

Related Entries: (Not identified at this time)

Employee Discipline Hearings before the School Board

The School Board of Lee County is committed to fair and objective discipline procedures and requires that all approved processes be followed and that proper notification be provided to all parties involved in discipline hearings before the School Board.

- (1) When the School Board of Lee County considers action concerning the suspension or dismissal of staff members, it is acting in the nature of a judicial tribunal. School Board members shall not discuss a pending case with the employee, the employee's representative, or members of the public or listen to opinions on how a case should be decided except from the parties when the case comes to the School Board for final action. The School Board members shall decide the case solely from the record that is presented to them.
- (2) When the Superintendent recommends suspension or dismissal of an employee, the Staff Attorney shall prepare an agenda item for presentation to the School Board.
- (3) The School Board delegates authority to the Superintendent to place employees on administrative leave without pay under the following conditions:
 - (a) The Superintendent may place an employee on administrative leave without pay from the date a recommendation for termination is made by the Department of Professional Standards and Equity until the School Board meeting at which the Superintendent's recommendation for suspension without pay pending termination will be heard. If an employee is placed on administrative leave without pay under this paragraph the matter must be heard by the School Board within 60 work days of the date of initiation of the administrative leave without pay.
 - (b) As a final resolution to an employee's pending disciplinary matter the Superintendent may suspend an employee without pay for up to 10 work days.
- (4) The employee shall be notified through the filing of a petition of the charges against the employee and the recommendation that the Superintendent is making to the School Board. The employee shall be informed in the petition that they may request a hearing or an arbitration hearing on the charges. An arbitration hearing is only available if the employee is governed by the terms of a Collective Bargaining Agreement. The employee shall be informed in the petition that the failure to request a hearing shall constitute an admission that the charges are true. The notification to the employee shall be at least 22 calendar days prior to the School Board meeting at which the recommendation of the Superintendent shall be presented. When the

recommendation is for dismissal, the Superintendent may recommend suspension without pay and benefits pending the outcome of the hearing if one is requested. If the employee wishes to speak concerning the Superintendent's recommendation of suspension without pay, pending the result of an administrative hearing concerning the dismissal recommendation, the employee must notify the Superintendent of such desire by 4:00 p.m. on the Friday before the School Board meeting at which the matter is addressed. Any comments the employee or their representative wishes to make at the meeting concerning the suspension without pay, pending the result of an administrative hearing, shall be limited to the reasons the suspension without pay should not be imposed. The employee shall not advocate their version of the facts of the case, nor present any evidence at that time. The employee or the employee's representative shall be provided 10 minutes to address the School Board. The Staff Attorney, on behalf of the Superintendent, shall be provided 10 minutes to respond. Failure to request a hearing within 21 calendar days after receipt of the petition shall constitute an admission of the charges and a waiver of the right to a hearing.

(5) If a hearing has not been timely requested, the charges made by the Superintendent shall be accepted as fact and the only matter that shall be considered by the School Board is whether suspension or dismissal is appropriate based upon the charges and what discipline shall be imposed.

(6) If an employee fails to request a hearing, the employee or the employee's representative may ask to address the agenda item when it is presented to the School Board. The employee or the employee's representative shall be provided 10 minutes to address the School Board. The Staff Attorney, on behalf of the Superintendent, shall be provided 10 minutes to respond. If the employee or the employee's representative asserts that the charges are not true, the School Board Attorney shall remind the employee or the employee's representative that the charges are accepted as fact because of the failure to request a hearing. The only matter to be advocated is the appropriateness of the recommended discipline.

(7) Administrative Hearing Requested

(a) When the employee requests a hearing within the specified time, the School Board may suspend the employee without pay in accordance with the Superintendent's recommendation in cases of dismissal. There shall be no action upon the recommendation for dismissal until receipt of a recommended order from the administrative law judge.

(b) When the employee requests a hearing, and the Superintendent's recommendation is for imposition of a suspension, the agenda item shall be pulled and there shall be no action upon the Superintendent's recommendation for suspension until receipt of a recommended order from the administrative law judge.

(c) All requests for hearings concerning employee discipline to which an employee is entitled shall be referred to the Division of Administrative

Hearings under Section 1012.33, Florida Statutes. The School District shall provide facilities for the hearing and shall provide administrative law judge a transcript of proceedings.

(d) When the recommended order is received, the Superintendent shall present an agenda item prepared by the Staff Attorney to the School Board.

(e) When a hearing has been conducted and a recommended order has been issued and is being presented to the School Board for action, the following procedures shall control:

1. Findings of Fact. If no exceptions have been filed by any party, the findings of fact made by the administrative law judge shall be considered as fact and the only issue remaining for the School Board is to decide the penalty.
2. Persons to be heard. Persons other than those involved in the case shall not be heard except as their comments are included in the record of the hearing.
3. Time Limit for Speakers. The employee or their representative shall be provided 10 minutes and the attorney representing the Superintendent shall be provided 10 minutes to review the record and any filed exceptions with the School Board and to make comments concerning the disciplinary action being recommended by the Superintendent or the administrative law judge.
4. No Retrials. When the recommended order is presented to the School Board for action, the matter shall not be retried as a new trial. No new evidence shall be allowed to be introduced when the School Board is considering a recommended order from the administrative law judge.
5. Administrative Law Judge's Decisions or Recommendations. If the administrative law judge's decisions or recommendations are not in accordance with those of the Superintendent's earlier or subsequent recommendations, the Superintendent shall state his/her recommendations and the reasons therefore on the record prior to comment by the parties.
6. Exceptions
 - a. Written exceptions to the recommended order of a Division of Administrative Hearings, administrative law judge, and any proposed final order shall be filed with the School Board office and served on the opposing party no later than 15 calendar days from the date the recommended order was received by the Superintendent, unless parties specifically agree to a different

time period. Failure to timely file exceptions shall constitute an acceptance of all portions of a recommended order to which exceptions have not been filed.

- b. In all cases, all portions of the record, including the transcript, the administrative law judge's recommendation, decision and any exceptions filed thereto and each side's proposed findings of fact and proposed final orders, shall be distributed to the School Board members no later than two business days before the School Board meeting at which the recommended order is being addressed.

7. Options Concerning Recommended Orders

- a. The School Board may adopt the recommended order as the Final Order of the School Board.
- b. The School Board may reject or modify the conclusions of law and interpretations of administrative rules over which it has substantive jurisdiction.
- c. The School Board may not reject or modify the findings of fact contained in the recommended order unless the School Board first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of the law.
- d. The School Board may accept the recommended penalty in a recommended order but may not reduce or increase it without a review of the complete record. If the School Board increases or decreases the recommended penalty, it must state with particularity its reasons for doing so and cite to the record to justify the action.

8. The Record

The official record in a case shall consist only of the following:

- a. All notices, pleadings, motions and intermediate rulings.
- b. A statement of matters officially recognized.
- c. Evidence admitted.
- d. Proffers of proof and objections and rulings thereon.

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188 e. Proposed findings and exceptions.
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190 f. Any decision, opinion, proposed or recommended order or report
191 by the administrative law judge.
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193 g. All staff memoranda or data submitted to the administrative law
194 judge during the hearing or prior to its disposition after notice of
195 the submission to all parties.
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197 h. All matters placed on record after an ex-parte communication
198 pursuant to Section 120.66(2), F.S.
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200 i. The official transcript.
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202 9. The decision of the School Board shall be based solely on the record
203 and no School Board member shall consider any matters not contained
204 in the record as a basis for deciding the case.
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206 10. Final Order
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208 a. The School Board shall enter a final order that rules upon all
209 exceptions filed by a party.
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211 b. The School Board member presiding over the meeting at which
212 the order is adopted shall execute final orders.
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214 c. Each final order shall contain a statement that judicial review is
215 available under Section 120.68, F.S., and that the appeal may
216 be taken by filing a notice of appeal with the School Board office
217 within 30 calendar days of the rendition of the final order.
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219 (8) Arbitration Hearing Requested
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221 (a) When the employee requests an arbitration hearing within the specified time,
222 the School Board may suspend the employee without pay in accordance with
223 the Superintendent's recommendation in cases of dismissal.
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225 (b) When arbitration is requested submission of a grievance to arbitration shall be
226 initiated by the grievant, counsel or by his/her representative, by filing a written
227 request with the American Arbitration Association and with the Superintendent,
228 pursuant to the Step III Grievance Procedures of the applicable Collective
229 Bargaining Agreement.
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231 (c) The disposition of the grievance made by the arbitrator shall be binding on
232 both parties.
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(d) Following receipt of the disposition of the grievance, the Board will adopt the arbitrator's order. The item will be brought to the Board at a public meeting of the Board.

(e) Chapter 120 Florida Statutes is not applicable to an arbitration hearing.

STATUTORY AUTHORITY: Chapter 120, 1001.41, 1001.42, 1001.43, 1012.27, 1012.33, 1012.40, F.S.

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