**Section 475.90 Hearings**

a) All hearings shall be public unless required by statute to be otherwise.

b) The following shall be the order of proceedings of all hearings, subject to modification by the hearing officer for good cause:

1) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of the matters raised in the notice or answer;

2) Presentation of complainant's opening statement;

3) Presentation of respondent's opening statement;

4) Complainant's case;

5) Respondent's case;

6) Complainant's rebuttal, if any;

7) Respondent's rebuttal, if any;

8) Complainant's closing statement;

9) Respondent's closing statement;

10) Presentation and argument of all motions prior to final order;

11) Presentation of written briefs if required or allowed by the hearing officer;

12) Filing of proposed findings of fact and conclusions of law and recommendations of the hearing officer.

c) The complainant shall have the burden of proof except in cases under the jurisdiction of the STCB pursuant to Section 21-1 of the School Code where the STCB must determine the good character of an applicant, in which case the applicant has the burden of proof.

d) Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the hearing officer may, at the sole discretion of the hearing officer, constitute a default. In the case of a default, the hearing officer shall enter such findings, opinions, and recommendations as are appropriate based on the pleadings and evidence received into the record.

e) Evidence

1) A party shall be entitled to present the party's case or defense and oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full and true disclosure of the facts. *Any oral or documentary evidence may be received but a presiding hearing officer may exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privileges applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under such rules of evidence may be admitted, except where excluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced, a hearing officer may allow evidence to be received in written form.* [5 ILCS 100/10-40]

2) The testimony of a witness shall be under oath or affirmation administered by the hearing officer.

3) If a party objects to the admission or rejection of any examination, or to the failure to limit its scope, the party shall state briefly the grounds for the objection. Rulings on all objections shall appear in the record. When the admissibility of disputed evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence subject to the right of the hearing officer to strike the evidence from the record either during the hearing or as a part of the findings of fact and conclusions of law if the hearing officer determines that it was improperly admitted, in which case it shall not be considered in making findings of fact, conclusions of law and recommendations.

4) Formal exception to an adverse ruling is not required.

f) *Official notice may be taken of any material fact not appearing in evidence in the record if the Circuit Courts of this State could take judicial notice of such fact. In addition, notice may be taken of generally recognized technical or scientific facts within the STCB's or the ISBE's or its employees' 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 facts so noticed. The agency's expertise, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.* [5 ILCS 100/10-40(c)]

g) Hostile or Adverse Witness:

1) If the hearing officer determines that a witness is hostile or unwilling or adverse, the witness may be examined by the party calling the witness as if under cross-examination.

2) The party calling an occurrence witness, upon the showing that the party called the witness in good faith and is surprised by the witness' testimony, may impeach the witness by proof of prior inconsistent statements.

h) *Oral proceedings or any part thereof shall be recorded* [5 ILCS 100/10-35(b)] by a certified court reporter. Such records shall be transcribed either:

1) upon written application filed with the reporter or hearing officer by any party and upon the payment of fees at the rate provided in the agreement with the reporter or as established by the State Superintendent of Education, or

2) upon receipt of summons in administrative review or an order of a court, with payment of fees when allowed or required by statute. Any recording or transcription will be retained through and including the time allotted for appeal, revision, re-hearing, or other manner of review, prior to final disposition as provided for by the ISBE, the State Superintendent of Education, STCB, the hearing officer, or by law.

i) The official record of each hearing conducted pursuant to this Part shall consist of the items enumerated in Section 10-35(a) of the Illinois Administrative Procedure Act [5 ILCS 100/10-35(a)].

j) The hearing officer may require or allow parties to submit written briefs to the hearing officer within 21 days after the close of the hearing or such other reasonable time as the hearing officer shall determine consistent with the ISBE's, the STCB's, or the State Superintendent of Education's responsibility for expeditious decision.

(Source: Amended at 29 Ill. Reg. 10146, effective June 30, 2005)