

**DEPARTMENT OF BEHAVIORAL HEALTH AND
DEVELOPMENTAL DISABILITIES**

**CHAPTER 82-1-2
ADMINISTRATIVE RULES OF PROCEDURE**

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**CHAPTER 82-1-2
ADMINISTRATIVE RULES OF PROCEDURE**

82-1-2-.01 Scope of Chapter.

The Rules in this Chapter are procedural only and confer no substantive rights. This Chapter applies to all hearings held by the Department unless a specific statute, Federal regulation or other legal authority governs otherwise, in which case this Chapter applies to the extent not inconsistent therewith.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.02 Definitions.

The following words and terms as used in these Rules shall have the following meanings:

(1) "Board" means the Board of Behavioral Health and Developmental Disabilities of the State of Georgia;

(2) "Commissioner" means chief administrative officer of the Department;

(3) "Department" means the Department of Behavioral Health and Developmental Disabilities of the State of Georgia and for O.C.G.A. Title 37 purposes includes the agents and designees included by O.C.G.A. Sec. 37-1-1(3) or its successor statute;

(4) "Hearing" means a right of the Department and persons and parties affected by an action or intended action of the Department to present testimony, documentary evidence and argument as to why such action should or should not be taken;

(5) "Hearing Officer" means the person employed and authorized to conduct the hearing and take action as authorized by law or regulation;

(6) "Notice of Hearing" means a written statement of the time, date and place of the hearing, the legal authority under which it will be held, the issues to be considered, and the participants' rights and duties. A notice of rule making hearing will also identify the rule under consideration; other Notices will generally state the nature of the hearing;

(7) "Office of State Administrative Hearings" means the agency established by O.C.G.A. Chapter 50-13, Article 2.

(8) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party;

(9) "Person" means any individual, partnership, corporation or association and includes bodies politic and corporate;

(10) "Reviewing Official" means the person or persons employed and authorized to review hearing records and to issue final decisions, in cases where administrative review of hearing decisions is authorized and properly invoked;

(k) "Rule" as used in this Chapter has the same meaning given in O.C.G.A. Sec. 50-13-2(6) or its successor statute.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.03 Quasi-judicial or Enforcement Hearings

Quasi-judicial or enforcement hearings are to enforce or sanction violations of an existing rule; or to investigate, declare or enforce liabilities or privileges on present or past facts or existing law.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.04 Same; Hearing Request Subject to the Jurisdiction of the Office of State Administrative Hearings.

(1) Hearing requests received by the Department which are within the jurisdiction of the Office of State Administrative Hearings shall be promptly transmitted to that Office in accordance with the instructions of that Office. The Department may file any procedural or jurisdictional objections to any hearing request at the time of transmittal.

(2) Initial decisions transmitted to the Department by the Office of State Administrative Hearings for review shall be accompanied by the entire hearing record. Reviews of the records and decisions will be made by the Commissioner or his/her designee who will issue the final decisions. Such decisions will be binding on the Department and no further administrative remedy will be available.

(3) Decisions made by the Office of State Administrative Hearings in cases involving continuing involuntary hospitalization or habilitation and cost of care arising under O.C.G.A. Title 37 will become final upon issuance by that Office and without further Departmental action.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.05 Same; Hearings Subject to the Jurisdiction of the Department.

Hearings subject to the jurisdiction of the Department shall be conducted in accordance with Rules 06 through 11 of this Chapter.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.06 Hearing Officer's Authority to Conduct the Hearing.

(1) The Hearing Officer shall have the authority to do the following:

(a) Arrange for and issue notices of the date, time, and place of hearings and prehearing conferences;

(b) Establish the methods and procedures to be used in the development of the evidence;

(c) Hold prehearing conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(d) Administer oaths and affirmations;

(e) Regulate the course of the hearing and govern the conduct of the participants;

(f) Examine witnesses called by the parties;

(g) Rule on, admit, exclude, or limit evidence;

- (h) Establish the time for filing motions, testimony, and other written evidence, exhibits, briefs, proposed findings of fact and conclusions of law, and other submissions;
 - (i) Rule on motions and other procedural matters including but not limited to motions to dismiss for lack of jurisdiction or for summary judgment;
 - (j) Order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;
 - (k) Allow cross-examination as required for a full and true disclosure of facts;
 - (l) Order that any information so entitled under applicable state or federal statute or regulation be treated as confidential information and be accorded the degree of confidentiality required thereby;
 - (m) Reprimand or exclude from the hearing any person for any indecorous or improper conduct;
 - (n) Subpoena and examine witnesses or evidence; and
 - (o) Sign and issue subpoenas and rule on offers of proof;
 - (p) Obtain or provide for obtaining written, videotaped or audio taped testimony or for evidence in other forms;
 - (q) Require a showing of authority by anyone purporting to appear in any representative capacity on behalf of any party;
 - (r) Arrange or request a party to arrange for the presence of interpreters or other measures to assist parties or witnesses; a party who needs such assistance shall notify the Hearing Officer in advance of the hearing;
 - (s) Issue default dismissals for failure to attend or participate;
 - (t) Take such other action as might be required to facilitate the development of a complete record upon which to base a decision as long as such actions are not inconsistent with relevant laws and regulations.
 - (u) Authorize any hearing required or permitted hereunder to be conducted by utilizing remote telephonic or video conference technology.
- (2) In considering the site for the conduct of the hearing, the Hearing Officer shall give due regard to the convenience and necessity of the parties and their representatives, the witnesses and the location of records. Where common questions of fact or law exist, group hearings may be scheduled for all parties to whom such commonalities apply.
- (3) The Hearing Officer may conduct the hearing in whole or in part, including preliminary or collateral proceedings, by telephone unless the parties object. If the objecting party is the Department or its agents, the Hearing Officer may overrule the objection unless good cause is shown for the objection.
- (4) Objections to the sufficiency of a Notice of Hearing must be made by written motion for a more definite statement, delivered to the Hearing Officer at least (5) days prior to the hearing date.
- (5) The Hearing Officer may at any time and on his/ her own motion determine the Hearing Officer's jurisdiction over the issues or parties. Hearings may be denied or dismissed if the sole issue is mandated by law with no Departmental discretion, or if the Department has no authority to grant the relief requested.
- Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.07 Hearing Procedures.

(1) The order of proof in the conduct of a hearing should be somewhat flexible. Generally the following procedure will be followed:

(a) The Department or its representative should examine its witnesses and present its proof first;

(b) The opposing party and its witnesses should then be heard;

(c) The giving of testimony by each party and its witnesses is subject to appropriate cross-examination by the opposing party or parties and questioning by the Hearing Officer;

(d) The Hearing Officer may call and examine witnesses to develop the record fully and to ensure all evidence favorable to an unrepresented party is presented.

(2) Each party will be given a reasonable time in which to complete its case. The hearing will not be considered complete until both sides have been given a reasonable opportunity to complete their arguments. The party against whom the action is to be taken will generally be allowed the last closing argument.

(3) Formality of pleadings or format shall not be required. Unless otherwise specified, all papers may be filed in the hearing record by mailing or statutory overnight or hand delivery, suitably marked for identification, to the Hearing Officer.

(4) Unless otherwise specified, all submissions authorized or required to be filed hereunder shall be filed with the Commissioner. Submissions shall be deemed filed on the date on which they are received by the Commissioner or his/her appointed designee or the official postmark date such document was mailed, properly addressed to the Commissioner with postage prepaid, whichever date comes first. Submissions may also be filed by facsimile machine or other electronic means. The Hearing Officer may at his/her discretion consider papers filed late, balancing the reasons for the delay against the prejudice to the other parties. The Hearing Officer may request that any Departmental employee or any party hand-deliver any paper if the circumstances require such.

(5) The rules of evidence as applied in the trial of civil nonjury cases in the superior courts of Georgia shall be followed and may when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not admissible there under, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs or if it consists of a report of medical, psychiatric, or psychological evaluation of a type routinely submitted to and relied upon by the Department in the normal course of its business.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.08 Contents of Hearing Records.

(1) A record of the hearing shall be kept and shall include:

(a) All pleadings, motions and rulings;

(b) A summary of the oral testimony and all other evidence received or considered, except that if the oral proceeding was recorded the recording or written transcript may be kept in lieu of the summary of the oral testimony;

(c) All matters officially noticed;

(d) Questions and offers of proof and rulings thereon;

- (e) Initial, proposed or recommended findings of fact and conclusions of law, if applicable;
 - (f) Any decision, report or opinion by the Hearing Officer or Reviewing Official, except that the Hearing Officer's or Reviewing Official's personal notes, research or other work product shall not be part of the record; and
 - (g) All staff memoranda or data submitted to the Hearing Officer or members of the Department in connection with their consideration of the case.
- (2) Official notice may be taken of Departmental records, including other hearing records, where relevant or helpful in developing the facts of any case.
- (3) Recordation of oral hearings:
- (a) Oral hearings will be recorded on magnetic tape at the Hearing Officer's discretion or where either party requests recordation sufficiently in advance to allow the Hearing Officer to arrange for recording equipment.
 - (b) Where the recording of the hearing is not available for any reason and a record of the oral hearing becomes necessary, the testimony and proceeding may be reconstructed by stipulation or by the recollection of the persons attending. Where the parties cannot agree, the Hearing Officer may reconstruct the proceeding and the Hearing Officer's reconstruction shall be final.
- Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.09 Decisions.

- (1) The Hearing Officer will issue a recommended decision, including findings of fact and conclusions of law, to the Commissioner within thirty (30) days of closure of the record, unless the Hearing Officer determines that additional time is needed for a full evaluation of the record. The recommended decision will be mailed or delivered to the parties. If no appeal is filed to the Commissioner within thirty (30) days after issuance of the recommended decision, the recommended decision will become the Department's final decision and will be binding on the Department and all parties. No further administrative relief will be available.
- (2) Appeals to recommended decisions will be considered by the Commissioner or his/her designee, who will issue the Department's final decision within thirty (30) days of receipt of the appeal, unless an extension of time is necessary for a full evaluation of the record. The final decision will be binding on the Department upon issuance, and no further administrative relief will be available.
- (3) Where fewer than all parties authorized to appeal a recommended decision do so, the Commissioner or his/her assigned designee may send notice of the appeal to the non-appealing parties. Said parties may then participate in the appeal as fully as the appealing parties, and will be as bound by the final decision.
- (4) Clerical mistakes, oversights and omissions in decisions and proposed decisions may be corrected following issuance, provided that no rights of the parties are adversely affected.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-10 Subpoenas and Discovery.

(1) The Hearing officer may provide for examination of the hearing record by the parties as follows:

(a) All laws of confidentiality and privilege shall be respected by the parties, and the Hearing Officer may, by order, condition any party's access to records so as to protect the confidentiality and privilege thereof;

(b) The Hearing Officer may arrange for examination by other parties prior to the hearing of any documents to be used by any party at the hearing, by directing the parties to make their documents available to the other parties for examination by appointment or to exchange copies, or by delivering the documents to the Hearing Officer prior to the hearing, or by other reasonable means;

(c) The Hearing Officer may recess, postpone, or continue the hearing to allow the parties to examine documents not previously disclosed. Where the recess or continuance will adequately protect the parties' rights, the mere failure to disclose a document prior to the hearing will not require its exclusion from the record;

(d) At the request of any party or on the Hearing Officer's own motion the Hearing Officer may mask or excise irrelevant, privileged or confidential parts of any document prior to its examination by the other parties.

(e) If any party refuses to comply with the Hearing Officer's reasonable directions to make a document available to other parties, the Hearing Officer may as a last resort exclude the document and any evidence or testimony derived from or based upon it from the record.

(2) The Hearing Officer may issue subpoenas for witnesses and records at the request of any party or on his/her own motion, provided the request is made sufficiently in advance of the hearing date to permit good service.

(3) The Hearing Officer is authorized to issue subpoenas to any employee of the Department to attend the hearing or prehearing conference, and to receive custody of the Departmental records for presentation at the hearing.

(4) Prior to the issuance of any subpoena or discovery order, the Hearing Officer may require a preliminary showing of relevance of the evidence sought or need for the order, and may also require a showing that alternate means of obtaining the evidence have been exhausted.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.11 Ex Parte Contacts with Hearing Official.

The Hearing Officer or Reviewing Official may be contacted *ex parte* on matters of an informational or procedural nature. At the discretion of the Hearing Officer or Reviewing Official, or upon request of a party, such contacts shall be made a part of the record and shall include notice to the opposing party or parties of the communication.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.12 Hearings and Hearing Records: Confidentiality, Custody, Language, Access, Costs.

- (1) Hearings will be open to the public unless a law or other proper authority requires or authorizes closure.
- (2) The Hearing Officer assigned to conduct any hearing will be the Department's custodian of that hearing record while the case is in hearing status, and for the duration of any appeal thereafter. Where the Hearing Officer's decision is appealed to the Commissioner, the Commissioner or his/her assigned designee will become the custodian upon receipt of the record after issuance of the recommended decision and for the duration of any appeal thereafter.
- (3) All hearing records will be assembled in the English language, as designated by Resolution No. 70, Georgia Laws 1986, Page 529. The Hearing Officer may require or arrange for translation into English of any testimony, arguments, documents or other matter presented in another language, and the English version will be the official record of the item. No person will be prevented from offering evidence or testimony for want of an English translation; however, the original language version will also be placed in the record.
- (4) Access to hearing records will generally be as provided by Georgia's Open Records Law", O.C.G.A. Chapter 50-18, Art. 4, or its successor statute, except where access to the record is governed by a specific law or other authority. The Department may exercise its statutory right to protect any record or part thereof from disclosure as authorized by O.C.G.A. § 37-1-53 or its successor.
- (5) Costs for transcripts and copies of records will be governed by the Department's general policy on costs for copies of its records.
Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.13 Certification of Hearing Records.

The official assigned to issue the final decision in any hearing is authorized to certify copies of the record of such hearing as true, complete and correct, and such certification will constitute the certification of the Commissioner and the Department thereto. In the absence or unavailability of the assigned official, the appointing authority of that official or the Commissioner may so certify the hearing record.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.14 Petitions for Declaratory Rulings.

- (1) Petitions for declaratory rulings may be delivered by mail, and should be sent to the Official mailing address as listed in Ga. Comp. R. & Regs. 82-1-1-.01.
- (2) A petition may be filed with the Department for a declaratory ruling as to the applicability of any Departmental Rule or order, or statutory provision for which the Department has enforcement authority. The petition need not conform to any specific format, but must:
 - (a) Specify that it is a petition for a declaratory ruling, and identify the petitioner and his/ or her mailing address;

(b) Identify the specific statute, Rule or order involved, and describe the specific factual and non-hypothetical circumstances calling its applicability into question;

(c) Demonstrate an actual present need for said ruling, as opposed to a mere abstract desire for same;

(d) Identify all other known persons involved in or impacted by the factual situation causing the petition.

(e) Petitions which do not contain the above information may be rejected by the Department.

(3) The Commissioner or his/her designee will issue the ruling within thirty (30) days of receipt of the petition unless the advice of the Attorney General or further investigation is needed, in which case the ruling will be issued as soon as possible. The Department may in the course of its investigation contact any other parties involved with or impacted by the statute, Rule or order.

(4) No petition for a declaratory ruling will be accepted where a hearing request is pending on the same subject matter, or where such a ruling would constitute the unauthorized practice of law.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.15 Substantial Compliance Only Required.

Exact compliance with this Chapter is desired. Unless a law, Federal regulation, court order or other valid legal authority requires otherwise, no proceeding under this Chapter will be voided because of a technical failure of compliance which does not harm substantive rights of the parties.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.

82-1-2-.16 Severability.

In the event that any Rule, sentence, clause or phrase of any of these Rules may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining Rules or portions thereof. The remaining Rules or portions thereof shall remain in full force and effect, as if such Rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part of these Rules.

Authority O.C.G.A. Secs. 37-1-3; 37-1-21; 37-1-22.