**Section 412.60 Investigation, Notice and Proceedings Involving Formal Complaints**

a) Complaints

Complaints shall be made to OCWEL for determination as to whether the complaint meets the grounds for licensure action in Section 412.50. The complaint shall be confidential within OCWEL, the Board, ELRT and the OIG, unless otherwise ordered by a court or Administrative Law Judge of competent jurisdiction. ELRT shall review the complaint to determine whether the complaint meets the description of one or more of the grounds for licensure action in Section 412.50. If a majority determines that the complaint meets the description of one or more of the grounds for licensure action, the report shall be forwarded to the OIG for investigation.

b) Office of the Inspector General

1) Investigation

The OIG shall investigate formal complaints made to the Board regarding the actions of any person holding or applying for a license. The OIG may impound (pursuant to 89 Ill. Adm. Code 431.130) and subpoena (pursuant to 20 ILCS 505/35.5 and 89 Ill. Adm. Code 430) documents relevant to an investigation authorized under this Part. The OIG will review documents and interview relevant persons to determine whether a licensed employee violated any of the provisions of this Part. If the OIG determines that licensure action is warranted, the OIG shall provide a Notice of Administrative Hearing pursuant to subsection (c), provided, however, that no adverse licensure action (other than preliminary suspension in accordance with Section 412.90) can be made before the employee has been notified of the allegations in accordance with this Section and given an opportunity to respond.

2) Proposed Action

A) If, after an investigation, the OIG determines that licensure action is inappropriate but that there is a basis for disciplinary action, it shall proceed according to Section 35.5 of the Act. If the investigation discloses possible criminal acts or violations of rules, the OIG may also refer the investigative findings or the investigation to the appropriate law enforcement or regulatory agency. If the OIG determines that licensure action may be appropriate, the OIG will provide a Notice of Administrative Hearing pursuant to subsection (c); provided, however, that no adverse licensure action (other than preliminary suspension in accordance with Section 412.90) can be made before the employee has been notified of the allegations in accordance with this Section and given an opportunity to respond.

B) If the investigation does not provide a basis for adverse licensure action, disciplinary action or referral to law enforcement or other regulatory enforcement, the OIG will notify OCWEL, in writing, and the licensee if the licensee was informed of the investigation. OCWEL will also inform any known child welfare employer of the closure of the licensure investigation if the employer had been notified of the investigation.

c) Notice of Administrative Hearing

1) When the OIG requests, the Administrative Hearing Unit shall identify the date, time and place for an administrative hearing, and shall assign an ALJ to the case. The OIG shall then notify the licensee in writing, at least 30 calendar days before the scheduled hearing date, of the Department's intent to revoke or suspend his or her license and of the right of the licensee to an administrative hearing. The notice shall be sent to the licensee, at the most recent address provided to OCWEL by the licensee or the address provided to the OIG during the investigation. The notice shall also be sent to the Administrative Hearing Unit. The notice to the licensee shall be served by personal delivery by certified or registered mail. Service in conformance with this subsection (c)(1) shall be sufficient to prove notice.

2) The notice shall contain the following:

A) the date, time, place and nature of the hearing;

B) the name of the licensee and the address of the licensee, if not represented by counsel, or the address of the counsel, if represented by counsel;

C) the name and business address of the Department's representative, if any, at the administrative hearing;

D) a citation to the provision in Section 5c of the Act that grants the Department the legal authority and jurisdiction to hold the hearing;

E) a reference to the particular Sections of the statutes and administrative rules involved;

F) a short and plain statement of the matters that are the basis of the charges;

G) the reasons that may be deemed an abandonment under subsection (n) and the cause for the entry of a final administrative decision before hearing, including the failure to file an answer to the notice of administrative hearing or the failure to appear at a pre-hearing or hearing without having first obtained a continuance;

H) the docket number assigned to the case;

I) the name and mailing address of the ALJ and any other parties, unless the names or addresses are confidential under the Abused and Neglected Child Reporting Act [325 ILCS 5] or the Department of Children and Family Services Act [20 ILCS 505], pursuant to provision found in 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services);

J) a statement of the action sought, including but not limited to revocation, suspension or refusal to renew a license; and

K) date the notice was filed with the Administrative Hearing Unit.

d) Answer to the Notice of Administrative Hearing

The respondent shall serve an answer, within 15 calendar days after the date on which the Notice of Administrative Hearing is sent, on the Administrative Hearing Unit. The answer shall be in writing and signed by the respondent or the respondent's authorized representative, and shall include the respondent's telephone number. The answer shall admit or deny the charges or shall state that the respondent lacks sufficient information to admit or deny the charges. If the respondent fails to admit, deny or assert that respondent lacks sufficient information to answer, the charge shall be deemed admitted as true. The answer shall also provide any information that establishes a factual basis for an affirmative defense to the charges. Failure to do so may result in the ALJ barring the respondent from presenting the defense at any hearing on the licensing matter.

e) Rights and Responsibilities in Administrative Hearings

1) Appearance/Authorization to Represent

A) A respondent may bring an authorized representative and witnesses to the hearing. The respondent shall pay expenses of a representative or respondent's witnesses.

B) No person shall be allowed to act as an authorized representative in any matter contested before the Administrative Hearing Unit without first filing a written authorization with the Administrative Hearing Unit. The authorization shall be effective only for the particular matter in which it is filed, unless the matter has been consolidated with other proceedings by order of the Chief ALJ or the assigned ALJ.

C) No particular form is required to file a written authorization for representation. However, all authorizations filed with the Administrative Hearing Unit shall be notarized, signed by the respondent and authorized representative, and identify:

i) the name, address and phone number of the party represented;

ii) the name, address and phone number of the authorized representative; and

iii) the administrative hearing in which representation is authorized.

D) An authorized representative may exercise the rights of the respondent in the hearing process. These rights include the right to:

i) review and copy material placed in the record during the proceeding;

ii) receive Department, Board and administrative hearing notices;

iii) request and receive discovery materials;

iv) speak, or otherwise be heard, on behalf of the respondent in the administrative hearing process; and

v) take any other actions permitted a respondent during the hearing process.

2) During the administrative hearing, the respondent and the Department have the right to:

A) present and question witnesses;

B) present any information relevant to the issues;

C) question or disprove any information, including an opportunity to question opposing witnesses; and

D) dispose of any disputed issue by stipulation, agreed settlement, consent order or default.

3) Before and during the administrative hearing:

A) the respondent may withdraw from the hearing process and relinquish the license in accordance with Section 412.40(g); and

B) the Department may amend the charges subject to due process.

4) The proceedings shall be recorded or conducted before a certified court reporter.

f) Confidentiality during the Hearing Process

1) The ALJ has the right to exclude from an administrative hearing any individual who, or agency that, does not have the right of access to the information being presented in accordance with the federal Adoption Assistance and Child Welfare Act (42 USC 671), the Children and Family Services Act, ANCRA, and any other pertinent Act.

2) The ALJ has the authority to divide the hearing into separate segments that deal with issues of other parties in order to preserve confidentiality as mandated under applicable statutes and rules and to prohibit discussion or introduction of evidence that is outside of the scope of the issues being presented in that segment.

3) Confidentiality During the Hearing Process

The Department has an affirmative duty to protect the confidentiality of personal information, in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services), the federal Adoption Assistance and Child Welfare Act and Section 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100]. Confidentiality shall be preserved throughout the administrative hearing, the transmittal of the ALJ's recommendation to the Board and the release of the final administrative decision. None of the documents, including the ALJ's recommendation to the Board, shall be subject to the Freedom of Information Act [5 ILCS 140]. The final administrative action, however, shall be public information.

g) The Administrative Hearing and Pre-hearing Conference

1) Rules of Evidence

In an administrative hearing, the OIG carries the burden of proving, by a preponderance of the evidence, grounds for suspension, revocation or refusal to reinstate license (Section 412.50).

A) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

B) Previous statements made by a child relating to abuse or neglect shall be admitted as hearsay exceptions.

C) In addition to any other hearsay exception that exists in Illinois, a statement may be admitted if it has circumstantial guarantees of trustworthiness, and if the probative value of the statement outweighs any prejudice resulting from an inability to cross‑examine the declarant.

2) Motions

A)Copies of the motion shall be served upon the ALJ, the Administrative Hearing Unit, and the opposing party at least 10 days before the date set for hearing.

B) The ALJ may hear any motion that is consistent with administrative practice and procedure.

3) The Chief ALJ or the ALJ may schedule a pre-hearing conference.

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

i) whether parties have exchanged lists of the persons who will provide testimony during the administrative hearing;

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

iii) whether the parties have or will have exchanged records or documents prior to the administrative hearing;

iv) whether the parties can agree upon any facts as true;

v) motions filed by any party; and

vi) the need for an interpreter for a party whose primary language is not English or who requires communication assistance.

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

C) The ALJ may order the parties to attend the pre-hearing conference in person without the consent of all parties. If the ALJ orders personal attendance, the ALJ shall:

i) give written notice to the parties of the date, time and place of the pre-hearing conference; and

ii) hold the pre-hearing conference at a place and time convenient for the parties.

h) The Administrative Law Judge

1) Appointment or disqualification of the Administrative Law Judge is subject to the provisions of Sections 10-20 and 10-30 of the Illinios Administrative Procedure Act.

2) The Chief ALJ shall select a trained, impartial ALJ from the available pool to conduct the administrative hearing. The ALJ shall:

A) be an attorney licensed to practice law in the State of Illinois;

B) possess knowledge and information acquired through training and/or experience relevant to the fields of child and family welfare law and administrative law, including familiarity with Department rules, procedures and functions;

C) not have been involved in the decision to take the action being contested or have rendered legal advice to the decisionmaker on the issue; and

D) not have a personal or professional interest that interferes with exercising objectivity or have any bias against the parties or issues contested. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

3) Functions and Authority of the Administrative Law Judge

The ALJ shall have all authority allowed under Article 10 of the Illinois Administrative Procedure Act, which includes, but is not limited to, the authority to:

A) conduct a fair, impartial and formal hearing;

B) inform participants of their individual rights and their responsibilities;

C) conduct pre-hearing telephone conferences between the parties or their authorized representatives to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law, in order to expedite the actual hearing;

D) take necessary steps to develop a full and fair record that contains all relevant facts;

E) administer an oath or an affirmation to all witnesses;

F) quash or modify subpoenas issued by the Administrative Hearing Unit for good cause, which includes, but is not limited to, relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;

G) preserve all documents and evidence for the record, subject to provisions of Section 10-35 of the Illinois Adminitrative Procedure Act;

H) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;

I) order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or conduct, that disrupts the hearing;

J) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including, but not limited to, the submission of briefs, memoranda of law, affidavits or post-hearing briefs; and

K) for good cause shown, on the judge's own motion or the motion of any party, allow a witness to testify at the administrative hearing by telephone.

i) Consolidating and Severing Issues and Parties

1) When common issues of fact or law are raised in more than one set of charges or involve more than one licensee, the Chief ALJ or ALJ may consolidate the charges into a single group hearing. Individuals shall be permitted to present their own cases separately. Nothing in this Section shall override confidentiality considerations.

2) The Chief ALJ or ALJ may also combine into one hearing all sets of charges, appeals and issues involving a single respondent, whether arising under this Part or any other Part.

3) The Chief ALJ or ALJ, if required for the fair and efficient administration of the hearing or to prevent possible prejudice to the respondent, may sever any party or any issue from the consolidated hearing. The party or issue severed from the consolidated hearing shall be heard separately.

4) The Chief ALJ or ALJ shall decide the order in which to hear any party, appeal or issue that has been severed.

5) The Chief ALJ may delegate the power to hear and decide any action to consolidate or sever under this Section to any ALJ who has been assigned to hear one or more of the appeals.

j) Exchange of Information

1) All requests for information must be in writing and sent to the party from whom the information is sought at least 20 calendar days in advance of the hearing. The requestor must send a copy of the request to the Administrative Hearing Unit. A party, without leave of the ALJ, may request from any other party:

A) a list of witnesses to be called at the hearing; and

B) copies of all documents that a party intends to present to the ALJ at the hearing.

2) Copies of all requests for information shall be filed with the Administrative Hearing Unit. All requests for information shall be answered within 10 calendar days after receipt unless, upon good cause shown, leave is sought for additional time to answer.

3) If a party fails to answer a request for information, the ALJ may enter any just and appropriate order to advance the disposition of the matter.

4) Hearings shall not be delayed to permit the exchange of information unless timeliness and due diligence is shown by the party seeking the information.

k) Continuances

1) The ALJ shall grant no continuance of a scheduled hearing or pre-hearing conference to any party except for good cause shown. Good cause includes, but is not limited to:

A) sickness or death in the immediate family of the respondent, the Department representative or the authorized representative of the respondent;

B) court or administrative hearing dates scheduled prior to the issuance of the notice of hearing;

C) the need to secure counsel;

D) the unavailability of a witness; and

E) adding or amending the charges in the complaint.

2) No request for a continuance shall be granted without notice to all parties and an opportunity to object on the record. All motions for continuance shall be disposed of by written order.

3) If a continuance is requested due to the lack of a certified court reporter or interpreter, the party seeking a continuance must demonstrate due diligence in seeking that service for the hearing date.

4) Notices of a continued hearing date need not include any restatement of the rights of the parties.

l) Attendance of Witnesses

A party or ALJ may subpoena a witness by requesting that the Chief ALJ issue a subpoena to compel the attendance of the witness. The request shall be made at least 14 calendar days before the hearing. Requests for subpoenas made less than 14 calendar days before the hearing require the leave of the Chief ALJ or the ALJ. Witness fees and travel expenses for persons other than Department, private agency or temporary services agency employees are the responsibility of the party requesting the subpoena.

m) Grounds for Entry of a Final Administrative Decision before Hearing

The Chief ALJ or the ALJ shall recommend licensure action to the Board, without further hearing, when:

1) the Department, the Board or a court of competent jurisdiction has already made a final decision on the issue as a result of a previous administrative hearing or court decision;

2) the respondent does not file an answer within 15 calendar days after the day the Notice of Administrative Hearing was filed with the Administrative Hearing Unit;

3) the respondent has stated that the respondent does not contest the entry of adverse licensure action;

4) the right to an administrative hearing has been abandoned pursuant to subsection (n); or

5) the issue is otherwise not within the jurisdiction of the Administrative Hearing Unit.

n) Abandonment of Right to Administrative Hearing/Default

1) The Administrative Hearing Unit shall find that the respondent has abandoned the right to an administrative hearing when:

A) the respondent has not filed an answer to the Notice of Administrative Hearing within 15 calendar days after the Notice was filed with the Administrative Hearing Unit;

B) the respondent or the respondent's authorized representative has failed to appear at the scheduled pre-hearing or hearing and failed to respond to the written notification of the finding of abandonment within 30 days, showing good cause why the finding should be vacated;

C) the respondent failed to notify OCWEL or the Chief ALJ or ALJ of a change of address and a Notice of Administrative Hearing, sent to the respondent's last known address, was returned as undeliverable, unclaimed, refused, moved or no forwarding address; or

D) the respondent has filed a relinquishment of license on the form prescribed by the Department.

2) The Administrative Hearing Unit shall find that the Department or the respondent has abandoned the right to an administrative hearing when the Department or the respondent or the respondent's authorized representative, without good cause, fails to appear at a hearing or pre-hearing conference without having received a continuance.

3) Any party seeking to vacate a finding of abandonment under subsections (n)(1)(A) and (B) shall file a motion within 30 days after notice of the entry of a finding of abandonment or default showing good cause why the party failed to appear. A recommendation to the Board regarding licensure action will be entered:

A) at the end of 30 days, if the respondent does not file a motion to vacate; or

B) when the Administrative Hearing Unit determines that good cause for the failure to appear does not exist.

o) Record of an Administrative Hearing

The Chief ALJ or ALJ shall maintain the record of the administrative hearing and the final administrative decision. All final administrative decisions shall be available to any party for public inspection during regular business hours. However, confidential information shall be deleted in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

p) Recommendation of Administrative Law Judge

1) The ALJ shall prepare a recommendation, along with findings of fact and conclusions of law, as to whether to suspend the respondent's license, revoke the respondent's license, allow the respondent's license to continue in good standing, or take any other action regarding the license. The ALJ shall submit the hearing record and recommendation to the Board and all parties. The parties shall have 20 calendar days to file exceptions and a brief to the recommendation of the ALJ. The exceptions shall be filed with OCWEL for consideration by the Board. The parties shall have 20 additional calendar days to respond to the exceptions and brief filed by any other party.

2) The Board shall accept the ALJ's findings of fact as true unless it finds that the findings of fact are contrary to the manifest weight of the evidence. The Board may:

A) issue a final administrative decision by accepting the recommendation of the ALJ;

B) issue a final administrative decision by making its own findings of fact or conclusions of law that shall be based solely on the record; or

C) remand the case to the Administrative Hearing Unit for further proceedings. When the Board remands a case, it shall issue a written order specifying the nature and scope of the additional proceedings. The Administrative Hearing Unit shall schedule a new hearing date that shall be between 15 and 90 calendar days after the date of the remand order. The Administrative Hearing Unit shall notify all parties of the new date. The ALJ shall issue a supplemental recommendation and shall serve a copy on all parties. The Board shall review the supplemental recommendation in the same manner as the initial recommendation.