

R277-102 received final approval by the Utah State Board of Education on December 3, 2020. R277-102 did not get published in the January 1, 2021 bulletin due to technical errors with the Office of Administrative Rules website; therefore, we were unable to make effective on February 9, 2021.

R277-102 will be published in the March 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of April 7, 2021.

R277. Education, Administration.

R277-102. Adjudicative Proceedings.

R277-102-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of public education in the Board,

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 63G-4-102(6) which allows agencies to make rules regarding adjudicative proceedings in matters subject to UAPA.

(2) The purpose of this rule is:

(a) to specify how to conduct adjudicative proceedings in matters subject to UAPA;

(b) to provide for review of Board actions where no opportunity for administrative review is provided by law and where there is a compelling reason for administrative review to fully and fairly facilitate the Board's decision making process; and

(c) to identify procedures the Board may apply when administrative review of a Board action is provided for by a law other than UAPA and the applicable law fails to identify procedures to be followed for the administrative review.

(3) This rule does not apply to actions for which separate adjudicative procedures are specifically provided for in statute, rule, or negotiated agreement.

(4) Nothing in this rule creates an independent basis for or requirement that the Board review a final Board action.

R277-102-2. Definitions.

(1) "Agency head" means the Board Chair.

(2) "Default" means the failure of a party to an administrative proceeding to meet the requirements or timelines of the proceeding.

(3) "Person" has the same meaning as set forth in Subsection 63G-4-103(1)(g).

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(4) "Presiding officer" has the same meaning as set forth in Subsection 63G-4-103(1)(h).

(5) "Utah Administrative Procedures Act" or "UAPA" means Title 63G, Chapter 4, Administrative Procedures Act.

R277-102-3. Adjudicative Proceedings Subject to UAPA.

(1) The Board shall conduct all requests for agency action as informal adjudicative proceedings under UAPA unless another statute or rule specifically designates the proceedings as formal.

(2) The presiding officer designated for a proceeding may convert an informal proceeding to a formal proceeding and vice versa as provided under Subsection 63G-4-202(3).

(3) A person seeking review of a Board action shall:

(a) submit a signed request for agency action in writing to the Board's secretary, which includes the information identified in Subsection 63G-4-201(3)(a);

(b) mail a copy of the request to each person known to have a direct interest in the request; and

(c) if no timeline is provided, submit the request for agency action within 30 days of the action subject to review.

(4) The agency head shall promptly review the request for agency action and shall notify the requesting party in writing that:

(a) the request is granted and that the adjudicative proceeding is completed;

(b) the request requires further consideration, and an informal adjudicative proceeding will be conducted to review the matter; or

(c) the request requires further consideration and, if expressly required by law, a formal adjudicative proceeding will be conducted to review the matter.

(5) If the agency head determines a hearing will be held, whether formal or informal, the agency head:

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(a) shall designate a presiding officer for the hearing; and

(b) may designate a hearing panel, consisting of the presiding officer and Board members, to hear the evidence and make recommendations to the full Board.

(6)(a) The presiding officer shall:

(i) chair the proceeding and make rulings on motions and evidentiary issues; and

(ii) if no panel is appointed, shall make all findings of fact, conclusions of law, and recommendations to the Board.

(b) If the agency head designates a hearing panel, the hearing panel shall make all findings of fact, conclusions of law, and recommendations to the Board.

(7)(a) The Superintendent shall make appropriate arrangements for an informal adjudicative proceeding including:

(i) determining the date of the hearing;

(ii) designating the hearing location and other necessary information; and

(iii) on a case by case basis, determine if an informal adjudicative proceeding may be held electronically.

(b) The Superintendent shall maintain a record of all aspects of an informal adjudicative proceeding.

(c) The Superintendent may delegate the hearing arrangements and procedures to the presiding officer.

(8) The presiding officer shall establish timelines for the hearing and shall determine if a hearing is open or closed to the public consistent with the law.

(9)(a) If the agency head determines the Board is legally required to provide a formal adjudicative proceeding or the presiding officer designates a proceeding as formal, the presiding officer shall conduct the proceedings in accordance with Sections 63G-4-204 through 63G-4-208.

(b) The presiding officer shall prescribe the means of discovery at the request of the parties to the extent necessary to allow all parties access to relevant evidence.

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(10)(a) For both informal and formal adjudicative proceedings, the presiding officer shall have discretion in managing and making procedural and evidentiary decisions throughout the hearing process.

(b) In ruling on matters raised by the parties, the presiding officer may consider, but is not bound by, the Utah Rules of Evidence and the Utah Rules of Civil Procedure.

(11)(a) A presiding officer designated for a formal or informal adjudicative proceeding may recommend a default to the Board consistent with deadlines set by the presiding officer and the provisions of Section 63G-4-209.

(b) A party in default may seek to have a default set aside consistent with Subsection 63G-4-209(3) and deadlines set by the presiding officer.

(12) The presiding officer shall submit a written hearing report formalizing the hearing recommendation, to the Board and the parties, including findings of fact, conclusions of law, and recommended action for all informal and formal adjudicative proceedings within 20 calendar days of the conclusion of the hearing.

(13) The Board shall consider the recommendation submitted under Subsection (12) and within a reasonable time shall:

(a) approve the recommendation under Subsection (12); or

(b) issue an alternate written determination and action based on the findings of fact made in the hearing report, if the Board disagrees with the proposed outcome in the hearing report.

(14) The Board's decision is the final administrative decision on the issue, subject to a request for reconsideration applying the procedures of Section 63G-4-302.

(15) The Superintendent shall respond to any request for reconsideration in accordance with Subsection 63G-4-302(3).

R277-102-4. Adjudicative Proceedings Not Subject to UAPA.

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(1) A person seeking review of a Board action not covered by UAPA shall submit a written request for review of agency action to the secretary of the Board in the same manner provided in Subsections R277-102-3(3).

(2) The agency head shall review the request for agency action in a timely manner and notify the requesting in party in writing:

(a) if the request is insufficient or untimely, that the request for review is denied; or

(b) if the request is sufficient and timely, that the Board will review the matter and which method the Board will employ to conduct the review and make a final determination.

(3)(a) If a hearing is not expressly required by law, the Board may review a request for agency action under this Section R277-102-4 through a documentary review, including consideration of written information submitted by each of the parties.

(b) If the Board conducts a documentary review:

(i) the agency head will establish deadlines for document submission; and

(ii) the full Board will consider all documents submitted and issue a final administrative determination in writing in a timely manner.

(4) If a hearing is expressly provided for by law or the agency head determines the matter will best be determined by means of a hearing, the agency head shall provide for an informal adjudicative proceeding as outlined in Section R277-102-3, except that provisions for reconsideration do not apply under this Section R277-102-4.

(5) In a request under this Section R277-102-4, a party may be found in default by the Board consistent with deadlines set by the agency head or the presiding officer.

KEY: administrative procedures, rules and procedures

Date of Enactment or Last Substantive Amendment:

Authorizing, and Implemented or Interpreted Law: Title 63G, Chapter 4; 53E-3-401(4);

Art X Sec 3