**Section 336.115 Rights and Responsibilities During the Administrative Appeal**

a) Rights of the Minor

1) *If the minor, who is the victim named in the report sought to be amended or removed from the State Central Register, is the subject of a pending action under Article II of the Juvenile Court Act of 1987, or the report was made while a guardian ad litem* (GAL)and/or attorney *was appointed for the minor under Section 2-17 of the Juvenile Court Act of 1987, then the minor shall, through the minor's attorney or GAL appointed under Section 2-17 of the Juvenile Court Act of 1987, have the right to participate and be heard in such hearing.* [325 ILCS 5/7.16]

2) The minor, through the minor's attorney and/or GAL, has the right to participate and be heard during the administrative appeal. "Participate" means that the attorney/GAL may submit an offer of proof regarding testimony and documentary evidence not presented by the parties and may ensure that proper protections are in place for clients who are called to testify during the hearing. "Be heard" means the attorney/GAL may submit a closing argument or position statement. The minor's attorney/GAL may request a continuance only on the basis that notice, as required by Section 336.105(a)(3), was not provided. The minor's attorney/GAL does not thereby become a party to the proceeding or have standing or intervenor status in the administrative appeal proceeding, and shall not have the right to request a continuance or to present, question or cross-examine witnesses.

3) Once it is identified that the subject matter of the hearing concerns a minor being represented by a GAL/attorney, the Department shall notify the GAL/attorney, as provided in Section 105(a)(3), and shall provide the GAL/attorney a copy of the "Intent to Participate" form. The GAL/attorney shall file the completed form within 5 days after receipt. Filing the form shall ensure the GAL/attorney is notified of all dates regarding the hearing.

b) Rights of the Parties

1) During the administrative hearing, the appellant and the Department have the right to:

A) present and question witnesses;

B) present any information relevant to the issues;

C) question or cross-examine witnesses, including an opportunity to question opposing witnesses, and dispute any information; and

D) present stipulations to facts or issues.

2) An appellant may bring an authorized representative to the hearing. All expenses of an authorized representative or of an appellant's witnesses shall be paid by the appellant.

3) Before and during the administrative hearing:

A) the appellant may withdraw the appeal;

B) the Department may expunge the indicated finding; or

C) the Department may amend the indicated finding to remove any information that identifies the appellant as the perpetrator of child abuse or neglect.

4) At any time prior to the commencement of the administrative hearing, the Department's legal representative may add or amend the allegations that support the indicated finding against the appellant. The Department's legal representative must notify the appellant and the AHU, in writing, of the new or amended allegation and provide the appellant with a concise statement of the facts that form the basis for the new or amended allegation. If the Department's legal representative adds or amends an allegation after the pre-hearing conference, but prior to the commencement of the administrative hearing, the appellant, upon request, may be entitled to a continuance for a reasonable period of time. This continuance shall not be attributed to the appellant.

c) The Responsibility of the Department

1) At any time subsequent to the filing of an appeal, when the Department attorney determines that the appeal involves a minor who is the subject of a pending action under Article II of the Juvenile Court Act, he or she shall notify the minor's GAL/attorney as soon as is practicable, but not later than 7 days prior to the first hearing date.

2) In an administrative hearing:

A) the Department carries the burden of proof of justifying the refusal to amend, expunge or remove the record; and

B) the Department must prove that a preponderance of the evidence supports the indicated finding, or that the record of the report is being maintained in a manner consistent with ANCRA and in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

3) The Department has an obligation to present evidence that creates a full and complete record, subject to Department rules and statutes on confidentiality.

(Source: Added at 41 Ill. Reg. 15260, effective December 6, 2017)