**Section 508.110 Hearings**

a) Except for hearings under 59 Ill. Adm. Code 50, 115, 117, 119, and 120, all hearings conducted in any proceedings shall be open to the public subject to individual rights to confidentiality.

b) Hearings will be conducted by the Secretary or by an administrative law judge appointed by the Secretary. If the Secretary conducts the hearing, any reference in this Part to the administrative law judge shall be read to refer to the Secretary, except for references that may limit the administrative law judge's power as opposed to the Secretary's. The final decision-maker for the hearing shall be designated by rule or statute governing the hearing. If there is no such designation in rule or statute, the Secretary shall designate the final decision-maker.

c) The administrative law judge shall conduct hearings; administer oaths; issue subpoenas; hold informal conferences for the settlement, simplification, or definition of issues; dispose of procedural requests, motions, and similar matters; continue the hearing from time to time when necessary; examine witnesses; and rule upon the admissibility of evidence.

d) The administrative law judge shall direct all parties to enter their appearances on the record.

e) Written opening arguments and written closing arguments shall not be permitted unless all parties so stipulate or the administrative law judge so directs.

f) Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. Unless precluded by law, disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, default, or motion.

g) At any stage of the hearing or after all parties have completed the presentation of their evidence, the administrative law judge may call for further testimony, subject to cross-examination by the parties.

h) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. However, evidence not admissible under those rules of evidence may be admitted (except where precluded by statute or rule) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Immaterial, irrelevant, or unduly repetitious material shall be excluded.* A copy of the whole or any part of an admissible book, record, paper, or memorandum of the Department that is made by photostatic or other method of accurate and permanent reproduction may be admitted in evidence at the hearing without further proof of the accuracy of such copy. Objections to evidentiary offers may be made and shall be noted in the record. *Cross examination of each witness shall be allowed.* [5 ILCS 100/10-40]

i) *Official notice may be taken of matters of which circuit courts of this State may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.* [5 ILCS 100/10-40]

j) Absent a showing of good cause, no document shall be offered into evidence that was not disclosed in accordance with the requirements in Section 508.100(a), and no witness shall testify whose name was not provided pursuant to Section 508.100(d). For purposes of this subsection, a showing of good cause shall mean that a party, through no fault of its own, did not have knowledge of a document to be offered into evidence or the name of a witness within the timeframe necessary for compliance with Section 508.100(a) and (b).

k) The Department will arrange for audio or video taping or for a certified stenographic reporter (court reporter) to make a stenographic record of the hearing in all administrative hearings under this Part. Any person may make arrangements to obtain a copy of the stenographic record from the reporter. The Department reserves the right to employ a certified stenographic reporter. There shall be no audio or video taping apart from any made by the certified stenographic reporter employed for those purposes by the Department without the express consent of the administrative law judge and all parties to the hearing.

l) Corrections to the transcript of the hearing may be made by the Secretary or administrative law judge who heard the matter.

m) If a party, or any person at the direction of or in collusion with a party, violates any ruling or order of the administrative law judge, the administrative law judge, on motion, may enter such orders as are just, including, among others, the following:

1) that further proceedings be stayed until the order or rule is complied with;

2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;

3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;

4) that a witness be barred from testifying concerning that issue;

5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that the offending party's pleading be dismissed without prejudice; or

6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.

n) At any time, the administrative law judge may order the removal of any person from the hearing room who is creating a disturbance or engaging in conduct that disrupts the hearing.

o) At the request of any party, the administrative law judge may exclude all witnesses from the hearing room, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.

p) When it is impractical for the parties, witnesses or administrative law judge to appear in the same site for a hearing, testimony may be taken by telephonic means, interactive video conferencing, or any other means, at the discretion of the administrative law judge. If a hearing is to be conducted by such means, the notice shall so inform the parties and include instructions for providing any necessary telephone numbers. The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses. A party to such a hearing must submit to the administrative law judge at least 7 days before the date of the scheduled hearing any documents that are intended to be introduced at the hearing. Copies of the documents must also be provided to any other party prior to the date of the scheduled hearing. All documents submitted to the administrative law judge will be identified on the record.

q) The applicable burden of proof shall be determined by the rule or statute governing the right to hearing. If the rule or statute governing the right to a hearing is silent concerning the burden of proof, *such burden shall be a preponderance of the evidence*. [5 ILCS 100/10-15]

r) Failure of a party to appear at the administrative hearing at the time the hearing is scheduled will result in a dismissal of the contested case or recommendation of dismissal to the decision-maker if the decision-maker did not preside at the hearing.

s) If a party fails to appear and the hearing is dismissed, that party may request a rehearing of the contested case from the administrative law judge. Requests for reinstating the contested case must be filed no later than 10 days after the date of the notice of dismissal. Based on the statements in the request and the facts of the record, the administrative law judge shall:

1) Grant the request if the request meets the requirements of this subsection (s) and schedule a hearing with notice to all parties, including a copy of the request to any opposing parties; or

2) Deny the request, if the request fails to meet the requirements of this subsection (s), and issue a written decision setting forth the reasons for the denial.

(Source: Amended at 28 Ill. Reg. 1122, effective December 31, 2003)