



Fair Hearing

September 22, 2022

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APPEALS PROCESS - FAIR HEARING PROCEDURES

INTRODUCTION

This Policy and Procedure section relates to: Titles III and VII of the Older Americans Act of 1965, as amended in subsequent years (Public Law 109-365), 42 U.S.C. 3025(b)(5)(C)(i), 3026(f)(2)(B), 42 U.S.C. 3027(a)(5), Section 504 of the Rehabilitation Act of 1973, as amended, American Disabilities Act of 1990 and Title XX of the Social Security Act, as amended, and KRS 13B.170. The KIPDA Area Agency on Aging and Independent Living (AAAIL) is responsible to provide a hearing to any applicant for funding or a recipient of services who is aggrieved by any agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. 910 KAR 1:140 is related to the appeals process for contractor selection, the AAAIL, and procedures for a Department Contracting Agency. Therefore, KIPDA AAAIL has included a fair hearing process for clients who have a grievance as specified in and will be followed in the absence of a fair hearing process included in a specific program regulation.

DEFINITIONS AND TERMS

- 1) **Administrative Agency** - State Board, Cabinet, Commission or Department (for hearings at the State Level). At the local level, this means KIPDA.
- 2) **Area Agency on Aging and Independent Living (AAAIL)** - an area agency on aging as defined by 42 U.S.C. 3002 (6).
- 3) **Applicant for Services** - a person or entity making application to the KIPDA AAAIL to provide services under an approved area plan.
- 4) **Burden of Proof** - the duty of going forward, i.e., of producing evidence of a particular matter or fact in issue and the burden of persuasion that a particular matter or fact is true.
- 5) **Cabinet** - defined by KRS 194A.005(1) – Cabinet for Health and Family Services.
- 6) **Client** - synonymous with recipient and means a person who has been determined to be eligible to receive services from the KIPDA AAAIL /contract agencies.
- 7) **Complainant** - the applicant for services, or client, who after submitting their written complaint, is entitled to a fair hearing.
- 8) **Days** - calendar days, unless specified.
- 9) **Department** - Department for Aging and Independent Living, the State Unit on Aging.
- 10) **Department Contracting Agency** - an agency contracting directly with the Department to administer department programs and services not affiliated with 42 U.S.C. 3021-2020s-2. Title III of the Older Americans Act.
- 11) **District** - defined by KRS 205.455(4)
- 12) **Fair Hearing** - an administrative hearing held pursuant to federal regulation, 45 CFR 205.10 and Kentucky Revised Statutes (KRS) 13B.00 -.170 or as applicable 910 KAR 1:140, and conducted following the procedures set forth in this section and the general procedures related to administrative hearings.

- 13) **Hearing Officer** - the person selected by KIPDA's Director of Social Services to conduct a hearing and to submit a written report based on that hearing to the Executive Director.
- 14) **Local Administrative Review** - the procedure of an area agency for consultation and review of a protest or complaint with an applicant or provider as defined in Subsection 10 of 910 KAR 1:140.
- 15) **Local Resolution Conference** - an informal process that gives the complainant the opportunity to discuss the complaint and an attempt is made to resolve the issues in the complaint.
- 16) **Local Resolution Facilitator** - a person who conducts the local resolution conference.
- 17) **Parties** - the Area Agency on Aging and Independent Living, the client, the bidder, provider and any other individuals or organizations named in the complaint or grievance.
- 18) **Planning and Service Area (PSA)** - means the multicounty geographical entity in which a given AAAIL is responsible for the delivery of aging services.
- 19) **Protest or Complaint** - a written objection by an applicant or provider to a proposed award or the award of a contract, or a written objection by a provider to a decision to terminate or not renew its contract to provide services.
- 20) **Provider** - a person or entity that is awarded a contract from an Area Agency on Aging and Independent Living to provide services under an approved area plan.
- 21) **Receipt of Notice** - the date notice is received.
- 22) **RFP File** - those documents that are maintained regarding a procurement. These documents shall include:
 - a. Request for Proposal (RFP);
 - b. Newspaper advertisements;
 - c. Each proposal received in response to the RFP;
 - d. Correspondence pertaining to the RFP;
 - e. The review by the AAAIL;
 - f. Rating or scoring and selection documents;
 - g. Notice of Award; and
 - h. the Contract.
- 23) **Secretary** - defined by KRS 194A.005(2).

CLIENT FAIR HEARING (LEGAL BASIS)

KIPDA AAAIL has assured the Department for Aging and Independent Living (DAIL) through contractual agreements, that it shall comply with the provisions of the Civil Rights Act of 1964, as amended, Section 504, Rehabilitation Act of 1973, as amended, American Disabilities Act of 1990 and with 45 CFR 205.10 and Commonwealth Discrimination Laws.

The KIPDA AAAIL hereby affirms its compliance and expects its staff and providers to act accordingly.

The KIPDA AAAIL shall not, based on race, color, national origin, sex, age, religion or handicap:

- (1) Deny any individual aid, care, services or other benefits of the KIPDA AAAIL, either directly or through contractual or other agreements;
- (2) Provide any aid, care, services or other benefits to an individual who is different or is provided in a different manner from that provided to others;
- (3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any aid, care, services or other benefits;
- (4) Restrict an individual in any way in the enjoyment of any advantage of privileges enjoyed by others receiving aid, care, services or other benefits;
- (5) Treat an individual differently from others in determining whether s/he satisfies eligibility or other requirements or conditions which individuals shall meet in order to receive aid, care, services or other benefits; and
- (6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others.

STAFF RESPONSIBILITY TO INFORM CLIENT OF RIGHTS

A. Policy: Staff of KIPDA AAAIL or contract agency shall be responsible for advising applicants and clients of their right to a fair hearing.

Procedures:

1. Each new applicant or client shall be given a written notice of his/her right to a hearing during intake.
2. At the time of an action for which a client is entitled to a fair hearing, staff shall give clients a written notice of their right to a fair hearing under (3) three circumstances: when a case is opened; services changed; or upon denial or discontinuation of services.
3. The right to a fair hearing and the method by which the client may obtain a hearing shall be restated in writing to the client during any action affecting services. If a request for a hearing is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of the client or staff.

B. Policy: In cases of intended action to discontinue, terminate or suspend or reduce services, staff shall give the client timely and adequate notice thereof and an opportunity to object (see Quality Assurance Agreement form). Timely means that the notice is mailed at least ten (10) days before the date of the action, except that "adequate" written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the client, or that the health or well-being of staff may be endangered if prior notice is given.

Procedures:

1. The date of a notice given by mail is the date of mailing the notice.
2. Special emphasis shall be placed on the fact that the applicant/client shall not suffer retaliation or sanction as a result of a request for a fair hearing.

NOTICE OF RIGHT TO A HEARING

- A. Policy:** A notice of the client's right to a hearing shall be displayed prominently in the KIPDA AAAIL, service provider offices and congregate service sites in a location easily accessible to participants.

Procedures:

1. The notice of right to a hearing shall include the following language: "If you are dissatisfied with the action taken, you may request a fair hearing within thirty 30 days from the date of the action by filing a written request or completing a complaint form and mailing it to: KIPDA AAAIL, 11520 Commonwealth Drive, Louisville, KY 40299. You may be represented by an attorney or other spokesperson."
2. A client shall be entitled to a hearing on the following actions:
 - a. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;
 - b. Dissatisfaction with a service received, inappropriate or inadequate treatment;
 - c. Failure of the KIPDA AAAIL or service provider to act upon a request for service with reasonable promptness;
 - d. Failure of the KIPDA AAAIL or service provider to consider a client's choice of service or a determination that the individual shall participate in a service program against his wishes (except where required by law); or
 - e. Discrimination against a client by the KIPDA AAAIL or service provider staff on account of age, sex, sexual orientation, gender identify, race, national origin, disability or religion.
3. The following shall not be considered through the hearing procedure described herein:
 - a. Complaints related to legal issues such as actions involved in court cases, court orders or the interpretation of any statute or regulation;
 - b. A Complaint that has not been submitted in writing to the KIPDA AAAIL Director of Social Services or designee within the timeframe specified in these policies;
 - c. A Complaint that has been abandoned by failure of the complainant to carry forward with his/her complaint, to furnish information requested by the Local Resolution Facilitator or Hearing Officer, or to appear at the hearing scheduled for him or her (or designated representative);

- d. Discrimination practices and personnel issues in relation to KIPDA AAAIL personnel policies and procedures. These grievances will be handled per instructions in the Personnel Manual; or
- e. A report of Abuse or Neglect which shall be directed to either Adult Protective Services or proper law enforcement officials.

REQUEST FOR HEARING

A. Policy: All requests for hearing must be filed in writing using the KIPDA AAAIL Request for a Fair Hearing Form within 30 days of a circumstance for which the client is entitled to a hearing and such request needs to contain:

1. Specific allegations or complaints against the KIPDA AAAIL or service provider;
2. Name of the KIPDA AAAIL staff, service provider or other persons involved, if known;
3. Circumstances under which the alleged act occurred;
4. Date and place of alleged act; and
5. Name and address of complainant.

Procedures:

1. The complainant or legal guardian must sign and submit the request to the KIPDA AAAIL within the time frame specified in this policy. If requested, the KIPDA AAAIL and/or service provider staff will assist individuals in preparation and submission of a request for hearing. Staff will not assume responsibility for mailing the request.

B. Policy: The request must be filed with the KIPDA AAAIL within thirty (30) days after the alleged act or notice of a decision affecting services.

Procedures:

1. If the notice is mailed, the “date of the notice” is the date mailed; otherwise it shall be the date of delivery. In cases where the request is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Executive Director of KIPDA or a designee named by the Executive Director.

C. Policy: Within five (5) working days of the receipt of the complaint, the KIPDA AAAIL shall notify the complainant of the receipt of the request and the KIPDA Area Agency on Aging and Independent Living’s policy of attempt at local resolution (Section P of this Policy) before a hearing is scheduled and conducted within 30 days of the request for a hearing.

Procedures:

1. The results of the KIPDA AAAIL or service provider’s efforts to achieve local resolution of the complaint shall be mailed to the Executive Director not more

than thirty (30) days after the filing of the request for hearing. The report shall must contain:

2. Nature of the Complaint (with specific issues);
3. Date of Resolution Conference;
4. Persons present at the Conference; and,
5. The results of the Conference.
6. A copy of the local resolution report, to include a specific statement of any issues not resolved, shall be sent to the complainant and involved staff. If the complaint is resolved, the complainant shall sign an acknowledgment to be attached to the report.

HEARING BEFORE KIPDA AAAIL

- A. Policy:** In the event the complaint is not resolved within thirty (30) days of filing a request for a hearing, the complaint shall be referred to a hearing officer of KIPDA AAAIL to conduct a hearing.

Procedures:

1. The hearing shall be held within thirty (30) days after referral to a hearing officer.
2. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

LOCATION OF HEARING

- A. Policy:** The hearing shall be conducted at a reasonable location selected by the Hearing Officer. Under rare and extenuating circumstances, this hearing can be conducted on the phone or a HIPAA-compliant form of video conferencing if this option is available.

NOTICE OF HEARING

- A. Policy:** The complainant and representatives, as appropriate, the KIPDA AAAIL or service provider staff named in the complaint and their representatives, shall be given at least seven (7) working days written notice prior to the hearing.

Procedures for Complainant and the Representative:

1. The following information must be contained in the hearing officer's notice to the complainant and his representative:
2. The specific complaint to be heard at the hearing. The complainant shall be asked to notify the Hearing Officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The

- hearing officer shall then make a determination as to whether to modify the complaint issues;
3. List the individuals required to be present at the hearing;
 4. The complainant's option of presenting his case himself or with the aid of an authorized representative, such as legal counsel, relative, friend or another spokesman;
 5. That KIPDA AAAIL shall not be responsible for any legal fees incurred by the complainant related to the hearing;
 6. The nature and conduct of the hearing, e.g., orderly but informal manner, opportunity to present witnesses and to cross examine opposing witnesses, etc.; and
 7. The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access such material.

Procedures for Staff involved in complaint:

1. The following information must be contained in the hearing officer's notice to staff involved in the complaint:
2. The specific complaint to be heard at the hearing;
3. Individuals to be present at the hearing;
4. The nature and conduct of the hearing, e.g., orderly but informal manner, opportunity to present witnesses and to cross examine opposing witnesses, etc.; and
5. Staff's option of presenting the case themselves or with an authorized representative. Staff shall be responsible for making arrangements for representation at the hearing.

ATTENDANCE AT THE HEARING

- A. Policy:** Attendance at the hearing shall be limited to the complainant and representatives, if any; staff named in the complaint and their representatives, if any: the KIPDA attorney; a representative of the KIPDA AAAIL; the Hearing Officer; and a person to operate the recording equipment and any witness called by either the complainant or KIPDA AAAIL.

CONDUCTING THE HEARING

- A. Policy:** The hearing shall be conducted in an orderly manner, following general rules of procedure applicable to administrative hearings. All facts relevant to the issue shall be provided to the Hearing Officer.

Procedures:

1. The hearing officer shall open the hearing by:

- a. Describing the purpose of the hearing,
 - b. Explaining the role of the hearing officer, and
 - c. Introducing parties to the hearing.
 - d. The Hearing Officer may direct or grant a continuance for good cause shown.
 - e. The hearing officer shall clarify the issues to be heard. The issues shall be the same as those in the written notification of the hearing.
2. The hearing will be conducted in a manner consistent with Kentucky Administrative Regulations and KIPDA AAAIL procedures as appropriate.
 3. The hearing officer shall arrange for the separation of witnesses. Only the complainant and representatives, staff involved in the complaint and their representatives, if any; the KIPDA AAAIL attorney; a representative of the KIPDA AAAIL; the hearing officer; and a person to operate the recording equipment is entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.
 4. The hearing officer shall swear each witness in prior to giving testimony. Each witness shall complete direct testimony and then shall answer questions on cross examination by the adverse party.
 5. The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.
 6. Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.
 7. Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented at the discretion of the hearing officer.
 8. The hearing officer may, if necessary, to secure full information on the issue, postpone the hearing; examine each party who appears, and his witnesses. The hearing officer may take any additional evidence that he deems necessary including excerpts from the case record.
 9. After both parties to the hearing have been given ample opportunity to present all their testimony and evidence, the hearing officer shall give each party an opportunity to summarize the salient points of their cases.
 10. Upon completion of the hearing, the hearing record shall be closed unless the hearing officer grants an exception under proper motion.
 11. The hearing officer shall advise the parties that a decision shall be rendered by the KIPDA AAAIL within twenty (20) days of the close of the hearing.
 12. Ex parte communication with the hearing officer is prohibited. Any ex parte communications shall be shared with all parties to the hearing and become a part of the official record.

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

- A. Policy:** Within ten (10) days after the close of the hearing, the hearing officer shall file a written report with KIPDA AAAIL.

Procedures:

1. The written report shall contain the following information:
 - a. Statement of the complaint;
 - b. Persons present at the hearing, including witnesses;
 - c. Findings of Fact based solely on the evidence introduced at the hearing;
 - d. Conclusions as to whether or not the Findings support the complaint by citing appropriate statutes, policies, procedures, and practices.
 - e. Recommendations as to action to be taken regarding the complaint.

DECISION LETTER

- A. Policy:** Within ten (10) days after receipt of the Hearing Officer's Report by KIPDA AAA, the Executive Director or designee shall render a written decision on the complaint.

Procedures:

1. The written decision shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall contain the following information:
 - a. Statement of the complaint issues;
 - b. Findings of Fact and Conclusion with applicable statutes, policies, procedures and practices in regard to complaint; and
 - c. Decision and action to be taken based on Finding of Fact.

CORRECTIVE ACTION

- A. Policy:** After reviewing the Findings of Fact and recommendations of the hearing officer, if the Executive Director or designee feels that corrective action is warranted, a memorandum shall be forwarded to the appropriate individuals requesting that corrective action be initiated. Corrective action deemed necessary shall be initiated within ten (10) days.

HEARING RECORD

- A. Policy:** The transcript or recording of testimony and exhibits, or an official report containing the substance of the testimony introduced at the hearing, together with all exhibits, papers and requests filed in the proceeding, ex parte communications and the report of the hearing officer shall constitute the exclusive record and shall be available at the KIPDA AAAIL office at any reasonable time in accordance with the open records law.

Procedures:

1. The record of the fair hearing containing all information included in this policy shall be maintained in a locked file separate from the case record of the complainant.

APPEAL PROCESS

- A. Policy:** If the complainant is dissatisfied with the written decision rendered by KIPDA AAAIL, the complainant has ten (10) days from the date of the agency's decision to appeal.

Procedures:

1. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal is mailed to the Commissioner, Department for Aging and Independent Living, 275 East Main St., 3 E-E, Frankfort, KY 40621.

- B. Policy:** Upon receipt of a written appeal, the Department will implement procedures to respond to the request for appeal.

Procedures:

1. The Commissioner of the Department shall forward the appeal of the decision to the Quality Assurance Branch to be reviewed by a Hearing Officer. After reviewing the decision made by the KIPDA AAAIL, the Hearing Officer shall file a written report with the Executive Director that shall contain:
 - a. Conclusions as to whether or not KIPDA AAAIL's findings support the complaint, citing appropriate policy and procedure; and
 - b. Recommendations as to action to be taken, if any, on the complaint.

- C. Policy:** After receipt of the Hearing Officer's report, the Commissioner of the Department or designee shall render a written decision on the complaint.

Procedures:

1. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:
 - a. Statement of the appeal; and
 - b. Decision and action to be taken.

IMPLEMENTATION OF DECISION

- A. Policy:** Upon receipt of the written decision by the Commissioner of the Department regarding the appeal request, implementation of the decision must be followed.

Procedures:

1. KIPDA AAAIL shall develop a plan to implement the decision of the Commissioner or the Commissioner's designee.

CONTRACT AGENCIES

- A. Policy:** Contract agencies of KIPDA AAAIL shall follow procedures outlined in this manual section when a client has a complaint related to civil rights, discrimination, or service delivery.

LOCAL RESOLUTION PROCESS

- A. Policy:** The local resolution conference is an informal process that gives the complainant the opportunity to discuss his complaint. The purpose of the local resolution conference is to clarify the issues, resolve informally those issues that can be resolved, and to state clearly, concisely, and specifically, those issues that cannot be resolved and are to be referred for a Fair Hearing. The complainant is afforded an opportunity to decide whether he desires a Fair Hearing following the local resolution process. If a Fair Hearing is to be held, the issues shall be stated as a violation of specific statutes, regulations, policies, procedures or practices.

Procedures:

1. After receiving the request, the Local Resolution Facilitator (LRF) of the appropriate agency will contact the complainant to clarify the issues of the complaint and to determine if the complainant wishes to participate in the local resolution process.
2. The complainant, at this point, may refuse to participate in the local resolution efforts and choose to request that the complaint be withdrawn, or that the complaint be referred for a Fair Hearing. If either occurs, the LRF shall relay this information, in writing, to the KIPDA AAAIL and attach an acknowledgment signed by the complainant to that effect, if possible.
3. If the complainant chooses to be involved in the local resolution process, the LRF may solicit information from all involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include, but is not limited to, interviews with the complainant and involved KIPDA AAAIL staff or contract staff, interviews with other involved parties, and a review of relevant case materials.

- B. Policy:** It is preferable to conduct a joint conference with the complainant and involved KIPDA AAAIL or contract staff together. However, this shall be decided on a case-by-case basis.

Procedures:

1. If a joint conference is held, it should be stressed that the meeting is "informal" in nature. Although complainants and involved KIPDA AAAIL or contract staff

- are allowed to have representatives, the swearing of witnesses, introduction of evidence, and other formal proceedings of a Fair Hearing is not appropriate for the local resolution conference.
2. Other issues identified as a result of the local resolution conference shall be brought to the attention of the appropriate management and supervisory staff. The local resolution process shall be utilized to the fullest extent possible for complaints filed.
 3. If the complainant requests to view his case record at the local resolution conference, the LRF shall explain the Open Records Law and provide the complainant with a Request to Inspect Public Records.
 4. At the conclusion of the local resolution process, a final report shall be forwarded to the Executive Director of KIPDA.

LOCAL RESOLUTION CONFERENCE

A. Policy: Should the complainant choose to follow the local resolution conference process; a local resolution facilitator shall be appointed by the Executive Director and a local resolution conference will be conducted not more than thirty (30) days after the filing of the request for hearing. This is a process that may be chosen by the complainant prior to beginning a more formal hearing process as described in Section 2.3 (D). The procedures shall be implemented upon request for a Local Resolution Conference.

Procedures:

1. The following shall be completed by KIPDA before the Conference:
 - a. Review the complaint upon receipt.
 - b. Review applicable policies and procedures.
 - c. Initiate a review of the record.
2. The local resolution facilitator shall implement the following procedures for the Local Resolution Conference:
 - a. It is preferable to interview the client and staff together, but it needs to be decided on a case-by-case basis.
 - b. Begin the conference by introducing all parties present, the purpose(s) of the conference and outlining the rules to be followed at the conference.
 - c. Give the complainant the opportunity to express his/her complaint.
 - d. Give staff the opportunity to express their viewpoints.
 - e. Keep the conference focused on the issue(s).
 - f. The role of the Local Review Facilitator is to facilitate and expedite the conference in an attempt to resolve the issue(s). The facilitator may even suggest a method of resolution.
 - g. Review policies and procedures with staff and provide them with a copy of the complaint, if necessary.
 - h. Review applicable policies and procedures with complainant and provide a copy of the complaint.

- i. If necessary, provide the complainant with a copy of the applicable policies and procedures.
 - j. Even if it appears at the outset of the conference that the issue can not be resolved, continue to work toward a resolution.
 - k. Determine if the issue is one that meets the criteria for those entitled to a hearing (review criteria prior to conference). When determining the issue, keep it specific.
 - l. If resolved or unresolved, have the complainant sign a statement to that effect.
3. The Local Resolution Facilitator shall complete the following after the conclusion of the Conference:
- a. Within thirty (30) days of the complainant's filing of the request for a hearing, provide a written report of the conference (in memo form) to the complainant and involved staff, and appropriate KIPDA AAAIL personnel. The written report must include:
 - i. The nature of the complaint with a listing of the specific issue(s);
 - ii. Date of the Local Resolution Conference;
 - iii. Persons present at the Conference; and,
 - iv. Results of the Conference (that is, if issue(s) resolved or unresolved).
4. Other items that may be addressed in the memo:
- a. Outline of the salient points made by both complainant and staff.
 - b. List any new issue that may fall under the criteria of those entitled to a hearing.
 - c. Bring to the attention of appropriate supervisory staff other issues not falling under the criteria.

CONTRACTOR and CONTRACTOR SELECTION HEARING PROCEDURE

All decisions made by the KIPDA Board of Directors on behalf of The Area Agency on Aging and Independent Living in the administration of programs administered on behalf of the Department for Aging and Independent Living or any other Federal or State organization shall be made in accordance with the approved agency procurement procedures and the approved Area Plan if funds are authorized through the Cabinet for Health and Family Services.

- A. Policy:** KIPDA AAAIL, within seven calendar (7) days of any decision which denies an applicant a contract to provide a service, terminates an existing contract, or which does not renew an existing contract, shall deliver a written notice of such decision to the affected applicant/contractor by registered or certified mail.

Procedures:

1. The notice of decision shall specify the reason(s) for the adverse action and advise the applicant or contractor that they have ten calendar (10) days from receipt of the letter to file a written complaint with KIPDA AAAIL.

2. The notice shall also advise the applicant or contractor that failure to file a complaint or protest within a timely manner constitutes a waiver of their opportunity for a fair hearing up to and including the State agency level. Should KIPDA general procurement standards for protests, disputes and claims conflict with this requirement, this policy shall supersede approved procurement procedures as this guideline is established in accordance with 910 KAR 1:140.

B. Policy: In the event a protest or complaint is filed in accordance with the established policies and procedures, in the timeframe established, KIPDA AAAIL shall not proceed with the solicitation, award or termination and local administrative remedies shall first be implemented in accordance with policies established by KIPDA AAAIL.

LOCAL ADMINISTRATIVE REVIEW

The purpose of a Local Administrative Review is to provide the KIPDA AAAIL and the applicant or contractor an opportunity to resolve complaints or protests regarding administration of a program/service funded through Federal or State general funds at the local level.

A. Policy: KIPDA AAAIL shall conduct an administrative review promptly after receipt of a written complaint or protest from an applicant or contractor. A State Agency review shall not be conducted until the local administrative review process is fully completed and administrative remedies are exhausted.

Procedures:

1. Upon receipt of a timely complaint and request for a fair hearing or review, KIPDA AAAIL shall provide the applicant an opportunity to review pertinent evidence upon which the adverse action was based. This will include
 - a. competing proposals and scoring sheets;
 - b. requesting reconsideration of an award; and
 - c. stating in writing why the protest is filed and the factual circumstances and issues to be considered during the review.

B. Policy: Upon receipt of a timely written complaint or protest from an applicant or contractor, the local administrative review shall afford the following opportunity:

1. An opportunity to appear in person before an individual or a group of three (3) persons who can render an impartial decision;
2. An opportunity to present witnesses and documentary evidence;
3. An opportunity to be represented by counsel;
4. An opportunity to cross-examine all witnesses; and
5. A written impartial decision which sets forth the reasons for the decision, the evidence on which the decision is based, and a statement explaining the complainant's right to request a State-level hearing as set forth below.

- A. Policy:** KIPDA AAAIL shall respond in writing by Certified Mail, return receipt required, to the applicant or contractor its findings and determinations on all issues raised in the complaint or protest no later than twenty (20) days after KIPDA AAAIL or its Administrative Review representatives complete the local review process.

Procedures:

1. KIPDA AAAIL shall provide written notice to the applicant or contractor as follows:
 - a. Respond in writing by certified mail, return receipt required, to the applicant or contractor its findings and determinations on the issues raised in the complaint, with a copy provided to the Department for Aging and Independent Living;
 - b. KIPDA shall provide notice to the applicant or provider of the right to request a hearing with the Department for Aging and Independent Living (de nova hearing); and
 - c. Provide opportunity for appeal to the state-level for review of the transcript.

- B. Policy:** All KIPDA AAIL service providers shall assure that, regardless of contracting level, a local administrative review process is in place with the minimum requirements as described in (1) through (5) above, included at the provider level review, except that KIPDA contractors only have a right to a State-level review, as set forth below, upon completion of a local level review and request for State hearing.

- C. Policy:** A contractor or applicant of KIPDA AAAIL shall be afforded a de nova (formal) hearing at the State level if the request and grounds for hearing as set forth in the 910 KAR 1:140 are met. If the provider is not satisfied with the decision at the local level, KIPDA contractors are afforded a de nova hearing by KIPDA AAAIL with an opportunity for appeal to the State level for a review of the transcript.

REQUEST AND GROUNDS FOR STATE LEVEL HEARING

- A. Policy:** If the complaint or protest is not resolved by the Local Administrative Review, or if KIPDA AAA does not respond to the complaint or protest within twenty (20) days as provided above, the applicant or contractor may request a hearing at the State level on one or more of the following grounds:
1. Where there is reason to claim that an award has not been made in accordance with the applicable procurement guidelines.
 2. Where there is reason to claim that the Local Administrative Review was not made in accordance with KIPDA AAAIL's approved procedures.
 3. Denial by KIPDA AAAIL in whole or in a substantial part of an application to provide services where there is reason to claim such denial is arbitrary, capricious, an abuse of discretion, biased, the result of a conflict of interest, not

based upon substantial evidence, or otherwise not in accordance with applicable Federal or State law, statute or regulation.

4. Any action on the part of KIPDA AAAIL concerning non-renewal or termination of a contract to provide services where there is reason to claim such action is arbitrary, capricious, an abuse of discretion, biased, the result of a conflict of interest, not based upon substantial evidence, not in accordance with terms of the contract, if appropriate, or otherwise not in accordance with Federal or State law, statute or regulation.

Procedures:

1. A written request for a hearing by an applicant or contractor shall set forth the grounds and their alleged factual basis for a hearing. It shall be mailed to the Commissioner, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621 with a postmark not later than (10) days from the applicant/contractor's receipt of the Local Administrative Review findings and determination. The applicant or contractor shall also mail a copy of the request for a State level hearing to KIPDA AAAIL.
2. Upon receipt of a copy of the request, KIPDA AAAIL shall immediately forward to the Department for Aging and Independent Living, a complete copy of the proposal file relating to the particular procurement in question, and a complete copy of the Local Administrative Review.
3. Copies shall be provided to the Hearing Officer for inclusion in the record of the case. Failure of the applicant or contractor (complainant) to comply with procedures shall constitute a forfeiture of the opportunity for a state level hearing. The request shall be made to the Commissioner of the Department with a written explanation.

STATE LEVEL HEARING PROVISIONS

The following provisions outline the State Level hearing process in accordance with 910 KAR 1:140, of which, the Department for Aging and Independent Living may be granted the authority to waive certain provisions or modify procedures. Therefore, KIPDA AAAIL is not establishing policy on how the State Level Hearing will proceed but is providing the following information for reference and guidance.

- 1) The Commissioner may waive the timeliness requirements and shall notify the parties of the reason for the waiver upon:
 - a. Receipt of a written request of a party and a determination that good cause or exigent circumstances exist;
 - b. Determination that waiver is in the best interest of the program.
- 2) Upon receipt of a request for a State-Level hearing in accordance with the procedures established, a hearing shall be conducted within twenty (20) days of the date the Commissioner receives the request. The hearing officer shall:
 - a. Notify the parties by mail of the date, time and location of the hearing;
 - b. Provide each party with a copy of the request; and

- c. May grant an extension or continuance if:
 - 1. The Commissioner receives a written request by a party with good cause shown to reschedule; and
 - 2. The extension or continuance shall not delay service delivery.
- 3) The Commissioner may expedite the scheduling of events and notify the parties of the reason upon written determination that:
 - a. A reduction in the time frame is in the best interest of the aging programs; and
 - b. The rights of the parties at the state level hearing are not prejudiced.
- 4) The decision of the Commissioner regarding the qualifications of the hearing officer shall be final. The hearing officer shall be disqualified if:
 - a. She/he has a personal bias;
 - b. She/he is prejudice with respect to a party; or
 - c. She/he has a conflict of interest in the matter pending.
- 5) A party may suggest in writing to the Commissioner any grounds for disqualification prior to the date set for the hearing.
- 6) The rights of all parties and the State-Level Hearing process shall be conducted in accordance with the provisions of 910 KAR 1:140. To the extent allowable by law, the Commissioner or Hearing Officer of the State-Level Hearing may have the right to waiver certain time frames and procedures in conducting the hearing. When a party fails to appear at a hearing, the hearing officer shall notify the party in writing that a default shall be entered. The defaulting party shall have no more than five (5) days in which to seek a new hearing date, which shall be granted only for good cause shown. The provisions of 910 KAR 1:140 apply with regard to proceeding with a State-Level Hearing upon default by any party.
- 7) Upon conclusion of the State-Level Hearing process, the Commissioner shall render a decision. Such decisions shall be based on the record of the hearing and may direct appropriate action be taken, including:
 - a. Affirming the action of the KIPDA AAAIL
 - b. Directing the award be made to the next most advantageous proposal, taking into consideration price, and the evaluation factors set forth in the Request for Proposal (RFP); or
 - c. Requiring the KIPDA AAAIL to re-advertise its RFP.
- 8) The Commissioner may authorize the KIPDA AAAIL or its Executive Director to approve a contingency plan for delivery of services while the AAAIL takes action to conform to the decision. The decision of the Commissioner shall constitute the final administrative review of the matter and issues to which were the subject of the hearing. A copy of the decision shall be:
 - a. Mailed or hand-delivered to the parties; and
 - b. Maintained by the Commissioner with the complete record of the hearing. (17 KyR. 854; Am. 1515; eff. 12-7-90; Recodified from 905 KAR 8:140; Recodified from 923 KAR 1:140, 7-8-99).

FORMS- The following two pages should be given to clients and/or posted at provider sites (as applicable) to advise clients of their right to a fair hearing.

Appendix for the Fair Hearing Section

- Request for a Fair Hearing

REQUEST FOR A FAIR HEARING

KIPDA is the Area Agency on Aging designated under the Older Americans Act. It is responsible for administering a variety of programs eligible older citizens in Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer and Trimble Counties in Kentucky. It has assured the US Department of Health and Human Services and the Kentucky Cabinet for Families and Children that it will adhere to the provisions of the Older Americans Act and other federal and state laws concerning complaints by clients about services, appeals of denial or reductions in services and fair hearings on those complaints and appeals.

If you believe that you have been denied services, received poor quality services, had services unfairly reduced or stopped, been mistreated by an employee of KIPDA or one of its contractors, you have the following rights:

1. You can file a complaint about the services or employees of the organization. The official form to do so is available from the provider, senior center, nutrition site, adult day care, case manager, or KIPDA.
2. The request for a Fair Hearing must be made in writing.
3. If you need assistance filling you the form, please contact KIPDA at 502.266.5571.

-If you are hearing impaired, you can call 1.800.648.6056.

4. You can request a Fair Hearing, held before an impartial hearing officer concerning services for which you have been denied, have been reduced, materially modified, suspended or terminated. You can receive assistance from KIPDA in requesting a Fair Hearing. You can use the form provided. All requests must be made in writing.
5. If you request a Fair Hearing within ten days of being notified of services being reduced or terminated, the service provider must continue providing services to you until a decision is reached by the hearing officer, unless it is determined that either you or the staff providing the service would be in danger while providing the service.
6. The complaint must be specific to the allegation, the person involved, the circumstances of the alleged incident, and the dates and places.

More information about the formal process is available. Please contact KIPDA at 502.266.5571 or visit our website www.kipda.org.

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY

11520 COMMONWEALTH DRIVE

LOUISVILLE, KY 40299

(502) 266-5571

REQUEST FOR FAIR HEARING FORM

Pursuant to the rights of clients, applicants and contractors of Title III Older Americans Act Programs and State Funded Programs through the Department for Aging and Independent Living in accordance with KRS 13B, I hereby submit a complaint and request a Local Administrative Review in accordance with KIPDA AAAIL policies and procedures. In the event I am not satisfied with the decision rendered through the Local Administrative Review process, I understand that I may pursue a request for a hearing to be conducted in accordance with KRS 13B. Please complete and return this form to the KIPDA Director of Social Services at the address above. Faxed copies must be followed by an original request mailed to KIPDA.

Name of Complainant: _____

(Please Print Full Name Legibly)

Address of Complainant: _____

County: _____ Telephone Number: _____ E-mail: _____

Please describe the nature of your complaint and complete this form in its entirety in order to satisfy the requirements of filing a complaint in accordance with 910 KAR 1:140. If you need more space, please include additional sheets of paper. Please write as legibly as possible or type this information.

Please give the name(s) and addresses, if known, of staff or other persons involved in this matter, if applicable.

Name

Name

Name

Address

Address

Address

City and State

City and State

City and State

The date of the occurrence or the most recent date the incident occurred or the period of time for which this incident occurred.

Time of Day: _____ Month: _____ Day: _____ Year: _____

Signature of Complainant

Date