

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]~~ (4) If the agency head finds the request for action action sufficient and the
52 matter at issue is appropriate for informal adjudicative proceedings, the Board shall hold an
53 informal adjudicative proceeding ~~[hearing, where required in accordance with Subsection 63G-~~
54 ~~4-203(b)] [if the Board receives a timely request for a hearing;~~

55 ~~_____ (b) If no timeline is provided a party seeking Board review shall submit a request for a~~

56 ~~hearing within 30 days of the action subject to review.]~~

57 ~~[(2)5] The agency head [may] shall:~~

58 ~~(a) designate a presiding officer for [each] the informal [hearing] adjudicative~~
59 ~~proceeding; or~~

60 ~~[(3)(a) The agency head may] (b) designate a hearing panel, consisting of [the] a~~
61 ~~presiding officer [designated under Subsection (2)] and Board members, to hear the evidence~~
62 ~~and make recommendations to the full Board.~~

63 ~~[(b) If the agency head designates a hearing panel,] (6)(a) [t] The presiding officer shall~~
64 ~~chair the [hearing] proceeding and make rulings on motions and evidentiary issues.~~

65 ~~[(c)b] [If the agency head designates a hearing panel, t] The hearing panel shall make~~
66 ~~all findings of fact, conclusions of law, and recommendations to the Board.~~

67 ~~[(4)7](a) The Superintendent shall make appropriate arrangements for [the] an informal~~
68 ~~[hearing] adjudicative proceeding including:~~

69 ~~[(a)i] determining the date of the hearing; [and]~~

70 ~~[(b)ii] designating the hearing location and other necessary information; and~~

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

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

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

77 ~~[(5)8] The presiding officer shall establish timelines for the hearing and shall determine~~
78 ~~if a hearing is open or closed to the public.~~

79 ~~[(6) The Superintendent may delegate the hearing arrangements and procedures to the~~
80 ~~presiding officer.~~

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

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

85 ~~R277-102-5. Procedures for Formal Adjudicative Proceedings.~~

86 ~~(1)9~~(a) If the agency head determines the Board is legally required to provide a formal
87 adjudicative proceeding or the presiding officer designates a proceeding as formal, the
88 presiding officer ~~[may add any of the following procedures, as appropriate, to the hearing~~
89 ~~procedures:~~

90 ~~— (a) responsive pleadings;~~

91 ~~— (b) discovery for parties;~~

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

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

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

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

98 ~~(2)10~~(a) For both informal and formal adjudicative proceedings, the presiding officer
99 shall have discretion in managing and making procedural and evidentiary decisions throughout
100 the hearing process.

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

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

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

107 (12) A party in default may seek to have a default set aside consistent with Subsection
108 63G-4-209(3) and ~~[timelines]~~ deadlines set by the presiding officer.

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

110 (13) The presiding officer shall ~~[, in consultation with the hearing panel, if applicable,]~~
111 submit a written hearing report formalizing the hearing recommendation, to the Board and the
112 parties, including findings of fact, conclusions of law, and recommended action to the Board
113 for all informal and formal adjudicative proceedings within 20 calendar days of the conclusion

114 of the hearing.

115 (~~[2]~~14) The Board ~~[may]~~ shall consider the recommendation submitted under
116 Subsection (13) and within a reasonable time shall:

117 (i) approve the recommendation under Subsection (13); or

118 (ii) ~~[approve]~~ issue an alternate written determination and action based on the findings
119 of fact made in the hearing report, if the Board disagrees with the proposed outcome in the
120 hearing report.

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

125 (~~[3]~~15) The Board's ~~[final]~~ decision ~~[following acceptance of written findings]~~ is the final
126 administrative decision on the issue, subject to a request for reconsideration ~~[under]~~ applying
127 the procedures of Section [63G-4-302](#).

128 (~~[4]~~16) The Superintendent shall respond to any request for reconsideration in
129 accordance with Subsection [63G-4-302\(3\)](#).

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

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

134 (2) The agency head shall review the request for agency action in a timely manner and
135 shall take one of the following actions:

136 (a) If the request is insufficient or untimely, the agency head shall notify the person
137 seeking review in writing that the request is denied; or

138 (b) If the request is sufficient and timely, the agency head shall notify the person
139 seeking review, which method the Board will employ to conduct the review and make a final
140 determination.

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

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

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

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

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

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

154

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

156 **Date of Enactment or Last Substantive Amendment: May 23, 2019**

157 **Notice of Continuation: April 4, 2014**

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

159 **X Sec 3**