

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 2 RULES OF PRACTICE AND PROCEDURE FOR CONTESTED CASE PROCEEDINGS

Section 1. Authority.

This Chapter is promulgated by the Wyoming School Facilities Commission under the authority of W.S. 16-3-102(a)(i), W.S. 21-15-114(a)(xv), W.S. 21-15-116(e) and W.S. 21-15-116(f).

Section 2. Purpose of Rules.

This Chapter is intended to provide a uniform and understandable process for contested case proceedings and informal reviews held before or on the behalf of the Wyoming School Facilities Department (Department) and the Wyoming School Facilities Commission (Commission).

Section 3. Application of Rules.

This Chapter shall apply to contested case proceedings and informal reviews authorized by Wyoming Statute and brought before the Wyoming School Facilities Commission by a properly aggrieved party.

Section 4. Definitions.

For purposes of contested cases brought before the Wyoming School Facilities Commission under these rules, the following definitions shall apply:

(a) “Aggrieved party” means a school district whose legal rights, duties or privileges have been harmed by an act of the Commission and which is entitled to a contested case proceeding as provided by law.

(b) “Contested Case” means a proceeding before the Commission in which the legal rights, duties or privileges of a party are required by law to be determined by an opportunity for a hearing, in accordance with the Wyoming Administrative Procedures Act.

(c) “District” means the school district seeking an informal review before the Department or Commission.

(d) “Informal Review” means the opportunity afforded a school district under W.S. 21-15-116(f) to consult with the Department or Commission regarding an action of the Department or Commission prior to seeking administrative review.

(e) “Notice” means the document served upon all parties by the Commission or its designee, stating the time, place and other pertinent material for the contested case proceeding as required by W.S. 16-3-107(a) and (b).

(f) “Petition” means the formal written document filed with the Commission which initiates the contested case proceeding.

(g) “Petitioner” means an aggrieved party, entitled by law to a contested case hearing and requesting such a hearing in accordance with these Rules and Regulations.

(h) “Presiding Officer” means the Chair of the Commission or a person designated pursuant to W.S. 16-3-112(a) and the provisions contained in this Chapter.

(i) “Wyoming Administrative Procedures Act” means W.S. 16-3-101 through 16-3-115.

Section 5. Informal Review Proceedings.

(a) In accordance with W.S. 21-15-116(f), districts may request informal review before the Department or the Commission before pursuing a contested case review. The time period for filing a petition pursuant to Section 6(c) shall be tolled for the period of time from the date of that request until the conclusion of the informal review.

(b) A school district requesting an informal review shall do so, in writing, to the Director. The request shall contain:

(i) The decision of the Commission or the Department the district would like reviewed;

(ii) A brief explanation of why the decision should be reviewed;

(iii) Any additional facts the District would like to be considered;

(iv) The legal authority upon which it is believed a decision was made in error.

(c) A decision or action of the Department shall be reviewed in the first instance by the Director. If the District is unsatisfied by the Director’s review, it may ask that the decision be reviewed by the Commission.

(d) Informal reviews before the Department shall be held either at the Department’s Cheyenne office, or, if agreeable to the District, via WEN video or

teleconference. The review shall be scheduled at the earliest convenience of the District and the Department, but in no event later than thirty (30) days after the request is made.

(e) Informal reviews before the Department shall proceed as follows:

(i) Department staff will present the information and basis for its decision or action;

(ii) The District will present any additional facts and authority upon which it believes the Department acted in error;

(iii) The Director shall issue his decision at the conclusion of the informal review, or as soon thereafter as reasonably practicable. The director shall confirm his decision in writing and outline the basis for that decision.

(f) If, following the Department's review, the District is still unsatisfied with the actions of the Department it may request an informal review before the Commission.

(g) Informal reviews before the Commission shall be limited to the information presented during the Department's review. The Department shall be forwarded an opportunity to review any new information germane to the issue before that information is presented to the Commission.

(h) Informal reviews before the Commission shall be scheduled by the Commission.

(i) If possible, the review shall be scheduled for the next regularly scheduled Commission meeting.

(ii) If the next regularly scheduled Commission meeting is not available, or, if the District and the Commission agree the next regularly scheduled meeting of the Commission is not practical, the Commission may call an emergency meeting to address the informal review.

(iii) The time allotted to the District's presentation will not exceed one (1) hour, unless otherwise agreed to by the District and Commission.

(i) The Commission shall issue its decision at the conclusion of the informal review or as soon thereafter as reasonably practicable. The chairman shall follow up the decision in writing and outline the basis for that decision.

Section 6. Service and Timing of Petition.

(a) A properly aggrieved party may file a petition with the Commission requesting a contested case proceeding. The petition shall be in accordance with the provisions contained in this Chapter.

(b) The petition shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, 1103 Old Town Lane, Ste. 1, Cheyenne, Wyoming 82002. Service can be made in person, by mail or received by facsimile, 307-777-8674, during regular business hours. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(c) The petition shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later. The Commission may grant an exception in circumstances where good cause is shown.

Section 7. Petition Contents and Requirements.

(a) To initiate a contested case proceeding the petitioner shall prepare and file with the Commission a petition which includes the following:

(i) The name, telephone number, fax number, if available, and mailing address of the petitioner and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the petition is based, including particular reference to statutory sections, contract provisions and/or rules, regulations, policies and orders involved;

(iii) A copy of the decision and/or relevant material which relates to the decision at issue;

(iv) The specific relief sought; and,

(v) The signature of the petitioner and the representing attorney, if applicable.

Section 8. Notice of Hearing.

(a) In all contested case proceedings, the petitioner shall be afforded an opportunity for a hearing after notice served by the Commission personally or by mail.

(b) The notice shall be in accordance with W.S. 16-3-107 and shall contain the following:

- (i) The time, place, and nature of the hearing;
- (ii) The legal authority and jurisdiction under which the hearing is to be held;
- (iii) The particular sections of the statutes and rules involved; and,
- (iv) A short and plain statement of the matters asserted.

(c) The notice shall be served upon each petitioner at least thirty (30) days prior to the date set for the hearing.

Section 9. General Procedure.

(a) The Commission shall:

(i) Examine the petition, notify the petitioner of any apparent errors or omissions, and request any additional information deemed necessary;

(ii) Dismiss any petition not timely filed, except in instances where the Commission determines good cause has been shown and an exception is necessary;

(iii) Assign the contested case a docket number and schedule the commencement of contested case proceedings in accordance with the Wyoming Administrative Procedures Act;

(iv) Establish a separate file for each docketed contested case in which all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto shall be filed. All items contained in this file shall contain the assigned docket number;

(v) Upon docketing, take appropriate action towards the ultimate decision, which may include but is not limited to, scheduling informal conferences, pretrial hearings, motion hearings, settlement conferences and the contested case evidentiary hearing.

(b) Each party may be ordered to file with the presiding officer and serve upon the other parties a preliminary statement or joint preliminary statement. The parties shall be afforded at least thirty (30) days for the preparation and filing of any preliminary statement. Unless otherwise ordered, the statement shall set forth:

- (i) A brief summary of the contentions of the party;

(ii) Significant facts about which there is no genuine issue (these may be admissions by stipulation);

(iii) Contested issues of fact remaining for decision;

(iv) Contested issues of law to be determined at the hearing. The parties may include memorandums of law on significant legal issues the parties wish to call to the attention of the presiding officer;

(v) The names, addresses, and a brief description of the testimony of each witness the party intends to present at the hearing;

(vi) A list and copies of all exhibits to be introduced. This does not foreclose the ability to introduce exhibits which become available at a later date; and,

(vii) Estimated time required for the hearing.

(c) The taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26 and 28 through 37 (excepting 37(b)(1) and (2)(D) there from) of the Wyoming Rule of Civil Procedure. The mandatory disclosure provisions of Rule 26 of the Wyoming Rules of Civil Procedure are applicable to contested case proceedings before the Commission. The Petitioner shall make such disclosure within thirty (30) days after service by Petitioner, of its disclosure unless other time periods are established by stipulation or order.

(d) Upon application the presiding officer shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers or other documents relevant or material to inquiry in accordance with W.S. 16-3-107(d).

(e) Motions shall be in writing and state the grounds and the relief sought. Prior to filing a motion for dismissal, default, or compliance with discovery procedures the moving party shall make reasonable good faith efforts to discuss the content and purpose of the motion, such efforts should be documented in writing and attached to the motion. Response to a motion shall be made within fifteen (15) days of service of the motion. All motions and responses shall be filed with the Commission and served upon all parties.

(f) All parties shall be permitted to file a brief with the presiding officer.

(g) Oral argument shall be allowed at the discretion of the presiding officer.

(h) Except to the extent authorized by law, a party or that party's attorney shall not communicate, directly or indirectly, in connection with any issue of fact or law

with the presiding officer concerning any pending case, except upon notice and opportunity for all parties to participate. Should ex parte communications occur, the presiding officer shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party an opportunity to respond.

(i) The record of the contested case shall include:

(i) All formal and informal notices, pleadings, motions and intermediate rulings;

(ii) Evidence received or considered including matters officially noticed;

(iii) Questions and offers of proof, objections and rulings thereon;

(iv) Any proposed findings and exceptions thereto;

(v) Any opinion, findings, decision or order of the Commission and any report by the presiding officer of the hearing.

(j) Proceedings, including all testimony, shall be reported verbatim stenographically or by any other appropriate means determined by the Commission or the presiding officer.

Section 10. Expedited Contested Case.

(a) Upon request of the parties, made prior to the date set for evidentiary hearing, any case may be heard as an expedited case.

(b) Expedited cases will be decided on written argument, evidence and stipulations submitted by the parties. Oral argument may be presented upon the request of any party.

(c) The hearing officer has discretion to require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined without an evidentiary hearing.

Section 11. Decisions and Final Agency Action.

(a) The Commission shall make and enter a written decision and order containing findings of fact and conclusions of law stated separately.

(b) The findings of fact shall be based exclusively on the evidence and matters officially noticed. Technical or scientific facts within the Commission's specialized knowledge may be considered in making a final determination.

(c) Findings of fact shall be made on all material issues and ultimate facts.

(d) The written decision shall be filed with the Commission and will, without further action, become the decision and order as a result of the hearing.

(e) All written decisions and orders shall be served upon all parties upon formal execution by the Commission.

(f) If the Commission acts as the presiding officer over the contested case proceeding, it shall have sixty (60) days from the end of the hearing to issue a written decision and order. If a presiding officer is appointed by the Commission, the Commission shall have thirty (30) days from receipt of the recommended decision and proposed order to enter a final decision in accordance with this Section.

(g) In the event a recommended decision is rendered by a designee, all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record.

(h) The decision rendered in accordance with this Section shall serve as the final decision of the Commission and shall be subject to judicial review in accordance with W.S. 16-3-114.

Section 12. Designation and Authority of a Presiding Officer.

(a) The Commission may designate a presiding officer by assigning a contested case proceeding to an employee of the Commission or an employee of another agency designated by the Commission, which includes the office of Administrative Hearings, to act as presiding officer in accordance with W.S. 16-3-112.

(b) The functions of all those presiding over contested cases shall be conducted in an impartial manner and in accordance with the Rules and Regulations of the Commission.

(c) Presiding officers shall have the full authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken in accordance with the provisions of the Wyoming Administrative Procedures Act and the rules of the Commission; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues; make recommended decision when directed to do so by the Commission; and take any other

action authorized by this Chapter, which are consistent with the Wyoming Administrative Procedures Act and Wyoming law.

(d) The presiding officer may, at any time while a contested case is pending, recuse himself from presiding over the contested case by filing written notice of recusal with the Commission and serving on all parties. From and after the date the written notice of recusal is entered, that presiding officer shall not participate in resolution of the contested case.

(e) If a presiding officer is appointed, he shall upon request of the Commission submit a written recommended decision and order containing proposed findings of fact and conclusions of law.

(f) The recommended decision and proposed order shall be submitted to the Commission no later than thirty (30) days after the end of the contested case hearing.

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Section 5. Informal Review Proceedings.

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(b) A school district requesting an informal review shall do so, in writing, to the Director. The request shall contain:

(i) The decision of the Commission or the Department the district would like reviewed;

(ii) A brief explanation of why the decision should be reviewed;

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(c) A decision or action of the Department shall be reviewed in the first instance by the Director. If the District is unsatisfied by the Director’s review, it may ask that the decision be reviewed by the Commission.

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(iii) The Director shall issue his decision at the conclusion of the informal review, or as soon thereafter as reasonably practicable. The director shall confirm his decision in writing and outline the basis for that decision.

(f) If, following the Department's review, the District is still unsatisfied with the actions of the Department it may request an informal review before the Commission.

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(h) Informal reviews before the Commission shall be scheduled by the Commission.

(i) If possible, the review shall be scheduled for the next regularly scheduled Commission meeting.

(ii) If the next regularly scheduled Commission meeting is not available, or, if the District and the Commission agree the next regularly scheduled meeting of the Commission is not practical, the Commission may call an emergency meeting to address the informal review.

(iii) The time allotted to the District's presentation will not exceed one (1) hour, unless otherwise agreed to by the District and Commission.

(i) The Commission shall issue its decision at the conclusion of the informal review or as soon thereafter as reasonably practicable. The chairman shall follow up the decision in writing and outline the basis for that decision.

Section 5. 6 Service and Timing of Petition.

(a) A properly aggrieved party may file a petition with the Commission requesting a contested case proceeding. The petition shall be in accordance with the provisions contained in this Chapter.

(b) The petition shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, ~~4920 Thomas Avenue, Suite 200~~ 1103 Old Town Lane, Ste. 1, Cheyenne, Wyoming 82002. Service can be made in person, by mail or received by facsimile, 307-777-8674, during regular business hours. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(c) The petition shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later. The Commission may grant an exception in circumstances where good cause is shown.

~~(d) In accordance with W.S. 21-15-116(f), districts may request informal review before the Commission before pursuing a contested case review. The time period for filing a petition pursuant to subsection (c) of this Section shall be tolled for the period of time from the date of that request until the date of the informal review.~~

Section 6. 7 Petition Contents and Requirements.

(a) To initiate a contested case proceeding the petitioner shall prepare and file with the Commission a petition which includes the following:

(i) The name, telephone number, fax number, if available, and mailing address of the petitioner and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the petition is based, including particular reference to statutory sections, contract provisions and/or rules, regulations, policies and orders involved;

(iii) A copy of the decision and/or relevant material which relates to the decision at issue;

(iv) The specific relief sought; and,

(v) The signature of the petitioner and the representing attorney, if applicable.

Section 7. 8 Notice of Hearing.

(a) In all contested case proceedings, the petitioner shall be afforded an opportunity for a hearing after notice served by the Commission personally or by mail.

(b) The notice shall be in accordance with W.S. 16-3-107 and shall contain the following:

- (i) The time, place, and nature of the hearing;
- (ii) The legal authority and jurisdiction under which the hearing is to be held;
- (iii) The particular sections of the statutes and rules involved; and,
- (iv) A short and plain statement of the matters asserted.

(c) The notice shall be served upon each petitioner at least thirty (30) days prior to the date set for the hearing.

Section 8. 9 General Procedure.

(a) The Commission shall:

(i) Examine the petition, notify the petitioner of any apparent errors or omissions, and request any additional information deemed necessary;

(ii) Dismiss any petition not timely filed, except in instances where the Commission determines good cause has been shown and an exception is necessary;

(iii) Assign the contested case a docket number and schedule the commencement of contested case proceedings in accordance with the Wyoming Administrative Procedures Act;

(iv) Establish a separate file for each docketed contested case in which all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto shall be filed. All items contained in this file shall contain the assigned docket number;

(v) Upon docketing, take appropriate action towards the ultimate decision, which may include but is not limited to, scheduling informal conferences,

pretrial hearings, motion hearings, settlement conferences and the contested case evidentiary hearing.

(b) Each party may be ordered to file with the presiding officer and serve upon the other parties a preliminary statement or joint preliminary statement. The parties shall be afforded at least thirty (30) days for the preparation and filing of any preliminary statement. Unless otherwise ordered, the statement shall set forth:

- (i) A brief summary of the contentions of the party;
- (ii) Significant facts about which there is no genuine issue (these may be admissions by stipulation);
- (iii) Contested issues of fact remaining for decision;
- (iv) Contested issues of law to be determined at the hearing. The parties may include memorandums of law on significant legal issues the parties wish to call to the attention of the presiding officer;
- (v) The names, addresses, and a brief description of the testimony of each witness the party intends to present at the hearing;
- (vi) A list and copies of all exhibits to be introduced. This does not foreclose the ability to introduce exhibits which become available at a later date; and,
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(c) The taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26 and 28 through 37 (excepting 37(b)(1) and (2)(D) there from) of the Wyoming Rule of Civil Procedure. The mandatory disclosure provisions of Rule 26 of the Wyoming Rules of Civil Procedure are applicable to contested case proceedings before the Commission. The Petitioner shall make such disclosure within thirty (30) days after service by Petitioner, of its disclosure unless other time periods are established by stipulation or order.

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(e) Motions shall be in writing and state the grounds and the relief sought. Prior to filing a motion for dismissal, default, or compliance with discovery procedures the moving party shall make reasonable good faith efforts to discuss the content and purpose of the motion, such efforts should be documented in writing and attached to the motion. Response to a motion shall be made within fifteen (15) days of service of the

motion. All motions and responses shall be filed with the Commission and served upon all parties.

(f) All parties shall be permitted to file a brief with the presiding officer.

(g) Oral argument shall be allowed at the discretion of the presiding officer.

(h) Except to the extent authorized by law, a party or that party's attorney shall not communicate, directly or indirectly, in connection with any issue of fact or law with the presiding officer concerning any pending case, except upon notice and opportunity for all parties to participate. Should ex parte communications occur, the presiding officer shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party an opportunity to respond.

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(i) All formal and informal notices, pleadings, motions and intermediate rulings;

(ii) Evidence received or considered including matters officially noticed;

(iii) Questions and offers of proof, objections and rulings thereon;

(iv) Any proposed findings and exceptions thereto;

(v) Any opinion, findings, decision or order of the Commission and any report by the presiding officer of the hearing.

(j) Proceedings, including all testimony, shall be reported verbatim stenographically or by any other appropriate means determined by the Commission or the presiding officer.

Section 9. 10 Expedited Contested Case.

(a) Upon request of the parties, made prior to the date set for evidentiary hearing, any case may be heard as an expedited case.

(b) Expedited cases will be decided on written argument, evidence and stipulations submitted by the parties. Oral argument may be presented upon the request of any party.

(c) The hearing officer has discretion to require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined without an evidentiary hearing.

Section 10. ~~10~~ 11 Decisions and Final Agency Action.

(a) The Commission shall make and enter a written decision and order containing findings of fact and conclusions of law stated separately.

(b) The findings of fact shall be based exclusively on the evidence and matters officially noticed. Technical or scientific facts within the Commission's specialized knowledge may be considered in making a final determination.

(c) Findings of fact shall be made on all material issues and ultimate facts.

(d) The written decision shall be filed with the Commission and will, without further action, become the decision and order as a result of the hearing.

(e) All written decisions and orders shall be served upon all parties upon formal execution by the Commission.

(f) If the Commission acts as the presiding officer over the contested case proceeding, it shall have sixty (60) days from the end of the hearing to issue a written decision and order. If a presiding officer is appointed by the Commission, the Commission shall have thirty (30) days from receipt of the recommended decision and proposed order to enter a final decision in accordance with this Section.

(g) In the event a recommended decision is rendered by a designee, all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record.

(h) The decision rendered in accordance with this Section shall serve as the final decision of the Commission and shall be subject to judicial review in accordance with W.S. 16-3-114.

Section ~~11~~ 12 Designation and Authority of a Presiding Officer.

(a) The Commission may designate a presiding officer by assigning a contested case proceeding to an employee of the Commission or an employee of another agency designated by the Commission, which includes the office of Administrative Hearings, to act as presiding officer in accordance with W.S. 16-3-112.

(b) The functions of all those presiding over contested cases shall be conducted in an impartial manner and in accordance with the Rules and Regulations of the Commission.

(c) Presiding officers shall have the full authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken in accordance with the provisions of the Wyoming Administrative Procedures Act and the rules of the Commission; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues; make recommended decision when directed to do so by the Commission; and take any other action authorized by this Chapter, which are consistent with the Wyoming Administrative Procedures Act and Wyoming law.

(d) The presiding officer may, at any time while a contested case is pending, recuse himself from presiding over the contested case by filing written notice of recusal with the Commission and serving on all parties. From and after the date the written notice of recusal is entered, that presiding officer shall not participate in resolution of the contested case.

(e) If a presiding officer is appointed, he shall upon request of the Commission submit a written recommended decision and order containing proposed findings of fact and conclusions of law.

(f) The recommended decision and proposed order shall be submitted to the Commission no later than thirty (30) days after the end of the contested case hearing.