

Office of Employment Dispute Resolution

Guidance for Conducting Hearings by Remote Means

Grievance hearings have traditionally been held in the locality where the grievant is or has been employed. However, grievance hearings may also be conducted by audio conference, video conference, or other equivalent electronic/remote means. Regardless of the format, hearing officers must adhere to the requirements of the grievance procedure as set forth in the Code of Virginia, the *Grievance Procedure Manual*, and the *Rules for Conducting Grievance Hearings*.

The decision as to the format of the hearing is in the hearing officer's discretion. In selecting the format of the hearing, the hearing officer must weigh all relevant considerations. Such considerations include, but are not limited to, the opinions of the parties and the hearing officer; whether the participants have access to necessary technology such as a computer, tablet, or smartphone; whether the participants have reliable internet service; and whether the participants will be able to fully and reliably engage in the hearing process by remote means. The hearing officer shall not select a hearing format that unfairly prejudices either party.

To ensure consistency and fairness in hearings conducted remotely, EDR requires hearing officers and parties to comply with the guidelines set forth below.

Guidelines:

1. The hearing officer may use their own technology or conferencing platform for the hearing. The technology or conferencing platform may also be provided by the agency or the grievant. The hearing officer must ensure that any technology or conferencing platform to be used has adequate security measures to protect personal and confidential information from unauthorized disclosure.
2. The hearing officer should ensure that the parties are familiar with the technology or conferencing platform to be used for the hearing. This may be accomplished by scheduling a brief test session with the equipment to be used, providing informational resources, or another similar and appropriate method.
3. The hearing officer and the parties should discuss arrangements for participants to access the hearing. For example, in some cases all participants may prefer to join the hearing from separate locations. Several participants may also join the hearing as a group from a conference room or other appropriate space. The hearing officer should be mindful of any appearance of prejudice or impropriety from the parties' arrangements for participating in the hearing.
4. Hearing officers may need to adopt more detailed procedures for handling documents than may be necessary for an in-person hearing. It may not be possible or practical for the hearing officer, the parties, and the witnesses to have a physical copy of

exhibits. In many cases it will be more practical for exhibits to be exchanged electronically. The hearing officer must provide the parties with instructions about the electronic exchange of exhibits.

5. The parties are responsible for making arrangements for any witnesses who will need to refer to exhibits to have access to those documents. Any concerns about confidentiality or other issues associated with providing access to exhibits for witnesses should be directed to the hearing officer.
6. The hearing officer must provide the parties with information in advance about how to join the hearing at the scheduled date and time. In general, the parties are responsible for informing their witnesses about the date and time of the hearing, as well as providing any information necessary for the witnesses to join and participate in the hearing (such as a link, telephone number, or other login information). The agency is responsible for notifying any employees who have been ordered to appear as witnesses about the date and time of the hearing, as well as providing them with the appropriate ability to participate in the hearing remotely.
7. Participants may not record the hearing by any means without approval from the hearing officer. The hearing officer's recording of the hearing will be the official record of the proceedings. The parties may request a copy of the recording from EDR after the conclusion of the hearing.
8. EDR requires all hearing participants, including the parties, their advocates, and witnesses, to abide by the following rules for all hearings conducted remotely:
 - All participants must take reasonable precautions to preserve the confidentiality of the grievance hearing proceedings and the privacy of the participants.
 - If a participant will be joining the hearing from a public place (e.g., a library or other public area), that must be disclosed to the hearing officer in advance of the hearing.
 - Participants must be in an environment that is free of interruptions and distractions. This includes, but is not limited to, other people, work, email, cell phones, and text messaging.
 - No third parties may be present in the room with any participant while the participant is in the hearing without approval from the hearing officer.
 - Participants must join the hearing from a location where they cannot be overheard, including from adjacent rooms or spaces in a home, office, or other work area.
 - The parties cannot communicate by email, text message, phone, or any other means with a witness while the witness is testifying during the hearing.

If a participant does not comply with these rules, the hearing officer has the authority to take any necessary and appropriate action to address the issue consistent with their authority to order sanctions pursuant to § III(E) of the *Rules for Conducting Grievance Hearings*.