

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. **An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding.**
2. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except that which has been offered, admitted, and made a part of the official record of the proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
3. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency, or any person conducting a proceeding for it, may exclude objectionable evidence.
4. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.
6. **Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.**
7. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

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## RULE 807. RESIDUAL EXCEPTION

Effective Date: 3/1/2022

**(a) In General. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:**

**(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and**

**(2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.**

**(b) Notice.** The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.