

505-6-.05 REVIEW OF INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE

(1) Purpose. The purpose of this rule is to specify the procedures for a review of the initial decision of a hearing officer pursuant to a request from the educator or the Professional Standards Commission.

(2) Either the educator or the commission may seek review of the initial decision of the hearing officer pursuant to O.C.G.A. 50-13-17(a). If the educator files a timely motion for review of the initial decision of the hearing officer, the educator shall include therein a statement of the reasons for seeking review and alleged errors made by the hearing officer in the initial decision. The commission's review will be limited to those issues raised by the educator in the educator's motion for review or by the commission in its order for review.

(3) Upon the filing of a timely motion by the educator seeking review, or upon the filing of a timely order for review by the commission on its own motion, notice of the date and time for the review shall be served on the educator or counsel for the educator and staff counsel for the commission.

(4) The commission may appoint a hearing officer for review, other than the hearing officer who entered the initial decision, who shall preside over the review proceedings and control the conduct of the review hearing. In acting as presiding officer, the hearing officer for review shall rule on all procedural and evidentiary questions that arise during the course of the review. At the direction of the commission, the hearing officer for review shall draft the final decision for the commission.

(5) On review, the commission shall have all the powers it would have in making the initial decision, and in its discretion shall have the power to take additional testimony or remand the case to the original hearing officer for such purpose, as provided in the Administrative Procedure Act O.C.G.A. 50-13-17 and in accordance with this rule. The educator or educator's counsel and counsel for the commission shall docket any motion, including motions to present additional evidence, at least fourteen (14) days before the date set for the review hearing. Responses to any such motions shall be docketed at least seven (7) days before the date set for the review hearing.

(a) Motions to present additional evidence or to remand the case to the original hearing officer for such purpose shall be granted only if the additional evidence is material and there was good cause for failing to present such evidence before the original hearing officer. The hearing officer for review who acts as presiding officer over the review proceeding shall enter an order as to the legal sufficiency of all motions, including motions for the presentation of additional evidence, prior to the review hearing.

(b) Unless the Commission has granted a motion to present additional evidence, the Commission shall not receive any additional evidence by testimony or through documents at the Review Hearing. When represented by counsel at the Review Hearing, only counsel for the educator is permitted to make oral argument on behalf of the educator. When represented by counsel, unless the Commission has granted a motion to allow the additional testimony of the educator at the Review Hearing, the educator may not make a statement to the Commission, and any questions of the educator by the Commission shall be directed to the educator's counsel. During oral argument, questions by the Commission and the responses thereto shall not exceed the scope of the record under review unless the Commission has granted a motion to present additional evidence.

(6) Oral argument up to 20 minutes per side is permitted in the review hearing. Additional time for argument must be requested in writing and docketed at least fourteen (14) days before the date set for the review hearing.

(7) Once the review hearing is concluded, the commission shall deliberate as to the final decision. Neither the hearing officer for review, nor the educator nor his/her counsel, nor the staff counsel arguing the review shall be present during or participate in the deliberations or voting on the final decision. Provided, however, that during the course of the deliberations the commission may seek or obtain legal

advice of the commission's counsel or make an inquiry on the record concerning either procedure or the merits of the case in the presence of all parties.

(8) At the conclusion of the deliberations, the decision of the commission shall be announced in open session, unless the sanction imposed by the decision is made confidential by statute, in which case it shall be announced in camera to the educator and counsel for the parties. The commission may take the matter under advisement and continue the deliberations until a date certain if deemed necessary due to the commission's agenda or the complexity of the issues.

Authority O.C.G.A. 20-2-982; 20-2-984; 20-2-200; 20-2-984.5; 50-13-17; 50-13-41; 43-1