

5101:6-20-16 ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS.

(A) HEARING AUTHORITY

- (1) THE DISTRICT OFFICE OF PROPER JURISDICTION IS RESPONSIBLE FOR PREPARING AND ISSUING ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS UNDER THE AUTHORITY OF THE DIRECTOR OF THE OHIO DEPARTMENT OF HUMAN SERVICES. FOR THIS PURPOSE, THE DISTRICT DIRECTOR SHALL DESIGNATE A HEARING AUTHORITY TO REVIEW THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE DISTRICT HEARING OFFICERS AND TO ISSUE DECISIONS UNDER THE AUTHORITY OF THE DIRECTOR, ODHS.
- (2) IN THE EVENT OF A TEMPORARY ABSENCE OF THE HEARING AUTHORITY, THE DISTRICT DIRECTOR SHALL DESIGNATE ANOTHER INDIVIDUAL WITHIN THE DISTRICT OFFICE TO ASSUME THE DUTIES OF HEARING AUTHORITY, SO THAT TIMELY ISSUANCE OF DECISIONS IS NOT JEOPARDIZED.
- (3) NO PERSON DESIGNATED AS HEARING AUTHORITY SHALL HAVE PREVIOUSLY PARTICIPATED IN THE LOCAL AGENCY DECISION BEING APPEALED, NOR SHALL THE HEARING AUTHORITY AND THE HEARING OFFICER WHO CONDUCTED THE HEARING BE THE SAME PERSON.

(B) TIMELY ISSUANCE

- (1) ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS SHALL BE ISSUED WITHIN NINETY DAYS OF THE MAILING DATE OF THE "ADVANCE NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING," ODHS 4061.
- (2) IF THE HEARING WAS POSTPONED, UNDER THE PROVISIONS OF RULE 5101:6-20-15 OF THE ADMINISTRATIVE CODE, THE NINETY-DAY TIME LIMIT SHALL BE EXTENDED BY AS MANY DAYS AS THE HEARING WAS POSTPONED.
- (3) THE DISTRICT OFFICE IS RESPONSIBLE FOR TIMELY ISSUANCE OF ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS.

(C) BASIS

- (1) THE HEARING OFFICER'S FINDINGS OF FACT SHALL BE BASED EXCLUSIVELY ON THE EVIDENCE INTRODUCED AT THE HEARING, OR, IF THE ACCUSED INDIVIDUAL WAS REPRESENTED AT THE HEARING, AFTER THE HEARING AND SUBJECT TO EXAMINATION AND REBUTTAL BY BOTH PARTIES AS DESCRIBED IN PARAGRAPH (C)(11) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
  - (a) THE HEARING OFFICER MAY BE GUIDED, BUT SHALL NOT BE BOUND, BY THE "OHIO RULES OF EVIDENCE" IN CONDUCTING HEARINGS AND IN MAKING FINDINGS OF FACT. THE HEARING OFFICER SHALL CONSIDER ALL RELEVANT EVIDENCE OFFERED AT THE HEARING.
  - (b) HEARSAY EVIDENCE MAY BE CONSIDERED BY THE HEARING OFFICER IN

ARRIVING AT THE FINDINGS OF FACT. HOWEVER, SUCH EVIDENCE MUST BE CRITICALLY EVALUATED, SINCE IT IS NOT GIVEN UNDER OATH AND CANNOT BE CROSS-EXAMINED TO TEST THE PERCEPTION, MEMORY, AND VERACITY OF THE DECLARANT.

DIRECT EVIDENCE SHALL NORMALLY BE GIVEN MORE WEIGHT THAN HEARSAY EVIDENCE WHEN THE TWO ARE IN CONFLICT. WHENEVER POSSIBLE, THE HEARING OFFICER SHALL AVOID BASING A FINDING OF FACT SOLELY ON HEARSAY EVIDENCE.

- (c) IT SHALL BE THE RESPONSIBILITY OF THE LOCAL AGENCY TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ACCUSED INDIVIDUAL COMMITTED INTENTIONAL PROGRAM VIOLATION.
- (d) THE HEARING OFFICER'S FINDINGS OF FACT SHALL BE BINDING UPON THE HEARING AUTHORITY. HOWEVER, THE HEARING AUTHORITY MAY REMAND THE CASE TO THE HEARING OFFICER IF THE HEARING AUTHORITY DETERMINES THAT ADDITIONAL FACTS NOT ALREADY ESTABLISHED BY THE HEARING OFFICER ARE ESSENTIAL TO A CORRECT DECISION, OR IF THE EVIDENCE RELIED UPON WAS TAKEN IN VIOLATION OF PARAGRAPH (C)(1) OF THIS RULE.

THE SCOPE OF THE REMAND SHALL BE LIMITED TO THOSE ADDITIONAL FACTS WHICH THE HEARING AUTHORITY DEEMS NECESSARY. THE REMAND SHALL NOT BE THE OCCASION FOR A NEW DETERMINATION OF ANY OF THE FACTS ALREADY ESTABLISHED.

- (2) THE HEARING OFFICER'S CONCLUSIONS OF POLICY AND RECOMMENDATIONS SHALL BE BASED SOLELY ON PUBLISHED ODHS REGULATIONS, EXCEPT WHEN THESE REGULATIONS ARE SILENT AND REFERENCE TO THE REVISED CODE OR OTHER STATUTORY SOURCE IS NECESSARY TO RESOLVE THE ISSUE.

THE HEARING AUTHORITY SHALL REVIEW CONCLUSIONS AND RECOMMENDATIONS BY THE HEARING OFFICER, AND ADOPT THEM WHEN THEY CONSTITUTE A CORRECT APPLICATION OF THE APPROPRIATE REGULATIONS.

THE HEARING AUTHORITY SHALL AMEND CONCLUSIONS AND RECOMMENDATIONS THAT DO NOT CORRECTLY APPLY THE APPROPRIATE REGULATIONS, CLEARLY EXPLAINING THE REASON AND BASIS OF ANY SUCH AMENDMENT.

- (3) THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION SHALL BE LIMITED TO DETERMINING WHETHER THE ACCUSED INDIVIDUAL COMMITTED INTENTIONAL PROGRAM VIOLATION AND WHETHER THE SANCTION PERIOD BEING PROPOSED IS APPROPRIATE.

(D) CONTENT

THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION SHALL SEPARATELY SET FORTH THE ISSUE, THE HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF POLICY AND RECOMMENDATIONS, AND THE DECISION AND ORDER.

- (1) THE ISSUE SECTION SHALL INCLUDE THE PROGRAMS FOR WHICH ADMINISTRATIVE

DISQUALIFICATION IS PROPOSED, THE LENGTH OF THE PROPOSED DISQUALIFICATION PERIOD, AND A BRIEF STATEMENT OF THE ALLEGED ACTIVITY UPON WHICH THE LOCAL AGENCY HAS BASED ITS PROPOSAL. WHEN DISQUALIFICATION IN MULTIPLE PROGRAMS HAS BEEN PROPOSED, THEY SHALL BE STATED SEPARATELY IN THE ISSUE STATEMENT, AND TREATED SEPARATELY IN THE REMAINDER OF THE DECISION.

WHEN THE DISQUALIFICATION HEARING HAS BEEN COMBINED WITH A STATE HEARING, THE STATE HEARING ISSUES SHALL BE DECIDED IN A SEPARATE STATE HEARING DECISION, NOT IN THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION. BOTH DECISIONS SHALL BE ISSUED AT THE SAME TIME.

- (2) THE FINDINGS OF FACT SHALL FIRST ADDRESS SUCH PRELIMINARY MATTERS AS DELAYS DUE TO POSTPONEMENT AND AMENDMENTS TO THE ISSUE.

PRELIMINARY MATTERS SHALL BE FOLLOWED BY A CLEAR AND ORDERLY CHRONOLOGICAL DISCUSSION OF THE FACTS AND EVENTS RELEVANT TO THE ISSUE. FACTS UPON WHICH ALL PARTIES AGREE SHALL NORMALLY BE SET FORTH FIRST, FOLLOWED BY DISCUSSION AND RESOLUTION OF FACTUAL DISPUTES. THE DECISION SHALL CLEARLY INDICATE THE BASIS FOR EACH SUCH FINDING, TO INCLUDE DISCUSSION OF THE RELATIVE WEIGHT GIVEN TO THE CONFLICTING EVIDENCE IN ARRIVING AT THE DECISION.

- (3) THE CONCLUSIONS OF POLICY SHALL CITE AND SUMMARIZE RELEVANT PORTIONS OF DEPARTMENTAL RULES OR PROGRAM MANUALS, AND OTHER APPLICABLE REGULATIONS AS NECESSARY, AND SHALL CLEARLY DEMONSTRATE HOW THEY APPLY TO THE FACTS ESTABLISHED.
- (4) THE HEARING OFFICER'S RECOMMENDATIONS SHALL ADDRESS EACH PROGRAM FOR WHICH ADMINISTRATIVE DISQUALIFICATION IS PROPOSED AND SHALL STATE WHETHER OR NOT THE ACCUSED INDIVIDUAL IS FOUND TO HAVE COMMITTED INTENTIONAL PROGRAM VIOLATION. WHEN THE HEARING OFFICER RECOMMENDS THAT THE ACCUSED INDIVIDUAL BE DISQUALIFIED, THE HEARING OFFICER SHALL STATE THE LENGTH OF THE DISQUALIFICATION PERIOD TO BE IMPOSED.

WHEN DISQUALIFICATION IS ORDERED, COMPLIANCE SHALL BE REQUIRED, VIA "STATE HEARING COMPLIANCE," ODHS 4068.

- (5) THE DECISION AND ORDER, SIGNED BY THE HEARING AUTHORITY, SHALL INDICATE ADOPTION OR AMENDMENT OF THE HEARING OFFICER'S RECOMMENDATIONS AND WHETHER THE ACCUSED INDIVIDUAL IS FOUND TO HAVE COMMITTED INTENTIONAL PROGRAM VIOLATION. IF THE ACCUSED INDIVIDUAL IS TO BE DISQUALIFIED, IT SHALL STATE THE PROGRAM(S) FOR WHICH DISQUALIFICATION SHALL BE IMPLEMENTED AND THE LENGTH OF THE DISQUALIFICATION PERIOD TO BE IMPOSED.

(E) NOTIFICATION

THE INDIVIDUAL AND AUTHORIZED REPRESENTATIVE SHALL BE PROVIDED WITH A WRITTEN ADMINISTRATIVE DISQUALIFICATION HEARING DECISION VIA "ADMINISTRATIVE DISQUALIFICATION HEARING DECISION," ODHS 4007. COPIES OF THE DECISION SHALL BE SENT TO THE LOCAL AGENCY AND TO THE BUREAU OF STATE HEARINGS, ODHS.

WHEN THE DISQUALIFICATION HEARING IS COMBINED WITH A STATE HEARING, A SEPARATE DECISION SHALL BE ISSUED FOR THE STATE HEARING ISSUE(S) IN ACCORDANCE WITH RULE 5101:6-7-01 OF THE ADMINISTRATIVE CODE , USING THE "STATE HEARING DECISION," ODHS 4005.

(F) HEARING RECORD

THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION, TOGETHER WITH DOCUMENTS INTRODUCED AT THE HEARING AND ALL PAPERS AND REQUESTS FILED IN THE PROCEEDING, SHALL CONSTITUTE THE EXCLUSIVE RECORD. THE HEARING RECORD SHALL BE COMPILED AND CERTIFIED BY THE HEARING AUTHORITY AND FORWARDED TO THE LOCAL AGENCY, WHERE IT SHALL BE MAINTAINED IN ACCORDANCE WITH APPLICABLE RECORD RETENTION REQUIREMENTS AND MADE AVAILABLE FOR REVIEW BY THE INDIVIDUAL AND AUTHORIZED REPRESENTATIVE.

(G) LIBRARY OF DECISIONS

THE CHIEF OF THE BUREAU OF STATE HEARINGS, ODHS, SHALL MAINTAIN A LIBRARY OF ALL ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS. THE DECISIONS SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND COPYING, SUBJECT TO APPLICABLE DISCLOSURE SAFEGUARDS.

(H) BINDING EFFECT

ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS SHALL BE BINDING ON THE LOCAL AGENCY FOR THE INDIVIDUAL CASE FOR WHICH THE DECISION WAS RENDERED.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994  
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

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