



Wake County Health and Human Services Board Rules Of Appeal Board Procedure 300 2.9

Countywide or	X	Department: Health and Human Services & Environmental Services	Divisions: Public Health/Environmental Health
Supersedes: Wake County Human Services, Department of Environmental Services Rules of Appeals dated 03/28/2002			Original Effective Date: 8/25/2011
Authority: North Carolina General Statute (NCGS) 130A-24(b),(c),(d) and (e)			
Originating Department: Health and Human Services & Environmental Services			
Document Classification: Public Non-Published (Unrestricted)			

- I. Purpose:** To provide a single Wake County Health and Human Services Board appeals process that applies to all functions under the purview of the Board. This procedure specifies how any aggrieved person may request an appeal hearing to contest a decision or ruling of the Director or Designee, or Delegate regarding the interpretation and enforcement of State or Wake County health regulations, rules adopted by the Board, or the imposition of administrative penalties. This document meets requirements or partial requirements for Public Health Accreditation Benchmark 35.1.

II. Procedure Statement:

1. **Hearing Request:** Any aggrieved person may request an appeal hearing under these rules to contest a decision or ruling of the Director regarding the interpretation and enforcement of State health regulations; rules adopted by the Board; or the imposition of administrative penalties if:
 - a. The request is submitted in writing to the Director within thirty (30) days following receipt of the decision or ruling; and
 - b. The notice contains the following information:
 - i. The name and mailing address of the Appellant;
 - ii. A description of the challenged decision or ruling; and
 - iii. A statement of why the decision or ruling is incorrect.
 - c. The Director or the Director's Delegate or Designee shall, within seven (7) working days after receipt of the notice of appeal, transmit to the Hearing Panel the notice of appeal and all papers and materials upon which the challenged decision or ruling was based.
2. **Notice of Hearing:**
 - a. The Hearing Panel shall schedule and hold a hearing within fifteen (15) days following receipt of the notice of appeal from the Director or the Director's Delegate or Designee. The Board shall issue notice to Appellant of the date, time, and place of the hearing not less than seven (7) days prior. If notice is sent by United States Mail, the Hearing Panel shall mail the notice not less than ten (10) days prior to the hearing.
 - b. The Appellant may waive notice by supplying the Board with a written statement

signed by the Appellant to that effect.

3. Continuance, Waiver of Hearing:

- a. The Appellant may, for good cause, request a continuance of the hearing. The Panel shall determine if a continuance should be granted, and shall inform the Appellant of its decision at least one day prior to the scheduled hearing.
- b. An Appellant waives his right to a hearing if:
 - i. He fails to file a notice of appeal with the Director within thirty (30) days of the decision or ruling;
 - ii. He fails to attend a scheduled hearing after sufficient notice; or
 - iii. He submits a written waiver to the Panel of his right to a hearing.

4. Filing of Written Answer: The Appellant who has been served with notice of a hearing may file a written response. Said response shall not be included in the record of the hearing unless served upon the Panel, through the Director or the Director's Delegate or Designee, at least three (3) working days before the hearing.

5. Discovery: Pre-hearing discovery shall not be available to any party.

6. Pre-hearing Conference:

- a. Prior to appearing before the Hearing Panel, the appellant shall appear at an informal pre-hearing conference. The conference shall be held and directed by the Environmental Services Director or Designee, or by the Health and Human Services Division Director for Public Health or Designee.
- b. The persons attending the conference will:
 - i. Simplify issues;
 - ii. Stipulate facts or findings;
 - iii. Identify areas where evidence will be needed;
 - iv. Discuss the needs for consolidation of cases or joint hearings; and
 - v. Consider any other means to expedite disposition.

7. Disqualification of Panel Members: If any Panel member cannot attend the hearing or feels they cannot conduct a fair and impartial hearing in a particular case, or any Appellant objects to a member of the Panel, and files a written objection at least two (2) working days before the hearing date, the Board shall appoint a substitute member to the Panel to conduct the hearing.

8. Oath: No person may testify or present any evidence, oral or written, to be admitted into the record without first being put under oath or affirmation. The Panel, its Clerk, or its attorney shall have the power to administer oaths or affirmations.

9. Conduct of Hearing: The Panel shall have complete control in conducting the hearing, including:

- a. The responsibility of preparing a complete record of all testimony and exhibits presented at the hearing.

- b. The order of the calling of witnesses or the prosecution of evidence.
 - c. Excluding irrelevant, immaterial, repetitious or redundant testimony or evidence.
 - d. The responsibility of determining the adequacy of the room in which the hearing is held for the safety of the Panel and of those persons involved in the hearing or observing the hearing. The room shall be large enough to ensure a safe environment and a setting conducive for the rendering of an impartial decision by the Panel. Security shall be provided by Wake County as reasonably requested by the Chairperson of the Panel, by a majority of the Panel, or as deemed appropriate in the discretion of the Panel's attorney.
10. Evidence at Hearing: The rules of evidence as applied in general courts of justice shall not apply at the hearing. Any competent evidence, relevant to the decision or ruling in the case shall be admissible in the record. The Panel may restrict or exclude unduly repetitious or redundant testimony or exhibits.
11. Counsel: Appellant shall have an attorney to present the case before the Panel. A representative of the County Attorney's Office shall be present to assist procedurally, and to assist in the development of evidentiary aspects of the hearing.
12. Recommendation of the Panel: After all competent testimony has been heard and all evidence presented to the Panel, the Panel shall deliberate in open session and:
- a. Assimilate and review all evidence presented, and, based on clear and convincing evidence, render a decision by majority vote;
 - b. Prepare proposed findings of fact and conclusions of law, based on the evidence presented;
 - c. Prepare recommendations to the full Board to either affirm, modify, or reverse the decision or ruling of the Director or Delegate on appeal;
 - d. Promptly transmit copies of the findings of fact, conclusions of law and recommendations (the record) to the Board and to Appellant; and
 - e. Transmit a copy of the record and all exhibits of the hearing to the Board if either party pursues further appeal.
13. Objection. Oral Argument before the Board:
- a. The Appellant shall have ten (10) days from receipt of the Panel's recommendation to file objections with the Board. Objections must be made in writing and actually received by the Director within the ten (10) day limitation.
 - b. The Appellant may request the right to present oral argument to the full Board. Such request must be made along with the objections described in subsections (a) above.
 - c. Upon receipt of an objection and request for oral argument, the Board shall schedule a time and date. The Board shall notify Appellant of the date, time, and place of the argument at least ten (10) days prior to the scheduled date.
 - d. In presenting oral arguments to the Board, no new evidence shall be allowed. The record below shall be the only evidence considered, and new evidence or written argument shall not be received. Oral argument is limited to twenty (20) minutes

per side. The Board shall decide by simple majority vote based on a reasonableness standard, whether or not the recommendations of the Hearing Panel should be adopted, reversed, or modified.

14. Decision:

- a. After review of the record and any oral argument presented to the Board, the Board shall issue a binding written decision adopting, modifying or reversing the proposal of the Panel. The Board shall notify all parties of its decision. The decision shall contain a concise statement of the reasons for the decision.
- b. Appeal from the Board's decision may be pursued under N.C.G.S. 130A-24(d), as amended.

15. Record: The official record of contested case hearings shall be maintained by the Hearing Office. Any person who wishes to examine the record shall submit a written request to the Hearing Office in sufficient time to allow the record to be prepared for inspection and all material properly held confidential to be deleted. The Hearing Office shall maintain the record for a period of sixty (60) days following the decision of the Board. If an Appellant appeals the Board's decision to the District Court pursuant to N.C.G.S. 130A-24(d), the Appellant is responsible for notifying the Hearing Office to maintain the record and all exhibits of the hearing for transmittal to the District Court.

16. Transcript: Any person who desires a transcript of a hearing or part of a hearing shall contact the Hearing Office, which shall require fees to be paid in advance of providing the transcript. The Hearing Office shall delete from the transcript all materials properly held confidential.

III. Definitions: For the purposes of these rules, these terms have the following meanings:

1. Appellant: Any aggrieved person appealing under this Section a decision or ruling of the Wake County Health and Human Services director or his Delegate regarding the interpretation and enforcement of State health regulations; rules adopted by the Board; or the imposition of administrative penalties.
2. Board: The Wake County Health and Human Services Board.
3. Delegate: A staff member acting on behalf of the Health and Human Services Director with the authority to issue decisions regarding the interpretation and enforcement of State health regulations; rules adopted by the Board; or the imposition of administrative penalties.
4. Designee: A staff member exercising the actual authority of a Delegate as directed by the Delegate.
5. Director: The Wake County Health and Human Services Director.
6. Hearing: An appeal hearing as provided for by NCGS 130A-24(b),(c),(d) and (e).
7. Hearing Office: The hearing may be scheduled at a Wake County Government location convenient to the parties. However, if not otherwise specified, the location will be:

Wake County Health and Human Services Center
220 Swinburne Street, Raleigh, NC 27620
Phone: 919-212-7000

8. **Hearing Panel:** A panel consisting of three members of the Board. The panel has the authority to conduct hearings under these rules.

IV. Applicability and Exceptions: This procedure applies to all parties subject to decisions, rulings, or administrative actions of the Director relating to State or Wake County health regulations administered by the Health and Human Services or Environmental Services Departments.

V. Procedure Responsibility and Management:

- A. Responsibility for the Procedure:** The Board has responsibility for development and implementation of this procedure. Within the department, the responsibility is delegated to the HHS Director and the Executive Assistant to the Board.
- B. Procedure Management:** The Board Chair, The County Attorney's Office and the WCHHS Director will review this procedure every 3 years from adoption or last revision date. The Executive Assistant to the Board shall make any necessary revisions in accordance with standard practice changes, statutes, or changes in the law. Any major procedure revision made shall be submitted to the Board at the time of revision for approval and adoption.
- C. Plan for communicating and training:** The Executive Assistant to the Board will communicate this procedure and any changes to the procedure to the WCHHS Board.
- D. Contact Department/Division and number:** WCHHS Director (919) 212-7759 or the Executive Assistant to the Board (919) 212-7351

VI. Procedure Responsibility and Management:

- The Environmental Services Director or the Health and Human Services Division Director for Public Health, or their delegates, shall review this procedure at least every two years to ensure currency.
- Employees who make decisions that are subject to these appeal procedures will be trained on the appeals process during their new employee orientation.
- Approved protocol will be located on the departmental shared network drive.

VII. Related Publications: N/A

VIII. Appendices: N/A

IX. Legal and Regulatory References

Reference Document	Reference Item	Description
North Carolina General Statutes 130A-24 (b), (c), (d), and (e)		

X. Approval History**Approval History:**

Approval Date	Version	Approver(s)	Role(s)
10/21/2021	2.7	Dr. John Perry (on behalf of the full Health and Human Services Board)	WCHHS Board Chair
12/15/2022	2.8	Ms. Ann Rollins (on behalf of the full Health and Human Services Board)	WCHHS Board Chair
10/26/2023	2.9	Ms. Ann Rollins (on behalf of the full Health and Human Services Board)	WCHHS Board Chair

XI. Revision History:

Effective Date	Version	Section(s) Revised	Author
10/26/2023	2.9	Annual review – headers updated to accurately capture the version number of the current version. First three pages had header details added as they were previously omitted.	Brittany Hunt, Executive Assistant to the Health and Human Services Board
12/15/2022	2.8	Annual Review – slight edits to wording (changing “Health and Human Services Board” to “Board” where applicable).	Brittany Hunt, Executive Assistant to the Health and Human Services Board
10/21/2021	2.7	Annual Review – Name of Board updated from “Human Services Board” to “Health and Human Services Board” in tandem with the same name change to Wake County Health and Human Services. Added “Legal and Regulatory References” and “Approval History” in line with changes required to submit to new protocol/procedure management system PowerDMS.	Brittany Hunt, Executive Assistant to the Health and Human Services Board
8/27/2020	2.6	Annual Review – No revisions	Brittany Hunt, Executive Assistant to the Human Services Board
9/26/2019	2.6	Reviewed corrections – No revisions	Brittany Hunt, Executive Assistant to the Human Services Board
8/22/2019	2.6	Reviewed - Page 1, changed benchmark activities listed from 31.1a and 34.5 to 35.1. The accreditation benchmark activities had changed over time and needed to be corrected to reflect the current benchmark activities.	Brittany Hunt, Executive Assistant to the Human Services Board
9/27/2018	2.5	Section III #7 – Deleted first line listed in the location “Office of the Human Services Director, Room 5035”. Listed the Wake County Human Services Center at 220 Swinburne St., Raleigh, NC 27620 as the location if not specified.	Debra Baker, Executive Assistant to the Human Services Board
8/24/2017	2.4	Annual Review – No revisions	Debra Baker, Executive Assistant to the HS Board
8/22/2016	2.4	Page 3, #11, changed word to “shall” from “may” to read “A representative of the County Attorney’s Office shall be present”	Kenneth Murphy, Assistant County Attorney

7/23/2015	Title	Amended the title from "Wake County Human Services Wake County Environmental Services Rules of Appeal" to "Wake County Human Services Board Rules of Appeal"	Amina Shah, Executive Assistant to HS Board
4/2015	2.3	Reviewed – Changed Benchmark references from "31.5a" to "35.1a"	B. Gunter, Division of Administration
6/2014	2.2	Reviewed – No Changes	B. Gunter, Division of Administration
7/12/2013	2.2	Section – Section(s) Revised - corrected date for "Replaces former rules of appeal" to 3/28/2002 instead of #/28/2002. -Corrected date for Regina Petteway's revisions to 2/12/2013 instead of 7/11/2013.	Laura Jernigan, Interim Executive Assistant to the Human Services Board per discussion with Regina Petteway, Director for Administration.
7/11/2013	2.2	Section 1 – Purpose, added "This document meets requirements or partial requirements for Public Health Accreditation Benchmarks 31.5a and 34.5." Section II.1.c – Added "or the Director's Delegate or Designee", removed word "his" Section II.2.a, Added "or the Director's Delegate or Designee" Section II.4, Added "or the Director's Delegate or Designee" Section III.7, added "Office of the Human Services Director, Room 5035"	Regina Petteway, Director for Administration per Board Discussion/Instructions with County Attorney at the June 2013 Human Services Board Meeting
6/27/2013	2.1	Section I, Added director "or designee" Section II.6.a, Added "or designee" Section II.9d – Added paragraph Section II 12, Added "deliberate in open session and" Section III.4. Added definition of Designee	Scott Warren & Ken Murphy. Reviewed by Sue Ledford and Joseph Threadcraft
12/2012	2.0	Reviewed – No changes	Sue Lynn Ledford
8/25/2011	2.0	Replaced former Rules of Appeal approved on 3/28/2002	Scott Warren, Matt Roylance, Sue Lynn Ledford