not apply to the procedures contained in this Section.

c) The grievant must notify DHS-ORS Hearings Coordinator of the appointment of a personal representative by filing, no later than 3 working days in advance of a hearing, a notice of appearance stating the personal representative's name, address and telephone number, identifying the grievant represented, and signed by the grievant. If the grievance pertains to the conduct of a customer of the adult residential training program for persons with visual disabilities, the notice must be made no later than 1 working day in advance of the hearing. The notice must be accompanied by appropriate consent to the release of confidential information to the representative, if one is not already on file.

d) At least 3 working days prior to the hearing, the grievant and the DHS-ORS staff person who has taken the action being grieved must provide each other and the Impartial Hearing Officer with a list of witnesses, copies of documents not in the possession of the other party, and a summary of the evidence that they plan to present at the hearing. If the grievance pertains to the conduct of a customer of the adult residential training program for persons with visual disabilities, the information must be shared within 1 working day prior to the hearing.

e) All parties involved in the hearing must avoid repetitive continuances so that the subject matter of the grievance may be resolved expeditiously. A hearing may for good cause shown be continued by the Impartial Hearing Officer. "Good cause" means death in the family, personal injury or illness that reasonably prohibits the grievant from attending the hearing, or sudden and unexpected emergency, or other circumstances beyond the grievant's control that reasonably prevents the grievant from attending the hearing. In the absence of an emergency, notice of the request must be given in writing to the other party and the Impartial Hearing Officer no later than 3 working days prior to the original hearing date. In the absence of an emergency, if the grievance pertains to the conduct of a customer of the adult residential training program for persons with visual disabilities, the notice must be provided to the other party and the Impartial Hearing Officer no less than 1 working day prior to the original hearing date. The granting of continuances for hearings arising from HSP shall be governed by DPA.

f) The grievant shall have the responsibility to prove by the preponderance of the evidence that the action or inaction by DHS-ORS was not in accordance with federal or State laws or regulations, against DHS-ORS policy, not in accordance with the grievant's IPE (89 Ill. Adm. Code 572) or HSP Service Plan (89 Ill. Adm. Code 684), or inappropriate for the customer. The Impartial Hearing Officer shall inform the grievant of this requirement at the beginning of the hearing.

g) Evidence

1) The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed except that any relevant evidence not admissible under those rules of evidence that is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, has probative value, and is relevant and material to the facts and issues may be admissible.

2) DHS-ORS employees directly involved in the contested action will be present to testify and can be questioned by the grievant. However, if the person is no longer employed by DHS-ORS and declines to attend the hearing after DHS-ORS has made a reasonable attempt to secure his/her attendance, the person most knowledgeable about the case will attend.

3) Only information bearing directly on the issue under review, pursuant to Section 510.20, may be introduced from the grievant's case file. The Impartial Hearing Officer may not consider any information that has not been made available to the other party.

4) Either party may present information and evidence in addition to the case file that must also be made available to the other party at least 3 working days prior to the hearing or by stipulation at the hearing.

5) The grievant and DHS-ORS may call any person as a witness and conduct examination and cross-examination.

6) The grievant and DHS-ORS may, by stipulation, agree upon any facts involved in the proceeding. The facts stipulated must be considered as evidence in the proceedings.

h) The following is the order of the proceedings:

1) presentation, arguments, and disposition of all preliminary motions and matters;

2) opening statements;

3) evidence presented by the grievant;

4) evidence presented by DHS-ORS;

5) rebuttal by either or both sides;

6) closing statements by the grievant;

7) closing statements by DHS-ORS; and

8) rebuttal by grievant.

i) A hearing will not be adjourned until the Impartial Hearing Officer has received all information agreed upon within the time the parties have agreed to provide it.

j) The Impartial Hearing Officer may take one of several courses of action in making a decision, which include, but are not limited to the following:

1) find in favor of the grievant;

2) uphold the determination or action of DHS-ORS;

3) accept a withdrawal of the appeal confirmed in writing signed by the grievant, or as appropriate, a parent, family member, guardian, advocate or duly authorized representative of the grievant that must be filed with the Hearings Coordinator;

4) accept a settlement of the issues agreed to by the grievant and DHS-ORS which must include a written withdrawal of the appeal that must be filed with the Hearings Coordinator.

(Source: Amended at 27 Ill. Reg. 9576, effective June 13, 2003)