

111—8.2(216D) Full evidentiary hearings. These rules define procedures under which full evidentiary hearings, required by the Randolph-Sheppard Act, shall be conducted in Iowa.

8.2(1) Definitions:

“*Day*” means a regular working day for employees of the state of Iowa.

“*Full evidentiary hearing*” means the proceeding defined by the Randolph-Sheppard Act, 20 U.S.C. 107D-1(a) and 34 CFR 395.13, July 1, 1981.

“*Petitioner*” means the person or agency which files the petition commencing the full evidentiary hearing proceeding.

“*Respondent*” means the person or agency named by the petitioner as a person or agency against which the petition is brought and from whom the petitioner seeks stated responses.

8.2(2) Commencement of proceeding.

a. How commenced. A full evidentiary hearing proceeding may be commenced by the department or by a vendor. A full evidentiary hearing proceeding is commenced by filing a petition with the director and serving the petition on the respondent in the manner described in these rules.

b. Commencement by department. If the department believes that a vendor has violated the terms of the operator’s agreement then in effect between the department and the vendor, or believes the vendor has violated the rules governing the business enterprises program in Iowa so as to warrant suspension or revocation of a vendor’s operating agreement or license, the department shall file a petition naming the vendor as respondent. However, in cases of imminent threat to the health or safety of vending facility patrons or concern for retention of the permit to operate a facility as governed by 111—subrule 7.5(2), the department may remove a vendor as provided in that subrule but at the same time must initiate the evidentiary hearing procedures contained in this subrule.

c. Commencement by vendor. If a vendor believes that the department has violated a right guaranteed to the vendor by the Randolph-Sheppard Act or Iowa law, or if the vendor is otherwise aggrieved by the action of the department, the vendor may file a written petition naming the department as respondent within 15 days after an adverse decision from an administrative review or within 15 working days of the occurrence in the absence of an administrative review.

d. Hearing officer involved. When the director has received a petition and a response has been filed with the director under these rules, the director shall provide these documents to an impartial hearing officer selected according to law and shall thereafter act only as the employee of one of the parties. After the director has referred the documents as provided in this subrule, then the director shall serve notice upon all parties of the identity, telephone number, and address of the hearing officer in the manner prescribed in these rules.

8.2(3) The petition.

a. Contents of the petition. The petition shall be a clear, concise written statement which shall:

1. Identify the petitioner;
2. Identify the petitioner’s representative;
3. Identify the respondent;
4. Give a general statement of the facts the petitioner believes constitute a violation of respondent’s duty to petitioner or a violation of petitioner’s rights or a grievance on petitioner’s behalf;
5. In the case of the department, give the specific portion or portions of the operator’s agreement or license or rules believed to have been violated;
6. In the case of a vendor, give a statement of the provisions of law on which the vendor bases a claim or violation of a right or other grievance; and
7. Give a general statement of the relief sought and the basis for such relief.

b. Serving of petition. The petitioner shall serve the petition upon the director and upon the respondent in the manner described in these rules. If the petitioner is the department, the filing of the petition with the director and serving of the petition upon respondent shall be sufficient to commence the proceeding.

8.2(4) The response.

a. Contents of the response. The response shall be a clear, concise statement which shall:

1. Identify the respondent;

2. Identify the respondent's representative;
3. Identify the petitioner;
4. Give a general statement of the facts the respondent believes constitute a legal and complete explanation for respondent's behavior;
5. In the case of the department, given specific citations to federal or Iowa law upon which it relies to explain its actions;
6. In the case of a vendor, give a statement of the provisions of law upon which the explanation is based;
7. Give a general statement of the appropriate conclusion of the proceeding from the respondent's point of view;
8. Concede as true those facts stated by the petitioner and not disputed by the respondent;
9. Concede the applicability and the correctness of the application of any law or regulation cited by the petitioner and not disputed by the respondent; and
10. Concede the appropriateness of any relief sought by the petitioner which the respondent agrees is appropriate.

b. Serving of response. Within ten days of the service of a petition prepared under subrule 8.2(3), the respondent shall file a response with the director. The response shall be served upon the director and on the petitioner in the manner described in these rules. If the respondent is the department, the filing of the response with the director is sufficient service upon the department.

c. Failure to respond. If the director receives a petition which is properly served in the manner described in these rules and to which no response is filed within ten days, then the director shall refer the petition to the hearing officer as described in subrule 8.2(2), paragraph "d." A party failing to file a response shall be taken by the hearing officer as having conceded each and every fact and application of law alleged in the petition concerning the respondent unless able to show good cause for failing to file within ten days. The hearing officer shall direct in such cases that a response be filed as soon after the ten-day period as the hearing officer deems reasonable.

8.2(5) Discovery.

a. Petitioner's discovery, generally. Upon the filing and service of a petition, the petitioner becomes entitled to discovery.

b. Respondent's discovery, generally. Upon the filing and service of a response, a respondent becomes entitled to discovery.

c. Voluntary discovery encouraged. All parties are entitled to take court-reported depositions from persons they believe have relevant evidence, except that a vendor who is a respondent may not be compelled to give a deposition. All parties are entitled to request voluntary production of documents and things in the possession of another party.

d. Department's duty to disclose. Upon request, the department must produce for a vendor's inspection and copy any documents and things requested by the vendor and must produce for deposition any commission member or employee requested by the vendor.

e. Discovery by subpoena. If any party seeks relevant evidence not under the control of the department and cannot obtain the evidence by voluntary compliance, the hearing officer is empowered to use the subpoena power of the department to subpoena witnesses for depositions and to subpoena the production of documents and things for inspection by all parties.

f. Notice of discovery events. All parties shall be given notice in the manner described in these rules of all depositions to be taken and of all productions of documents and things, whether performed voluntarily or pursuant to a subpoena.

g. Hearing officer to supervise. The hearing officer shall supervise discovery and shall ensure:

1. That each side has the opportunity to find and examine all evidence it deems relevant;
2. That all parties conduct discovery as quickly as possible so there is no unnecessary delay of the proceedings to the harm of any party; and
3. That no party or citizen is unnecessarily burdened with repetitive cumulative or harassing requests for discovery except that the department shall be held strictly to its duty to produce as defined in subrule 8.2(5), paragraph "d."

h. Sanctions. If the hearing officer determines that any party is refusing to cooperate in discovery, is hiding evidence, or is unnecessarily delaying or dawdling in discovery to the harm of any other party, then the hearing officer shall grant some or all of the relief sought by the harmed party.

8.2(6) Hearing date and scheduling conferences.

a. Setting of hearing date. As soon after the filing and service of the response as can be arranged, the hearing officer shall hold a conference between the parties to set a date for the hearing. All parties shall provide to the hearing officer their best estimate of how long their discovery will take and shall provide suggested hearing dates. The hearing officer shall then set a date for the hearing, taking into consideration the estimates of each party concerning discovery, the convenience of witnesses and counsel, and the need to conduct the proceedings expeditiously. Testimony shall be taken evenings or weekends if blind persons who are employed are to be called as witnesses. The hearing officer shall write an order scheduling the date for the hearing within 15 working days of receipt of a response unless the vendor and the department agree in writing to some other period of time.

b. Rescheduling of hearing date. If any party finds that discovery is taking longer than estimated despite the party's efforts or for any other good cause, the hearing officer may reschedule the hearing for a later date by means of a second conference at which the party seeking rescheduling shall state its reasons and any other party has the opportunity to object. After hearing all relevant statements from the parties, the hearing officer shall reschedule the date or not reschedule the date as required by equity, the provisions of subrule 8.2(5), paragraph "g," giving the hearing officer supervisory authority over discovery, and the provisions of subrule 8.2(6) governing the setting of hearing dates.

c. Methods of holding conferences. Conferences held under this rule may be held in person or by telephone or by a combination of both, according to the convenience of the hearing officer and the parties.

d. Notice. Notice of these conferences shall be served upon all parties in the manner described in these rules.

8.2(7) Prehearing conference.

a. Scheduling the conference. The hearing officer shall schedule a prehearing conference so that all parties or representatives may be present. Normally it will be held 20 days before the date set for the hearing, but the date of this conference may be more than 20 days before the date set for the hearing if all parties agree, if the date would otherwise fall on a weekend, or if the hearing officer's schedule requires it. In no case shall the prehearing conference be nearer to the date set for the hearing than five days. The hearing officer shall serve notice of the prehearing conference at least ten days prior to the date set for the conference in the manner described in these rules. If any party objects to the time set for the conference, the party shall immediately notify the hearing officer and the hearing officer shall conduct an immediate conference with all parties as soon as possible so the prehearing conference can go forward. Aside from the provisions of this paragraph, the hearing officer shall only change the prehearing conference to accomplish the provisions of subrule 8.2(7), paragraph "b."

b. Conference in person. To the greatest extent possible, the hearing officer shall schedule the prehearing conference so that all parties may be present in person or through their representatives being present in person.

c. Facts and law. During the prehearing conference, the hearing officer shall determine the facts on which all parties agree, the facts on which any parties disagree, the applications of law about which all parties agree, and the areas of applications of law about which the parties disagree.

d. Witnesses exchanged. During the prehearing conference, each party shall provide the hearing officer and the other parties with a list of the witnesses the party intends to call at the hearing. If any party does not recognize a witness or the purpose for which the witness is being called, the hearing officer shall require the party intending to call the witness to describe briefly the witness including the witness' relation to any party and shall require a brief summary of the testimony the witness is expected to provide.

e. Documents exchanged. During the prehearing conference, each party shall provide the hearing officer and all other parties a copy of every document the party intends to introduce into evidence and a copy of every document the party might introduce during its case or during rebuttal. The hearing officer may designate those documents intended to be introduced at this time if that is desired. Upon the request of

any party, the party offering a document shall be required to identify the person or persons who prepared a document and the source of information presented in a document.

f. Objections to evidence. During the prehearing conference, the hearing officer shall hear and determine all objections to the admission of evidence which can be fully and fairly made at this time so that time at the hearing can be used for the taking of admissible evidence.

g. Settlement. During the prehearing conference, the hearing officer shall encourage the reaching of a settlement agreement which is fair and equitable to all parties.

h. Completing discovery. During the prehearing conference, the hearing officer shall settle all unresolved matters of discovery.

i. Final discovery schedule. At the end of the prehearing conference, the hearing officer and all parties shall jointly make a schedule for completing any discovery to ensure that the hearing shall proceed on schedule.

j. Prehearing order. Within one week of the prehearing conference, the hearing officer shall prepare and serve upon all parties in the manner described in these rules a prehearing order which shall:

1. List the participants in the conference and whether they were present in person or by telephone;
2. State the relevant facts and applications of law not in dispute;
3. State the facts and applications of law which constitute the dispute;
4. Attach the list of witnesses of each party;
5. List the exhibits intended to be introduced by each party, giving designations if already assigned;
6. Attach the schedule for completing discovery;
7. Set forth any rulings on the admissibility of evidence together with the reason why the ruling is made.

8.2(8) The hearing.

a. Order of presentation. The order of presentation at the hearing shall be as follows:

1. Opening statement by petitioner;
2. Opening statement by respondent;
3. Witnesses and exhibits from petitioner;
4. Witnesses and exhibits from respondent;
5. Rebuttal witnesses and exhibits from petitioner;
6. Rebuttal witnesses and exhibits from respondent;
7. Closing statement by petitioner;
8. Closing statement by respondent; and
9. Rebuttal statement by petitioner.

b. Evidence. During the hearing, the hearing officer shall receive all oral and documentary evidence from witnesses, documents and things which are relevant to the issues in dispute. The hearing officer may exclude totally irrelevant evidence or evidence which is repetitive and shall admit the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, even if it would be inadmissible in a jury trial. During the presentation of evidence by one party, the other party and the hearing officer may cross-examine witnesses. Objections to evidence that it is totally irrelevant or repetitive must be made and ruled upon, where possible, at the prehearing conference. If the hearing officer excludes evidence in the prehearing order, the party offering the evidence may offer the excluded evidence again at the hearing if other evidence makes the excluded evidence relevant to the party's case or rebuttal.

c. Subpoenas. The hearing officer is empowered to use the subpoena power of the department to compel the attendance of witnesses and the production of documents on behalf of any party which seeks a subpoena and shows that the evidence cannot otherwise be presented.

d. Reporting or recording. The hearing shall be reported by a certified shorthand reporter or, by agreement of all parties, the hearing may be tape recorded. If the hearing is reported, the department shall pay for the reporter. If the hearing is recorded, any party may transcribe the hearing at the party's own expense. The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

e. Offering of new evidence and recesses for reading it. If any party seeks to introduce a document into evidence which was not exchanged with other parties at the prehearing conference as required in

subrule 8.2(7), paragraph “e,” the hearing officer shall hear objections to the admission of the document on the grounds it was not so exchanged. The document shall be admitted only if the party offering the document can show that the party did not know of the existence of the document before the prehearing conference or had some other good reason why the document was not exchanged as required. If a document is offered into evidence, any blind hearing officer, blind representative, or blind vendor may automatically have a recess of the hearing for a reasonable time to study the document.

f. Burden of proof. The burden of proof shall rest upon the petitioner at all times, and the decision of the hearing officer shall be rendered according to the preponderance of the evidence.

g. Briefs. Within ten days after the hearing, the petitioner may file with the hearing officer a brief which shall be served upon all other parties in the manner prescribed in these rules and which shall summarize the facts and state the applicable law. Within five days after the filing of a petitioner’s brief, the respondent may file a reply brief summarizing the facts and stating the law which shall be served upon all parties in the manner described in these rules. Within five days of filing a reply brief, the petitioner may file a rebuttal brief, which shall be served on all parties. If any party chooses not to file a brief, the parties following it in order may still file briefs. Any party may waive the filing of briefs.

8.2(9) Decision on the record.

a. Written decision. Within 15 working days after receipt of the official transcript, the hearing officer shall render a decision. The decision shall be written and shall be served upon all parties in the manner described in these rules.

b. Finality of decision. The decision of the hearing officer shall be final unless a party appeals the decision as provided in subrule 8.2(10).

c. Contents of decision. The hearing officer’s decision shall clearly state the facts found by the hearing officer, the law found by the hearing officer to be applicable, the hearing officer’s specific applications of the law to the dispute presented at the hearing, and the relief to be granted, if any, which the hearing officer finds to be fair, equitable, and according to law.

d. Reader services or other communication services. Reader services or other communication services will be arranged for a vendor requesting them. Transportation costs and per diem shall be provided to the vendor if the evidentiary hearing is in a city other than the legal residence of the vendor. The hearing will be held at a time and place convenient and accessible to the vendor.

8.2(10) Appeal. A vendor dissatisfied with the decision rendered after a full evidentiary hearing may request that an arbitration panel be convened by filing a complaint with the United States Secretary of Education, as described in 20 U.S.C. 107D-1(a) and 34 CFR 395.13, effective July 1, 1981, and serving upon all other parties the letter demanding arbitration.

8.2(11) Settlement. The hearing officer shall at all times encourage settlement by the parties before the hearing. The hearing officer shall be satisfied that any settlement decree proposed by the parties is fair and equitable to all parties and, if so, shall sign the decree along with all the parties and shall retain jurisdiction over the parties for a reasonable period, to be provided for in the decree, to ensure that the decree is implemented.

8.2(12) Hearing officer.

a. Generally. The hearing officer shall conduct all proceedings to ensure every party an opportunity to make its case and to avoid unnecessary delay. The hearing officer shall be an impartial, qualified official who has no involvement either with the action at issue or with the administration or operation of the vending program. The hearing officer shall be a qualified state agency hearing officer and shall in no case be a staff member of the department.

b. Interim orders. The hearing officer shall have the power to make all interim orders deemed necessary for the orderly and fair progression of the proceeding. Where appropriate, the hearing officer may make orders determining the interim relation of the parties in the proceeding.

c. Sanctions. The hearing officer shall have the power to supervise the proceeding generally and to fashion those orders for punishment of dawdling or misbehavior of any party which fairness requires. These orders may include the granting of some or all of the relief sought by the party who was harmed by the dawdling or misbehavior of a party.

d. Ex parte communication prohibited. The hearing officer shall not communicate directly or indirectly about any issue of fact or law in the hearing with any party except with notice and opportunity for all parties to participate as provided in these rules.

8.2(13) Representatives.

a. Representatives designated. Upon the filing of a petition or response, every party shall designate the person, if any, who will serve as the party's representative, giving work and home telephone numbers and work address of the representative. Vendors may choose to represent themselves and shall, if they choose to do so, indicate that choice on the petition or response. The department may choose to have one of its employees serve as representative and, if it elects to do so, shall so indicate on the petition or response. Any party may choose to be represented by an attorney. Any party may choose to be represented by a friend, advocate, or representative not licensed to practice law.

b. Change of representative. If, at any time, for any reason, the designation of representative of a party changes, that party shall immediately serve notice in the manner described in these rules upon the hearing officer and all other parties, identifying the new representative and giving the information required to be provided by subrule 8.2(13), paragraph "a."

c. Duties of representatives. The representative designated by a party shall appear with the party at all points in the proceeding. The party may be represented at any point in the proceeding by the representative alone. The representative shall have the power to act for and to bind the party represented, after consultation with that party.

8.2(14) Notice and service.

a. Form of notice. Every petition, response, notice, order, decision, and other document required to be served under these rules shall be served on every party in standard print. In addition to the standard print document, a blind vendor, blind representative, or blind hearing officer shall also receive service in braille, tape, or large print at the choice of the vendor, representative, or hearing officer. The department shall maintain a list of choice of alternative medium of each vendor. Documents served in the alternative medium shall be served in a timely manner.

b. Basic documents. The petition or response, the prehearing order, and the hearing officer's decision shall be served upon the blind vendor, blind representative, or blind hearing officer in the medium of that person's choice in addition to service in standard print. This requirement cannot be waived.

c. Hearing officer serving notices, orders. In addition to sending scheduling notices to a blind vendor or blind representative in standard print, the hearing officer may telephone the blind person and read the notice over the telephone as the alternative medium for the blind person. If the hearing officer elects this method, the hearing officer shall keep a log showing the time and date of the call. If the hearing officer chooses this method, no discussion of the proceeding shall occur during the call except that the receiver may register objections to scheduling. The prehearing order and the decision will be produced by the department and in a timely manner unless the hearing officer chooses to tape or braille these documents personally.

d. Waiver. The blind vendor, blind representative, or blind hearing officer may waive service of all documents, except basic documents, in an alternative medium by filing a waiver with the hearing officer and serving the waiver on all parties.

e. Service methods. Service of documents can be made in one of three ways: By a sheriff or deputy who prepares for the serving party a return of service; by certified mail, return receipt requested, with a delivery restricted to the party to be served; or by a person not employed by or related to any party who is over 18 years of age and who hands the document to the party to be served and makes a return of service for the serving party.

f. Service recorded. Every document served under these rules will be accompanied by a statement of how the document is being served, signed by the party doing the serving. Proofs of service will be maintained by the serving party.

g. Serving the department. The department may be served during regular business hours at its Des Moines office through acceptance of the document by the director, a deputy director, or administrative assistant to the director, any one of whom may sign the return receipt.

h. Serving the vendor. The vendor may be served at home or at work, but only the vendor or the vendor's spouse can accept service. If the vendor designates a representative, the representative shall accept service on behalf of the vendor from the time the representative begins to act on the vendor's behalf. The representative may be served in the same manner the department is served. The fact that a representative is accepting service for the vendor does not remove the requirement for service to be in the alternative medium as defined in this rule.

i. Disputes. If a dispute arises concerning the receipt of service, the hearing officer shall examine the documents showing service by the serving party, the intended recipient, and any other relevant evidence. Genuine disputes shall be resolved in favor of the person who states that a document was not received except that a document's being served and then lost at the department shall not constitute failure of service. If the hearing officer finds that a document was not received, the schedule of proceedings shall be adjusted accordingly. If a party misses a deposition, production, or conference due to lack of service, the hearing officer shall fashion an appropriate remedy.

j. Sanctions. If the hearing officer determines that a party deliberately or negligently failed to serve another party who was harmed by the lack of service, the hearing officer shall fashion appropriate sanctions which may include granting some or all of the harmed party's relief.

8.2(15) *Referring to these rules.*

a. Official citation. These rules shall be published in the Iowa Administrative Code with each rule preceded by the agency number and followed by the appropriate Iowa Code section or Acts designation in parentheses.

b. Ordinary citation. During the course of a hearing proceeding in all oral and written statements, these rules may be referred to by simple designation, omitting the Iowa Code reference. For example, this paragraph may be referred to as subrule 8.2(15), paragraph "b."

c. Availability. To facilitate the availability and use of these rules, each vendor shall be provided with a copy in a designated medium and the library for the blind and physically handicapped shall have copies in all three media available for borrowing. These shall give the Iowa Administrative Code citation at the beginning and shall thereafter use the ordinary designation method described in subrule 8.2(15), paragraph "b."