

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-
	:	
	:	
Respondent.	:	
	:	

STANDING PRACTICE ORDER

This order is intended to fully inform the parties to this action of their responsibilities regarding confidentiality, the filing of pleadings, requests for continuances, the filing of briefs and other administrative matters.

NOW IT IS HEREBY ORDERED THAT in all proceedings assigned to a hearing officer under the Educator Discipline Act (“Act”) (24 P.S. § 2070.1a *et seq.*), the parties shall abide by this Standing Practice Order.

CONFIDENTIALITY

Under the Act, all information relating to any complaints or any proceedings relating to or resulting from such complaints is confidential unless or until public discipline is imposed. 24 P.S. § 2070.17b(a). Any individual who releases or gives out information deemed confidential under the Act, without authorization of the Professional Standards and Practices Commission (“Commission”), commits a misdemeanor of the third degree. 24 P.S. § 2070.17b(b). Precautions should be taken to avoid unintentional violations of the law and, at a minimum, all correspondence should be marked “confidential”.

The Act’s confidentiality provisions **do not** apply to information relating to

reinstatements or to proceedings under section 9(b) (relating to discipline for criminal offenses) or section 9(e) (relating to reciprocal discipline). 24 P.S. § 2070.17b(d).

COMMISSION PROCEEDINGS AND PROCEDURES

Disciplinary proceedings are conducted in accordance with the Act, Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) (2 Pa.C.S. § 501 *et seq.*), and the General Rules of Administrative Practice and Procedure (1 Pa. Code, Chapters 31, 33 and 35).

COMMUNICATIONS AND FILINGS

Due to the coronavirus/COVID-19 pandemic, the Commission is accepting filings by email. Documents may also be filed in the traditional way by mailing a paper copy to the Commission at 333 Market Street, 14th Floor, Harrisburg, PA 17126. In-person filings will not be accepted until further notice. **Email filings are strongly preferred and encouraged.** Instructions for emailing documents for filing are attached as Appendix A.

A copy of any filing should be served on all parties of record and the hearing officer. The hearing officer may elect to receive copies of communications and filings electronically. The hearing officer shall establish requirements for the format and transmission of such documents. Parties with an email address are strongly encouraged to consent to receive service of notices and documents by email. A Consent to Electronic Service form is attached as Appendix B. Parties who consent to receive service by email will no longer receive documents in paper form by mail.

Service of all documents where a party or its attorney has filed a Consent to Electronic Service form shall be accomplished by delivery of documents to the designated email address. Where any party has not filed a Consent to Electronic Service form, service of all documents shall be accomplished by mailing a paper copy, properly addressed with postage prepaid.

All pre-hearing motions or petitions must be in writing and include the position of the opposing counsel unless it is not possible to obtain. If the position of the opposing counsel is not possible to obtain, the moving party shall articulate in writing what efforts were made to contact the opposing counsel and the result of those efforts. If a party is appearing without counsel, a statement regarding the opposing party's position need not be included with the motion or petition.

CONTINUANCES

Requests for a continuance should be made as soon as the requesting party/counsel is aware that a reason for a continuance exists, but no later than 10 days prior to the hearing except in emergency circumstances. Except as specified below, continuances are at the discretion of the hearing officer. The hearing officer may refuse a request for continuance regardless of the concurrence of all parties.

In proceedings conducted under section 9b(a)(1) of the Act (relating to immediate suspensions), the hearing shall be held within 30 days of the receipt of the request for hearing. 24 P.S. § 2070.9b(a)(1)(i). Requests for a continuance that would take the hearing date beyond the 30-day time limitation specified in section 9b(a)(1)(i) shall be denied.

PRE-HEARING CONFERENCES

The purpose of the pre-hearing conference is to facilitate the timely and effective disposition of the case. In preparation for the conference, the hearing officer will direct each party to file a pre-hearing statement containing *at a minimum* the following information:

- a. A concise statement of the legal and/or factual issues presented by each party's case;
- b. A list of all witnesses to be called in each party's case-in-chief and a summary of the anticipated testimony of each witness;
- c. A list of all exhibits proposed to be offered into evidence during the presentation of each party's case in chief (**the parties are expected to exchange copies of all exhibits that they propose to offer into evidence with each other and with the hearing officer prior to commencement of the conference call**);
- d. The willingness of each party to admit to or stipulate to facts not in dispute or to the authenticity of documents;
- e. An estimate of the amount of time needed to present each party's case-in-chief; and
- f. Available hearing dates.

The pre-hearing conference will be conducted in accordance with 1 Pa. Code § 35.112.

HEARINGS

These procedures are adopted by the Commission pursuant to the July 10, 2020 Order of Governor Tom Wolf Authorizing Commonwealth Agencies to Conduct Administrative Proceedings Online by Telephonic Means. The following procedures shall be applicable to all administrative proceedings before the Commission.

Video or telephone hearings are highly preferred. Hearing officers should utilize remote or virtual methods of conducting administrative proceedings whenever possible and follow the Centers for Disease Control and Prevention and

Department of Health guidelines and other orders or guidance that may be required when in-person proceedings are necessary. Hearing officers are authorized to utilize video, telephonic, or other online conferencing equipment or services to conduct administrative hearings without consent and over the objection of the parties, at the discretion of the hearing officer. The burden shall be on the party requesting an in-person hearing to establish good cause why the hearing should not be held virtually. In determining the type of hearing to be held, the hearing officer should consider the following:

- (1) Presence and importance of factual/credibility matters in issue.
- (2) Number of documents to be proffered/admitted.
- (3) The technology available to the parties and the witnesses.
- (4) Other technical limitations or circumstances which could prevent the hearing from being conducted via remote or virtual methods.
- (5) The delay that will be caused if the hearing is not held virtually.

Even if an in-person hearing is held, the hearing officer may allow a specific witness or party to testify by video conference or telephone.

A hearing officer shall, through pre-hearing order, notify the parties in advance of a hearing. The notice shall include:

- (1) The date and time of the hearing.
- (2) Whether the hearing will be conducted by telephone or video conference.
- (3) Instructions on how to participate in the hearing remotely including sequestration of witnesses, if necessary.

- (4) The deadline and method by which the hearing officer and court reporter are to receive documents and the directive that all documents must be pre-marked and exchanged prior to the hearing. Electronic pre-hearing submission of documents is preferred.

Further guidelines to assist presiding officers in the conduct of hearings by virtual means is attached as Appendix C.

The hearing shall be closed and only the Department, Commission members and staff, the educator and his or her counsel, any intervener or its counsel, if applicable, and any witness shall be permitted to attend. Where a witness is a child or student, the Commission or its hearing officers may in their discretion permit a parent or guardian to be in attendance during the testimony of the child or student. See 24 P.S. § 2070.13(c)(5).

POST-HEARING BRIEFS

Unless waived by the parties with the consent of the hearing officer, at the close of the taking of testimony, the hearing officer will fix the time for the filing and service of briefs and the order in which the briefs shall be filed in accordance 1 Pa. Code § 35.251. In proceedings conducted under section 9b(a)(1) of the Act (relating to immediate suspensions), the hearing officer will direct that briefs shall be filed simultaneously. In all proceedings the party with the burden of proof will be afforded the opportunity to file a reply brief.

Briefs shall be as concise as possible. The content and form of briefs shall be in conformity with 1 Pa. Code § 35.192(a), except that an abstract of the evidence relied upon shall not be necessary. All proposed findings of fact should

be supported by citations to the record. The original of each brief shall be filed with the Commission. A copy of each brief shall be served on all parties and the hearing officer.

CURRENT ADDRESS/TELEPHONE NUMBER

All parties have an affirmative obligation to keep the Commission informed of their address and telephone number. Should such address or telephone number change in the course of these administrative proceedings, the party shall immediately inform the Commission, the hearing officer, and all parties.

SO ORDERED:

Hearing Officer

APPENDIX A

Instructions for Emailing Documents for Filing

- Documents to be submitted electronically must be in PDF format.
- Documents to be filed may be emailed to: RA-ED_PSPC_Filings@pa.gov.
- Documents to be filed must be attached to the email and not contained in the body of the email.
- Documents filed by email must be signed by the filing party either by (a) signing by hand and then scanning the document, or (b) signing electronically using a digital signature.
- The email and attached documents must contain the filer's name, address, telephone number, and the case's docket number (if one has been assigned).
- A document submitted for filing by email does not have to be delivered in hard copy form to the Commission.
- The email and attachment will constitute the official record of the filing.
- Documents received by 5:00 pm will be considered filed that day. Documents received after 5:00 pm or on weekends and holidays will be considered filed the following business day.
- The email address is solely for submitting attached PDF documents for filing.
- Please do not include comments, questions, or additional correspondence in the email.

Service of Documents filed by Email

- Documents filed by email must be served on all participants.
- Service may be made on the Department of Education by emailing a copy to: RA-EDMISCONDUCT@pa.gov
- All other participants must be served by mailing a paper copy, properly addressed with postage prepaid, unless the participant has filed a Consent to Electronic Service form with the Commission.
- Service is complete upon mailing or emailing but is not effective if the filer learns that the document did not reach the person to be served.
- Documents submitted for filing by email must contain a signed Certificate of Service indicating the date the document was placed in the mail or emailed.

THE COMMISSION MAY REJECT FILINGS THAT DO NOT CONFORM TO THESE REQUIREMENTS

APPENDIX B

CONSENT TO ELECTRONIC SERVICE

I am the participant named below, or I am authorized to accept service on behalf of the participant named below. I hereby consent to receive service of notices and documents in my case by means of the email address provided below. I affirm that:

1. I have regular access to my email account and to the internet and will check my email account regularly so that I do not miss a case filing or notice;
2. I understand that by consenting to electronic service, I will no longer receive the same documents in paper form by mail;
3. I will promptly notify the Professional Standards and Practices Commission if there is any change in my personal data, such as name, address, or email address; and
4. I understand that I may cancel this consent to electronic service at any time by notifying the Professional Standards and Practices Commission in writing.

Case Name and Docket Number: _____

Participant Name: _____

Attorney Name and ID Number (if applicable): _____

Mailing Address:

Phone Number: _____

Email Address: _____

Signature: _____ Date: _____

Return completed form to:

Shane Crosby, Executive Director
Professional Standards and Practices Commission
333 Market Street, 14th Floor
Harrisburg, PA 17126

Or:

RA-ED_PSPC_Filings@pa.gov

APPENDIX C

CONDUCT OF HEARING BY VIRTUAL MEANS

(a) *Contacting attorneys, parties and witnesses in a telephone or video conference.*

- (1) At the beginning of the hearing, the Presiding Officer will put on the record the following information:
 - (i) The names of each individual participating in the hearing.
 - (ii) Whether the individual is participating by telephone or video conference.
 - (iii) The time at which the Presiding Officer initiates contact with the attorney, parties, and witnesses.
- (2) The witness to be examined shall be available and ready to be sworn and begin testimony upon being telephoned or when video conferencing is initiated and shall remain available until excused by the Presiding Officer.
- (3) Where a witness or party is not on the telephone or video conference call at the scheduled time for the hearing to start or, for a witness, another pre-designated time, the Presiding Officer for a period of time not less than ten minutes nor more than twenty minutes, following the scheduled time of the hearing or other pre-designated time, will make at least three attempts to contact that party or witness before conducting the hearing

without the party or witness being present. If a party or witness seeks to join the proceeding after that time and can show good cause for the delay in joining, the Presiding Officer, in his or her discretion, may permit the party or witness do so.

- (4) The equipment used by the court reporter, the parties and their witnesses must be capable of and produce a clear transmission satisfactory to the Presiding Officer. The parties and their witnesses are responsible for having a reliable internet (for video hearings) or telephonic (for telephone hearings) connection in a quiet space, free from background noise that could impede the integrity of the transcription of the hearing and the ability of the Presiding Officer, the court reporter, and the parties and their counsel to hear what is being said.
- (5) To facilitate matters, at least three business days prior to the hearing each party should provide at least one alternative means of contacting the individual that will be effective for the date and time of the hearing.

(b) *Oath or affirmation.*

(1) The witness testifying by telephone or video conference will be placed under oath in the same manner as if the witness were appearing in person.

(2) The oath or affirmation administered to a witness testifying by telephone or video conference must indicate that the witness will

not testify from or use any document unless the document has been brought to the attention of the Presiding Officer and that the testimony shall not be prompted or directed during the hearing by any other person.

(c) *Opportunity to verify witnesses.*

(1) The tribunal will permit parties a reasonable opportunity to question a witness testifying by telephone or video conference for the purpose of verifying the identity of the witness.

(2) Falsification of identity may be subject to prosecution and punishment under 18 Pa. C.S. § 4902 (relating to perjury) and 18 Pa. C.S. § 4903 (relating to false swearing).

(d) *Use of documents.*

(1) A witness testifying by telephone or video conference may only use a document previously provided to all parties and the Presiding Officer.

(2) A copy of each document to be relied upon by a witness shall be pre-marked as an exhibit and pre-submitted as set forth above and as may be further defined in a pre-hearing scheduling order.

(e) *Recording the proceedings.*

(1) Only the court reporter is authorized to record the proceeding for the purpose of producing a verbatim transcript.

Attorneys and parties are not permitted to record or video/audio tape the proceeding.