

1 **R277. Education, Administration.**

2 **R277-102. Adjudicative Proceedings.**

3 **R277-102-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

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

9 (c) Subsection 63G-4-~~203~~102(6) which [directs] allows agencies to make rules
10 regarding adjudicative proceedings [following the general designation of Board hearings as
11 informal] in matters subject to UAPA.

12 (2)~~(a)~~ The purpose of this rule is:

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

14 (b) to provide a means for review of Board actions [are conducted before the Board]
15 where no opportunity for administrative review is provided by [statute or rule] law [or] and where
16 there is a compelling reason for [a hearing] administrative review to fully and fairly facilitate the
17 Board's decision making process; and

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

21 (3) This rule does not [govern Board actions exempted under Section 63G-4-102] apply
22 to actions for which separate adjudicative procedures are specifically provided for in statute
23 [or], rule, or negotiated agreement.

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

26 **R277-102-2. Definitions.**

27 (1) "Agency head" means the Board Chair[person of the Board].

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

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

31 ~~[(3)4]~~ "Presiding officer" has the same meaning as set forth in Subsection 63G-4-
32 103(1)(h).

33 ~~[(4)5]~~ "Utah Administrative Procedures Act" or "UAPA" means Title 63G, Chapter 4,
34 Administrative Procedures Act.

35 ~~**R277-102-3. [Designation of Adjudicative Proceedings as Formal or Informal.]**~~

36 **Adjudicative Proceedings Subject to UAPA.**

37 (1) ~~[The Board initially designates all proceedings conducted before the Board as~~
38 ~~informal in accordance with Subsection 63G-4-202(1).]~~ The Board shall conduct all requests
39 for [a hearing] agency action as informal adjudicative proceedings under UAPA unless another
40 statute or rule specifically designates [alternative procedures] the proceedings as formal.

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

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

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

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

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

50 ~~**[R277-102-4. Procedures for Informal Adjudicative Proceedings.]**~~

51 ~~[(1)(a) The Board shall hold a hearing where required in accordance with Subsection~~
52 ~~63G-4-203(b) if the Board receives a timely request for a hearing.]~~

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

55 (a) the request is granted and that the adjudicative proceeding is completed;
56 (b) the request requires further consideration and an informal adjudicative proceeding
57 will be conducted to review the matter; or
58 (c) the request requires further consideration and, if expressly required by law, a formal
59 adjudicative proceeding will be conducted to review the matter.
60 ~~——(b) If no timeline is provided a party seeking Board review shall submit a request for a~~
61 ~~hearing within 30 days of the action subject to review.]~~
62 (2)5 If the agency head determines a hearing will be held, whether formal or informal,
63 [F]the agency head [may]:
64 (a) shall designate a presiding officer for [each] the hearing; [or] and
65 [3(a) The agency head may] (b) may designate a hearing panel, consisting of the
66 presiding officer [designated under Subsection (2)] and Board members, to hear the evidence
67 and make recommendations to the full Board.
68 ~~[(b) If the agency head designates a hearing panel;] (6)(a) [t]The presiding officer shall:~~
69 (i) chair the [hearing] proceeding and make rulings on motions and evidentiary issues;
70 and
71 (ii) if no panel is appointed, shall make all findings of fact, conclusions of law, and
72 recommendations to the Board.
73 [(e)b] If the agency head designates a hearing panel, the hearing panel shall make all
74 findings of fact, conclusions of law, and recommendations to the Board.
75 [(4)7(a) The Superintendent shall make appropriate arrangements for [the] an informal
76 [hearing] adjudicative proceeding including:
77 [(a)i] determining the date of the hearing; [and]
78 [(b)ii] designating the hearing location and other necessary information; and
79 (iii) on a case by case basis, determine if an informal adjudicative proceeding may be
80 held electronically.
81 (b) The Superintendent shall maintain a record of all aspects of an informal adjudicative
82 proceeding.

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

85 (~~[1]8~~) The presiding officer shall establish timelines for the hearing and shall determine
86 if a hearing is open or closed to the public consistent with the law.

87 (~~[6]~~) The Superintendent may delegate the hearing arrangements and procedures to the
88 presiding officer.

89 ~~—— (7) The Superintendent may, on a case by case basis, determine if an informal~~
90 ~~[hearing] adjudicative proceeding may be held electronically.~~

91 ~~—— (8) The Superintendent shall maintain a record of all aspects of an informal adjudicative~~
92 ~~proceeding.~~

93 **R277-102-5. Procedures for Formal Adjudicative Proceedings.**

94 (~~[1]9~~)(a) If the agency head determines the Board is legally required to provide a formal
95 adjudicative proceeding or the presiding officer designates a proceeding as formal, the
96 presiding officer ~~[may add any of the following procedures, as appropriate, to the hearing~~
97 ~~procedures:~~

98 ~~—— (a) responsive pleadings;~~

99 ~~—— (b) discovery for parties;~~

100 ~~—— (c) the right to subpoena witnesses;~~

101 ~~—— (d) intervention by third parties; and~~

102 ~~—— (e) an electronic recording of the complete proceeding;]~~ shall conduct the proceedings
103 in accordance with Sections [63G-4-204](#) through [63G-4-208](#).

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

106 (~~[2]10~~)(a) For both informal and formal adjudicative proceedings, the presiding officer
107 shall have discretion in managing and making procedural and evidentiary decisions throughout
108 the hearing process.

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

111 ~~[R277-102-6. Default.]~~

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

115 ~~[2]b~~ A party in default may seek to have a default set aside consistent with Subsection
116 63G-4-209(3) and ~~[timelines]~~ deadlines set by the presiding officer.

117 ~~[R277-102-7. Recommendation to Board.]~~

118 (12) The presiding officer shall ~~[, in consultation with the hearing panel, if applicable,]~~
119 submit a written hearing report formalizing the hearing recommendation, to the Board and the
120 parties, including findings of fact, conclusions of law, and recommended action ~~[to the Board]~~
121 for all informal and formal adjudicative proceedings within 20 calendar days of the conclusion
122 of the hearing.

123 ~~[2]13~~ The Board ~~[may]~~ shall consider the recommendation submitted under
124 Subsection (12) and within a reasonable time shall:

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

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

129 ~~[(b) The Board shall take final action following the conclusion of an informal or formal~~
130 ~~proceeding no later than 120 days from the receipt of the request for agency action unless the~~
131 ~~presiding officer grants additional time for the hearing upon motion or stipulation of the parties.~~
132 ~~within 60 days of receiving the hearing report under Subsection (1).]~~

133 ~~[3]14~~ The Board's ~~[final]~~ decision ~~[following acceptance of written findings]~~ is the final
134 administrative decision on the issue, subject to a request for reconsideration ~~[under]~~ applying
135 the procedures of Section 63G-4-302.

136 ~~[4]15~~ The Superintendent shall respond to any request for reconsideration in
137 accordance with Subsection 63G-4-302(3).

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

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

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

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

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

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

150 (b) If the Board conducts a documentary review:

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

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

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

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

160

161 **KEY: administrative procedures, rules and procedures**

162 **Date of Enactment or Last Substantive Amendment:**

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

164 **X Sec 3**

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November 6, 2020