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| Office of Administrative Hearings (OAH) Procedures Transmittal | | Transmittal Number: 16-07 |
| Distribution: | | Date: November 15, 2016 Page: 1 of 2 and Attachments |
| Albany OAH Staff <input checked="" type="checkbox"/> | Rest of State Hearing Officers <input checked="" type="checkbox"/> | Subject: Video Hearing Procedures |
| | Supervising Hearing Officers <input checked="" type="checkbox"/> | |
| NYC OAH Staff <input checked="" type="checkbox"/> | NYC Hearing Officers <input checked="" type="checkbox"/> | |
| | Supervising Hearing Officers <input checked="" type="checkbox"/> | |
| Rest of State Social Service Districts <input checked="" type="checkbox"/> | | |
| NYC Agencies <input checked="" type="checkbox"/> | | |

The Office of Administrative Hearings (OAH) implemented video hearings in May 2016 after promulgating 18 NYCRR 358-5.13 which authorized OAH to conduct video hearings. Video technology allows for greater scheduling flexibility and the ability to address unforeseen circumstances, such as weather or illness, resulting in improved customer service and reliability for Appellants.

The text of the regulation is as follows:

- (a) OAH may provide that a fair hearing held pursuant to this Part be conducted by means of video equipment. When a hearing is conducted using video equipment, the parties and the hearing officer need not be physically present at the same location.
- (b) All provisions of this Part, which are not inconsistent with the specific provisions of this section, shall apply to hearings conducted using video equipment.
- (c) An appellant who objects to OAH conducting the fair hearing by video equipment should notify OAH at the earliest possible opportunity before the time set for the hearing, but no later than at the commencement of the hearing. The request must be made in writing, in person, by video equipment, or by telephone.
- (d) A fair hearing, with the appellant and the hearing officer physically present at the same location, will be held in the following circumstances:
 - (1) when, in the judgment of OAH, an appellant's due process rights would best be served by conducting a hearing in-person; or
 - (2) when, in the judgment of OAH, there are circumstances presented by the appellant which make proceeding with the hearing by video equipment fundamentally unfair.

The following new coding has been created to identify video hearings in the Fair Hearings Information System (FHIS):

HEARING TYPE:

VI Video Hearing

IP In-person Hearing

Appellants who potentially will be scheduled for a video hearing are notified via a Video Hearing Guide which is attached to the OAH 4420 Acknowledgement of Hearing Request or sent with the OAH 457 Notice of Fair Hearing explaining the scheduling.

The Scheduling Unit will determine whether a video hearing will be scheduled. An annotation is made in box F on the OAH 457 Notice of Fair Hearing indicating the hearing is scheduled as a video hearing. A Video Hearing Addendum is attached to the OAH 457 when mailed out.

When a fair hearing is pending scheduling, should an appellant opt-out of the video hearing process, staff should add Hearing Type IP. This will prevent the hearing from being scheduled as a video hearing. An in-person hearing will be scheduled as soon as possible.

Once a video hearing calendar has been created, no additional hearings should be added to those scheduled dates without consulting with the Liaison Unit. Once the hearing is scheduled, if an appellant objects to participating in a video hearing a new code has been created for use in FHIS to record the adjournment:

77 - OPT-OUT VIDEO HEARING

When adjournment code 77 is used, FHIS will automatically enter hearing type IP.

At any time, an appellant may request the removal of the IP hearing type. This will allow the hearing to be scheduled as either an in-person hearing or a video hearing, depending on scheduling needs.

When a defaulted hearing, which was scheduled as an in-person hearing, is being reopened, or when adjourning an in-person hearing, staff will receive a prompt in FHIS asking whether the hearing should again be scheduled as an in-person hearing. Should an appellant opt-out of a video hearing, an in-person hearing will be scheduled as soon as possible.

If you have any questions regarding this transmittal, you may contact your supervisor or Michael Allen at (518) 473-4969 or at Mike.Allen@otda.ny.gov.



Samuel L. Spitzberg, Director,
Office of Administrative Hearings

Your fair hearing may be conducted by a Hearing Officer who is in a different location using video equipment.

If your fair hearing is held by video, you will be able to see your Hearing Officer on a screen that is in your hearing room. Your Hearing Officer will be able to see you and any witnesses you bring to your fair hearing, as well as the people who represent the agency. Documents can be sent to the Hearing Officer by scanner during the hearing.

FREQUENTLY ASKED QUESTIONS

WHY MAY MY HEARING BE CONDUCTED BY VIDEO EQUIPMENT?

The Office of Administrative Hearings (OAH) gets many requests for hearings every year. Using video equipment allows our office to schedule more hearings. That means that you could have your hearing held sooner and get your decision more quickly.

WHERE WILL MY HEARING BE CONDUCTED?

The location for video hearings is the same as for in-person hearings. The same hearing rooms will be used, but they will have screens and other video equipment in them.

HOW IS A VIDEO HEARING DIFFERENT FROM A NON-VIDEO HEARING?

Your hearing will be like all other hearings. The only difference will be the Hearing Officer's location. You will be able to see and hear the Hearing Officer and the Hearing Officer will be able to see and hear everything that occurs in the hearing room.

HOW WILL THE HEARING OFFICER SEE THE DOCUMENTS THAT THE AGENCY SUBMITS INTO EVIDENCE? HOW WILL I SHOW THE HEARING OFFICER ANY EVIDENCE?

The Hearing Officer will be able to look at the documents that you and the agency wish to submit into evidence. Each hearing room has scanning equipment that is connected directly to the Hearing Officer's computer. When a document is scanned, it appears on the Hearing Officer's screen.

WILL MY HEARING BE RECORDED?

Just like in-person hearings, only the audio is recorded.

CAN I REQUEST AN IN-PERSON HEARING?

Yes. You should notify us at the earliest possible opportunity before the time set for the hearing, but no later than at the beginning of the hearing. The request must be made in writing, in person, by video equipment, or by telephone. We will make sure that you have an in-person hearing at the earliest opportunity.

GUÍA INFORMATIVA SOBRE AUDIENCIA IMPARCIAL

Su audiencia imparcial la puede realizar un funcionario de Audiencias Imparciales. Este funcionario se encuentra en un sitio diferente utilizando un equipo de video.

Si la audiencia imparcial se celebra mediante video, usted podrá ver al funcionario de Audiencias Imparciales en una pantalla disponible en la sala de audiencias. El funcionario de Audiencias Imparciales podrá verlo a usted y a los testigos que usted lleve a la audiencia, así como también, el funcionario podrá ver las personas que representan la agencia. Los documentos se le pueden enviar por medio de escáner al funcionario de Audiencias Imparciales cuando la audiencia está en curso.

PREGUNTAS FRECUENTES

¿POR QUÉ SE CELEBRA MI AUDIENCIA POR MEDIO DE VIDEO?

La Oficina de Audiencias Administrativas (OAH) recibe numerosas solicitudes cada año. La utilización de equipos de video le permite a la Oficina programar más audiencias. Por consiguiente, su audiencia imparcial se puede celebrar de una manera pronta para que usted reciba su decisión rápidamente.

¿DONDE SE CELEBRARÁ MI AUDIENCIA?

El lugar donde se lleva a cabo la audiencia por medio de video es el mismo lugar donde se realizan las audiencias en persona. Se utilizan las mismas salas de audiencias. Sin embargo, estas salas cuentan con pantallas y equipos de video.

¿CUÁL ES LA DIFERENCIA ENTRE UNA AUDIENCIA DONDE SE UTILIZA VIDEO Y UNA DONDE NO SE UTILIZA?

Su audiencia será como las otras audiencias. La única diferencia será la ubicación diferente del funcionario de Audiencias Imparciales. Usted podrá ver y escuchar al funcionario de Audiencias Imparciales, y él a su vez, podrá verlo y escuchar todo lo que ocurre en la sala de audiencias.

¿CÓMO PODRÁ EL FUNCIONARIO DE AUDIENCIAS IMPARCIALES VER LOS DOCUMENTOS QUE LA AGENCIA SOMETA COMO EVIDENCIA? ¿CÓMO LE PUEDO PRESENTAR EVIDENCIAS AL FUNCIONARIO DE AUDIENCIAS IMPARCIALES?

El funcionario de Audiencias Imparciales podrá ver los documentos que usted y la agencia quieran someter como evidencia. Cada sala de audiencias tiene equipos de escaneo, los cuales están conectados directamente con el computador del funcionario de Audiencias Imparciales. Cuando un documento es escaneado, este aparece en la pantalla del funcionario de Audiencias Imparciales.

¿SE GRABARÁ MI AUDIENCIA?

Como en las audiencias en persona, únicamente se graba el audio.

¿PUEDO SOLICITAR UNA AUDIENCIA IMPARCIAL EN PERSONA?

Sí. Nos debe notificar lo antes posible, antes de la hora programada de la audiencia pero no después de que ya haya comenzado la audiencia. La solicitud se debe hacer por escrito, en persona, por video o por teléfono. Nos aseguraremos de que usted tenga una audiencia en persona lo antes posible.

Your fair hearing may be held as a video hearing.

If your fair hearing is conducted by video, it will be done in the same location and in the same manner as an in-person hearing, but the Hearing Officer will be located in a different location using video equipment. The video picture will not be recorded. Only the voices and audio will be recorded, just as in an in-person hearing.

You will be able to see the Hearing Officer on the video screen in the hearing room. The Hearing Officer will be able to see and speak with you and with the person who represents the agency, and any witnesses.

You should bring whatever papers, letters or other written evidence you have to present at the video hearing. The documents will be scanned, and the Hearing Officer will be able to view the documents.

You may choose to have an in-person hearing instead of a video hearing. If you choose not to have a video hearing, you should notify us at the earliest possible opportunity before the time set for the hearing, but no later than at the beginning of the hearing. Your case will be heard by a Hearing Officer in-person at the earliest opportunity. This will have no effect on the decision in your case. When a hearing is adjourned from a video hearing to an in-person hearing at the appellant's request, the adjournment time will be considered as requested by the appellant.

Su audiencia imparcial se puede celebrar mediante video.

Si su audiencia imparcial se celebra mediante video, se llevará a cabo en el mismo lugar y de la misma manera que se realizan las audiencias en persona.

La imagen del video no será grabada. Únicamente las voces y el audio serán grabados como en las audiencias en persona.

Usted podrá ver al funcionario de audiencias imparciales en la pantalla de video de la sala de audiencias. El funcionario de audiencias imparciales podrá verlo y hablar con usted. De igual manera, el funcionario de audiencias imparciales podrá hablar con la persona que representa a la agencia y con los testigos.

Usted debe traer a la audiencia documentos, cartas o cualquier otra evidencia escrita que usted deba presentar en la audiencia por video. Los documentos serán escaneados y el funcionario de audiencias imparciales podrá verlos.

Usted puede escoger una audiencia en persona en vez de una audiencia por video. Si no quiere una audiencia por video, nos debe notificar lo antes posible, antes de la hora programada de la audiencia, pero no después de que ya haya comenzado la audiencia. En tal caso, su audiencia en persona se llevará a cabo lo antes posible con un funcionario de audiencias imparciales. Dicho procedimiento no afectará la decisión sobre su caso. Cuando a pedido del apelante, una audiencia se aplaza debido al cambio de una audiencia por video a una audiencia en persona, el tiempo de aplazamiento se considerará como una solicitud del apelante.