**Section 108.120 Conduct of the hearing**

a) Within five days of his or her appointment, the hearing officer shall set the time and place for the hearing.

1) The hearing shall be held at a time and place reasonably convenient for both parties involved. However, it shall be scheduled not later than 15 days after the appointment of the hearing officer, unless the hearing officer permits an extension of time due to extenuating circumstances, not to exceed 15 days, unless both parties agree.

2) If the facility and parent cannot agree to a reasonably convenient time and place, the hearing officer shall make such a determination and proceed to schedule the hearing.

3) The Department shall inform the parents, by mail, no later than 10 days prior to the hearing, that:

A) Pursuant to Section 4 of the Act, they or their designated representative shall have an opportunity to inspect all records regarding the recipient and to obtain copies prior to the hearing, at their own expense.

B) They may request an independent evaluation of the recipient prior to the hearing, at their own expense. The hearing officer may consider this request an extenuating circumstance and thereby authorize an extension of time for the hearing date, not to exceed 30 days, unless both parties agree.

C) They may require the attendance at the hearing of any facility employee or any other person who may have information relevant to the recipient's needs and abilities. They may request the attendance of any other persons who may have such information. They must make all requests for attendance to the hearing officer as soon as possible but no later than five days prior to the scheduled date of the hearing. The hearing officer may issue subpoenaes requiring the attendance of witnesses and, at the request of the parent of facility, shall issue subpoenaes. The hearing officer may limit the number of witnesses whose attendance is subpoenaed or requested by either party to not more than 10. If a party refuses to answer a subpoena or refuses to honor a request to attend, the hearing officer shall note such in the record and contact the Illinois State Board of Education legal department. The hearing may be postponed for a specified period of time, as designated by the hearing officer in order to resolve questions of attendance.

D) They may bring representatives, including legal counsel, agency representatives, or others, to the hearings at their own expense. These persons shall be given an opportunity to participate in the hearing process according to the procedures established by the impartial hearing officer. The facility shall maintain on file a list of independent evaluation sites, legal and other relevant services available in the area, and shall provide parents with the above information, upon request.

E) The educational status of the recipient will not be changed, pending the completion of the due process proceedings, unless the facility director or designee decides that such change would be warranted due to immediate physical danger to the recipient or other persons. In such case, the facility shall be responsible for developing and implementing an appropriate interim educational plan. Any change in placement shall not exceed 10 days. A facility director must request a change in placement from the Secretary, in writing.

F) Any party to the hearing has the right to prohibit the introduction of any evidence which has not been disclosed to that party at least five days prior to the hearing.

G) Either party may request that an interpreter be made available.

b) Parents involved in such a hearing have the right to have the recipient who is the subject of the hearing present, and open the hearing to the public if the parents wish.

c) The hearing officer shall conduct the hearing in a fair, impartial, and orderly manner.

1) At all stages of the hearing, the hearing officer shall require that the facility make available interpreters for persons who are hearing impaired or for persons whose normally spoken language is other than English. The facility shall assume any costs for interpretation services.

2) At all stages of the hearing, the hearing officer shall assure that the parents are aware of and understand their rights and responsibilities in regard to this process.

3) The hearing officer shall have the authority to require additional information or evidence when he or she deems it necessary to make a complete record. The hearing officer may recess the hearing for a specified period in order to obtain the additional information necessary.

4) The hearing officer may order an independent evaluation at facility expense.

d) At any hearing which has been requested regarding the educational placement of a recipient, the hearing officer shall seek to establish the issues, allow the introduction of evidence which is relevant to those issues, and derive conclusions therefrom. These conclusions may include, but are not limited to the following:

1) Whether the recipient has needs which require special education intervention;

2) Whether the evaluation procedures used in determining the recipient's needs have been appropriate in nature and degree;

3) Whether the recipient's diagnostic profile on which the placement recommendation was based is substantially verified;

4) Whether the proposed educational placement is directly related to the recipient's needs;

5) Whether the recipient's rights have been fully observed.

e) A hearing which has been requested regarding any other controversy shall seek to establish the issues as perceived by the prospective parties and the facts on which these issues depend. To that end, the hearing officer may require from both parties to the hearing written statements of the issues to be resolved, prior to the convening of the hearing. Each party is entitled to a copy of the other party's statement at least five days prior to the hearing.

f) The facility shall present evidence that the special education needs of the recipient have been appropriately identified and that the special education services proposed to meet the needs of the recipient are adequate, appropriate and available.

g) The recipient's parents and the facility, or their respective representatives, shall have a right to present testimony, cross-examine, and confront all witnesses at the hearing.

h) The rules of evidence shall not apply to the hearing process.

i) The facility shall make a record of the hearing proceedings, either by a court reporter or by a tape recorder. The parents have a right to obtain a written or electronic verbatim record of the hearing and to obtain written findings of fact and decisions. Additionally, the record of the hearing shall be part of the recipient's education record, which is governed by the Act. The facility shall bear the cost for such record.

j) Within 10 days after the conclusion of the hearing, the hearing officer shall render his or her decision, by certified mail, to the facility, the parents, and the State Superintendent of Education and the Secretary.

1) The findings of fact and decision shall be in English and in the language normally spoken by the parents if it is other than English.

2) The State Superintendent of Education shall distribute the information in a non-personally identifiable form to the Advisory Counsel on Education of Handicapped Children.

3) The hearing officer's decision shall be binding upon the facility and the parent unless such decision is appealed, pursuant to Section 108.130.

(Source: Amended at 15 Ill. Reg. 6122, effective April 15, 1991)