

Ex parte communication.

- (A) The members of the board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the board in any way other than by review of the evidence of record shall be considered by such member in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless the member excuses himself or herself from participation in the decision on the ground that he or she cannot restrict his or her decision on the matter to the evidence of record.
- (B) Except as otherwise provided under this chapter or by statute, no hearing examiner or member of the board shall initiate or consider ex parte communications concerning a substantive matter related to a pending adjudicatory proceeding. Nothing contained herein, however, shall preclude the hearing examiner from nonsubstantive ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.
- (C) The hearing examiner and members of the board shall disclose on the public record the source of any ex parte or attempted ex parte communications pertaining to a substantive issue. If the recipient of the ex parte communication determines that he or she can no longer render an impartial decision, the recipient shall recuse himself or herself from further participation in consideration of the matter.
- (D) If requested by any party, the recipient of the ex parte communication shall file with the board an affidavit setting forth the substance of the ex parte communication. The affidavit shall be sealed, held as proffered material and maintained with the hearing record.

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