**Section 650.130 Grievance Procedures for Vendors**

a) Dissatisfaction of a vendor with any DHS action arising from the administration of the Program shall be appealed pursuant to 89 Ill. Adm. Code 510. A vendor may grieve discipline pursuant to the following procedures for Level I (Administrative Reviews) and Level II (Evidentiary Hearings). The action of grieving a suspension, not including an immediate suspension, to Level I or Level II shall stay the imposition of the discipline until the administrative remedies within DHS have been exhausted. A Level I Hearing is optional; a vendor may choose to go directly to a Level II Hearing and follow the procedures in subsection (c)(2) of this Section. A suspension shall be grieved by appealing directly to Level II.

b) Level I (Administrative Review)

 In order to grieve an oral or written reprimand imposed under Section 650.110, DHS must receive a request for a Level I Hearing within 15 days after the date of receipt of notification that discipline is to be imposed. The vendor shall give notice in writing by certified mail to the Administrator, which shall state the reason for the grievance and the remedy being sought.

1) If the grievance is timely, the Administrator or designee shall, within five days, notify the vendor by certified mail of the time and place of the Level I Hearing, to be held between 10 and 15 days after receipt of the vendor's notice at the Springfield administrative office of DHS, 809 Commercial Drive, Springfield IL 62703. The Administrator, or designee, and vendor shall meet and attempt to resolve the grievance to their mutual satisfaction.

2) Within 10 days after the adjournment of the meeting, the Administrator shall send the vendor a letter by certified mail stating DHS' position and summarizing the results of the hearing. The letter must cite:

A) a statement of the basis upon which the decision was made;

B) the applicable laws, rules, regulations and policies used;

C) the name and address of the DHS Hearings Coordinator; and

D) a statement that, if the vendor is dissatisfied with the decision, a request for a Level II Hearing must be received by the Hearings Coordinator within 15 days from the date of receipt of the Level I Hearing decision notice. The request shall be in writing, be addressed to the DHS Hearings Coordinator at 100 South Grand Avenue East, 3rd Floor, Springfield, Illinois 62762, contain the reason for the Level II Hearing, and propose four acceptable dates for the hearing, which dates shall be within 20 days after the request.

c) Level II (Evidentiary Hearing)

1) If the vendor requests a review of an action in which there has been no Level I Hearing, the request for a Level II Hearing must be received by the DHS Hearings Coordinator within 15 days after the date of notification that discipline is to be imposed. The request shall also propose four acceptable dates for the hearing, which dates shall be within 20 days after the request.

2) If the vendor has chosen to have a Level I Hearing and then requests a Level II Hearing, the Hearing Officer at the Level II Hearing shall review only those issues presented by the vendor or that are material and related to those presented in the Level I Hearing.

3) Within 5 days after receipt of the request, the DHS Hearings Coordinator shall select one of the offered dates and notify the vendor by certified mail of the date and place for the Level II Hearing, stating the Hearing Officer's name and address and informing the grievant of all rights accorded pursuant to this Part.

4) DHS shall be represented by the Administrator or designee, who may be assisted by other staff, including the DHS legal counsel.

5) At least three days prior to the hearing, the vendor and the Administrator must provide each other and the Hearing Officer with a list of witnesses and copies of documents not in the possession of the other party.

6) The following is the order of proceedings:

A) presentation, argument and disposition of all preliminary motions and matters;

B) opening statements;

C) evidence presented by the vendor;

D) evidence presented by DHS;

E) rebuttal by either or both sides; and

F) closing statements.

7) The vendor and DHS are entitled to present their cases by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for disclosure of all facts bearing on the issues.

8) The Hearing Officer

A) The Level II Hearing shall be heard by an Impartial Hearing Officer appointed by the Hearing Coordinator from a list maintained by him/her.

B) The qualifications for a hearing officer are:

i) impartiality;

ii) an understanding of the applicable rules (89 Ill. Adm. Code 650);

iii) the ability to preside over the evidentiary hearing; and

iv) the ability to reach a recommendation based upon the facts presented at the evidentiary hearing and the applicable rules.

9) The Hearing Officer has the power to:

A) control the conduct of the hearing to prevent irrelevant or immaterial discussion;

B) rule upon all motions and other matters arising in the course of the hearing, including, but not limited to, admissibility of evidence; and

C) require the parties, in an agreed upon time frame, at any stage of any hearing or after all parties have completed the presentation of their evidence, to present further evidence, including, but not limited to, the production of any and all documents, books, papers and accounts the Hearing Officer deems pertinent or relevant to any issue.

10) Any relevant evidence presented that is of a type commonly relied upon by reasonably prudent individuals may be admissible, i.e., any information not presented in the hearings previously that pertains to the issues raised in the grievance and has been made available to both parties within the agreed upon time.

11) DHS will make an audio tape recording of the proceedings and will provide the vendor with one copy, upon request, at no cost. Upon request by a vendor, a Braille or large print transcript will be provided at no cost.

12) The record of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

13) The Decision

A) Within 15 days after the hearing is adjourned, the Hearing Officer shall provide a recommendation to the Director of DHS-DRS. The recommendation of the Hearing Officer shall be based upon the record of the hearing and shall set forth the principal issues and relevant facts adduced at the hearing; the applicable provisions in law and regulation; and a recommended action. It shall also contain findings of fact and conclusions with respect to each of the issues and the bases for those findings and conclusions.

B) The recommendation may also set forth any remedial action necessary to resolve operational problems of the Program.

C) The Director of DHS-DRS shall make a decision as to the disciplinary action to be taken within 15 days after receipt of the recommendations. The Director's decision shall state the principal issues and relevant facts brought out at the hearing, pertinent provisions in law, regulation and Program procedures, the reasoning that led to the decision, and the vendor's right to appeal to the U.S. Department of Education pursuant to 34 CFR 395.13 (2009). A copy of the Hearing Officer's recommendations shall be attached to the Director's letter. The Director shall send copies of the decision by certified mail to the Hearing Officer, the vendor and his or her personal representative, and the Administrator.

D) If the vendor is dissatisfied with the decision rendered after a Level II Hearing, the vendor may request that an arbitration panel be convened by filing a complaint with the Secretary of the United States Department of Education, as authorized by Section 5(a) of the Randolph-Sheppard Act and 34 CFR 395.13 (2009).

d) General Provisions for Level I and II Hearings

1) A vendor may only designate one personal representative at any one time. DHS and the Hearing Officer must be notified by the vendor of the appointment of a representative by filing, at least three days in advance of a hearing, a notice of appearance stating the representative's name, address and telephone number, identifying the vendor represented, and signed by the vendor.

2) Grievances by any party not directly aggrieved by the discipline cannot be heard by DHS pursuant to this Part.

3) The vendor may request a reader, which DHS shall provide at its expense if it is necessary. Either Braille, large print or audio material, at the vendor's request, will be used as required.

4) All meetings with the vendor pursuant to this Section must occur at a time and location convenient to both parties.

5) All proceedings pursuant to this Section are to be confidential and not open to the general public unless requested to be so by the vendor.

6) DHS will assume the administrative costs of the appeals, e.g., reader and court reporter/transcription, but not costs personally incurred by the vendor because of the proceedings, e.g., legal fees, travel, witness costs, and room and board.

e) Vendor's Rights Regarding a Grievance

 After a request for a hearing is received by DHS, the vendor must be informed of the right to:

1) review his or her file and other related documents, with the exception of information submitted under Section 650.90 and confidential information;

2) be represented by a personal representative who has filed a notice of appearance with DHS;

3) an explanation of the grievance process as set forth in this Section;

4) request a reader;

5) withdraw the grievance at any time during the process, in which case the vendor cannot request a reopening of the grievance;

6) a timely and impartial hearing;

7) decline to appear for a Level I or II Hearing, in which case a review of the case file and any new written information or evidence submitted by the grievant shall be examined and a decision made based on that review by the Hearing Officer;

8) confidentiality of the proceedings as set forth in 89 Ill. Adm. Code 505.10; and

9) have DHS employees directly involved in the appealed action present at the hearings, and to question them. However, if the employee is no longer employed by DHS and declines to attend the hearing after DHS has made a reasonable attempt to secure his or her attendance, the person most knowledgeable about the case shall attend.

f) DHS Rights Regarding a Grievance

 DHS has the right to:

1) refuse to hear grievances if not timely filed;

2) have a DHS attorney present;

3) cooperation by the vendor (e.g., responding to Hearing Officer questions, adhering to time frames provided in this Section);

4) publish hearing summaries, with deletions as necessary to ensure a vendor's confidentiality; and

5) consolidate for hearing all issues related to a vendor or to several vendors out of the same set of facts and circumstances.

g) Conduct of the Hearings

1) A hearing shall not be adjourned until the Administrator or Hearing Officer is satisfied that all facts needed for a decision have been presented.

2) Only evidence bearing directly on the issue under review may be introduced; only evidence that has been made available to the other party may be considered by the Administrator or Hearing Officer.

3) It is DHS' responsibility to prove that a violation occurred. If the Hearing Officer determines that DHS failed to prove that a violation occurred, based on evidence and a review of applicable law and regulations, he or she may direct that the disciplinary action being grieved be removed from the vendor's file.

4) All parties involved in the hearing must avoid undue delay caused by repetitive continuances so that the subject matter of the hearing may be resolved expeditiously. A hearing may, for good cause shown (e.g., illness of a vendor or witness, crisis at a facility, severe weather), be continued by the Administrator or Hearing Officer. Notice of the request must be given in writing to the other party and to the Hearing Officer no less than 5 days prior to the scheduled hearing date (in the absence of an emergency).

h) Use of the Record

1) Upon completion of the hearing, all records, recommendations, orders, and attached materials shall be placed in a permanent file. This file shall be confidential and only those DHS officials involved in the disciplinary process shall have access to them. In future cases, the legal representative of a vendor may examine the files, but only after the names, addresses, and identifying characteristics of any vendors involved have been removed.

2) The Director of DHS-DRS reserves the right to submit the record of the Level II Hearing to the appropriate State or federal officials, together with a request that action be taken, if the record discloses that illegal conduct relating to the operation of the facility may have occurred.

(Source: Amended at 34 Ill. Reg. 1535, effective January 19, 2010)