

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

**3301-73-16 Witnesses.**

- (A) All witnesses at any administrative hearing or during any deposition in lieu of live testimony at hearing shall testify under oath or affirmation.
- (B) A witness may be accompanied and advised by legal counsel who has been admitted to practice law in the state of Ohio. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and counsel for a witness may neither examine nor cross-examine any witnesses.
- (C) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the state board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.
- (D) Neither a presiding board member nor a presiding hearing officer ~~is shall be~~ a competent witness in any administrative proceeding or subject to deposition in lieu of live testimony. A presiding board member is a board member who has a decisive role in the outcome of the matter in question. A presiding hearing officer is the hearing officer assigned to the matter in question. Evidence or testimony from other persons relating to the mental processes of a presiding board member or presiding hearing officer shall not be admissible in any adjudication proceeding.
- (E) Unless the testimony of a non-presiding state board member or a non-presiding hearing officer is material to the factual allegations set forth in the notice of opportunity for hearing, neither a non-presiding state board member ~~nor a non-presiding and hearing officer may shall~~ be a witness or subject to deposition in lieu of live testimony in any adjudication proceeding. A non-presiding board member is a sitting or former board member who does not have a decisive role in the outcome of the matter in question due to recusal, absence or other reason. A non-presiding hearing officer is a hearing officer not assigned to the matter in question.
- (F) Any party may move for a separation of witnesses. Absent exceptional circumstances, the hearing officer ~~will shall~~ order a separation of witnesses. A separation of witnesses ~~does shall~~ not apply to the parties or the designated representative(s) of the parties. The hearing officer ~~will shall~~ determine whether a separation of witnesses ~~will apply shall apply~~ to expert witnesses.
- (G) Each party, prior to or immediately upon the start of a hearing, shall inform the hearing officer of the identity of each potential witness for his/her case present in the hearing. ~~from~~ A witness who remains in the hearing ~~room~~ during testimony after a separation of witnesses is ordered ~~will shall~~ be disqualified by the hearing officer from testifying in the hearing.

**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]:** Removed to reflect increased efficiency and accessibility for witnesses with option to testify virtually.