**Section 1001.100 Conduct of Formal Hearings**

a) Open to Public. All hearings conducted in any proceeding shall be open to the public.

b) Out-of-state Petitioners. An out-of-state petitioner is defined as a petitioner who never resided in Illinois, or who has permanently relocated outside of the State of Illinois. An out-of-state petitioner may choose to submit an "out-of-state application" in petitioning for driving relief, in lieu of appearing at an in-person hearing. These petitioners shall be deemed to have waived the right to appear at an in-person hearing. However, no person subject to a life-time prohibition from making an application for a driver's license under Section 6-208(b)4 of the Code may submit an out-of-state application and must appear at a formal in-person hearing, regardless of the nature of the current loss of driving privileges, unless the hearing officer determines that there are material extenuating circumstances that prohibit the petitioner from attending an in-person hearing. Material extenuating circumstances do not include inconvenience or monetary considerations. In-person hearings require the petitioner to be physically present and do not include telephonic hearings but do include real-time audio and visual internet hearings.

1) Out-of-state petitioners must provide evidence of their residency, such as, but not limited to, voter registration, income tax returns, apartment rental leases, mortgage contracts, employment verification, utility and/or telephone bills, etc. The Department reserves the discretion to reject out-of-state petitions that fail to provide this evidence or establish residency. The Department also reserves the discretion to reject out-of-state petitions if there is evidence that the petitioner is regularly present in the State of Illinois, for such reasons as, but not limited to, through work, school or family contacts and is capable of attending a hearing in person in a timely manner. An out‑of‑state petitioner who chooses to appear in person must either testify to, or provide documentation of, the location of the petitioner's current residency. An out-of-state petitioner who has not completed the requirements for reinstatement as a BAIID Multiple Offender (BMO) permittee or is currently a Lifetime permittee (see Section 1001.410) in Illinois must also submit a valid state-issued identification card or driver's license prior to being granted reinstatement.

2) The out-of-state petitioner must submit, at a minimum, all documentation and information required by Subpart D if they appear at an in-person hearing. The uniform report alcohol and drug evaluation at an in-person hearing must have been conducted in-person or virtually, by an Illinois provider licensed by the Illinois Department of Human Services, Division of Substance Use Prevention and Recovery (DSUPR) to conduct these evaluations. All other documentation, including treatment and intervention documentation, required by Subpart D can be completed in person by an out-of-state licensed provider on forms downloaded from the Department of Administrative Hearings web page and must comply with this Part and the regulations set by DSUPR. Remedial education may be performed in-person or virtually but must comply with this Part and the regulations set by DSUPR. However, no documents in Subpart D are required to be submitted if the petitioner submits a written out-of-state application for driving relief, as the out-of-state application for driving relief encompasses all documentation required by Subpart D.

3) An informal hearing request is made when the Department accepts a written out-of-state application. The petitioner's application will be assigned to a hearing officer within 10 calendar days after receipt of a complete application. The application will be reviewed by the hearing officer and a letter decision will be issued no more than 180 days after it is assigned to a hearing officer.

c) Formal Hearings Generally; Parties to a Hearing; Disqualification of Hearing Officer. Every hearing shall be presided over by a hearing officer duly appointed by the Secretary. The hearing officer shall have authority to conduct the hearing, to rule on all motions, to administer oaths, to subpoena witnesses or documents at the request of any party, to examine witnesses, and to rule upon the admissibility of testimony and evidence. The Secretary may also appoint a representative to appear and participate in the hearing on the Secretary's behalf. Prior to the taking of evidence, the petitioner/respondent may request disqualification of the hearing officer by making a motion for disqualification on the record, stating the specific grounds upon which it is alleged that a fair and impartial hearing cannot be afforded the petitioner/respondent by the hearing officer. The hearing officer will rule upon the motion. If the motion is denied, the hearing will proceed, or the petitioner may withdraw from the hearing. If the motion is granted, the case shall be transferred to another hearing officer for a hearing on the same day if possible. If it is not possible to schedule a hearing on the same day, a new hearing date shall be scheduled and another hearing officer shall be assigned by the Secretary.

d) Depositions and Interrogatories

1) Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department, may take, at that party's expense, the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action in a contested case (for example, when the witness is not available due to distance, time, cost to the party using the testimony, sickness, infirmity, imprisonment, the witness being out of state or similar factors). The notice, order or stipulation to take a deposition shall specify whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification, a deposition is a discovery deposition only. If both discovery and evidence depositions are desired of the same witness, they shall be taken separately, unless the parties stipulate otherwise or the hearing officer orders otherwise upon notice and motion. The deposition shall be taken in the manner provided by law for discovery and evidence depositions in civil actions in the Circuit Courts of Illinois.

2) Any party may direct written interrogatories to any other party. Interrogatories must be restricted to the subject matter of the case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party. Sworn answers or objections to interrogatories directed to the Department and/or Secretary of State may be made by a designated agent, including the Department's counsel, who shall furnish such information as is available. Written interrogatories shall be served on the opposing party no later than 15 business days before the hearing. Objection to answers or refusals to answer shall be heard on motion at the hearing before the hearing officer, who shall rule on the objection or refusal. Answers shall be sworn. If an answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatories were served, it shall be a sufficient answer to specify the documents and make them available to the inquiring party to inspect and copy at the asking party's expense. The requirements of this subsection (d)(2) do not apply to objections or refusals to answer interrogatories.

e) Rules of Evidence

1) The technical rules of evidence shall not apply. Any relevant evidence may be admitted if it is the sort of evidence relied upon by reasonably prudent people in the conduct of their affairs. The existence of any common law or statutory exclusionary rule that might make improper the admission of the evidence over objections in civil or criminal actions shall not be a bar to the admissibility of otherwise relevant evidence. The rules of privilege shall be followed to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant, immaterial or unduly repetitious evidence may be excluded upon objection. Objections to evidentiary offers may be made and shall be noted in the record, and ruled upon by the hearing officer. Any party may make an offer of proof following an adverse evidentiary ruling. 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. Subject to the evidentiary requirements of this subsection, a party may conduct cross-examination required for a full and fair disclosure of the facts.

2) In regard to implied consent hearings over which the Secretary of State has jurisdiction, the hearing may be conducted upon a review of the official police reports. However, the parties may subpoena the arresting officer and any other officer who was involved in the petitioner's arrest or processing after arrest, as well as any other person whose testimony may be probative to the issues at the hearing. The failure of an officer to answer the subpoena shall be considered grounds for a continuance if, in the hearing officer's discretion, the continuance is appropriate. Furthermore, the failure of the arresting officer to answer a subpoena shall not be considered grounds for the rescission of an implied consent suspension. Rather, the hearing shall proceed on the basis of the other evidence available and the hearing officer will assign this evidence whatever probative value the hearing officer deems appropriate.

f) List of Witnesses; Bill of Particulars. Upon written request, made at least 10 business days prior to the hearing, a party shall furnish to other parties a list of the names and addresses of prospective witnesses, or furnish written answers to a written demand for a bill of particulars.

g) Inspection of Documents; Interview of Parties. Any party or that party's representative shall have a right, upon the filing of a written motion with proper proof of service, to inspect any relevant document in the possession of or under the control of any other party prior to the formal hearing. The inspection of documents shall occur at the location the formal hearing is scheduled. Any party may file a written motion seeking to interview parties or persons having knowledge of relevant facts, subject to any statutory or constitutional privileges. Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department, may interview, at that party's expense, parties or persons having knowledge of relevant facts. Interviews of persons and inspection of documents shall be at times and places reasonable for the persons and for the custodian of the document.

h) Admissions. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request or for the admission of genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

i) Right to Call Witnesses, Cross-Examine, Subpoena Documents and Introduce Exhibits. Each party shall have the right to request the subpoena of, and to call and to examine, witnesses, to introduce exhibits, and to cross-examine witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination. Applications to the hearing officer assigned to the case for subpoenas duces tecum shall specify the books, papers and documents desired to be produced.

j) Pre-hearing Conference. At the request of any party or upon the hearing officer's own motion, the hearing officer may call a pre-hearing conference. At the conference, the parties or their representatives shall appear as the hearing officer directs. Matters that may be considered at a pre-hearing conference include, but are not limited to:

1) The simplification of the issues;

2) Amendments to the grounds for action;

3) The possibility of obtaining admissions and stipulations of fact and of documents that will avoid unnecessary proof;

4) The limitation of the number of expert witnesses; and

5) Any other matters that may aid in the disposition of the contested case.

k) Order from Pre-hearing Conference. Upon the conclusion of a pre-hearing conference, the hearing officer shall enter an order that recites any action taken, any agreements made by the parties as to any of the matters considered, and the issue to be heard.

l) Oath. Testimony shall be taken only on oath or affirmation.

m) Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing.

n) Official Notice. Official notice may be taken of past hearings and of any matter of which the Circuit Courts of Illinois 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 staff memoranda and data, and they shall be afforded an opportunity to contest the material so noticed. The Department's and the hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

o) Rights of Parties. Each party shall have the right to rebut the evidence against it; to appear in person; and to be represented by counsel. If a party does not testify on its own behalf, the party may be called by the Secretary of State's representative and examined as if under cross-examination.

p) Opening and Closing Statements. Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements. Opening statements may not be made at any other time, except at the discretion of the hearing officer. Upon the close of the hearing, each party may make a closing statement orally and/or by written brief at the discretion of the hearing officer, incorporating arguments of fact and law. A written brief may be required when the facts and issues are deemed complicated by the hearing officer and there is a need for the parties to plead their cases in writing for the record.

q) Exhibits. All exhibits for any party shall be clearly marked for identification and as admitted into evidence by the hearing officer.

r) Cross-examination of Witnesses. In the hearing of any case, any party or that party's agent may be called, as an adverse witness and examined as if under cross‑examination, by any party. The adverse party calling for the examination is not bound by the testimony of the adverse witness, but may rebut the testimony given and may impeach the witness by proof of prior inconsistent statements. If the hearing officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination. The party calling an occurrence witness may, upon showing that the party called the witness in good faith but is surprised by the testimony, impeach the witness by proof of prior inconsistent statements.

s) Burden of Proof; General and Exception.  The general burden of proof is upon the petitioner for any relief in a hearing. The standard of proof is the preponderance of the evidence, except as provided for in Subpart D, where the burden of proof is upon the petitioner to prove each issue or element of proof by clear and convincing evidence.

t) Interpreters; Hearing Impaired. The Secretary will provide, upon prior written request, an interpreter for hearing impaired petitioners/respondents who wish to testify; providing a language interpreter, however, is the responsibility of the petitioner/respondent.

u) Report of Proceedings; Obtaining a Copy of Record

1) The Department shall, at its expense, have present at each formal hearing an electronic or digital recording device or a qualified court reporter, for the purpose of making a permanent and complete report of the proceedings, including: evidence admitted or tendered and not admitted, testimony, offer of proof, objections, remarks of the hearing officer and of the parties and/or their representatives, all rulings of the hearing officer.

2) Upon written request and at the party's own expense, any party may obtain a copy of the report of proceedings from the court reporter or copied from the electronic device by the Department. The party must pay $25 to the Secretary of State, in advance, to cover the cost of making an electronic or digital copy and mailing.

v) Motions to Continue and Withdraw; Leave to Submit Original Documents

1) Motions to Continue by Petitioner or Respondent; Grounds.  Hearings before the Department of Administrative Hearings will be continued only pursuant to a motion that complies with the requirements of Section 1001.80 and is:  filed prior to or on the date of the hearing, made over the telephone less than 15 days prior to or on the date of the hearing, or made in person on the day of the hearing.  The movant shall set forth the grounds for the motion, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the movant, an immediate family member, or the movant's legal counsel, or if the movant is able to demonstrate some other real and compelling need for additional time. A Motion to Continue may be supported by evidence that tends to prove the grounds alleged, including sworn testimony taken at a motion hearing on the day of the hearing. The inability to obtain transportation to the hearing site or a party's failure or inability to obtain the documentation required to fulfill the minimum requirements to be issued driving relief may be circumstances that will justify continuing a hearing upon showing of good cause by the petitioner.

2) Continued to a Date Certain. A formal hearing shall not be continued "generally". A continuance, if granted, shall state a date certain upon which the hearing shall reconvene. If the petitioner is not prepared to go forward after the first continuance, a request to withdraw should be submitted or an Order of Default shall be entered.

A) Written Motions to Continue filed at least 15 days prior to the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date will be given priority in rescheduling over those motions filed or made less than 15 days prior to the date of the hearing or made on the day of the hearing. The Department will rule upon Motions to Continue filed at least 15 days prior to the date of the hearing and, when possible, notify the movant of its ruling prior to the date of the hearing. If the motion is denied, the movant must appear at and proceed with the hearing or withdraw from the hearing or an Order of Default shall be entered.

B) Motions to Continue made by telephone less than 15 days prior to the date of the hearing, specified in the Notice of Hearing or notice of a continued hearing date must also be filed in writing and received or postmarked no more than 5 days after the date of the hearing to be considered. A Motion to Continue made in writing less than 15 days prior to the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date must be received and postmarked no more than 5 days after the date of the hearing. The Department cannot assure the movant that it will rule upon these motions prior to the date of the hearing.

C) A Motion to Continue made or filed by a petitioner waives the statutory requirement of Sections 2-118 and 3-402.B(7)(a) of the Code that the hearing commence within 90 days from the date of the written request.

D) It is the responsibility of the movant to inform the Department, in the Motion to Continue or during the telephone conversation, what course of action the movant wishes to take if the motion is denied (either to appear and proceed with the hearing, withdraw or default). In all cases, it is also the responsibility of a movant who has not been notified of the Department's ruling to contact the Department on or before the day of the hearing to determine whether the hearing officer has ruled on the motion. A movant's failure to appear after a Motion to Continue is denied will result in the entry of an Order of Default.

3) Motions Made by the Department. The Department may also make or file a Motion to Continue for unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the hearing officer, the attorney representing the Secretary of State, a witness, or a member of the immediate family of one of these entities, or if the Department is able to demonstrate some other real and compelling need for additional time.

4) Motions to Withdraw. Except as provided in this subsection (v)(4) and in Section 1001.70, a petitioner may withdraw from a hearing for any reason. A Motion to Withdraw made in person or by telephone on or before the day of the hearing must be followed up with a written motion that is received no more than 10 days after the date of the hearing. A Motion to Withdraw made in writing must be received or postmarked no more than 10 days after the date of the hearing. Failure to do so will result in an Order of Default. Once a petitioner is placed under oath, a request to withdraw from a hearing that, in the hearing officer's judgment, is based upon surprise evidence presented or adverse evidence, shall not be granted. Upon withdrawal, the requested relief will not be considered and the petition dismissed. Should the petitioner request another hearing, it must be done in writing and it will be treated as any other request for hearing.  (See Section 1001.70.)

5) Motions for Leave to Submit Original Document. As provided in Section 1001.90(b)(7) and (8), the petitioner may request leave to submit original documents if the petitioner proceeds with the hearing, offering copies of documents when originals are required. The hearing shall be completed and the petitioner shall be granted leave to submit the original documents as provided in Section 1001.90(b)(7) and (8).

6) Attorney's Appearance on File. A Motion to Continue or Withdraw made by any attorney on behalf of a petitioner/respondent will not be considered unless the attorney has filed a written notice of appearance as provided in Section 1001.40.

(Source: Amended at 45 Ill. Reg. 14985, effective November 12, 2021)