

§ 93.504

§ 93.504 Grounds for dismissal of a hearing request.

(a) The ALJ must dismiss a hearing request if the respondent—

(1) Does not file the request within 30 days after receiving the charge letter;

(2) Does not raise a genuine dispute over facts or law material to the findings of research misconduct and any administrative actions, including debarment and suspension actions, in the hearing request or in any extension to supplement granted by the ALJ under § 93.501(d);

(3) Does not raise any issue which may properly be addressed in a hearing;

(4) Withdraws or abandons the hearing request; or

(b) The ALJ may dismiss a hearing request if the respondent fails to provide ORI with notice in the form and manner required by § 93.501.

§ 93.505 Rights of the parties.

(a) The parties to the hearing are the respondent and ORI. The investigating institution is not a party to the case, unless it is a respondent.

(b) Except as otherwise limited by this subpart, the parties may—

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any case-related conference held by the ALJ;

(3) Conduct discovery of documents and other tangible items;

(4) Agree to stipulations of fact or law that must be made part of the record;

(5) File motions in writing before the ALJ;

(6) Present evidence relevant to the issues at the hearing;

(7) Present and cross-examine witnesses;

(8) Present oral arguments;

(9) Submit written post-hearing briefs, proposed findings of fact and conclusions of law, and reply briefs within reasonable time frames agreed upon by the parties or established by the ALJ as provided in § 93.522; and

(10) Submit materials to the ALJ and other parties under seal, or in redacted form, when necessary, to protect the confidentiality of any information contained in them consistent with this part, the Privacy Act, the Freedom of

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Information Act, or other Federal law or regulation.

§ 93.506 Authority of the Administrative Law Judge.

(a) The ALJ assigned to the case must conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a complete and accurate record of the proceeding is properly made. The ALJ is bound by all Federal statutes and regulations, Secretarial delegations of authority, and applicable HHS policies and may not refuse to follow them or find them invalid, as provided in paragraph (c)(4) of this section. The ALJ has the authorities set forth in this part.

(b) Subject to review as provided elsewhere in this subpart, the ALJ may—

(1) Set and change the date, time, schedule, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences with the parties to identify or simplify the issues, or to consider other matters that may aid in the prompt disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Require the attendance of witnesses at a hearing;

(6) Rule on motions and other procedural matters;

(7) Require the production of documents and regulate the scope and timing of documentary discovery as permitted by this part;

(8) Require each party before the hearing to provide the other party and the ALJ with copies of any exhibits that the party intends to introduce into evidence;

(9) Issue a ruling, after an *in camera* inspection if necessary, to address the disclosure of any evidence or portion of evidence for which confidentiality is requested under this part or other Federal law or regulation, or which a party submitted under seal;

(10) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(11) Examine witnesses and receive evidence presented at the hearing;

(12) Admit, exclude, or limit evidence offered by a party;

(13) Hear oral arguments on facts or law during or after the hearing;

(14) Upon motion of a party, take judicial notice of facts;

(15) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(16) Conduct any conference or oral argument in person, by telephone, or by audio-visual communication;

(17) Take action against any party for failing to follow an order or procedure or for disruptive conduct.

(c) The ALJ does not have the authority to—

(1) Enter an order in the nature of a directed verdict;

(2) Compel settlement negotiations;

(3) Enjoin any act of the Secretary; or

(4) Find invalid or refuse to follow Federal statutes or regulations, Secretarial delegations of authority, or HHS policies.

§ 93.507 Ex parte communications.

(a) No party, attorney, or other party representative may communicate *ex parte* with the ALJ on any matter at issue in a case, unless both parties have notice and an opportunity to participate in the communication. However, a party, attorney, or other party representative may communicate with DAB staff about administrative or procedural matters.

(b) If an *ex parte* communication occurs, the ALJ will disclose it to the other party and make it part of the record after the other party has an opportunity to comment.

(c) The provisions of this section do not apply to communications between an employee or contractor of the DAB and the ALJ.

§ 93.508 Filing, forms, and service.

(a) *Filing.* (1) Unless the ALJ provides otherwise, all submissions required or authorized to be filed in the proceeding must be filed with the ALJ.

(2) Submissions are considered filed when they are placed in the mail, transmitted to a private delivery serv-

ice for the purpose of delivering the item to the ALJ, or submitted in another manner authorized by the ALJ.

(b) *Forms.* (1) Unless the ALJ provides otherwise, all submissions filed in the proceeding must include an original and two copies. The ALJ may designate the format for copies of non-documentary materials such as videotapes, computer disks, or physical evidence. This provision does not apply to the charge letter or other written notice provided under § 93.405.

(2) Every submission filed in the proceeding must include the title of the case, the docket number, and a designation of the nature of the submission, such as a “Motion to Compel the Production of Documents” or “Respondent’s Proposed Exhibits.”

(3) Every submission filed in the proceeding must be signed by and contain the address and telephone number of the party on whose behalf the document or paper was filed, or the attorney of record for the party.

(c) *Service.* A party filing a submission with the ALJ must, at the time of filing, serve a copy on the other party. Service may be made either to the last known principal place of business of the party’s attorney if the party is represented by an attorney, or, if not, to the party’s last known address. Service may be made by—

(1) Certified mail;

(2) First-class postage prepaid U.S. Mail;

(3) A private delivery service;

(4) Hand-delivery; or

(5) Facsimile or other electronic means if permitted by the ALJ.

(d) *Proof of service.* Each party filing a document or paper with the ALJ must also provide proof of service at the time of the filing. Any of the following items may constitute proof of service:

(1) A certified mail receipt returned by the postal service with a signature;

(2) An official record of the postal service or private delivery service;

(3) A certificate of service stating the method, place, date of service, and person served that is signed by an individual with personal knowledge of these facts; or

(4) Other proof authorized by the ALJ.