

ALABAMA STATE PERSONNEL BOARD
ALABAMA STATE PERSONNEL DEPARTMENT
ADMINISTRATIVE CODE

CHAPTER 670-X-5
STATE PERSONNEL BOARD: MEETINGS, MINUTES AND HEARING PROCEDURE

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670-X-5-.01 Regular Meetings.

Regular meetings of the Board shall be held monthly in the offices of the Department, provided that the chairman may change the date or location of any meeting when deemed necessary, in accordance with the Open Meetings Act.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-6.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.02 Special Meetings.

Special meetings of the Board may be called by any member, by the Governor, or by the Director upon giving such notice as required by the Open Meetings Act.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-6.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.03 Public Meetings.

All regular meetings of the Board shall be open to the public.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-6.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.04 Rules Of Order.

Meetings of the Board may be informal, subject to such rules of order as may be promulgated by the chairman of the Board. A member of the Board may record in the minutes his approval of or dissent from any act of the Board, together with his reasons therefor, if so desired.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-6.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.05 Quorum.

Three members of the Board shall constitute a quorum for the transaction of business.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-5.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.06 Minutes.

The Director shall attend all meetings of the Board, act as its secretary, and records its official actions in the minutes. The time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and when requested a Board member's dissent, with his reasons if so requested, shall be recorded in the minutes. The minutes or a true copy thereof shall be open to public inspection.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-8, 36-26-9.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.07 Appeals To The Board.

(1) If an officer, employee or citizen feels that any of these rules are working or apt to work a hardship upon him, or that the efficiency of state service, he may be improved by an amendment to these rules, then the person may request a hearing upon the matter

and then appear before the Board at its regular meeting. This written request will be made to the Director.

(2) The Board shall, if demand is made in writing by an employee within ten days after notice of discharge, order a public hearing. The hearing shall be before a special agent (hereinafter called Hearing Officer) appointed for the purpose by the Director. The Hearing Officer may enter a default for the agency based upon the employee's failure to prosecute his case should the employee fail to appear. The hearing shall be recorded either by the mechanized means or by a qualified court reporter. At the hearing, the Hearing Officer shall take testimony offered in support and denial of the reasons for dismissal and from the same submit to the Board a finding of facts and law involved and a recommended decision in the form of a proposed order.

(3) The proposed order shall be furnished to each party. If either party feels he is adversely affected by the proposed order, he may file with the Director exceptions to the proposed order within five days of his receipt thereof. Such exceptions may include a request for presentation of briefs and oral arguments before the Board. The exceptions shall be made a part of the report to be considered by the Board. If a party requests oral argument, he must file written exceptions. Oral argument shall be limited to ten minutes for each side. Should the Board, in its sole discretion, decide to hear the appeal itself, or to read the transcript of the Hearing Officer proceedings, then the provision of this paragraph would not be applicable. The parties, by written stipulation, may waive compliance with this paragraph.

(4) The Board at its next regular or special meeting shall consider said proposed order and modify, alter, set aside or affirm said proposed order, and if the charges are proved unwarranted, order the reinstatement of the employee under such conditions as the Board may determine.

(5) In the event funds are not available to retain Hearing Officers and/or court reporters for appeals under the foregoing provisions, the Director shall have the authority to assign any or all appeals for hearing before the Board, which shall follow the hearing procedure authorized in Rule 670-X-5-.08 below where applicable.

(6) An employee in the classified service may also be removed or awarded lesser discipline on the basis of charges filed by any officer, citizen or taxpayer of the state. Within five days of receiving such charges, the Director shall have a copy served on the employee concerned and shall set a public hearing on the charges not less than ten nor more than twenty days after they are served on the employee. The hearing may be before the Director, a special agent designated by the Director, or the Board itself. If the Director or a special agent hears the matter, he shall, after taking testimony, report to the Board within five days a finding

of facts and law and a recommended decision. At its next regular or special meeting, the Board shall consider this report, which it may modify, alter, set aside or affirm. The Board shall then certify its decision to the appointing authority who shall forthwith put it into effect. If the Board hears such charges directly or reviews the record of testimony taken before another, it shall make up and file its own findings and decision.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-6, 36-26-9, 36-26-27.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.08 Hearing Procedure.

(1) Conduct of Hearings. Hearings on employee appeals from dismissal and on charges brought against employees shall be open to the public and shall be informal. The employee, the appointing authority, and all others concerned shall be given reasonable notice of the time and place of hearing. The parties shall have the right to have subpoenas issued, present witnesses and give testimony. A hearing before a Hearing Officer is intended solely for the purpose of receiving evidence either to refute or to substantiate specific charges. It shall not be made an occasion for irresponsible accusations, unrelated attacks upon the character or conduct of the employer or employee or others, or other derogatory matters having no bearing on the charges under investigation. Any request by a party for a Board member or a Hearing Officer as designated by the Board to recuse himself shall be made in writing to the Director immediately. The written request must cite reasons and the legal basis for the recusal. (See Rules 670-X-18-.02 and 670-X-18-.03 for dismissal and suspension procedure.)

(2) Witnesses. The Hearing Officer shall examine the list of proposed witnesses submitted by each of the parties and shall determine the justification for calling of each witness. Any witness whose testimony is not material, is not relevant or is cumulative of other testimony shall not be required to testify. The Hearing Officer shall examine any objection filed by or on behalf of any witness claiming that the testimony of that witness is not material, is not relevant, is cumulative or if the witness claims a total lack of knowledge of the matter in question. The Hearing Officer shall make a determination of the relevancy, materiality, cumulative nature or lack of knowledge on the part of the witness prior to the commencement of the hearing. The determination to allow or disallow the testimony of a witness shall be based upon an offer of proof by the party offering the testimony of the witness.

(3) Pre-Hearing Conference. The Hearing Officer shall conduct a pre-hearing conference. The Hearing Officer shall have the authority to require the parties to act in furtherance of the hearing process, to include but not limited to:

(a) Setting of an appropriate schedule for the conduct of the hearing;

(b) The crystalization of issues to be presented at the hearing;

(c) The production of documents;

(d) The attendance of witnesses;

(e) The specification of issues and charges;

(f) To issue a pre-hearing conference order which shall be binding on all the parties and shall be amended only upon a showing of good cause;

(g) A Hearing Officer may review pre-hearing issues ruled upon at the pre-hearing conference;

(h) Such other authority as may be necessary for the conduct of the hearing.

(4) Sanctions. Sanctions shall be defined as used in the Alabama Rules of Civil Procedure. The Hearing Officer may recommend to the Board that sanctions be imposed against a party who has:

(a) Failed to comply with the pre-hearing conference order;

(b) Failed to appear;

(c) Failed to prosecute his case;

(d) Failed to comply with orders issued by the Hearing Officer;

(e) Acted in bad faith.

(5) Testimony and Evidence. In taking testimony and in considering the evidence, the Hearing Officer shall follow accepted legal procedure insofar as is practicable, but shall not be bound by the technical Rules of Evidence observed in courts of law. The Hearing Officer may listen to hearsay testimony and may accept depositions and affidavits if such testimony is material and relevant to the issues. The Hearing Officer may also accept the results of lie-detector tests, if such results are material and relevant to the issues.

(6) Counsel or Representation. Parties to a hearing before a Hearing Officer may have representatives of their own choosing. In the event they do not choose such counsel or representatives, they may themselves request the issuance of subpoenas, examine and cross-examine witnesses, make statements, summarize testimony, and otherwise conduct their own hearing.

(7) Procedure. A hearing before a Hearing Officer shall be conducted in accordance with the following order:

(a) Reading of the dismissal action or other charges against the employee and of other pertinent information from the employee's record. The record shall be available to all parties for reference in connection with the hearing.

(b) Presentation of charges against the employee, including testimony of witnesses and other evidence. The employee or his counsel and the Hearing Officer may examine the witnesses.

(c) Presentation of the employee's answer to the charges, including testimony of his witnesses. The parties and the Hearing Officer may also examine these witnesses.

(d) Summation by the parties, if desired by them.

(8) Findings and Decisions. On the basis of testimony and evidence and oral arguments and briefs, if any, the Hearing Officer may recommend that the dismissal of an employee be sustained or may recommend his reinstatement with or without loss of pay, less any interim earnings. Where an employee is found guilty of charges brought against him by an officer, citizen, or taxpayer, and such charges warrant disciplinary action, the Board may order the dismissal of the employee or may order lesser penalties. Where an employee does not appear for his hearing, he has forfeited his right to oral argument before the Board.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-6, 36-26-7, 36-26-9, 36-26-27.

History: Filed September 29, 1981. **Amended:** Filed March 19, 1986; effective April 23, 1986. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-5-.09

Re-Hearings.

(1) The Board shall entertain requests for reconsideration of its decision rendered in an appeal hearing by either party to the hearing if timely submitted within thirty days from the rendition of said decision.

(2) The request shall only be based upon newly discovered evidence which would justify relief from the decision rendered.

(3) Such requests should include, by written memorandum or brief, the detailed basis for such reconsideration. The opposing party shall have the opportunity to present a written reply memorandum or brief challenging such basis.

(4) The Board shall then review the written reply in executive session, and based upon such review, shall either sustain its previous decision or grant such relief from the decision as may be appropriate. In reviewing the request, the Board, at its sole discretion, may hear further oral argument, hear new testimony, or suggest supplemental responses.

(5) The filing of the request for reconsideration shall be at the option of the parties, and should not be deemed as a prerequisite to, or hindrance of, either party's right to judicial review of a Board decision.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-6, 36-26-9.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.