paper may be served on the representa-
tive for the OED Director by:
(1) Delivering a copy of the paper to
the representative; or
(2) Mailing a copy of the paper by
first-class mail, “Express Mail,” or
other delivery service to an address
designated in writing by the represent-
tive; or
(3) Any other method mutually
agreeable to the respondent and the
representative.
(d) Each paper filed in a disciplinary
proceeding shall contain therein a cer-
tificate of service indicating:
(1) The date on which service was
made; and
(2) The method by which service was
made.
(e) The hearing officer or the USPTO
Director may require that a paper be
served by hand or by “Express Mail.”
(f) Service by mail is completed when
the paper mailed in the United States
is placed into the custody of the U.S.
Postal Service.
§ 11.43 Motions.
Motions, including all prehearing
motions commonly filed under the Fed-
eral Rules of Civil Procedure, shall be
filed with the hearing officer. The
hearing officer will determine whether
replies to responses will be authorized
and the time period for filing such a re-
sponse. No motion shall be filed with
the hearing officer unless such motion
is supported by a written statement by
the moving party that the moving
party or attorney for the moving party
has conferred with the opposing party
or attorney for the opposing party in
an effort in good faith to resolve by
agreement the issues raised by the mo-
tion and has been unable to reach
agreement. If, prior to a decision on
the motion, the parties resolve issues
raised by a motion presented to the
hearing officer, the parties shall
promptly notify the hearing officer.
§ 11.44 Hearings.
(a) The hearing officer shall preside
over hearings in disciplinary pro-
cedings. The hearing officer shall set
the time and place for the hearing. In
cases involving an incarcerated re-
spondent, any necessary oral hearing
may be held at the location of incarcera-
tion. Oral hearings will be steno-
graphically recorded and transcribed,
and the testimony of witnesses will be
received under oath or affirmation. The
hearing officer shall conduct the hear-
ing as if the proceeding were subject to
5 U.S.C. 556. A copy of the transcript of
the hearing shall become part of the
record. A copy of the transcript shall
be provided to the OED Director and
the respondent at the expense of the
Office.
(b) If the respondent to a disciplinary
proceeding fails to appear at the hear-
ing after a notice of hearing has been
given by the hearing officer, the hear-
ing officer may deem the respondent to
have waived the right to a hearing and
may proceed with the hearing in the
absence of the respondent.
(c) A hearing under this section will
not be open to the public except that
the hearing officer may grant a request
by a respondent to open his or her
hearing to the public and make the
record of the disciplinary proceeding
available for public inspection, pro-
vided, a protective order is entered to
exclude from public disclosure informa-
tion which is privileged or confidential
under applicable laws or regulations.
§ 11.45 Amendment of pleadings.
The OED Director may, without
Committee on Discipline authoriza-
tion, but with the authorization of the
hearing officer, amend the complaint
to include additional charges based
upon conduct committed before or
after the complaint was filed. If
amendment of the complaint is author-
zized, the hearing officer shall authorize
amendment of the answer. Any party
who would otherwise be prejudiced by
the amendment will be given reason-
able opportunity to meet the allega-
tions in the complaint or answer as
amended, and the hearing officer shall
make findings on any issue presented
by the complaint or answer as amend-
ed.
§§ 11.46–11.48 [Reserved]
§ 11.49 Burden of proof.
In a disciplinary proceeding, the OED
Director shall have the burden of prov-
ing the violation by clear and con-
vincing evidence and a respondent shall