**Section 336.105 The Administrative Appeal Hearing**

The administrative appeal hearing shall consist of a pre-hearing conference and a hearing date during which testimony is taken and evidence is received. The appellant or the appellant's authorized representative shall be prepared to participate at all pre-hearing conferences and hearings. Hearings shall be recorded; however, any party wishing to have the proceedings recorded by a certified court reporter may do so at the party's own expense.

a) Pre-Hearing Conference

The pre-hearing conference shall be convened by telephone unless the ALJ and the parties agree that the pre-hearing conference shall be held in person. The ALJ shall place all telephone calls. The cost of telephone calls will be borne by the Department. The AHU shall arrange for the appellant to use a telephone at a Department Field Office if the appellant has previously notified the Department that he/she does not have access to a telephone.

1) At the pre-hearing conference, the ALJ shall provide the parties with standard admonishments that shall include a statement of the rights of the parties and the right to have a timely hearing within the applicable timeframe, as well as the setting of dates for the administrative appeal hearing.

2) During the pre-hearing conference, the appellant and the Department should be prepared to discuss:

A) potential witnesses;

B) exhibits that might be offered;

C) timeframes for the administrative appeal hearing;

D) any potential motions that could be filed;

E) any other issues that would impact the timing and length of the administrative appeal hearing, such as, but not limited to, whether any of the witnesses require a special accommodation or a translator; and

F) The Department's legal representative and the appellant and his or her representative have an affirmative duty to determine if there is, and to report to the ALJ before any hearing is scheduled, any pending criminal case or juvenile court case concerning the circumstances that gave rise to the indicated report.

b) The ALJ shall address the following issues during the pre-hearing conference:

1) If the appellant asserts, at the pre-hearing conference, that he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect investigation (see 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect)), the appellant may request a review of the investigation. The ALJ may request documentation to validate the child care worker status of the appellant. The review shall be conducted jointly by the Division of Child Protection and the Office of Legal Services and shall determine if the case should be unfounded or if a hearing date will be set. The review must be conducted within 14 days from the date of the pre-hearing conference in which the appellant claims he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect determination. Any time expended for the review process will be attributed to the appellant and not to the Department (see Section 336.220(a)(1) or (2)).

2) Whether parties have exchanged lists of the names of persons who may provide testimony during the administrative hearing.

3) Whether children may testify or be involved in the hearing.

A) Either party requesting that a child be subpoenaed to testify or be involved in the hearing process must demonstrate at the pre-hearing conference that:

i) the child's testimony or involvement is essential to a determination of an issue on appeal;

ii) the likelihood of inflicting emotional harm to the particular child involved can be minimized with conditions and restrictions and the child's testimony is necessary for the interests of justice; and

iii) no alternatives, such as stipulations or transcripts from prior court hearings, exist that may be used as a substitute for the child's testimony.

B) In determining whether a child will testify, the ALJ must consider, when available, the opinion of the child's treating clinician regarding the impact on the child if the child is permitted to testify or not permitted to testify, and how any negative impact could best be minimized for the particular child.

i) The ALJ must balance the hardship on the child, taking into account possible restrictions or modifications described in subsection (c)(3)(B)(ii), against the interests of justice and the harm to the child if an appeal is improperly denied or an indicated finding is improperly expunged.

ii) If an ALJ allows a child to testify, the ALJ may set any conditions or restrictions, and may use any techniques allowed in any juvenile, civil or criminal court (including but not limited to in camera interviews, video conferences, questions submitted in writing, exclusion of parties to the proceeding (including but not limited to the parents), or change of hearing room or location) that will help minimize any emotional impact on the child.

4) Whether:

A) the parties agree to hold the hearing by telephone or video conference;

B) whether witnesses should be scheduled to testify at specific times;

C) there are any witnesses, such as medical professionals, that should be permitted to testify telephonically; and

D) whether there are any non-professional witnesses who should be allowed to testify telephonically.

5) Whether the parties have or will have exchanged records or documents prior to the administrative hearing.

6) Whether the parties can agree upon any facts as true.

7) Motions Filed by Any Party

A) Any motions from the appellant or the Department shall be filed with the ALJ and served upon the AHU and the opposing party within a reasonable time prior to the hearing.

B) Any motion that is consistent with administrative practice and procedure and does not infringe upon the Director's authority may be heard.

C) Motions filed shall be filed in accordance with any motion practice and timelines established by the ALJ responsible for hearing the case.

D) If any party believes that a finding in a juvenile court proceeding is dispositive to an issue on a pending administrative appeal, he or she may file a motion, with supporting documentation, requesting the appropriate relief.

8) The need of either party for an interpreter in his/her preferred language or for communication assistance.

9) Whether any juvenile or criminal cases related to the indicated finding on appeal are pending in circuit court. If the ALJ discovers during the pre-hearing conference that there is a pending juvenile or criminal case arising from the same set of facts as the indicated finding, the appeal will be dismissal as premature. The perpetrator shall be informed orally that, within 60 days after the conclusion of any criminal court action in the circuit court, or after adjudication in any juvenile court action concerning the circumstances that give rise to an indicated report, he or she may again file a request, except that there shall be no such right to a hearing on the ground of the report's inaccuracy if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator. The dismissal order shall also state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.

10) Upon notification from the Department's legal representative or the perpetrator that a criminal or juvenile court action is pending, based on the same facts or circumstances as the administrative expungement appeal, the appeal will be dismissed as premature. The dismissal order shall state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.

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