



Ohio Administrative Code

Rule 4723-16-13 Authority and duties of board hearing committee or hearing examiners.

Effective: February 1, 2022

(A) Adjudication hearings may be conducted before the board, a board hearing committee or a hearing examiner appointed by the board.

(B) The hearing examiner shall be licensed to practice law in Ohio and may be an employee of the board or an independent contractor.

(C) The board hearing committee shall be composed of at least three board members, and one or more alternates, appointed by the board at a public meeting, to serve for a term of one year. One board hearing committee member shall preside and be responsible for conduct of the hearing. The presiding board member shall also be responsible for approving the report and recommendation discussed in paragraph (H) of this rule. The board hearing committee may request advice on legal questions from a staff attorney employed by the board, or an attorney with whom the board contracts as a hearing examiner, related to procedural or evidentiary questions or in preparation of the report and recommendation. This legal consultation shall not be deemed an ex parte communication.

(D) All hearings shall be open to the public, but the board hearing committee or hearing examiner conducting a hearing may close the hearing to the extent necessary to protect compelling interests or to comply with statutory requirements. In the event this occurs, the board hearing committee or hearing examiner shall state on the public record the reasons for closing the hearing.

(E) If the hearing examiner or board hearing committee determines that permitting broadcasting, televising, recording or the taking of photographs in the hearing room would not distract participants, impair the dignity of the proceedings, violate patient 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 and upon request:



- (1) Requests for permission for the broadcasting, televising, recording or taking of photographs in the hearing room shall be made in writing and submitted to the hearing examiner or board hearing committee prior to the start of the hearing, and shall be made part of the record of the proceedings;
 - (2) Written permission is granted prior to the start of the hearing by the hearing examiner or board hearing committee and is made part of the record of the proceedings;
 - (3) The filming, videotaping, recording or taking of photographs of witnesses who object shall not be 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 board to prepare the stenographic hearing record, shall not be part of the record of the proceeding.
- (F) The board hearing committee or hearing examiner shall conduct hearings so as to prevent unnecessary delay, maintain order and ensure the development of a clear record. The authority of the board hearing committee or hearing examiner conducting a hearing includes, but is not limited to, the following:
- (1) Administering oaths or affirmations;
 - (2) Ordering that subpoenas be issued or that depositions in lieu of live testimony be conducted;
 - (3) Examining witnesses and directly witnesses to testify;
 - (4) Making rulings on admissibility of evidence;
 - (5) Making rulings on procedural motions, whether such motions are oral or written;
 - (6) Holding prehearing conferences, as discussed in rule 4723-16-05 of the Administrative Code;
 - (7) Requesting briefs, before, during or after a hearing;



- (8) Issuing scheduling orders for exchange of documents and filing deadlines;
 - (9) Determining the order of the hearing;
 - (10) Requiring or disallowing oral or written opening statements and closing arguments;
 - (11) Consolidating two or more matters involving the same respondent into one hearing;
 - (12) Preparing entries, proposed findings, and reports and recommendations to the board, as discussed in paragraph (H) of this rule; and
 - (13) Based upon a conflict in schedule, complexity of the issues involved, or for reasons of administrative efficiency, the board hearing committee may reassign the matter to a hearing examiner, or a hearing examiner may reassign to another hearing examiner or to the board hearing committee.
 - (14) In the sole discretion of the board hearing committee or hearing examiner, the hearing may be conducted by live, real-time video conference if requested and agreed upon by both parties. The board hearing committee or hearing examiner shall issue instructions as to how the proceeding is to be conducted. The video conference platform selected must enable the parties, hearing examiner, court reporter and witnesses to see and converse with each other and to display documentary and physical evidence. The video conference platform selected must be widely available to the general public without charge, and accessible to the public to watch and listen to the hearing, upon request, unless the hearing or portions thereof are closed to the public by the hearing examiner according to paragraph (D) of this rule.
- (G) The board hearing committee or hearing examiner may recommend in the report and recommendation that factual or legal allegations set forth in the notice of opportunity for hearing issued to respondent be dismissed, however, the authority of the board hearing committee or hearing examiner does not include authority to grant motions for dismissal of, or to otherwise dismiss, factual or legal allegations, or to modify, compromise or settle factual or legal allegations.
- (H) Within one hundred twenty days of the date an adjudication hearing is closed, the board hearing



committee or hearing examiner assigned to the case shall submit a written report to the board setting forth the proposed findings of fact and conclusions of law, or in the case of the board hearing committee, conclusions, and a recommendation of action to be taken by the board. A copy of the written report shall be mailed by certified mail to representatives of record for both parties. Either party may, within ten days of receipt of the report and recommendation, file written objections. Written objections, if filed in a timely manner, shall be considered by the board in determining whether to approve, modify or reject the report and recommendation.

(I) At a board meeting scheduled after the time for filing objections to a report and recommendation has passed, the board may approve, modify or reject the report and recommendation of the board committee or hearing examiner. Members of the board hearing committee that heard a case shall abstain from voting on a matter heard as members of the board hearing committee.