

RULES OF THE MILWAUKEE BOARD OF SCHOOL DIRECTORS

APPENDIX A: PROCEDURES FOR APPEALS OF EMPLOYEE DISCIPLINARY HEARINGS

(1) FILING OF REQUEST FOR APPEAL

(a) The employee may appeal the decision of the Independent Hearing Officer (IHO) to the Milwaukee Board of School Directors (Board). The Administration, at the request of the appropriate executive officer, may also appeal the decision of the Independent Hearing Officer (IHO) to the Board. The appeal must be filed, in writing, with the Office of Board Governance within ten workdays of receipt of the IHO's decision. An appeal to the Board is permitted only in matters involving an employee's termination, disciplinary demotion, a disciplinary suspension in excess of five workdays without pay, or workplace safety issues.

(b) The appeal must specifically state the basis for the appeal, including the issues, concerns, and any information regarding why the appellant feels that the IHO's decision was arbitrary and capricious. The appeal must be based on the record before the IHO and shall not introduce evidence or arguments that were not presented to the IHO.

(2) STANDARD OF REVIEW

The standard of review for the Board is whether or not the decision of the IHO was arbitrary and capricious. A decision will be considered arbitrary and capricious if it is a willful and unreasonable action, without consideration or in disregard of facts, or without determining principle. If the decision was not arbitrary and capricious, then the Board is required to find on behalf of the prevailing party.

(3) REVIEW BY BOARD

The Board will not take additional testimony or evidence. The opposing party may file a response to the letter of appeal within ten (10) workdays of receipt of the appeal. The Board will decide whether the IHO reached an arbitrary and capricious decision based on the information presented to the IHO, the letter of appeal, and the opposing party's response. The Board shall, in each situation, assign an impartial advisor to review the paper record and, within 20 workdays of the due date of the opposing party's response, create a summary and recommendation for the Board's review.

(4) DELIBERATIONS

(a) The Board shall retire into executive session and deliberate upon and consider the impartial advisor's summary and recommendation, to determine, based upon that summary and recommendation, whether the IHO reached an arbitrary and capricious decision. The record from the hearing before the IHO will also be available to the Board.

(b) If the Board determines that the IHO did not reach an arbitrary and capricious decision, the Board will sustain the IHO.

(c) If the Board determines that the IHO reached an arbitrary and capricious decision, the Board will, in its sole discretion:

1. review the written record from the hearing before the IHO and make an independent decision based on that record; or
2. hold a Board appellate hearing and make a decision based on the arguments presented at the hearing. If the Board decides to hold a Board appellate hearing, the Board appellate hearing will be held in accordance with the guidelines set forth in the attachment to this Appendix A (*see below*).

(5) DECISION OF THE BOARD

(a) The Board’s written decision will be made within forty-five (45) workdays, or as soon as is practicable, of receipt of the impartial advisor’s summary and recommendation, or the conclusion of the written review or the Board appellate hearing.

(b) The Board’s written decision regarding the appeal will state whether the IHO is sustained, denied, or modified.

(c) The Board will decide the matter by a majority vote, and the decision of the Board shall be final and binding and shall be not subject to further review.

(6) NOTICE OF BOARD ACTION

The appellant shall be informed in writing of the Board’s decision.

(7) EX PARTE COMMUNICATIONS

Once an appeal has been filed, *ex parte* communications (contacts between the Board or one of its members and a party or a party’s representative) shall be avoided.

Attachment Follows

RULES OF THE MILWAUKEE BOARD OF SCHOOL DIRECTORS

APPENDIX A ATTACHMENT: PROCEDURES FOR EMPLOYEE APPELLATE HEARINGS

(1) PRE-HEARING INFORMATION

(a) Five (5) workdays before the scheduled start of the Milwaukee Board of School Directors' (Board's) appellate hearing, all parties shall receive the following:

1. a complete record of the hearing before the Independent Hearing Officer (IHO);
2. a copy of the appeal letter;
3. a copy of the opposing party's response to the appeal letter, if one was received by the Board; and
4. a copy of the Board Independent Advisor's summary and recommendation.

(2) PRESIDING OFFICER

(a) The Board President, or his or her designee, will preside over the hearing.

(b) The Board's presiding officer will have powers and duties subject to all applicable rules and will:

1. regulate the course of the hearing;
2. be apprised of conferences held prior to or during the hearing for settlement (if all parties so consent) or for simplification of the issues;
3. dispose of procedural requests or similar matters;
4. take other action authorized by the Board consistent with these rules;
5. direct, at beginning of hearings, that the records show the appearances of the parties or their representatives;
6. file with the Director of the Office of Board Governance a copy of the notice of Board appellate hearing which was served on the employee;
7. take full charge of the proceedings over the conduct of the participants and the orderly direction of the proceedings. The Board shall follow *Robert's Rules of Order*, except where in conflict with Board rules; and
8. limit the time of the oral arguments so that the Board may ultimately receive them.

(3) EVIDENCE

Other than the oral arguments listed below and the aforementioned pre-hearing information, no additional evidence, testimony, information, or handouts will be accepted at the Board's appellate hearing.

(4) HEARING GUIDELINES

Each party will be allowed thirty (30) minutes to present an oral argument regarding whether or not the IHO's decision was arbitrary and capricious. Each party will be allowed only to refer to information provided in the pre-hearing packet to support their argument.

(5) DELIBERATIONS

(a) The Board will retire into executive session and deliberate upon and consider the pre-hearing information and the oral arguments offered at the Board appellate hearing.

(b) The Board must again determine whether or not the decision of the IHO was arbitrary and capricious. A decision will be considered arbitrary and capricious if it is a willful and unreasonable action, without consideration or in disregard of facts, or without redeeming principle. If the decision was not arbitrary and capricious, then the Board is required to find on behalf of the prevailing party.

- (c) Otherwise, the Board may sustain, deny, or modify the IHO's decision/recommended action.
- (d) The Board will decide the matter by a majority vote, and the decision of the Board is final and binding and is not subject to review.

(6) WAIVER

The employee may waive a Board appellate hearing by oral or written communication with the Administration or Board; by failing to request a Board appellate hearing; by failing to appear in person or by representative at the Board appellate hearing; or, having once appeared, by leaving the Board appellate hearing before the hearing is concluded.

(7) NOTICE OF BOARD ACTION

All parties will be informed in writing of the Board's decision to sustain, deny, or modify the IHO's decision/recommended action.

(8) OPEN/CLOSED HEARINGS

(a) The Board appellate hearing shall be closed unless the appellant requests otherwise. To ascertain the will of the appellant and to assure such participant of his/her right to either type of hearing, the presiding officer should put the question at the beginning of the hearing to the appellant.

(b) When the hearing is requested to be closed, those permitted to remain during the course of the hearing are as follows: employee and representative(s); Board members, administrators and administrative representative(s), and hearing staff.

(c) The presence of relatives is discretionary with the presiding officer. Discretion to exclude should not be exercised unless it appears that the relatives are likely to be disruptive of the hearing. Such relatives may be permitted to stay until such disruption is manifested.

(9) DISRUPTIONS

The Board will tolerate no disruptions during the Board appellate hearing. Persons deliberately disrupting hearings will be ordered by the presiding officer to desist from disrupting the meeting or may be removed with or without the vote of the Board.

(10) SUPERINTENDENT

The Superintendent (where his/her action or recommendation is presently under review by the Board) shall not attend or be present during the deliberations of the Board following the Board appellate hearing.

(11) COUNSEL/ATTORNEY

(a) The representative presenting the Administration's recommendation to the Board may present the oral argument. The appellant or appellant's representative presenting the Appellant's recommendation to the Board may present the oral argument. Neither the representative for the Administration nor the appellant nor appellant's representative shall appear during the deliberations of the Board either on request or as a matter of routine.

(b) Neither the representative presenting the Administration's case nor the appellant or appellant's representative will, during the course of the Board appellate hearing, be the advisor of the Board. The independent advisor, acting solely as representative of the Board, may be present at the time of the Board appellate hearing and during deliberations to advise the Board relative to questions which the Board may have in their procedures or decisions.

(12) *EX PARTE* COMMUNICATIONS

Once a Board appellate hearing has been requested and a right to it established, *ex parte* communications (contacts between the Board or one of its members and a party or a party's representative) shall be avoided.

History: Revised 05-29-14; rescinded 11-19-15; Reinstated 03-24-16; Reaffirmed 03-24-22

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