

DRAFTER'S NOTE: Subsection (a) is derived from § 4-215(d) of the Model APA.

(B) IN A CONTESTED CASE, THE OFFICE IS BOUND BY ANY AGENCY REGULATION, DECLARATORY RULING, PRIOR ADJUDICATION, OR OTHER SETTLED, PREEXISTING POLICY, TO THE SAME EXTENT AS THE AGENCY IS OR WOULD HAVE BEEN BOUND IF IT WERE HEARING THE CASE.

DRAFTER'S NOTE: Regarding subsection (b): An administrative agency may make policy by regulation, declaratory ruling, adjudication, or other administrative action. See Consumer Protection v. Consumer Publishing Co., 304 Md. 731, 753-56 (1985); 68 Opinions of the Attorney General 9, 12 (1983). However, when adjudicating a contested case, an administrative agency is not totally free to disregard its prior policy statements. See CBS v. Comptroller, 319 Md. 687 (1990); Cicala v. Disability Review Board, 288 Md. 254, 264 (1980); Hopkins v. Md. Inmate Griev. Comm'n, 40 Md. App. 329, 335-37 (1978); State Government Article, § 10-305(b). Subsection (b) would apply to the OAH the same restrictions that govern agency adjudicators. The word "policy" in the proposal does not mean an ad hoc directive, but rather is intended to bear its ordinary meaning as a "settled or definite course or method previously adopted and followed by government". Aircraft Corp. v. Superior Court, 153 P. 2d 966, 973 (Cal. App. 1944); Williamson v. City of High Point, 195 S.E. 90, 97 (N.C. 1938). This is the import of the words "settled" and "preexisting".

[10-211.] 10-215. TRANSCRIPTION OF PROCEEDINGS.

All or part of proceedings in a contested case shall be transcribed if any party:

- (1) requests the transcription; and
- (2) pays any required costs.

[10-212.] 10-216. EXCEPTIONS.

[If a majority of the officials who are to make the final decision in a contested case have not heard the evidence and the proposed decision is adverse to a party other than the agency, the officials may not make the final decision until:

- (1) the agency:
 - (i) serves on each party the proposed decision, including findings of fact and conclusions of law; and
 - (ii) gives each party whom the proposed decision affects adversely an opportunity to:
 1. file exceptions; and
 2. present argument to a majority of the officials who are to make the final decision; and
- (2) a majority of the officials who are to make the final decision consider personally each part of the record that the party cites.]