

Title 10: Education Institutions and Agencies

Part 402: MCSAB Board Policies

Part 402, Chapter 5: Administrative Hearing Procedures

Rule 5.1 Hearing Procedure Variance. The Mississippi Charter School Authorizer Board (“MCSAB” or “Board”) may grant variances from these rules if it is determined that application of the rules would, in the particular case, be unnecessarily burdensome, and such variance would not be inconsistent with the public policy purposes of the Mississippi Charter Schools Act of 2013 (“Act”).

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.2 Severability. If any one or more of these rules, or any part of any rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other rule or the remaining content of any part of a rule that is not found to be invalid. Further, if any one or more of these rules, or any part of any rule, is superseded, amended, or contradicted by subsequent legislations, such amendment or change by subsequent legislation in no way invalidates any other part of a rule or any other rules not addressed or impacted by subsequent legislative action.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.3 Oral opinions. Oral or informal opinions by members or staff of the Board as to the applicability of the Act and oral or informal representations by members or staff of the Board concerning the status of filings and applications made with the Board are not binding upon the Board. Requestors can obtain a written declaratory opinion from the Board by following the procedures described in the Board’s rule on Declaratory Opinions.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.4 Notice of Hearing. Written notice shall be provided to any charter school governing board or other person against whom the Board intends to institute an administrative hearing pursuant to the Act or these rules. At least thirty (30) calendar days of notice shall be given to the charter school governing board or other person prior to the hearing unless the charter school governing board or other person notified consents or the Board has authority to do so under applicable statute. Notice is effective on date of issue.

Such notice shall be made by certified mail, return receipt requested, and shall set forth the date, time and place for the administrative hearing and shall also designate a hearing officer.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.5 Appointment and Authority of Hearing Officer. The Board hereby appoints a designee chosen by the Executive Director from a list preapproved by the Board as hearing officer for all hearings held under this chapter.

The hearing officer has and shall exercise the power to regulate all proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of his or her duties under these rules. The hearing officer may require production, through order or subpoena, of evidence upon all matters in the hearing, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The hearing officer shall have the power to administer oaths and affirmations, examine witnesses, examine and report upon all matters referred to him or her. The hearing officer shall have the power to enter protective orders.

The hearing officer shall have the power to direct the issuance of subpoenas for witnesses to attend before him or her to testify in the cause. If any witness shall fail to appear, the hearing officer shall proceed by process to compel the witness to attend and give evidence. The hearing officer may direct the parties to participate in a conference or conferences prior to the hearing on the merits, for such purposes of expediting the disposition of the action and facilitating resolution of the case.

The hearing officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The hearing officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy, or unduly cumulative.

The hearing officer may issue rulings on scheduling matters, protective orders, admissibility of evidence, and other procedural or pre-hearing matters. The hearing officer may alter any of the time periods provided by these regulations, upon his or her own initiative or upon a motion by a party or other person affected for good cause shown.

The hearing officer may clear the hearing room of witnesses not under examination. The hearing officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.6 Appearance through Counsel. Parties to proceedings governed by this chapter may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the hearing officer. When a party has appeared through an attorney, service of all notices, motions, orders, decisions, and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including any request for issuance of subpoena.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.7 Pre-Hearing Conference/Scheduling. The hearing officer may enter a scheduling order, or any such other order, that sets deadlines, conferences, or hearings deemed necessary or appropriate by the hearing officer. Oral argument will not normally be granted. However, the hearing officer may grant oral argument on any motion in his or her sole discretion.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.8 Subpoenas requested by parties. The hearing officer shall have the power to issue subpoenas for testimony or documents. Subpoenas may be issued to parties upon request, but only for the following purposes:

- A. To compel a non-party witness to appear and give testimony at any hearing scheduled under these rules; or
- B. To compel any person to appear at the hearing on the merits of the case, to give testimony, or to produce documents or other tangible things.

Subpoenas requested by a party shall be submitted to the hearing officer on a form approved by the Board. Concurrently with the submission of the subpoena to the hearing officer, the requesting party shall serve a copy on all of the parties to the proceeding and shall file proof of such service with the Board and the hearing officer.

Subpoenas shall not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time and place of hearing, and the name and signature of the requesting party or his or her attorney. A subpoena duces tecum must in addition, contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

Unless the witness agrees otherwise, a subpoena issued for the purposes provided in these rules must be served by the requesting party at least ten (10) calendar days prior to the hearing. A subpoena will be issued during the hearing or on less than ten (10) days' notice only upon order of the hearing officer for reasonable cause shown by the requesting party.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.9 Conduct of Hearings. Hearings shall be informal, and the Miss. Rules of Evidence, while applicable, shall be relaxed. All witnesses who appear and testify under oath shall be subject to cross-examination.

Documents received into evidence by the hearing officer shall be marked by him or her, or under his or her direction, entered into evidence, and made a part of the record in the cause.

Rebuttal or surrebuttal evidence may be heard at the discretion of the hearing officer.

At the hearing, the Board shall be the first to present evidence.

The Board shall have the burden of proving its assertions by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.

A record of testimony at the hearing shall be made. A true and correct copy of said stenographic recording shall be made available to any party to the hearing requesting it, provided such party agrees to pay the expense of such copy.

Nothing contained herein shall prohibit the hearing officer from entering orders or making rulings which provide for the orderly conduct of said hearings. The hearing officer may limit the issues to be heard during any hearing. The hearing officer may also make rulings concerning any matters which do not involve a disputed issue of fact without setting a hearing concerning same. Continuances will not be granted except for good cause shown.

In computing any period of time prescribed or allowed under these rules, the hearing officer and all parties shall be guided by the Mississippi Rules of Civil Procedure.

Source: Miss. Code Ann. § 37-28-9 and 33(8).

Rule 5.10 Recommendation of the Hearing Officer and Decision of the Board. All findings of fact and conclusions of law made by the hearing officer or the Board shall be based upon the preponderance of the evidence. The hearing officer shall reduce all recommendations to writing and submit those recommendations to the Board as described herein.

After all evidence is heard or received and the hearing is completed, the hearing officer shall, within a reasonable time thereafter, issue a report and recommendation that details his or her findings of fact and conclusions of law. All parties (including the Board) shall be served with the hearing officer's report and recommendation. Within fourteen (14) calendar days following service of the findings, either party may present a written response to these findings to the Board. The Board will review the hearing officer's report and recommendations, all exhibits entered into evidence, all written responses to the Report and Recommendations and, if desired, order a transcript of the hearing.

Thereupon, the Board may issue a final order adopting and accepting the hearing officer's report and recommendations, rejecting the report and recommendations in whole or in part and issuing findings of fact and conclusions of law with a final order; or remand the case to the hearing officer for additional findings or clarification of key issues. A case is not concluded until issuance of a final order by the Board. All reports and recommendations and final orders shall be sent via certified mail, return receipt requested, to all parties who appeared at the administrative hearing or their attorney or authorized representative.

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