

Complaint Resolution, Hearing, and Appeal Procedures

12VAC35-115-150 – Complaint Resolution, Hearing and Appeal Procedures

- A. Court orders or orders or decisions entered after an administrative hearing are not subject to review under the human rights complaint resolution process.
- B. The parties to any complaint are the individual and the director. Each party can also have anyone else represent him during resolution of the complaint. The director shall make every effort to resolve the complaint at the earliest possible stage.
- C. Reviews and hearings will generally be closed to other people unless the individual making the complaint requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq. of the Code of Virginia). The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (see § [2.2-3711](#) of the Code of Virginia).
- D. In no event shall a pending hearing, review, or appeal prevent a director from taking corrective action based on the advice of the provider's legal counsel that such action is required by law or if the director thinks such action is correct and justified.
- E. The LHRC or SHRC, on the motion of any party or on its own motion, may, for good cause, extend any time periods before or after the expiration of that time period. No director may extend any time periods for any actions he is required to take under these procedures without prior approval of the LHRC or SHRC.
- F. Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a party to act within that time period shall waive that party's further rights under these procedures.
- G. In making recommendations regarding complaint resolution, the LHRC and the SHRC shall identify any rights or regulations that the provider violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under this chapter.
- H. If it is impossible to carry out the recommendations of the LHRC or the SHRC within a specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.
- I. Any action plan submitted by the director or commissioner in the course of these proceedings shall fully address final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, that prevent efforts to fully remedy the violation.
- J. All communication with the individual during the complaint resolution process shall be in the manner, format, and language most easily understood by the individual.

12VAC35-115-175 – Human Rights Complaint Process

A. Each individual has a right to:

1. Make a complaint that the provider has violated any of the rights assured under this chapter;
2. Have a timely and fair review of any complaint in accordance with this chapter and the program's human rights complaint resolution policies and procedures;
3. Have someone file a complaint on his behalf;
4. Use these and other complaint procedures; and
5. Make a complaint under any other applicable law, including to the protection and advocacy agency.

B. The individual shall:

1. Be contacted by the director or the director's designee regarding the complaint within 24 hours;
2. Have access to a human rights advocate for assistance with the complaint;
3. Be protected from retaliation and harm;
4. Have the complaint reviewed, investigated, and resolved as soon as possible;
5. Receive a report with the director's decision and action plan within 10 working days; and
6. Be notified in writing of his right to and the process for appealing the director's decision and action plan to the LHRC.

C. Upon receipt of a complaint, Strengthening Our System, Inc. shall:

1. Notify the department of the complaint as soon as possible, but no later than the next business day;
2. Ensure that the Executive Director or the director's designee contacts the individual regarding the complaint within 24 hours;
3. Initiate an impartial investigation into, or resolution of, the complaint as soon as possible, but no later than the next business day;
4. Take all steps necessary to ensure that individuals involved in the complaint are protected from retaliation and harm;
5. Assist the individual making a complaint in understanding the human rights complaint process, the provider's complaint resolution policies and procedures, and the confidentiality of involved information;
6. Ensure that all communications to the individual are in the manner, format, and language most easily understood by the individual;

7. Adhere to the reporting requirements in [12VAC35-115-230](#); and

8. Report the director's decision and action plan within 10 working days to the individual, authorized representative, if applicable, and human rights advocate.

D. All providers shall have complaint resolution policies and procedures that address all of the requirements of subsections C and E of this section.

E. Provider complaint resolution policies and procedures shall be in writing and approved by the department prior to implementation. The policies and procedures shall:

1. Ensure that anyone who believes that SOS, Inc. has violated an individual's rights under this chapter can report it to the director or the human rights advocate for resolution;

2. Ensure that employees shall not take, threaten to take, permit, or condone any action (i) to punish or retaliate against anyone filing a complaint or (ii) to prevent anyone from filing or helping an individual file a complaint either under this chapter or with an outside entity;

3. Ensure that every attempt is made to resolve an individual's complaint as quickly as possible;

4. Provide opportunities for timely negotiation and resolution for all complaints, including the additional requirements related to abuse, neglect, or exploitation in subsection F of this section;

5. Establish a process for designating the director's responsibilities to ensure timely complaint reporting and resolution;

6. Detail the program's complaint review or investigation process, including (i) specific actions the program will take to protect the individual and gather and document relevant information and (ii) how and when the individual and his authorized representative, if applicable, will receive updates on the progress of the review;

7. Detail notification requirements and deadlines including procedures for providing:

a. The program's complaint policies and procedures to all individuals and authorized representatives at admission to service; and

b. Written notification to the individual regarding his right to and the process to appeal the director's decision and action plan to the LHRC; and

8. Detail staff training requirements regarding the program's complaint resolution process and requirements.

F. Additional requirements for complaints involving abuse, neglect, or exploitation:

1. The program director shall take immediate steps to protect the individual until the investigation is complete, including appropriate personnel actions.

2. Any instance of seclusion or restraint that does not comply with this chapter or an approved variance, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and the department in accordance with the requirements for reporting allegations of abuse. (SOS, Inc. does not use restraints)

3. The program director shall notify the department and authorized representative, if applicable, of an allegation of abuse or neglect within 24 hours of the receipt of the allegation.

4. The program director shall ensure that the investigation is conducted by a person trained to do investigations and who is not involved in the issues under investigation.

5. The investigator shall provide a written report of the results of the investigation of abuse or neglect to the director and to the human rights advocate within 10 working days from the date the investigation began unless an extension has been granted.

6. The program director shall decide, based on the investigator's report and any other available information, whether the abuse, neglect, or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of the evidence.

7. The program director shall submit the final decision and action plan, if applicable, to the individual, authorized representative, if applicable, and human rights advocate within 10 working days of its completion.

G. If the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately; the human rights advocate shall inform the director, the provider's governing body, and the LHRC. The LHRC shall conduct a hearing according to the special procedures for emergency hearings in [12VAC35-115-190](#).

H. The director shall cooperate fully with any abuse or neglect complaint investigation conducted by a local department of social services.

I. If at any time the director has reason to suspect that the abusive, neglectful, or exploitive act is a crime and that it occurred on the program premises, the director or designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that may result.

PLEASE SEE APPENDIX A FORM FOR COMPLAINTS

APPENDIX A

STRENGTHENING OUR SYSTEM, INC. COMPLAINT FORM

First Name: _____ Last Name: _____ DOB: _____

Information Received By: _____ Date: _____ Date Filed: _____

Against: DSP MHSB Supervisor Admin Name of Provider: _____

Mailing Address: _____

City: _____ State: _____
Zip: _____

Phone: _____

How individual prefers to be contacted: Tel. Letter Email In person

Does the complaint involve abuse & neglect? Yes No

Summary of Grievance

What does the individual want?

Describe any previous attempt to resolve the problem:

For the investigation:

I am am not willing to meet in the same room with SOS, Inc. staff to discuss the grievance

I prefer (select one) mediation, a hearing no preference

I need the following special accommodation(s):

To the Individual:

1. A copy of this form is proof that you filed your grievance on the date above. Please keep your copy of the form until your grievance is over.
2. Information about your grievance that you provide, or that others provide, may be shared with staff of the Human Rights Committee and not with others who respond to the grievance. Information about the grievance will not be placed in your clinical record or shared with anyone involved in the grievance.
3. You cannot be punished or treated unfairly because you file a grievance.

APPENDIX B

STRENGTHENING OUR SYSTEM, INC. RESPONSE TO GRIEVANCE

Individual Name:

Response Delivered to Individual by:	Date:
--------------------------------------	-------

Response Level: <input type="checkbox"/> Formal <input type="checkbox"/> Informal

Outcome of Investigation: Please specify who wrote the response and worked on the problem and how. Be sure to sign and date.
--

Individual's Decision: I have decided to (check one):

- End my grievance now. No further action will be taken.

- Appeal my grievance to the next level. I and/or y Representative will be notified of my External Review (appeal) date.

- Wait to decide whether to appeal my grievance. I understand that if I want to appeal I must decide within (10) business days after the date of the response to my grievance.