

Descriptor Term: RULES OF PROCEDURE - Non-Renewal, Separation/ Termination and Suspension - Certified Personnel

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Rescinds: GBN-R

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RULES OF PROCEDURE UNDER THE EDUCATION EMPLOYMENT PROCEDURES
LAW

OF 2001

IMPORTANT NOTICE: This policy is applicable only to professional personnel covered under the Education Employment Procedures Law (EEPL) as defined in Mississippi Code 1972, §37-9-103

1. Application of Policy

The policies and procedures as set forth herein will be applicable only to certified personnel elected by the Board of Trustees, or other professional instructional personnel, who are required to have a valid certificate issued by the State Department of Education as a prerequisite of employment and are under formal contract of employment under §37-9-23 and §37-9-25 of the Mississippi Code 1972.

2. Determination of Separation/Termination and Non-Renewal

a. In the event that a determination that the best interests of the Gulfport School District would be served by the **separation/termination** from employment of the employee, the Superintendent will inform and send notice of the determination to the employee.

b. In the event that a determination is made by the Superintendent not to offer the employee a renewal contract for a successive year, written notice of **non-renewal** will be given by the Superintendent on or before the applicable date as established by Board policy CGM (Certified Administrative Personnel) and policy GBN (Certified Non-Administrative Personnel).

3. Rights of Employees; Notices

a. A certified employee who has received a notice of separation/termination or non-renewal under Section 37-9-105, upon written request from the employee received by the District within ten (10) days of receipt of the notice by the employee, will be entitled to:

(1) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed separation/termination or non-renewal,

including any reasons alleged by the employee to be the reason for separation/termination or non-renewal;

- (2) Written notice of the specific reasons for separation/termination or non-renewal together with a summary of the factual basis therefor, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice will be given at least fourteen (14) days prior to any hearing. If the Superintendent fails to provide this information to the employee, then the recommendation for separation/termination or non-renewal will be null and void, and the Board will order the execution of a contract with the employee for an additional period of one (1) year;
- (3) Receive a fair and impartial hearing before the Board or hearing officer;
- (4) Be represented by legal counsel at the employee's own expense.

Any employee requesting a hearing will provide the District, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for separation/termination or non-renewal, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing. If the employee fails to provide this information, then the recommendation of separation/termination or non-renewal will be final without the necessity of a hearing.

If the employee does not request a hearing, the recommendation regarding the separation/termination or non-renewal of the employee will be final.

- b. If a hearing is requested by the employee within ten (10) seven (7) days of receipt of the notice of non-reemployment, the Board will schedule a hearing before itself or a hearing officer in its discretion. If a request is not made within this ten (10) day period, the decision of the Superintendent to separate/terminate or non-renew the employee will be final. For purposes of this section, notice will be deemed to have been sent to the employee upon the date of actual receipt thereof or the date of delivery to the United States Postal Service for delivery by certified mail.
 - c. If a hearing is held pursuant to these rules, the Board will set the time, place and date of such a hearing to be held not sooner than five (5) days, nor later than thirty (30) days from the date of the request from the employee and notify the employee in writing of the same.
4. Board Hearing
- a. A quorum of the Board may conduct the hearing, or it may designate a hearing officer to conduct the hearing as hereinafter provided.
 - b. The Board may appoint a presiding officer for the hearing, who will make all rulings on procedure and evidence and will generally conduct the hearing, subject to being overridden by a majority vote of the members present. The presiding officer may be a member of the Board, the Superintendent, the Board Attorney, or any other

impartial person chosen by the Board, provided that the person was not responsible for the initial decision of separation/termination or non-renewal.

- c. The presiding officer will have full power and authority to conduct hearings in such manner as is appropriate to ascertain the facts and facilitate the hearing which will include, but not be limited to, the authority to:
 1. administer oaths and affirmations;
 2. issue subpoenas, subject to the provisions of Section 7 of these rules;
 3. examine witnesses;
 4. receive depositions or affidavits or have them taken when the ends of justice would be served, as hereinafter provided;
 5. regulate the course of the hearing;
 6. hold conferences for the settlement or simplification of the issues by consent of the parties;
 7. dispose of procedural requests or similar matters;
 8. make or recommend decisions in accordance with Section 10 of these rules;
 9. take other action authorized by the Board consistent with the rules and policies.
- d. In conducting the hearing, the presiding officer will not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in the Education Employment Procedures Law of 2001 and by these rules.

5. Hearing Officer

- a. The Board may, at its discretion, appoint one or more hearing officers to conduct the hearing. Nothing herein will be construed to prohibit a member of the Board or an employee of the District from serving as the hearing officer or to require that he/she be legally trained, provided that such person was not responsible for the initial decision of separation/termination or non-renewal.
- b. The hearing officer will have all the powers of the presiding officer of a board hearing to conduct the hearing as enumerated in Sections 4 (c) and (d) above.
- c. Once a hearing officer has been appointed, then no ex parte communications may be held with any parties regarding the details or the merits of the hearing.

6. The Hearing

- a. The employee will have the burden of establishing that the determination to separate/terminate him/her from employment or non-renew employment is based upon legally impermissible reasons (such as sex, race, religion, exercise of First Amendment rights, etc.) or that the decision is arbitrary and capricious.

The administration of the District has the burden of establishing that the determination to separate/terminate the employee from employment or non-renew employment is a proper employment decision that is based upon valid educational reasons or noncompliance with the District personnel policies.

- b. Any oral or documentary evidence may be received, but evidence which is irrelevant, immaterial, or unduly repetitious may be excluded.

- c. An employee may present his/her case by oral or documentary evidence and may cross-examine witnesses against him/her.
- d. The attorney for the Board of Trustees and the staff member responsible for the determination to release the employee are also entitled to cross-examine witnesses presented at the hearing.
- e. The employee will not be required to testify in his/her own behalf, but upon doing so will be subject to cross-examination.
- f. A transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, will be prepared and will constitute the exclusive record for decision. A copy of the record will be made available to a party in interest upon payment of a charge not in excess of reporter's fees under Section 9-13-33 of the Mississippi Code 1972. In the event of a judicial appeal of the Board's decision, the entire expense of the transcript and notes will be assessed as court costs.

7. Subpoenas

- a. Requests for subpoenas may be made by the employee, the staff member responsible for the decision of separation/termination or non-renewal, a representative of the administration or the Board not later than five (5) days prior to the hearing date.
- b. The presiding officer is authorized to issue subpoenas, in his/her sole discretion, upon his/her own motion or upon request where there is a statement or showing of general relevance and reasonable scope of the evidence sought.
- c. If a request for a subpoena is approved, one will be issued upon prepayment of a fee to the hearing officer in an amount sufficient to defray the cost of service of the subpoena by a lawful officer, together with the required witness fee and mileage allowance as set by the hearing officer.
- d. Any person compelled to appear before the Board or hearing officer is entitled to be accompanied, represented, and advised by counsel and, if the witness is a minor, by a parent or legal guardian.
- e. In the event it becomes necessary to enforce or to quash a subpoena issued to compel attendance of a witness, the proponent may petition the Chancery Court of Harrison County.

8. Depositions

- a. It is the policy of the Gulfport School District that depositions will be allowed only in extraordinary cases in which the personal attendance of the witness is impossible or would impose an unreasonable hardship.
- b. Depositions will be allowed only if an application by a party is approved by the hearing officer or presiding officer, in his sole discretion.
- c. Any costs associated with the taking of depositions will be the responsibility of the party requesting it, which will not include attorneys' fees.

9. Conduct of Hearing

- a. The hearing will be held in executive session unless the employee elects to have a public hearing, and will be considered a confidential personnel record. If the hearing

is public, the Board or hearing officer may order any part of the hearing to be held in executive session, if, in the opinion of the Board or hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Testimony by minors will be held in executive session.

- b. The first order of business after the hearing is convened is to dispose of any procedural matters.
- c. Prior to receiving any testimony, evidence will be received that all notices and information was timely sent to the employee and that the employee made timely requests for information and a hearing. If a notice or a request is defective or untimely, the presiding officer may order such relief as is appropriate.
- d. Witnesses and other evidence in support of the determination to separate/terminate the employee from employment or non-renew employment will be introduced first. The presiding officer may interrogate witnesses himself/herself or he/she may allow a representative of the administration or the Board to examine witnesses. The employee or his/her attorney will also be allowed to cross-examine each witness presenting evidence against him/her at the hearing.
- e. After the evidence in support of the determination has been submitted, the employee will be allowed an opportunity to present his witnesses and evidence. The presiding officer and a representative of the administration or the Board will be allowed an opportunity to cross-examine any witnesses for the employee.
- f. After the employee concludes his/her case, the administration will be allowed an opportunity to present rebuttal evidence, either at the time of the hearing or within a reasonable time upon recess of the hearing.
- g. The presiding officer in his/her discretion, may require any portion of the evidence to be submitted in the form of depositions or affidavits. If affidavits are received, counter-affidavits may be presented within such time as the hearing officer may allow.
- h. At the conclusion of the hearing, each party may be allowed an opportunity for closing arguments, if requested by the presiding officer.

10. Recommended Decision of Hearing Officer

- a. If the Board of Trustees appoints a hearing officer, he/she will make a report, unless the Board orders that the record be transmitted to it without such report.
- b. The hearing officer may, in his/her discretion, prior to the conclusion of the hearing and to making the report, request proposed findings from all parties.

11. Final Decision

- a. If the Board initially hears the matter, it will make its decision on the basis of the matters presented before it and will send notice of its decision to the parties within ten (10) days of the conclusion of the hearing.
- b. If the Board does not initially hear the matter, the parties will be given a reasonable opportunity to appear before the Board, in person or by counsel, to present statements in their behalf. The Board will send notice of its decision to the parties within thirty (30) days of the conclusion of the hearing.

- c. The Board will receive the hearing officer's report and the record, and will prepare its own findings and final decision.