

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

3301-73-14 Depositions in lieu of testimony, prior testimony, and testimony by electronic means at a hearing.

- (A) Upon written motion of any party, and upon service of that motion to the opposing party, the hearing officer may order that the testimony of a witness be taken by deposition in lieu of live testimony under such conditions and terms as the hearing officer ~~shall will~~ set, and may order that any information, in whatever form maintained, be produced so long as not privileged, at the same time and place of the deposition if it appears probable that:
- (1) The witness will be unavailable to attend the administrative hearing;
 - (2) The testimony of the witness is material;
 - (3) The testimony of the witness is necessary;
- (B) The parties ~~shall will~~ agree to the time and place for taking the deposition in lieu of live testimony. Depositions ~~shall will~~ be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the parties. If the parties are unable to agree, the hearing officer ~~shall will~~ set the time and place of the deposition. At a deposition taken pursuant to this rule, parties ~~shall will~~ have the right to fully examine witnesses as if the testimony was live at hearing. The hearing officer has the discretion to be present at the deposition.
- (C) A transcript ~~shall will~~ be made of a deposition taken under this rule and ~~shall will~~ be filed with the department. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony at hearing ~~shall will~~ be borne by the department. The cost of any video deposition ~~shall will~~ be borne by the requestor.
- (D) A deposition taken under this rule may be offered into evidence at hearing by any party, in lieu of the witness' live testimony at hearing.
- (E) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition of prior testimony is offered into evidence by a party, the opposing party may offer any other part. A transcript of testimony and exhibits from a prior court or administrative proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from a prior proceeding, the offering party may be required by the opposing party to present any other part of the offered item which should in fairness be considered contemporaneously with it.
- (F) Upon written motion of any party, and upon service of that motion to the opposing party, the hearing officer will ~~permit may order~~ that the testimony ~~or deposition~~ of a witness be taken by video, telephonic or other electronic means ~~unless the hearing officer determines that there is a compelling reason for the witness to testify in person.~~

~~(1) Testimony by video, telephonic or other electronic means may be ordered if the parties agree or if it appears probable that:~~

~~(a) the witness will be unavailable to attend the administrative hearing;~~

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

Commented [DM2]: Change provides for decrease cost in witness fees, provide easier access for witnesses located around the state, and will save time for all parties including school and district witnesses.

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~~(b) The testimony of the witness is material; and~~

~~(c) The testimony of the witness is necessary;~~

(21) –Testimony of witnesses by video, telephonic or electronic means ~~shall~~ will be admitted into the hearing record as if the witness testified live at hearing. The hearing officer may permit the use of electronic or photographic means for the presentation of other evidence at hearing.

(G) “Unavailable to attend an administrative hearing” includes, but is not limited to, the following situations:

- (1) The witness is unavailable to be present or testify at the hearing because of then-existing infirmity, physical illness, or mental illness;
- (2) The witness would be caused a hardship to attend the hearing; or
- (3) A party has been unable to procure the witness’ attendance at the hearing by service of process or other reasonable means.

(H) In the case of an expert witness, a showing of the unavailability of the expert is ~~shall~~ not ~~be~~ necessary for the hearing officer's consideration of the motion of a party to take a deposition in lieu of live testimony or to testify by video, telephonic or electronic means.