**Section 108.100 Request for hearing**

a) After informal procedures have been exhausted, and there remain differences between the facility and the parents or the recipient regarding the educational component and intervention modalities aspect of the individual treatment or habilitation plan, an impartial due process hearing may be requested.

b) Differences over issues regarding services other than special education and intervention modalities to the recipient are resolved according to provisions of the Code.

c) A hearing may be requested by the parents, the recipient or the facility regarding, but not limited to, the following:

1) Objections to signing consent for a proposed educational diagnosis or evaluation or initial educational placement;

2) Failure of the facility, upon request of the parents or the recipient, to provide an educational diagnosis or evaluation;

3) Failure of a facility to consider evaluations completed by a qualified professional outside the facility;

4) Objection to a proposed individual education component, either an initial plan, a continuation of a previous plan, or a major change in the recipient's program;

5) Termination of an individual education plan;

6) Failure of the facility to provide an individual education plan consistent with the findings of the educational diagnosis or evaluation and the recommendation of the staff (24 day) conference;

7) Failure of the facility to provide or arrange for the least restrictive special education placement appropriate to the recipient's needs;

8) Provision of special education instructional or resource programs, in an amount insufficient to meet the recipient's needs;

9) An exclusion from educational services, except as provided by medical order, totaling individually or in aggregate 10 or more school days in a given school year of a recipient who has a special education instructional program or resource plan;

10) An exclusion from educational services, except as provided by medical order, totaling individually or in aggregate 10 or more school days in a given school year of a recipient who is eligible for a special education instructional program or resource service but who has not been placed in such a program or provided such a service;

11) Reasonable belief by the parents or the recipient, that the recipient's exclusion from educational services resulted from behavior or a condition symptomatic of an exceptional characteristic as defined herein;

12) Recommendation for the graduation of a recipient;

13) Failure of the facility to comply with this Part;

14) Failure of the facility to arrange for or provide a recipient with a free, appropriate public education.

d) The facility shall be responsible for informing the parents, in writing, of their right to a hearing and of the procedures to follow to make a request for such a hearing. The facility director shall assist the parents in taking whatever action is necessary to use the hearing process. The facility shall inform the parent of any free or low cost legal and other relevant services available in the area if the parent requests the information or if the parent facility initiates a hearing.

e) A request for a hearing shall be made, in writing, to the facility director of the facility in which the recipient resides. Such a request shall contain the reasons the hearing is being requested and all other information pertinent to the request.

1) A request for a hearing may be made at any time significantly different circumstances prevail. Otherwise a hearing may not be requested nor an appeal made more than once each calendar year.

2) Such a request shall be made in writing within 10 days after the parents' receipt of the written notification regarding the proposed placement. If the parents have not made a request within the 10-day period, the parents may request a hearing at a later date in accordance with the provisions of subsection (a) of this Section.

f) Within 48 hours of the receipt of a request for a hearing, the facility shall:

1) Send a certified letter to the Secretary, requesting the appointment of an impartial hearing officer. This letter shall include:

A) The name, address, and telephone number of the recipient, and of the parents and of the person(s) making the request for the hearing, if it is someone other than the recipient or parents;

B) The date on which the facility received the request for the hearing;

C) The nature of the controversy to be resolved;

D) The primary language spoken by the parents and the recipient.

2) Send to the person requesting the hearing, by certified mail, a copy of the letter sent to the Secretary.

3) If the hearing has been requested by someone other than the recipient's parents, the parents shall be informed of the request and invited to participate in the proceedings. Thereafter, unless the parents indicate that they do not wish to be informed and/or involved in the hearing process, all communications from the facility, the hearing officer, and the Secretary, and the Illinois State Board of Education shall be directed to both the person requesting the hearing and the parents.

g) If the facility decides not to honor the request for a hearing, the parents of the recipient shall be notified of this denial. Such notification shall be made, in writing, within five days of the receipt of the request and shall contain the reasons for the denial. A copy of the written denial shall be sent to the Illinois State Board of Education.

1) If the facility fails to notify the parents of their right to a hearing, as prescribed herein, or if the request for a hearing is denied either directly or by failure to provide such a hearing, the parent may appeal such a denial directly to the Secretary.

2) In the event of a direct appeal to the Secretary, the Secretary shall order that a hearing be conducted at the local level, or order the facility to perform such other measures as deemed necessary.

(Source: Amended at 15 Ill. Reg. 6122, effective April 15, 1991)