**Section 1925.293 Ex Parte and Extra-Record Communication**

a) *Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis including, but not limited to rule making, the State board, any State Board member, employee, or a hearing officer shall not engage in ex parte* or extra record *communication, after an application for a permit is received,* until project completion, *in connection with the substance of any application for a permit or an exemption with any person or party or the representative of any party.*

b) *A State Board member or employee may communicate with other members or employees and any State Board member or hearing officer may have the aid and advice of one or more personal assistants.*

c) *An ex parte* or extra record *communication received by the State Board, any State Board member, employee, or a hearing officer shall be made a part of the record of the pending matter, including all written communication, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.*

d) The State Board member, employee or hearing officer who received or made the ex parte or extra record communication shall submit such communications, responses, and memoranda to the Executive Secretary who shall cause them to be filed in the administrative record for the subject project in a separately identified section.

e) The ex parte or extra record communication, together with all other documents enumerated in this Section, shall be available to the public in conformance with the procedures of the Freedom of Information Act [5 ILCS 140/3]. Prohibited communications shall be reported to the General Assembly and incorporated on the State Board's Internet site.

f) Any ex parte or extra record communication shall not be considered by the State Board, any State Board member or employee, nor form the basis for any decision, finding of fact or order.

g) *"Ex Parte* *communication*" or "extra record communication" *means a communication between a person who is not a State Board member or employee and* *a* *State Board member or employee that reflects on the substance of a pending State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte or extra record communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Any assistance shall be documented in writing by the applicant and employees within 10 business days after the assistance is provided.*

h) Written communication made by applicants, persons, parties, or their representatives shall not be considered ex parte or extra record if made in accordance with the procedures authorized by Parts 1130, 1140 and 1180 of the State Board rules.

i) Written communications made by applicants or permit holders in response to inquiries made by Agency staff in connection with project review, to Agency reports, to State Board questions or requests for information, or as otherwise authorized by State Board rules shall be made part of the record and are not considered prohibited communications. All other communications by applicants or permit holders are prohibited communications, except for requests for information pertaining to procedure or the status of a pending application or permit.

j) Any communication, written or oral, received from a member of the public, news media, interested persons, legislative members, or other persons regarding any matter other than the status of an application which is not authorized by the public comment process specified in 77 Ill. Adm. Code 1140 of the State Board rules is ex parte or extra record communication and is prohibited.

k) The Executive Secretary shall maintain a record of inquiries and responses regarding an application for permit or exemption.

l) *For purposes of this Section, "employee" means a person the State Board or the Agency employs on a full-time, part-time, contract, or intern basis.*

m) *The State Board, State Board member, or hearing examiner presiding over the proceeding, in the event of a violation of this Section, must take whatever action is necessary to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.*

n) *Nothing in this Section shall be construed to prevent the State* *Board* *or any member of the State board or any employee from consulting with the attorney for the State Board.*

(Source: Amended at 25 Ill. Reg. 2718, effective January 22, 2001)