

## **RULES OF PROCEDURE UNDER THE EDUCATION EMPLOYMENT PROCEDURES LAW**

### **1. APPLICATION OF POLICY**

The policies and procedures as set forth herein shall be applicable only to teachers, principals, and superintendents elected by the board, or other professional instructional personnel who are required to have a valid license issued by the State Department of Education as a prerequisite of employment and are under formal contract of employment under §37-9-25 of the Mississippi Code of 1972.

### **2. DETERMINATION OF SEPARATION**

In the event that a determination that the best interests of the school district would be served by the release from future employment of the employee, the school district shall send notice of the determination to the employee on or before the applicable date as established by the policies of this district.

### **3. RIGHTS OF EMPLOYEES: NOTICES**

- a. An employee who is notified of nonrenewal shall be entitled to a written statement of the specific reasons for nonreemployment, together with a summary of the factual basis therefor, a list of witnesses and a copy of the documentary evidence substantiating the reasons intended to be presented at the hearing. The employee must provide the superintendent with a written request within ten (10) calendar days of the receipt of the notice of nonreemployment. This information shall be given at least fourteen (14) calendar days prior to the hearing.
- b. If a hearing is requested by the employee within ten (10) days of receipt of the notice of nonreemployment, the board will schedule a hearing before itself or a hearing officer at its discretion. It is the practice of this board to appoint a hearing officer except in extraordinary circumstances. If a request is not made within this ten (10) day period, the decision of the superintendent to nonrenew the employee shall be final. For purposes of this section, notice shall be deemed to have been sent to the employee upon the date of actual receipt thereof or the date of delivery to the United States Postal Service for delivery by certified mail.
- c. If a hearing is held pursuant to these rules, the board shall set the time, place and date of such hearing to be held not sooner than five (5) days, nor later than thirty (30) days from the date of the request from the employee and notify the employee in writing of the same.

### **4. HEARING OFFICER**

- a. The board may, at its discretion, appoint one or more hearing officer(s) to conduct the hearing. Nothing herein shall be construed to prohibit a member of the board or an employee of the school district from serving as the hearing officer or to require that he be legally trained, provided that such person was not responsible for the initial decision of nonreemployment.
- b. The hearing officer shall have full power and authority to conduct the hearing to ascertain pertinent facts and facilitate the hearing. The hearing officer is empowered to do the following:
  1. administer oaths and affirmations;
  2. issue subpoenas, subject to the provisions of Section 7 of these rules;
  3. examine witnesses;
  4. receive depositions or affidavits or have them taken when the end of justice would be served, as hereinafter provided;
  5. regulate the course of the hearing;
  6. hold conferences for the settlement or simplification of the issues by consent of the parties;
  7. dispose of procedural requests or similar matters;
  8. make or recommend decisions in accordance with Section 10 of these rules; and
  9. take other action consistent with the district's rules and policies.

In conducting the hearing, the presiding officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in the Education Employment Procedures Law and by these rules.

## 5. THE HEARING

- a. The administration of the school district has the burden of establishing that the determination to nonrenew the employee from future employment is a proper employment decision and that is based upon valid educational reasons or noncompliance with school district personnel policies.
- b. The employee shall have the burden of establishing that the determination to release him from future employment is based upon legally impermissible reasons (such as sex, race, religion, exercise of first amendment rights, etc.) or that the decision is arbitrary and capricious.
- c. Any oral or documentary evidence may be received, but evidence which is irrelevant, immaterial, or unduly repetitious may be excluded.

- d. An employee may present his case by oral or documentary evidence and may cross-examine witnesses against him.
  - e. The school attorney is entitled to cross-examine witnesses presented at the hearing.
  - f. The employee shall not be required to testify in his own behalf, but upon doing so shall be subject to cross-examination.
  - g. A transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall be prepared and shall constitute the exclusive record for decision. A copy of the record shall be made available to a party in interest upon payment of a charge not in excess of the reporter's fees under §9-13-33 of the Mississippi Code of 1972. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court cost.
6. SUBPOENAS
- a. Requests for subpoenas may be made by the employee, the staff member responsible for the decision of nonreemployment, a representative of the administration or the board not later than five (5) days prior to the hearing date.
  - b. The hearing officer is authorized to issue subpoenas, at his sole discretion, upon his own motion or upon request where there is a statement or showing of general relevance and reasonable scope of the evidence sought.
  - c. Any person compelled to appear before the board or hearing officer is entitled to be accompanied, represented, and advised by counsel and, if the witness is a minor, by a parent or legal guardian.
  - d. In the event it becomes necessary to enforce or to quash a subpoena issued to compel attendance of a witness, the proponent may petition the Chancery Court of Hinds County.
7. DEPOSITIONS
- a. It is the policy of the school district that depositions will be allowed only in extraordinary cases in which the personal attendance of the witness is impossible or would impose an unreasonable hardship.
  - b. Depositions shall be allowed only if an application by a party is approved by the hearing officer, at his sole discretion.
  - c. Any costs associated with the taking of depositions shall be the responsibility of the party requesting it, which shall not include attorneys' fees.
8. CONDUCT OF HEARING
- a. The first order of business after the hearing is convened is to dispose of any procedural matters.

- b. Prior to receiving any testimony, evidence will be received that all notices and information was timely sent to the employee and that the employee made timely requests for information and a hearing. If a notice or a request is defective or untimely, the presiding officer may order such relief as inappropriate.
- c. Witnesses and other evidence in support of the determination to release the employee from future employment will be introduced first. The hearing officer may interrogate witnesses himself or he may allow a representative of the administration or the board to examine witnesses. The employee or his attorney will also be allowed to cross-examine each witness presenting evidence against him at the hearing.
- d. The hearing will be held in executive session unless the employee elects to have a public hearing, and shall be considered a confidential personnel record. If the hearing is public, the board or hearing officer may order any part of the hearing to be held in executive session, if, in the opinion of the board or hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Testimony by minors shall be held in executive session.
- e. After the evidence in support of the determination has been submitted, the employee will be allowed an opportunity to present his witnesses and evidence. The presiding officer and a representative of the administration or the board will be allowed an opportunity to cross-examine any witnesses for the employee.
- f. After the employee concludes his case, the administration will be allowed an opportunity to present rebuttal evidence, either at the time of the hearing or within a reasonable time upon recess of the hearing.
- g. The hearing officer, at his discretion, may require any portion of the evidence to be submitted in the form of depositions or affidavits. If affidavits are received, counter-affidavits may be presented within such time as the hearing officer may allow.
- h. At the conclusion of the hearing, each party may be allowed an opportunity for closing arguments, if requested by the hearing officer, at his discretion.

#### 9. RECOMMENDED DECISION OF HEARING OFFICER

- a. If the board appoints a hearing officer, he/she shall make a report unless the board orders that the record be transmitted to it without such report.
- b. The hearing officer may, at his discretion, prior to the conclusion of the hearing and to making his report, request proposed findings from all parties.

#### 10. FINAL DECISION

- a. If the board initially hears the matter, it will make its decision on the basis matters presented before it and will send notices of its decision to the parties within 10 days of the conclusion of the hearing.

- b. If the board does not initially hear the matter, the parties will be given a reasonable opportunity to appear before the board, in person or by counsel, to present statements in their behalf. The board will send notice of its decision to the parties within 30 days of the conclusion of the hearing.
- c. The board shall receive the hearing officer's report and the record and shall prepare its own findings and final decision.

SOURCE: Jackson Public School District, Jackson, Mississippi

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