

Law Related Education

The newsletter of the Illinois State Bar Association's Committee on Law Related Education

Local Government Administrative Hearings: What Are They, How Do They Operate, and Does Your Community Have Such a Process?

BY JEFFREY D. GREENSPAN, ESQ.

What Is an Administrative Hearing, Where and By Whom are the Hearings Conducted, and What Kinds of Matters Are Brought Before the Presiding Official?

Cities, towns, and villages throughout Illinois have authority, by statute, to conduct local administrative hearings to adjudicate

local municipal code violations. 65 ILCS 5/2-12.1. These hearings, which are civil and not criminal in nature, are conducted at the local city, town, or village hall before an appointed independent administrative hearing officer, sometimes identified as an administrative law judge (ALJ) as

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'[BLEEP] School...'

BY JUDGE JUSTIN HANSEN & JUDGE JENNIFER JOHNSON

Editor's Note: The first publication of this article appeared in the July issue of the LRE Committee's newsletter. Due to the addition of a more expansive summary of the U.S. Supreme Court opinion on which the article was based, the article is being republished in the September issue.

If there is a child in your life of a certain age, then you probably are familiar with

Snapchat.¹ But, did you know that the U.S. Supreme Court has granted certiorari on a case involving a "snap" that includes the sentiment "[BLEEP] school", as well as some other choice remarks, sent by a "frustrated" high school student known as B.L.² The decision is a good read and sets up the pertinent background information nicely:

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opposed to taking place before a circuit court judge at the county courthouse. Each municipality has its own set of procedures as implemented by its city council or board of trustees. The violations heard by the ALJ can include building code violations, parking tickets, and certain other misdemeanor offenses such as littering, trespass, noise disturbances, curfew, retail theft, drinking or having open alcohol in public, or smoking or possessing marijuana in public. Tickets can also be issued for non-moving motor vehicle violations such as broken safety equipment or missing or expired license plates. Generally, all types of misconduct that can be adjudicated by an ALJ are identified in the local ordinances or city, village, or township codes.

Citations are also issued for violations involving animals which include the failure of the owner to obtain the required licenses and shots, having the animal be off leash or let loose in public, or more serious situations such as when an animal attacks a person or another animal. Administrative hearings are also conducted to enforce red-light traffic violations identified through red-light cameras that have been installed after their need for monitoring motor vehicles is established through a traffic safety study. If a vehicle has been towed when parked or seized during a traffic stop, a hearing can be requested before an administrative hearing officer to contest the tow and any administrative fee that may have been charged.

How Is the Stage Set for the Hearing to Take Place & the Ticketed Party to Appear?

The process starts by the issuance of a notice of violation citation. That notice, for example, if it is a parking ticket, is served by an officer of the municipality leaving it on the vehicle. The car owner is the responsible party and can either pay the ticket (also known as a 'fine') or request a hearing. Some municipalities allow a hearing on a parking ticket by mail or online. There is usually a

time period by which that choice must be made before a late fee is added to the fine. If there is no response by the person to whom notice was provided, the municipality then issues a second notice to the registered owner of the car and may set the matter for a hearing. At that stage, failure to attend the pre-set hearing or respond to a notice will result in a judgment being entered. Red-light camera violations are handled in a similar manner in that the notice is mailed to the registered owner of the vehicle. Hearings that are requested for red-light camera violations can be conducted in person or by mail. 625 ILCS 5/11-208.6. The 'set' fine amounts are established by local ordinance. If the fine designated in the ticket is not paid within the time provided, or the owner does not request a hearing, late fees will be added to the charge.

In the case of other code violations, the citation will either be personally served on the responsible party or be mailed to that individual at his or her street address. The notice will either have a set fine amount and a hearing date or have a 'must appear' hearing date without a fine. If the fine is paid before the hearing date, the responsible party need not appear. Otherwise, that party must appear at the hearing. The local municipality generally does not report the outcome of the matter to the circuit court or the Secretary of State. Consequently, if a fine is imposed and paid, or the party served with a violation is found liable of the charge, that person's driving record is not affected.

In 2018, amendments were made to the Juvenile Court Act which now apply to ordinance citations issued to minors under the age of 18. Proceedings against minors are held in closed hearings and the records are kept confidential. Except in the case of a serious felony offense, the records are required to be expunged after the respondent turns 18 years of age. Many municipalities have also adopted and offer or conduct restorative justice practices for juvenile offenders. That practice generally includes, as an option to incarceration,

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Published at least four times per year.

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several hours of community service in lieu of a fine and could include counseling or other social services.

What Process Can Be Expected in an Administrative Hearing for Those Who Plead 'Not Liable' for the Offense Charged and What Outcomes or Orders Might Be Imposed?

At the hearing, just as in a county court hearing, all the witnesses who will testify are sworn in under oath to tell the truth. The hearings are recorded to preserve the administrative record. The hearing officer will ask the responsible party, called the respondent, if he, she, or the business entity is pleading liable or not liable to the charges. If the respondent admits to the offense as charged and pleads liable, a fine will be set, costs, if authorized, will be added, and the hearing officer will enter an appropriate order as provided for in the local code to assure compliance with the code, such as a requirement that the defendant fix the property to bring it into compliance with the applicable municipal code. In the case of a dangerous animal, the order may compel restitution to the injured party, animal training, and, in rare cases such as those where an individual has been seriously injured by the animal, a requirement that the animal be put down. If an order of compliance is entered, the case will be continued to a future hearing date when it can be determined whether the party has complied with the dictates of the order issued by the hearing officer. Fines are set by local ordinance and can be up to \$750 per violation. Each day may also be a separate violation for which additional fines can be assessed.

The Municipality's Burden of Proof in the Hearing

As the complainant, the municipality has the burden of proof and must prove its case by a 'preponderance of the evidence,' meaning that the findings are more likely true than not. If the matter proceeds to a hearing, the sworn citation signed and attested to by the officer or employee who issued the citation or complaint, will be read into the record. That will serve as the municipality's evidence that the facts

contained within the complaint are true. Except for building code violations, the officer who issued the citation is not present. If the building code officer who issued the citation is present, he or she will testify to the violation and the status of any compliance. That evidence will serve as the municipality's 'prima facie' evidence. The respondent then has the right and opportunity to rebut that evidence. It is important to understand that mistakes such as not seeing a sign or not knowing the law is not a proper defense to the charge.

The Role of Evidence, the Order Issued, & Appeals

Because of the nature of the hearings, the formal and technical rules of evidence do not apply. However, evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. All evidence must be relevant to the issues. The hearing officer is the sole judge of relevancy and will rule on any objections to evidence. After all the evidence is heard, which evidence may include witness testimony, and any documents that are admitted, the hearing officer makes a factual determination as to whether a violation occurred. If he or she finds that the violation did not occur, an order will be entered with a finding of not liable. If the hearing officer finds a violation did occur, an order will be entered with a finding of 'liable' and a fine will be set, costs, if authorized, added, and appropriate findings or requirements imposed upon the respondent pursuant to the local code to assure compliance, will be included.

Appeals of any local order can be made to the circuit court by filing an appeal under the Administrative Review Act within 35 days of issuance of the order. The respondent, however, is responsible for the cost of the appeal which may be larger than the fine. Those costs would only be refunded if the appeal is successful, meaning that the hearing officer's order has been overturned. Once a fine or order of compliance is entered, it becomes a judgment against the respondent. If not paid, subsequent late charges can be added. In the event an appeal is not filed, the municipality can move to

enforce the judgment in the circuit court by seeking compliance or by recording the judgment against the respondent, or through placing a lien on the property involved, and may also use other collection methods to recover its fines.

NOW YOU ARE PREPARED IF A TICKET IS SERVED ON YOU BY YOUR MUNICIPALITY! ■

Attorney Jeffrey D. Greenspan is a solo-practitioner with a law firm in the northern suburbs of Chicago. He has over 40 years of experience in representing local government entities and practices law in the areas of real estate and eminent domain. Mr. Greenspan also serves as an administrative hearing officer for three suburban municipalities.

‘[BLEEP] School...’

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B.L. is a student at Mahanoy Area High School (MAHS). As a rising freshman, she tried out for cheerleading and made junior varsity. The next year, she was again placed on JV. To add insult to injury, an incoming freshman made the varsity team.

B.L. was frustrated: She had not advanced in cheerleading, was unhappy with her position on a private softball team and was anxious about upcoming exams. So one Saturday, while hanging out with a friend at a local store, she decided to vent those frustrations.

We have found it to be more than just a good read. Take B.L.’s snap, the resulting school-imposed punishment, and the ensuing First Amendment litigation and you have a great topic to capture the attention of a middle or high school student! Along with our colleagues in the 22nd Judicial Circuit, we embraced this fact scenario as a wonderful example to help students in civics classes understand how the ideas set out in the U.S. Constitution and the Bill of Rights are still at work today. So far, we think we have been proven right: the dispute between B.L. and the school district has been a great vehicle to explain how a fundamental principle of our government and our judiciary—the First Amendment—affects students and community members.

Our presentation is pretty simple. We use a slide show to shepherd the students through a general explanation of the structure of our government and a description of the court system. Then, we focus on First Amendment precedent and the recent Snapchat case. Teachers in local school districts have welcomed us into their classrooms virtually this year to supplement the civics curriculum. Certainly, none of us judges are experts at teaching or the remote platforms we use to present the content, but we have managed to connect with a number of students who are engaged, ask excellent questions, and are able to understand the

various viewpoints at issue in the case.

There is no magic to the content or the method of presentation. In the past, we have presented similar general civics information but focused on the Fourth Amendment, raising questions with the students about whether the school could search their cell phones and, if so, under what circumstances.³ Before the pandemic we presented in-person to classes ranging from 15 students enrolled in AP Government to a couple hundred 7th graders taking civics. There are many ways to be engaging and interactive with a room full of students and these issues.

Over the past two years, we have presented to hundreds if not thousands of students in several school districts. We have every intention of continuing those efforts. But the point of this article is not to tell you about our good deeds or to convince you that students benefit from more in-depth civics education. Rather, the point of this article is to tell you that our idea is bigger than that and to invite you to join in our efforts.

Putting judges in classrooms to talk about the judiciary is a high-quality, straight-forward idea that is not our own. We follow in the footsteps of others who have done it effectively with great success.⁴ We believe this idea is *most* effective when it emphasizes giving students a *local* look at a few foundational ideas that are already part of their civics curriculum, and we think the best way to do that involves using *local* officials as the presenters. For the judicial branch, this means a judge teaches about precedent on an issue, helps students understand how it affects their everyday lives, and lets them “think out loud” through the competing interests to really bring the concepts home. The teachers we work with are already doing this, and we believe that this message is reinforced when it is delivered by a judge who lives and works in the students’ community.

Taking it one step further, this idea is not and should not be limited to the judicial branch. Even though we have an admitted

affinity to our own branch of government, we hope to expand this program next school year to include local members of the legislative and executive branches. We are seeking volunteers to join in our efforts. Let’s have a city council member talk about how they reach decisions on a contentious issue. Let’s have a school administrator talk about being the executive of a school district in the midst of a pandemic. The next generation of judges, councilwomen, administrators, and community members are ready and waiting to learn about democracy in action.

We have told you what we have been doing and we have told you what we would like to do next. Here comes “the ask”: What if *you* made an offer to speak at a local school? Are you a local board member willing to offer some time? Can you arrange for a village president in the area to attend a presentation? Before you answer, take into account some practical considerations based upon our experience:

- You do not need a lot of content. A normal class period goes by very quickly, especially if you invite participation. Take a 10-minute overview of the judicial system, add 10 minutes about a few cases, add introductions along with some Q&A, and you have filled a 40-minute class period.
- Start with people you know. Our presentations began with reaching out to contacts we already had—school board members, administrators, and teachers. From there, the list of interested classrooms expanded. But if you start with a familiar face, you are more likely to get a positive response to your offer and you are more likely to be comfortable.
- These can be done in person or remotely. In person has advantages, especially when it comes to seeing your audience and gauging their level of interest. But remote presentations have advantages too. It is much easier

to schedule a 40-minute presentation between court appearances if there is no travel time.

- Consider a partner. These presentations can be done successfully with one presenter. In some respects, that may be easier. But do not be wary of presenting with a partner. In our experience, the presentations can be better with some back-and-forth. Plus, there are two personalities for the students to relate with, you can fill the time more easily, you have help with remote platform logistics, and of course, there is more than one person to answer questions. Which leads to our next point
- Yes, you will get questions; no, you cannot anticipate all of them and that's okay! No one expects perfection so laughing or saying I don't know is perfectly fine. We have had questions ranging from

the proper venue for multi-state litigation (it depends!) to whether we make a lot of money (this is a great job, and we do not take it on for the money), but rest assured many of the questions are very on-point and insightful.

Because of the cooperation and hard work of our school systems, we have an opportunity to help make foundational civics principles come alive for students. With some time and effort, we can help classrooms explore what it means to apply these principles as citizen in our communities. Utilizing meaningful present-day content, we can encourage that thought process to foster responsible citizenship now and in the future. We are proud to be part of a legal community that has been working at this for several years and we look forward to collaborating with members from other branches of government. ■

Justin Hansen is a circuit court judge in McHenry County and the presiding judge of the Family Division. Jennifer Johnson is an associate judge in McHenry County. Both are recent recipients of the Illinois State Bar Association's Civics Education Award. Both wish to thank their colleagues in the 22nd Judicial Circuit who have supported and contributed to education outreach, especially Chief Judge James S. Cowlin, as well as the Illinois State Bar Association and the Illinois Judges Association.

1. For those wondering about Snapchat: it is a messaging application. Users can send photos, videos and text messages to their contacts. The content is not generally visible after a period of time—in other words, the content “disappears” in a sense.
2. *B.L. v. Mahanoy Area Sch. Dist.*, 964 F.3d 170, 175 (3d Cir. 2020) (cert granted 2021 U.S. LEXIS 482).
3. For any Illinois Judges Association members out there, the IJA has a host of great presentations that you can also use, including one specifically about bringing the courtroom to the classroom and the 4th Amendment.
4. Other judges and organizations have been speaking in classrooms with great effectiveness and success for many years, thanks in part to the support of organizations like the Illinois State Bar Association, the Illinois Judges Association, and circuit courts and local bar associations throughout the state.

What I Have Learned About Myself During the Pandemic Shutdown Through Communication With Family, Friends, Neighbors, & Strangers

BY SHARON L. EISEMAN

Even though I love having many segments of alone time in any given day or week, I am also a social person—one who loves to engage with others on a regular basis. That inclination also doesn't keep me from isolating myself when I have a project to complete or am working at my day job. Before the announcement of the Covid-19 virus attack in early March of 2020, I loved the structure of my life: working hard at a job I enjoy because of the expended brain activity required of me every workday, as well as the opportunity my position ordinarily gives me to interact with colleagues and clients and even my supervisors. And that part of my life was balanced by a very

separate personal life filled with cultural activities such as attending theatre and music events, and travels near and very far, visiting with family and friends, and volunteering what extra time I could carve out of a day or week to partner with NFP agencies in my city to support, inspire, and find resources to address the needs of struggling, underserved segments of our population.

Then came the order to quarantine in our homes and succumb to restrictions re: where we were allowed to go, when, and for how long, and all accompanied by our soon-to-be an everyday companion: our face masks, followed by the access to newly approved vaccines to give us some hope

of immunity and ultimate victory over the killer coronavirus. And not just any masks. The ones we would be wearing had to cover our mouths and noses and not be open on the sides due to the release into the air and onto other people who might by intent or accident, get very close to us. In other words, we had to keep not only our fears and other feelings about the horrific and sudden changes in our daily routines and lives in general, but more importantly, our BREATH to ourselves and under control.

Certainly, I am not the only one faced with this set of experiences, which is, by the way, constantly evolving based upon the status of infection rates and, most

recently, the identification of a new variant of the virus named delta that began to rage throughout the country—not to mention the world. That discovery and the new virus' rapid spread brought many communities in cities, villages, and states right back, it seems, to the start of the pandemic as hospitals across the nation began, again, filling up to capacity and beyond, front-line health care workers became further exhausted and exposed, and the death rates almost everywhere have been spiking upwards and dramatically.

So here we all are, struggling to find some form of 'normalcy' while knowing and maybe even understanding-but having trouble accepting-that it will be a long time before we are able to hug and otherwise embrace those family members, friends and colleagues whom we have been cautioned against touching or even standing close to while communicating. And this brings me to where I started this written journey of sharing my feelings: How have I (have you) been coping with these dramatic swings in the nature and degree of control that the CDC and local governing authorities, along with various medical authorities, have been exercising over our daily movement and our interactions with others to the extent that nothing is/seems normal, nor do we know when we will return to normal?

With the above as the background I have set, I am ready to share how I am managing to stay SANE, assuming I can tell if I AM sane, during this incredibly challenging time, and what new aspects of social interaction I have developed far beyond anything I was doing in my pre-COVID life. I will also share with you the amazing things others in my life, whether through work, my social communication with friends and family, or from reading and listening to developing news as we move from day to day, have brought into my life as I live it now.

FIRST, I have grown to LOVE being on/in/a part of Zoom or Zoom-type meetings which were originally, and now continuously, a substitution for in-person meetings and other kinds of gatherings in order to avoid the risk of infection from being in close physical proximity to others who may infect you or become infected by you. In such

virtual communications, there seems to be a more serious focus by participants—myself included—on paying attention to what others are saying and how they are delivering their views, perspectives, questions and answers, and the expressions of their feeling-states. Perhaps participants feel less threatened when they are just one snapshot among many on the screen, or there is some degree of comfort from being safe in your own home or office and thus at a distance from your fellow 'Zoomers' even though we are all squeezed onto a fairly small screen and our video selves sometimes come and go. We are also free to take breaks from the program or meeting or conference, seemingly without disrupting the ongoing communications because others are there to continue the conversation without us. This new form of socializing has also resulted in long-lost friends reaching out to me and the reverse as we are realizing that being in touch with those we care/have cared deeply about over our lifetimes is extremely fulfilling, almost like finding a diamond in a sandbox. (As a warning, please note some recent research showing that frequent participation in Zoom or WebEx or similar format meetings may be taking an unexpected toll on us by contributing to 'brain fatigue' though it may be a long time before those findings can be scientifically confirmed. Please see the April 24, 2020 National Geographic report by Julia Sklar at www.NatGeo.com for an analysis of this potential impact, as well as an article from the Cleveland Clinic, which you can access at <https://health.clevelandclinic.org/why-all-those-zoom-and-google-meets-are-so-draining-and-what-to-actually-do-about-it/>.

SECOND, I have found some means of relieving my stress. Certainly, there is always a favorite movie or TV series or a news channel I can watch which gives me a chance to escape from my thoughts and self-pity. But the best TONIC I can give myself, besides more frequent 'check-ins' with family and close friends, turns out to be talking to strangers, whether they are neighbors also taking long walks in the neighborhood during early evening hours, or random people in grocery stores or outdoor restaurants where opportunities to

interact are available almost all the time if you keep your antennae up as to what those individuals in close proximity are doing and saying. And yes, that can seem intrusive, but I do try to make a quick assessment of the situation to determine if those particular people seem open to conversation.

I have learned that, in this time of isolation, almost everyone in a grocery or hardware or store is available for a quick chat while in the check-out line or strolling casually through the aisles searching for an item. Moreover, neighbors walking dogs like to talk, as do moms or dads or others pushing strollers. And in my neighborhood, rich with two elementary schools that boast outdoor facilities, I pass by students working there on art or other projects and engaged in sports activities, with teachers facilitating or overseeing those endeavors, and sometimes stop to observe. It is typical for some of the kids to come over to talk to me, or to show me something they have made for their project. I get a thrill from that outreach as I believe it comes from their similar need to engage with others in a time where contacts have been so significantly curtailed or even put on hold. By those brief encounters, both sides are able to fulfill what seems to be a common human need: interaction with fellow humans. I dread the loss of this means of interaction when winter comes.

THIRD, I have found it helpful to regularly remember that some people and their families have far greater responsibilities and associated stress than I do as an older adult whose children and grandchildren are all adults. When I consider that reality, I turn my attention to sympathies for them because of their burdens and the challenges they are facing, and often reach out to them to ask if there is anything I can do to help with chores or bring some joy into their lives. In those interactions, I have discovered that just my mere acknowledgment of their particular situations, especially where a parent or parents are home-schooling young children, including those with special needs, seems to open the floodgates for them to talk through those situations with me, and that appears to be a means for them to unload a bit of their stress.

As a result of such encounters, I have

found ways to interact with these struggling parents in a way that benefits their families as well. When I learned that the children of a family member and of a few of my colleagues have specific interests in turtles, or penguins, or baby elephants, I shared with those families the links I regularly receive from the Shedd Aquarium that allow the viewer to witness how such wildlife behave in their natural or specially built habitats. Something that simple brought great joy to those children—and their overwhelmed parents too, and also, perhaps a bit selfishly, to me, because I figured out a good way to engage them.

FINALLY, I am committed to continuing the very kinds of outreach I described above, both because those contacts uplift me and thereby reduce my stress and help me sleep better, and because I know that what I shared

brightened a moment, a day, even a week of their sheltered lives and gave them strength and hope that the future too will be brighter.

Perhaps you, the reader, are similarly or differently taking some steps to reach out to support and cheer up others in your life. If so, KEEP IT UP. If not, try a few kinds of outreach not only to test your comfort level, but to see what may transpire and how you can make a pleasant difference in how your friends and colleagues and fellow students and neighbors or cousins, nieces, nephews, aunts and uncles are facing our shared uncertain future. I bet they will warmly welcome your engaging with them and will add joy to your life as well.

Hey Pandemic Warrior, What's Next?

Free
Program for
ISBA Members
and Spouses!



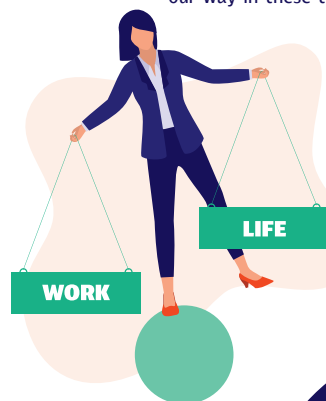
Speaker:
Debbie Epstein Henry

*Founder, DEH Consulting,
Speaking, Writing
Podcast Host, Inspiration Loves Company*

October 6 | 5-6:30 p.m.

We are indeed in uncharted territory and many are wondering how to capture the learnings of the pandemic while integrating back into a new normal both at work and at home. During this dynamic discussion, work and life expert, Debbie Epstein Henry, will share recommendations, field questions, and facilitate breakout discussions on how to pursue our lives with vigor and ambition but also with a dose of reality. We will uncover ways to maximize opportunities, maintain productivity, and navigate our way in these times of transition. We will also explore

how to delegate, relinquish control, and support each other to prioritize what really matters. We will leave this conversation inspired with strategies to embrace resilience and perseverance as a means to gain greater success and satisfaction. Join us to learn how to do our best and be our best as we develop a more reasonable outlook on a fresh life.



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