**Section 50.1390**  **Program Violations, Sanctions, and Hearing Process**

a) An intentional program violation occurs when:

1) Program participants knowingly provide false or misleading statements~~,~~ or engage in misrepresentation, concealment, or withholding of relevant facts or information; or

2) Program participants knowingly fail to comply with the requirements of the Smart Start Workforce Grants as stated in this Subpart.

b) An intentional program violation may include, but is not limited to:

1) Intentionally providing false employment information, including staffing, wages, and payroll, or intentionally failing to report a change in staffing or wages;

2) Falsifying eligibility or reporting documentation or information; or

3) Intentionally reporting inaccurate day care licensing status.

c) For the purposes of this Subpart, fraud is defined as an offense committed by any person or persons who scheme to deceive, falsify, conceal, create, or cover up material facts to receive the Smart Start Workforce Grants or to financially gain or profit from the Smart Start Workforce Grants. The offense must be committed willfully and knowingly. Examples of fraud include, but are not limited to:

1) Manufacturing paystubs, payroll documentation, or enrollment information;

2) Creating fictitious children;

3) Creating fictitious child care settings or classrooms; or

4) Creating and participating in a conspiracy/scheme to defraud the State for financial gain.

d) Any intentional program violation or fraud as stated and defined in this Section by a program participant will result in the following sanctions:

1) Require repayment of any improper payments as defined in 89 Ill. Adm. Code 50.105; and

2) Place the program participant on the Illinois Stop Payment List (also known as the Illinois Debarred and Suspended List) as provided for in 44 Ill Adm. Code 7000.30 and 7000.80.

e) Qualified Partners shall alert the Department's Division of Early Childhood of any alleged intentional program violations.

f) Program participants may request a hearing regarding the imposition of a sanction as follows:

1) Notification of all sanction actions will be sent to the program participant and the Division of Early Childhood by the Department or its agents. The notification will include a description of the violation and the Illinois statute or the Department's administrative rule that has been violated and the instructions for filing an appeal.

2) Program participants must file first-level appeals of sanctions with the Department's Division of Early Childhood within 60 calendar days after the date on the notification action (see subsection (b)(1)) that the program participant is disputing.

g) Representation

1) Program participants may appear with or without representation at the hearing.

2) If the program participant is represented by legal counsel or another authorized representative, the program participant need not be present at the hearing. The representative must have a written authorization signed by the program participant prior to any action taken on behalf of the program participant.

3) The action or inaction of an authorized representative shall be deemed to be an action or inaction of the program participant.

h) First Level Hearing with the Department's Division of Early Childhood

1) The Division of Early Childhood will send reasonable notice in writing that a first level hearing has been scheduled at least 10 calendar days prior to the hearing. This hearing is intended to determine whether a program participant appeal can be resolved before it reaches the Bureau of Hearings.

2) Following the first level hearing, the Division of Early Childhood will issue a decision to either uphold, withdraw, dismiss, or revise the sanction action, or determine that the Department lacks jurisdiction.

i) Second Level Hearing with the Department's Bureau of Hearings

1) If the program participant is dissatisfied with the results of the first level appeal, they may file a second level appeal through the Department's Bureau of Hearings within 30 calendar days after the date that the Division of Early Childhood issues their decision.

2) The second level hearing will be conducted in accordance with the hearing process described in Section 50.1230, will be conducted de novo and will not consider the first level hearing in making its determination.

3) The Bureau of Hearings will give reasonable notice to the program participant and to the Division of Early Childhood that a hearing has been scheduled. This notice shall be provided at least 10 calendar days prior to the hearing.

4) At the adjournment of the hearing, the record shall be closed, and no further evidence may be submitted. Prior to adjournment of the hearing, a request to leave the record open for a specified period for the submittal of additional evidence specifically identified during the hearing may be granted by the Administrative Law Judge. Copies of any evidence presented after the hearing shall be provided to all parties.

5) Following the hearing, a final administrative decision will be made by the Secretary of the Department or the Secretary's designee that either upholds or does not uphold the appealed sanction or determines that the Department lacks jurisdiction. A copy of the decision shall be mailed to the appellant and any representative.

6) After a final administrative decision is released, no petition for rehearing or reconsideration is allowed. Neither the filing of any such motion, or correspondence in the nature of such a motion, nor any response by the Department to such correspondence nor motion will alter the issue date of the final administrative decision.

7) The final administrative decision may be appealed under the Illinois Administrative Review Law [735 ILCS 5/Art. III]

8) The Division of Early Childhood will implement the results of the final administrative decision within 10 calendar days after receiving the final administrative decision.

j) Conduct of the Hearings

1) The Department shall have the responsibility at the hearing to prove, by a preponderance of the evidence, that the program participant committed an intentional program violation or fraud.

2) The hearing shall not be bound by common law or statutory rules of evidence, nor by technical or formal rules of procedure, but shall be conducted in a manner best calculated to conform to substantial justice.

3) An appeal may be withdrawn by the program participant either prior to or at the hearing. A withdrawal must be in writing and signed by the appellant or entered orally on the record.

4) A request for postponement or continuance may be made by IDHS or the program participant.

A) A request to postpone a hearing must be in writing and received by the Bureau of Hearings at least 2 business days prior to the scheduled hearing date.

B) A request for postponement made less than 2 business days prior to the scheduled hearing date will be granted only upon showing of good cause.

C) At the hearing, the Administrative Law Judge may grant a request to continue when the party shows that good cause exists for not proceeding with the hearing. If the request is based on the unavailability of witnesses and/or documentary evidence, the Administrative Law Judge may defer ruling on the request until after the available evidence on the issues of the case is presented.

5) An appeal shall be dismissed, and appellant shall be informed of the dismissal by written notice, if:

A) The appellant or the appellant's authorized representative does not appear at the time, date, and place designated for the hearing; or

B) The appellant or the appellant's authorized representative fails or refuses to proceed with the hearing.

(Source: Added at 48 Ill. Reg. 14957, effective October 1, 2024)