

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**IN RE STEPHEN INGLE,  
Petitioner.**

*Petition for Direct Appeal to the Georgia  
Office of State Administrative Hearings*

**Docket No.: 1933160  
1933160-OSAH-DIRECT APPEAL-  
PETITION-29-Malihi**



**ORDER**

**INTRODUCTION**

On April 8, 2019, Petitioner submitted a petition for an order permitting him to file a hearing request directly with the Office of State Administrative Hearings (hereinafter “the Court”) pursuant to O.C.G.A. § 50-13-41(a)(1). Attached to his petition were supporting documents, including a brief statement of “Background Facts” that alleged Petitioner had experienced “undue delay” and suffered “prejudice” because the Professional Standards Commission (“PSC”) had failed to refer his hearing request to this Court within thirty days.

The Court granted the PSC ten business days to respond to the petition or, alternatively, to refer Petitioner’s hearing request and related documentation to the Court in accordance with Ga. Comp. R. & Regs. 616-1-2-.03. On April 23, 2019, the PSC timely submitted a brief in opposition to the petition, asking the Court to deny the petition or, in the alternative, to issue a stay in the instant matter.

For the foregoing reasons, the PSC’s motion for a stay in the instant matter is **DENIED**, and Petitioner’s petition to file a hearing request directly with this Court is **GRANTED**.

**ANALYSIS**

The Georgia Administrative Procedure Act provides two avenues by which contested cases may be referred to this Court for a hearing:

Whenever an agency . . . receives a request for a hearing in a contested case, such agency shall forward such request for a hearing to the Office of State Administrative Hearings within a reasonable period of time not to exceed 30 days after receipt of such request, and if the agency fails to do so, the party requesting the hearing may petition the Office of State Administrative Hearings for an order permitting such party to file a request for a hearing directly with the Office of State Administrative Hearings.

O.C.G.A. § 50-13-41(a)(1); *see also* Ga. Comp. R. & Regs. 616-1-2-.03(2). The granting or denial of such a petition “shall be within the Administrative Law Judge’s discretion,” but the decision “shall not be based on the merits of the contested case.” Ga. Comp. R. & Regs. 616-1-2-.03(2)(c). If the petition is granted, the Court shall schedule the case for a hearing. *Id.* at 616-1-2-.03(2)(d).

In the instant matter, the undisputed facts show that Petitioner submitted a timely hearing request to the PSC on December 27, 2018.<sup>1</sup> As more than 90 days had passed without this case being referred to this Court, Petitioner had grounds to directly petition this Court on April 8, 2019, for a hearing date. *See* O.C.G.A. § 50-13-41(a)(1); Ga. Comp. R. & Regs. 616-1-2-.03(2); *see also* O.C.G.A. § 20-2-984.5(d); Ga. Comp. R. & Regs. 505-6-.04(1)(b).

In its brief opposing the petition, the PSC concedes that more than thirty days have passed since Petitioner submitted his hearing request. Nonetheless, the PSC asks the Court to deny the petition on the grounds that “Petitioner has failed to demonstrate that the scheduling of a hearing at this time is a proper exercise of the Court’s discretion.” More specifically, the PSC asserts the following: (1) Petitioner has failed to demonstrate an undue delay or how the delay has prejudiced him; (2) any negative impact to Petitioner (pertaining to his efforts to seek

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<sup>1</sup> On December 14, 2018, the PSC issued a letter to Petitioner stating, among other matters, that (1) the PSC had found probable cause to believe Petitioner had breached the Code of Ethics for educators; (2) the PSC recommended that Petitioner’s teaching certificate be revoked; and (3) Petitioner could seek a hearing on the matter by submitting a written request to the PSC no later than January 14, 2019. The PSC timely received Petitioner’s written hearing request on December 27, 2018. Nearly a month later, on January 24, 2019, Petitioner’s case was forwarded to the Attorney General’s Office. (*Petition for Direct Appeal & Exs. A-1, A-3, A-4, A-5; PSC’s Response in Opposition to the Petition for Direct Appeal at 2*).

employment) seemingly would stem from his pending criminal charges, not his pending PSC case; and (3) Petitioner seeks to “rush” the administrative process because he “desire[s] to get ahead of the criminal process by subpoenaing witnesses, taking their testimonies under oath, and having access to other evidence that may be used in the prosecution of the criminal case.” Alternatively, the PSC asks for a stay on the instant petition, “because the interests of justice warrant waiting until the conclusion of Petitioner’s criminal case” so as not to interfere with the criminal process.

The Court does not find the PSC’s arguments persuasive. While Petitioner proffered only a conclusory statement about suffering prejudice, that alone does not justify denial of his petition on its face. Neither the statute nor the regulation controlling direct-appeal petitions required Petitioner to demonstrate prejudice or show other negative impacts of the delay. *See* O.C.G.A. § 50-13-41(a)(1); Ga. Comp. R. & Regs. 616-1-2-.03(2)(b) (laying out requirements for petition). On a related note, the PSC’s assertion that any prejudice felt by Petitioner must have been caused by pending criminal charges—as opposed to the PSC’s allegations—is both speculative and irrelevant to the question of the hearing request’s timely referral under O.C.G.A. § 50-13-41(a)(1).

Lastly, even assuming *arguendo* that Petitioner harbors strategic reasons for seeking an administrative hearing prior to the criminal trial, such motivation does not justify this Court denying or delaying the instant petition. As an initial matter, the PSC’s characterization of Petitioner “rushing” the administrative process is inapt, as he is well within his legal right to petition this Court for a hearing date following the agency’s own delay. *See* O.C.G.A. § 50-13-41(a)(1); Ga. Comp. R. & Regs. 616-1-2-.03(2). Rather, should the PSC seek a temporary halt on the matter in question, it may do so within the parameters of the *actual administrative*

*proceeding before this Court*, which starts with a hearing request being docketed and the contested case being scheduled for hearing. See O.C.G.A. § 50-13-41(a)(1), (2); Ga. Comp. R. & Regs. 616-1-2-.03, -.09. To allow otherwise would give agencies sole discretion to decide whether “the interests of justice” warrant an administrative hearing’s delay—a decision left to the courts. See *Securities & Exchange Com’n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C.C. 1980) (holding that “a court may decide in its discretion to stay civil proceedings” pending the outcome of a criminal case, when “the interests of justice” seem to require such action) (citation and quotation omitted); see also *Securities & Exchange Com’n v. Zimmerman*, 854 F. Supp. 896, 898 (N.D. Ga. 1993) (“A court may be justified in ordering a stay where the delay of the non-criminal proceeding would not seriously injure the public interest.”).

#### **CONCLUSION**

Accordingly, for the reasons stated above, the PSC’s motion to stay the petition for direct appeal is **DENIED**, and the petition is hereby **GRANTED**. Petitioner’s case shall be docketed and scheduled for a hearing on the next available date. A Notice of Hearing will be issued separate from this Order.

**SO ORDERED**, this 30th day of April, 2019.

Michael Malihi  
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Michael Malihi  
Administrative Law Judge

