

*****DRAFT - NOT FOR FILING*****

3301-73-09 Authority and duties of hearing officers.

- (A) Administrative hearings ~~shall will be~~ conducted before a hearing officer pursuant to section 3319.311 and Chapter 119. of the Revised Code.
- (B) All hearings ~~shall will~~ be open to the public, but, upon motion by either party or at the hearing officer's discretion, the hearing officer may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing officer closes the hearing, the hearing officer ~~shall should~~ state the reasons therefore in the public record.
- (C) The hearing officer ~~shall will~~ conduct hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.
- (D) The authority of the hearing officer ~~shall~~ includes, but is not ~~be~~ limited to, ~~the~~ authority to:
- (1) Administer oaths and affirmations;
 - (2) Examine parties and witnesses;
 - (3) Direct parties and witnesses to testify;
 - (4) Make rulings on the admissibility of evidence;
 - (5) Make rulings on procedural motions, whether such motions are oral or written;
 - (6) Hold pre-hearing conferences;
 - (7) Request briefs before, during or following the hearing, as well as suggested findings, orders, and conclusions of law within such time limits as the hearing officer may determine;
 - (8) Prepare entries, findings, orders, or reports and recommendations;
 - (9) Request preparation of entries, findings, or orders;
 - (10) ~~Decide whether a witness shall be permitted to testify by video, telephonic, or other electronic means; Issue instructions as to how the proceeding is to be conducted in the event of a virtual hearing;~~
 - (11) Rule on any challenges to a witness' competence, capacity or identity;
 - (12) ~~Order issuance of subpoenas and subpoenas duces tecum compelling the attendance of witnesses at hearings and depositions testimony and the production of evidence for hearings;~~
 - (13) ~~Allow depositions in lieu of live testimony;~~
 - (14) ~~Provide or disallow oral or written opening statements and closing arguments;_~~
 - (15) ~~Consolidate one or more matters involving the same respondent into one hearing;~~
 - (16) Take such other actions as may be necessary to accomplish the purposes of paragraph (C) of this rule; and
 - (17) Determine the order in which any hearing ~~shall is~~ to proceed.
- (E) ~~If the hearing officer determines that permitting broadcasting, televising, recording or the taking of~~

Commented [DM1]: Changes made throughout the rule according to SB 9, 134th GA, to remove restrictive regulatory language.

Commented [DM2]: Added for clarity.

Commented [DM3]: Originally added in 33-01-73-09 for ease of use for all parties and to encourage participation by Witnesses and Respondents. Moved language from 3301-73-09 as it was more relevant to "time and place of hearings" than "authorities and duties of hearing officers"

Left "Issue instructions as to how the proceeding to be conducted in the event of a virtual hearing" as it fell under the authorities and duties of hearing officers.

Commented [DM4]: Reworded for clarity, Removed in "lieu of live" as it is redundant.

Commented [DM5]: Added to clarify hearing officer's duties and authorities.

Commented [DM6]: Added for ease and efficiency in higher profile cases. For comparable language, see, e.g., OAC 4731-13-26 (State Medical Board), 4723-16-13 (Nursing Board), 4715-15-27 (Dental Board)."

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photographs in the hearing room would not distract participants, impair the dignity of the proceedings, violate student confidentiality, or otherwise materially interfere with the achievement of a fair administrative hearing, the broadcasting, televising, recording, or taking of photographs during hearing proceedings open to the public may be permitted under the following conditions:

- (1) Request for permission for broadcasting, televising, recording, or taking of photographs in the hearing room are made in writing and submitted to the hearing officer prior to the start of the hearing and are part of the record of the proceedings;
- (2) Written permission is granted prior to the start of the hearing by the hearing officer and is made part of the record of proceedings;
- (3) The filming, videotaping, recording, or taking of photographs of witnesses who object is not permitted:
and
- (4) Any film, video, photograph, or audio recording created during a hearing, except for an audio recording made by the court reporter hired by the state board to prepare the stenographic hearing record, will not be part of the record of proceeding.

(~~EF~~) The hearing officer ~~is to shall~~-rule on parties' motions with all possible speed.

(~~FG~~) The hearing officer ~~shall have has~~ such other powers, duties, and authority as are granted by statutes or rules.

(~~GH~~) The authority of the hearing officer ~~shall does~~- not include authority to do any of the following:

- (1) Grant motions for dismissal of an action;
- (2) Compromise or settle any action; or
- (3) Rule on questions of the constitutionality of federal, state or local laws or rules.

(~~HI~~) All rulings by a hearing officer on evidence and motions, including motions for recusal, and on any other procedural matters ~~shall will~~ be subject to review by the state board upon presentation of the proposed findings of fact and conclusions of law of the hearing officer. When such rulings warrant, the matter may be remanded to the hearing officer for further proceedings or clarification.

(~~IJ~~) An administrative hearing ~~shall will~~ not be a forum to re-adjudicate the original order of a professional licensing board to limit, suspend, revoke, or deny licensure.