

Board Hearing/Appeal Procedures

All formal due process hearings to be held before the board shall be conducted in the manner provided by the Rules of Practice Governing Hearings and Contested Cases Before the Board and in accordance with the Wyoming Administrative Procedures Act.

All formal due process hearings required to be held before an independent hearing officer assigned by the Office of Administrative Hearings shall be held in accordance with the procedures and/or rules specified under W.S. 9-2-2202(b), including the rules for contested case practice and procedure before the Office of Administrative Hearings ("OAH Rules").

Disputes regarding services and programs provided to children with disabilities shall be resolved in the manner provided by the Wyoming State Board of Education Rules and Regulations for serving children with disabilities, specifically including the due process procedures set forth therein.

Less formal hearings may be conducted before the board at any time with the consent of all parties or as provided for resolving grievances and/or other discrimination claims which are appealed to the board, in which event the appeal process shall be as set forth in the specific policy relating to the grievance or claim.

Rules of Practice Governing Hearings and Contested  
Cases Before the Board of Directors of  
Northwest Wyoming Board of Cooperative  
Educational Services  
and Procedures to Consider Recommended Findings from  
an Independent Hearing Officer.

Article I  
General Provisions

Section 1. Authority. These rules are adopted as authorized by the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115, and under the provisions of W.S. 21-3-110 as amended.

Section 2. Effective Upon Compliance. These rules shall be effective upon compliance with all prerequisites set forth in the Wyoming Administrative Procedures Act, § 16-3-102 to 16-3-106 or any statute amending, recodifying or superseding the same.

Section 3. Previous Rules Superseded. From and after the effective date of these rules, any previously filed rules of practice of NW BOCES relating to contested hearings, shall be superseded and shall be of no further force or effect.

Section 4. Promulgation, Amendment or Repeal of Rules. Any amendments to these rules shall become effective as provided by W.S. 16-3-101 through 16-3-115.

Article II  
Definitions and Applicability  
Hearings and Contested Cases

Section 1. Definitions. As used in these rules.

- a. "Board" means the Board of the Northwest Wyoming Board of Cooperative Educational Services (NWBOCES).
- b. "Chairman" means the chairman of the Board.
- c. "Day" means calendar day.
- d. "Hearing" includes all contested cases.
- e. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- f. "Persons" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency.
- g. "Administrative Director" means the chief administrative officer of the NWBOCES.

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- h. "Clerk" means the Clerk of the Board.
- i. "Teacher" means any person employed under contract by the board as a certified professional employee.
- j. "Pupil" or "student" means any person duly enrolled for instruction in the NWBOCES.
- k. "Independent hearing officer" means that person selected or appointed as provided for in W.S. §21-7-110(c).

Section 2. Applicability of Rules.

a. These rules shall apply to all hearings required by law to be held with respect to termination, dismissal and suspension of teachers under the Wyoming Teacher's Employment Law as amended, and any applicable federal and state court decisions, and to all formal hearings required by law to be held with respect to the suspension or expulsion of any student from NW BOCES and to any other matters wherein a contested case, as defined by law, is presented or any other matter wherein a hearing is required by law.

b. Informal or investigative hearings may be held by the Board without compliance with these rules.

c. Hearing not in compliance with these rules may be held by the Board upon express written agreement by all parties.

d. All hearings required to be held before an independent hearing officer as provided by W.S. §21-7-110(c) shall be governed by the procedures specified under W.S. §9-2-2202(b), including the Rules for Contested Case Practice and Procedure Before the Office of Administrative Hearings ("OAH Rules").

Article III  
Hearings Before the Board

Section 1. Generally. Any person whose legally recognized rights have been or will be affected by any decision, order, ruling, or other action taken by the Board or to be taken by the Board has a right to a hearing before the board unless such hearing is required by law to be before an independent hearing officer.

Section 2. Petition. Any person desiring to come before the Board for a hearing must file with the Board, in its office at the NW BOCES, Thermopolis, Wyoming, a petition setting forth:

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a. A concise statement of the facts on which the petitioner relies;

b. A statement in ordinary language, setting forth the action or decision desired by the petitioner;

c. The name, address and telephone number of the petitioner and of the attorney for the petitioner, if any;

d. The signature of the petitioner and attorney for the petitioner, if any;

e. The legal authority, if any, or known at the time of the filing of the petition, upon which the petitioner relies.

Section 3. Board As Petitioner. In any matter in which the NW BOCES is required to hold a hearing before the Board in which it has the burden of proof; the NW BOCES shall be deemed the petitioner for purposes of these rules. Any notices or writings required by law for said hearing shall be deemed to be the petition for the NW BOCES. Any objection by the other party to the petition of the NW BOCES shall be served in writing at least ten (10) working days before any scheduled hearing.

Section 4. Notice of Hearing. For any hearing which is to be held before the Board, the Clerk shall cause written notice of any hearing held under these rules to be served upon each party as much time in advance of the date set for hearing as is reasonably practicable. Such notice shall include a statement of:

- a. The time, place and nature of the hearing;
- b. The legal authority and jurisdiction under which the hearing is to be held;
- c. The particular sections of the statutes, rules, or court decisions involved;
- d. A short and plain statement of the matters asserted. If the Clerk is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a more definite and detailed statement shall be furnished.

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Section 5. Hearing Examiner.

a. Whenever it shall appear, from statements of any party or other sources, including applicable federal or state case law, that a dispute exists wherein a hearing is authorized or required to be held before the Board, the Board, at its option, may delay further proceedings until all factual disputes are heard and recommendations made by a hearing examiner as provided in this section.

b. The hearing examiner shall be the presiding officer at the hearing and shall conduct all proceedings in an impartial manner.

c. The hearing examiner shall be a qualified member of the Bar of Wyoming.

d. The hearing examiner shall make recommended findings of fact and conclusions of law to the Board in writing.

e. The hearing examiner shall be hired by the Board and shall be entitled to a reasonable fee for services and reimbursement for reasonable expenses incurred in connection therewith, but shall not be considered an employee of the NWBOCES, but rather, an independent contractor.

f. The hearing examiner shall accord the parties the same hearing procedural rights as are available to them in a hearing before the Board as herein set forth.

g. The impartial hearing examiner shall not be an employee of the Board or a person with a personal or professional interest in the case at hearing, nor be biased or prejudiced against any party to the hearing.

Section 6. Adoption of Findings of Fact and Conclusions.

a. The recommended Findings of Fact and Conclusions of Law made by the hearing examiner under Section 5.d of this Article III rendered by the independent hearing officer pursuant to W.S. §21-7-110 shall be mailed or delivered to all parties and members of the Board.

b. Any party objecting to the recommended Findings of Fact and Conclusions of Law shall present any objections at the next meeting

of the Board occurring at least five (5) days after mailing of the recommended Findings of Fact and Conclusions of Law to all parties or within fourteen (14) days after mailing, whichever occurs first.

c. The recommended Findings of Fact and Conclusions of Law shall be adopted by the Board unless a majority of the members of the Board object to the recommended Findings of Fact and Conclusions of Law. No member of the Board may object to the recommendations unless he shall have been present at the hearing or has read the transcript of the proceedings or heard or examined the official record of the hearing. If the Board terminates, suspends or dismisses a teacher's employment over a recommendation by the independent hearing officer of retention, the written order of the Board shall include a conclusion together with reasons supported by the record. The decision of the Board to either adopt or reject the recommended Findings of Fact and Recommendation from an independent hearing officer assigned by the Office of Administrative Hearings shall be issued in writing within twenty (20) days of receipt of the recommended Findings of Fact and Recommendation.

Section 7. Duties of Presiding Officer. The presiding officer at any hearing before the Board shall be the Chairman of the Board, or any member of the Board authorized to act in the absence of the Chairman, or the hearing examiner as provided in Section 5.b of this Article III of these rules. The presiding officer shall have authority and power to:

- a. Administer oaths and affirmations;
- b. Issues subpoenas;
- c. Rule upon offers of proof and receive relevant evidence;
- d. Take or cause depositions to be taken in accordance with the provisions of the Wyoming Administrative Procedures Act and rules of the Board;
- e. Regulate the course of the hearing;
- f. Hold conferences for the settlement or simplification of the issues;
- g. Dispose of procedural requests or similar matters;
- h. Cause Findings of Fact and Conclusions of Law to be finalized and filed with the Clerk and delivered to all parties;
- i. May recess the hearing or grant continuances for good cause;
- j. May require written briefs from any party clarifying its legal or factual position;
- k. May declare that any matter is being taken under advisement and that a decision will be announced at a later time, not to exceed twenty (20) days after receipt of findings and a recommendation from the independent hearing officer or sixty (60) days from the hearing date for all other hearings;

- l. Punish contempt by permanent removal from the hearing location by any person so offending;
- m. See that a recording of the hearing is made by either an electronic recording device or certified shorthand or machine reporter or other person authorized to administer oaths;
- n. Take any other action authorized by law, consistent with these rules, or required to fulfill any of his duties.

Section 8. Order of Procedure at Hearing. As nearly as may be, a hearing shall be conducted in accordance with the following order of procedure:

- a. The petitioner may briefly state the case and the evidence by which the petitioner expects to sustain it.
- b. The adverse party may then briefly state the defense and the evidence expected to be offered in support of it.
- c. The petitioner shall first produce the evidence; the adverse party will then produce their evidence.
- d. The parties will then be confined to rebutting evidence unless the presiding officer permits them to offer evidence in their original case.
- e. The presiding officer may, at their discretion, allow evidence to be offered out of the order as herein prescribed.
- f. Closing statements will be made in the following sequence:
  - (1) Petitioner
  - (2) Adverse Party
  - (3) Petitioner in Rebuttal

Section 9. Witnesses at Hearings to be Sworn. All persons testifying at any hearing shall stand and be administered the following oath by the presiding officer: "Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in the matter now before the Board, so help you God?", unless the hearing officer waives said oath on a showing that the person understands the meaning of telling the truth and that he/she may be charged and convicted of the crime of falsifying his/her testimony.

Section 10. Disposition of Case by Stipulation. Any case may be finally disposed of by stipulation, agreed settlement, consent order or default of the parties, approved by the Board. An appropriate order accordingly shall be entered in the case record.

Section 11. Applicable Rules of Civil Procedure to Apply. The rules of practice and procedure contained in the Rules of Civil Procedure of the State of Wyoming, insofar as the same may be applicable, and not inconsistent with the laws of the State of Wyoming, or these rules shall apply at all hearings under these rules. Service of the petition and notice of hearing may be by

certified or registered mail to the last known address of the teacher or student involved or by personal service by any adult, provided that the service upon a teacher or student by an employee of the NW BOCES shall be witnessed unless an acknowledgment of service is signed by the teacher or student. All other notices and service of papers shall be made in accordance with Rule 5 W.R.C.P.

Section 12. Attorneys. The filing of a petition or other similar representation by an attorney constitutes his appearance for the party for whom the representation is made. The Board or hearing examiner or independent hearing officer must be notified in writing of any withdrawal from the case. Any person appearing at a hearing in a representative capacity, shall be precluded from examining or cross-examining any witness, unless such person shall be an attorney licensed to practice in the State of Wyoming, or a non-resident attorney, associated with a Wyoming attorney. These rules shall not be construed to prohibit any person from representing himself in any hearing under these rules.

Section 13. School Attorney Present. In all matters before the Board, or under these rules, Chairman shall request the school attorney to be present, to assist and advise the Board and to represent NWBOCES. If there is a conflict in the Board attorney acting as advisor for the Board, the Board shall authorize the employment of Special Counsel to act either as attorney for the Board or attorney for NWBOCES.

Section 14. Taking of Testimony - Reporter. Where oral testimony of witnesses is taken in a hearing under these rules, the testimony shall be reported either by an electronic recording device or by a certified shorthand machine reporter or other person authorized to administer oaths whose compensation for taking such testimony shall be at the expense of NWBOCES. A transcription of the proceedings or any part thereof shall be at the cost and expense of any party requesting the same.

Section 15. Decision and Order. The Board shall make a written decision and order in all cases, which order and decision shall be filed by the Clerk in the file of the matter. The vote of the Board shall be shown in its decision. When the decision involves a teacher, a copy shall be provided to the teacher and a copy placed in the school records pertaining to the teacher.

Section 16. Appeals. Any decision of the Board is subject to appeal to the District Court and the Supreme Court of Wyoming as provided by law.

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Section 17. Application of Wyoming Administrative Procedure Act. Whether or not herein set forth, the provisions of the Wyoming Administrative Procedure Act, §16-3-101 to 16-3-115, as amended and the Wyoming Education Code (21-3-101 et. Seq.), shall govern all procedures before this Board except in all statutory proceedings before this Board. Should a conflict arise between the statutes and these rules, the statutes shall govern and control.

Section 18. Severability. If any provision of these rules of practice or the application thereof to any matter is held invalid, the invalidity shall not affect the other provisions or applications of these rules which can be given effect without the invalid provision or application, and for this purpose the provisions of these rules are severable.