

Board Hearing/Appeal Procedures

All formal due process hearings to be held before the Board conducted in the manner provided by the Rules of Practice Hearings and Contested Cases Before the Board and in accordance with the Wyoming Administrative Procedures Act.

Disputes regarding services and programs provided to children with disabilities shall be resolved in the manner provided by the State Board of Education Rules and Regulations for services for children with disabilities, specifically including the due process set forth therein.

Less formal hearings may be conducted before the Board with the consent of all parties or as provided for grievances and/or other discrimination claims which are heard by the board, in which event the appeal process shall be as set forth in the specific policy relating to the grievance or claim.

Rules of Practice Governing Hearings and Contested
Cases Before the Board of Directors of
Northwest Wyoming Board of Cooperative
Educational Services
and Procedures to Consider Recommended Findings from
an Independent Hearing Officer.

Article I
General Provisions

Section 1. Authority. These rules are adopted as authorized by the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115, and under the provisions of W.S. 21-3-110 as amended.

Section 2. Effective Upon Compliance. These rules shall be effective upon compliance with all prerequisites set forth in the Wyoming Administrative Procedures Act, § 16-3-102 to 16-3-115, or statute amending, recodifying or superseding the same.

Section 3. Previous Rules Superseded. From and after the effective date of these rules, any previously filed rules of NWBOCES relating to contested hearings, shall be superseded and shall be of no further force or effect.

Section 4. Promulgation, Amendment or Repeal of Rules. Amendments to these rules shall become effective as provided in W.S. 16-3-101 through 16-3-115.

Article II
Definitions and Applicability
Hearings and Contested Cases

Section 1. Definitions. As used in these rules.

- a. "Board" means the Board of the Northwest Wyoming Board of Cooperative Educational Services (NWBOCES).
- b. "Chairman" means the chairman of the Board.
- c. "Day" means calendar day.
- d. "Hearing" includes all contested cases.
- e. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled to be admitted as a party.
- f. "Persons" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency.
- g. "Administrative Director" means the chief administrative officer of the NWBOCES.

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- h. "Clerk" means the Clerk of the Board.
- i. "Teacher" means any person employed under contract with the board as a certified teacher providing instruction.
- j. "Pupil" or "student" means any person duly enrolled in instruction at NWBOCES.
- k. "Independent hearing officer" means that person or appointed as provided for in W.S. §21-7-110

Section 2. Applicability of Rules.

a. These rules shall apply to all hearings required to be held with respect to termination, dismissal and of teachers under the Wyoming Teacher's Employment Act, as amended, and any applicable federal and state court and to all formal hearings required by law to be held with respect to the suspension or expulsion of any student from NWBOCES and to any other matters wherein a contested hearing defined by law, is presented or any other matter wherein a hearing is required by law. Provided, however, the rules required for teachers employed by NWBOCES shall be those of the NWBOCES Board.

b. Informal or investigative hearings may be held by the Board without compliance with these rules.

c. Hearings not in compliance with these rules may be held by the Board upon express written agreement by all parties.

Article III
Hearings Before the Board

Section 1. Generally. Any person whose legally protected rights have been or will be affected by any decision, ruling, or other action taken by the Board or to be taken by the Board has a right to a hearing before the board unless a hearing is required by law to be before an independent hearing officer.

Section 2. Petition. Any person desiring to request a hearing before the Board for a hearing must file with the Board, in person or by mail at the NWBOCES, Thermopolis, Wyoming, a petition setting

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a. A concise statement of the facts on which the petitioner relies;

b. A statement in ordinary language, setting forth the action or decision desired by the petitioner;

c. The name, address and telephone number of the petitioner and of the attorney for the petitioner, if any;

d. The signature of the petitioner and attorney for the petitioner, if any;

e. The legal authority, if any, known at the time of the filing of the petition, upon which the petitioner relies.

Section 3. Board As Petitioner. In any matter in which the NWBOCES is required to hold a hearing before the Board, the NWBOCES shall be deemed to be the petitioner for purposes of these rules. Any notices required by law for said hearing shall be deemed to be notices of the petition for the NWBOCES. Any objection by the other party to the petition of the NWBOCES shall be served in writing at least ten (10) working days before any scheduled hearing.

Section 4. Notice of Hearing. For any hearing to be held before the Board, the Clerk shall cause written notice of any hearing held under these rules to be served upon the parties as much time in advance of the date set for hearing as is reasonably practicable. Such notice shall include the following:

- a. The time, place and nature of the hearing;
- b. The legal authority and jurisdiction under which the hearing is to be held;
- c. The particular sections of the statutes, rules and decisions involved;
- d. A short and plain statement of the matters in dispute. If the Clerk is unable to state the matters in dispute at the time the notice is served, the initial notice shall be limited to a statement of the issues involved. Thereafter upon application a more definite statement shall be furnished.

Section 5. Hearing Examiner.

a. Whenever it shall appear, from statements of or other sources, including applicable federal or state case law, a dispute exists wherein a hearing is authorized or required before the Board, the Board, at its option, may delay proceedings until all factual disputes are heard and recommended by a hearing examiner as provided in this section.

b. The hearing examiner shall be the presiding officer at the hearing and shall conduct all proceedings in an impartial manner.

c. The hearing examiner shall be a qualified member of the Bar of Wyoming.

d. The hearing examiner shall make recommended findings of fact and conclusions of law to the Board in writing.

e. The hearing examiner shall be hired by the Board and shall be entitled to a reasonable fee for services and reimbursement for reasonable expenses incurred in connection therewith, but shall not be considered an employee of the NWBOCES, but an independent contractor.

f. The hearing examiner shall accord the parties at the hearing procedural rights as are available to them in a hearing before the Board as herein set forth.

g. The impartial hearing examiner shall not be a member of the Board or a person with a personal or professional interest in the case at hearing, nor be biased or prejudiced against any party at the hearing.

Section 6. Adoption of Findings of Fact and Conclusions of Law.

a. The recommended Findings of Fact and Conclusions of Law by the hearing examiner under Section 5.d of this Article I shall be adopted by the independent hearing officer pursuant to W.S. §21-7-1 and shall be mailed or delivered to all parties and members of the Board.

b. Any party objecting to the recommended Findings of Fact and Conclusions of Law shall present any objections at the next meeting of the Board.

of the Board occurring at least five (5) days after mail recommended Findings of Fact and Conclusions of Law to all within fourteen (14) days after mailing, whichever occurs fi

c. The recommended Findings of Fact and Conclusions o be adopted by the Board unless a majority of the members o object to the recommended Findings of Fact and Conclusions o member of the Board may object to the recommendations unles have been present at the hearing or has read the transcr proceedings or heard or examined the official record of tl If the Board terminates, suspends or dismisses a teacher's over a recommendation by the independent hearing officer of the written order of the Board shall include a conclusio with reasons supported by the record.

Section 7. Duties of Presiding Officer. The presid at any hearing before the Board shall be the Chairman of th any member of the Board authorized to act in the abse Chairman, or the hearing examiner as provided in Section 5 Article III of these rules. The presiding officer shall hav and power to:

- a. Administer oaths and affirmations;
- b. Issues subpoenas;
- c. Rule upon offers of proof and receive relevant evid
- d. Take or cause depositions to be taken in accordance provisions of the Wyoming Administrative Procedur rules of the Board;
- e. Regulate the course of the hearing;
- f. Hold conferences for the settlement or simplificati issues;
- g. Dispose of procedural requests or similar matters;
- h. Cause Findings of Fact and Conclusions of Law to b and filed with the Clerk and delivered to all parti
- i. May recess the hearing or grant continuances for gc
- j. May require written briefs from any party clarifyin legal or factual position;
- k. May declare that any matter is being taken under ad and that a decision will be announced at a later t exceed twenty (20) days after receipt of findi recommendation from the hearing examiner or sixty from the hearing date for all other hearings;

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- l. Punish contempt by permanent removal from the hearing by any person so offending;
- m. See that a recording of the hearing is made by electronic recording device or certified shorthand reporter or other person authorized to administer oaths;
- n. Take any other action authorized by law, consistent with these rules, or required to fulfill any of his duties.

Section 8. Order of Procedure at Hearing. As nearly as a hearing shall be conducted in accordance with the order of procedure:

- a. The petitioner may briefly state the case and the which the petitioner expects to sustain it.
- b. The adverse party may then briefly state the defense evidence expected to be offered in support of it.
- c. The petitioner shall first produce the evidence; the party will then produce their evidence.
- d. The parties will then be confined to rebuttal unless the presiding officer permits them to offer evidence in their original case.
- e. The presiding officer may, at their discretion, allow evidence to be offered out of the order as herein prescribed.
- f. Closing statements will be made in the following sequence:
 - (1) Petitioner
 - (2) Adverse Party
 - (3) Petitioner in Rebuttal

Section 9. Witnesses at Hearings to be Sworn. Any person testifying at any hearing shall stand and be administered the following oath by the presiding officer: "Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in the matter now before the Board, so help you God?", unless the presiding officer waives said oath on a showing that the person understands the meaning of telling the truth and that he/she may be convicted of the crime of falsifying his/her testimony.

Section 10. Disposition of Case by Stipulation. Any case may be finally disposed of by stipulation, agreed settlement, confession or default of the parties, approved by the Board. An order accordingly shall be entered in the case record.

Section 11. Applicable Rules of Civil Procedure to be Applied. The rules of practice and procedure contained in the Rules of Civil Procedure of the State of Wyoming, insofar as they are applicable, and not inconsistent with the laws of the State of Wyoming, or these rules shall apply at all hearings under this Act. Service of the petition and notice of hearing may be by

certified or registered mail to the last known address of the teacher or student involved or by personal service by any adult, provided the service upon a teacher or student by an employee of the school shall be witnessed unless an acknowledgment of service is obtained from the teacher or student. All other notices and service of process shall be made in accordance with Rule 5 W.R.C.P.

Section 12. Attorneys. The filing of a petition or other representation by an attorney constitutes his appearance for the person for whom the representation is made. The Board or hearing officer must be notified in writing of any withdrawal from the hearing by the person appearing at a hearing in a representative capacity. A person precluded from examining or cross-examining any witness, and a person shall be an attorney licensed to practice in the State of Wyoming, or a non-resident attorney, associated with a Wyoming attorney. These rules shall not be construed to prohibit an attorney from representing himself in any hearing under these rules.

Section 13. NWBOCES Attorney Present. In all matters before the Board, or under these rules, the Chairman shall request that an attorney be present, to assist and advise the Board. If the Board represents NWBOCES. If there is a conflict in the Board acting as advisor for the Board, the Board shall authorize the employment of Special Counsel to act either as attorney for the Board or attorney for NWBOCES.

Section 14. Taking of Testimony - Reporter. The testimony of witnesses is taken in a hearing under these rules. The testimony shall be reported either by an electronic recording device or by a certified shorthand machine reporter or other person authorized to administer oaths whose compensation for the taking of testimony shall be at the expense of NWBOCES. A transcript of the proceedings or any part thereof shall be at the cost and expense of any party requesting the same.

Section 15. Decision and Order. The Board shall issue a written decision and order in all cases, which order and decision shall be filed by the Clerk in the file of the matter. The decision of the Board shall be shown in its decision. When the decision is against a teacher, a copy shall be provided to the teacher and a copy shall be placed in the school records pertaining to the teacher.

Section 16. Appeals. Any decision of the Board is subject to appeal to the District Court and the Supreme Court of Wyoming as provided by law.

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Section 17. Severability. If any provision of these rules or the application thereof to any matter is held invalid or unconstitutional, such invalidity shall not affect the other provisions or applications of these rules which can be given effect without the invalid provision or application, and for this purpose the provisions of these rules shall be severable.

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