
TEACHER HEARINGS

Background

The Superintendent of Schools shall conduct all hearings concerning the suspension or termination of a contract of employment of a teacher, or the termination of a teacher's designation as an administrator, in compliance with the requirements of natural justice and the provisions of the *Education Act*.

Procedures

1. Hearings by Oral or Written Submissions

- 1.1 It is the responsibility of the Superintendent to hold a hearing and it is the responsibility of the Deputy Superintendent - Human Resources to recommend that a hearing take place. Where circumstances warrant, the responsibilities of the Superintendent or Deputy Superintendent - Human Resources shall be performed by their respective designate.
- 1.2 Hearings may be conducted through oral submissions or in exceptional circumstances, through the receipt of written submissions of the parties.
- 1.3 In the case of hearings by way of oral submissions, the teacher will normally be present in person.
- 1.4 In the case of hearings by way of receipt of written submissions where the teacher will not be present in person, the Superintendent shall hold a preliminary meeting based upon the recommendation of the Deputy Superintendent - Human Resources to determine whether this method of hearing procedure shall be used.
 - 1.4.1 When a hearing is proposed to be conducted through the receipt of written submissions of the parties, the Deputy Superintendent - Human Resources shall provide to the Superintendent a recommendation in writing, with reasons, to that effect.
 - 1.4.2 When recommending that a hearing should be conducted through the receipt of written submissions, consideration of the availability of the teacher, the teacher's representative, or both, to attend at an oral hearing, any prior adjournment of an intended oral hearing, and any other relevant information may be taken into account by the Deputy Superintendent - Human Resources acting in good faith.
 - 1.4.3 The written recommendation of the Deputy Superintendent - Human Resources shall be deliberated in private by the Superintendent.
 - 1.4.4 In so doing, the Superintendent may call upon the Secretary-Treasurer or legal counsel to assist on points of law or in the drafting of a decision.

- 1.4.5 The decision of the Superintendent as to the written recommendations shall be communicated in writing, with reasons, as soon as possible to the Deputy Superintendent - Human Resources and to the teacher.
- 1.4.6 Where the decision of the Superintendent is to proceed with a hearing through the receipt of written submissions and the teacher appears in person, on the day of the hearing, the hearing may, if feasible, proceed by way of oral submissions.
- 1.5 In making a decision to proceed with a hearing by way of written submissions, the Superintendent shall take into account: (1) that the preference for holding a hearing is by way of oral submissions; (2) that as a general rule, a hearing by way of oral submissions ought to be held within 60 days of a suspension, recommendation for dismissal, or removal of an administrative designation matter; (3) that where delays are encountered with the scheduling of a hearing by way of oral submissions, then a hearing by way of written submissions shall normally proceed within sixty (60) days of the last proposed oral hearing date to the teacher by the Deputy Superintendent - Human Resources; and (4) that where for whatever reason a teacher fails to attend in person on the day of a scheduled oral hearing or fails to provide written submissions for the day of a scheduled written submission hearing, the Superintendent may, in taking into account all relevant considerations and exercising reasonable discretion, decide to proceed with the hearing in the absence of the teacher or the written submissions.

2. Oral Submission Procedures

- 2.1 In the case of a hearing to be conducted by way of oral submissions, the Deputy Superintendent - Human Resources shall provide to the teacher written notification of:
 - 2.1.1 the date, time and location of the hearing.
 - 2.1.2 the recommendation and reasons for the action contemplated by the Deputy Superintendent - Human Resources.
 - 2.1.3 the opportunity to receive and examine within a reasonable time prior to the hearing, supporting documentation and other material, including these procedures, upon which the administration shall rely and present at the hearing (excluding any presentation or written submission).
 - 2.1.4 the opportunity for the teacher to attend the hearing and have a representative present; and
 - 2.1.5 the requirements, to be complied with, that the teacher provide to the Deputy Superintendent - Human Resources 5 days prior to the hearing, the supporting documentation and material upon which the teacher shall rely and present at the hearing (excluding any presentation or written submission), any preliminary objections for the Superintendent to consider at the hearing and written notification of the names of counsel or representative to accompany the teacher at the hearing.

- 2.2 The Deputy Superintendent - Human Resources may be accompanied by counsel who may partake and make submissions during the hearing and shall notify the teacher of the names of counsel 5 days prior to the commencement of the hearing.
- 2.3 The Deputy Superintendent - Human Resources shall ensure that the Superintendent is provided with all available supporting documentation and material for review where possible, five (5) days prior to the date of commencement of the hearing, or during the hearing.
- 2.4 A hearing shall be conducted at a private meeting before the Superintendent where the Superintendent may record the hearing by electronic means in which case the parties shall be advised by the Superintendent at the commencement of the hearing. The Superintendent will also have recording secretary present at the meeting.
- 2.5 The Superintendent shall introduce all parties, counsel and/or representatives at the hearing.
- 2.6 The Superintendent shall declare any conflict of interest at the earliest possible opportunity following distribution of documentation, either before or at the hearing and advise of the designate who will replace the Superintendent and hold the hearing.
- 2.7 Questions to clarify the evidence of any party shall be allowed during the hearing, but no cross-examination shall occur.
- 2.8 The sequence of the hearing shall involve:
 - 2.8.1 consideration of any conflicts of interest;
 - 2.8.2 consideration of any preliminary objections;
 - 2.8.3 written and oral submissions by the Deputy Superintendent - Human Resources;
 - 2.8.4 written and oral submissions by the teacher;
 - 2.8.5 the opportunity for the Deputy Superintendent - Human Resources to respond to the teacher's submissions;
 - 2.8.6 the opportunity for the teacher to respond to the Deputy Superintendent - Human Resources' submissions;
 - 2.8.7 the opportunity for the Superintendent to ask questions of both parties;
 - 2.8.8 the opportunity for the Deputy Superintendent - Human Resources to make final comments; and
 - 2.8.9 the opportunity for the teacher to make final comments.
- 2.9. Following the presentation of the information above, all persons other than the Superintendent shall be asked to leave the room, and the Superintendent shall deliberate in private without assistance from administration, taking into account the following:

- 2.9.1 The Superintendent may call upon the Secretary-Treasurer or legal counsel to assist on points of law or in the drafting of a decision.
 - 2.9.2 If the Superintendent requires further information or clarification, the parties shall be reconvened and a request for further information or clarification shall be made in the presence of both parties;
 - 2.9.3 If any information requested is not readily available, the Superintendent may request a recess, or if necessary, an adjournment of the hearing to a later date; and
 - 2.9.4 In the case of an adjournment, no discussion whatsoever of the matters heard at the hearing may take place between the Superintendent and the parties, their respective counsel or representatives, the Superintendent of Human Resources, or other members of administration until the hearing is reconvened.
- 2.10 The Superintendent shall reach a decision in the matter.
 - 2.11 The Superintendent shall reconvene the parties to the hearing and indicate to the parties the decision reached in the matter.
 - 2.12 All documentation, including any recording by electronic means, that is related to the hearing shall be returned to the Deputy Superintendent - Human Resources immediately upon conclusion of the hearing and shall be retained or destroyed in accordance with legal requirements.
 - 2.13 Upon declaring the hearing adjourned, the Superintendent shall ensure that the teacher and the Deputy Superintendent - Human Resources are provided with written notification of the decision as soon as possible, and where the decision is not favourable to the teacher, advise of any right of the teacher to undertake an appeal of the decision under the *Education Act*.

3. Written Submission Procedures

- 3.1. In the case of a hearing to be conducted by receipt of written submissions, the Superintendent shall advise the Deputy Superintendent - Human Resources and the teacher the following:
 - 3.1.1 the time and place of the hearing;
 - 3.1.2 the date on which the Deputy Superintendent - Human Resources shall provide to the teacher the supporting documentation and other material of the Deputy Superintendent - Human Resources to be presented at the hearing, including these procedures but excluding any presentations, submissions or preliminary objections, which shall be 20 days prior to the hearing before 4 pm;
 - 3.1.3 the date on which the teacher shall provide to the Deputy Superintendent - Human Resources the supporting documentation and other material of the teacher to be presented at the hearing, but excluding any presentations, submissions or preliminary objection, which shall be 15 days prior to the hearing before 4 pm;

- 3.1.4 the date on which the Deputy Superintendent - Human Resources and the teacher shall provide their written submissions to each other, including any preliminary objections they may have for the Superintendent to consider, which shall be 10 days prior to the hearing before 4 pm;
 - 3.1.5 the date on which the Superintendent of Human Resources and the teacher shall provide their written replies to the written submissions of each other, which shall be five (5) days prior to the hearing before 4 pm;
 - 3.1.6 that where dates for providing all forms of documentation by either party fall on a weekend or statutory holiday, such documentation shall be provided on the next business day of the District before 4 pm; and,
 - 3.1.7 that deadlines established for providing information, documents, materials, and submissions shall be followed.
- 3.2. The Deputy Superintendent - Human Resources shall provide to the Administrative Assistant for the Superintendent the supporting documentation and materials of both parties, and their respective preliminary objections, written submissions and replies three (3) days prior to the date of commencement of the hearing.
 - 3.3. The Administrative Assistant for the Superintendent shall ensure that all such documentation received from the Deputy Superintendent - Human Resources is provided as soon as possible to the Superintendent on the date of the hearing prior to its commencement or, where the documentation is voluminous and where the parties agree, on a date prior to the commencement of the hearing.
 - 3.4 A written submission hearing shall be conducted at a private meeting before the Superintendent where the Superintendent may record any portion of the meeting that is deemed reasonable by electronic means.
 - 3.5 The sequence of the written submission hearing shall be:
 - 3.5.1 consideration of any conflicts of interest;
 - 3.5.2 consideration of any preliminary objections, including specifically any objections to the decision of the Superintendent to hold the hearing by way of written submissions;
 - 3.5.3 consideration of the written submissions of the Deputy Superintendent - Human Resources;
 - 3.5.4 consideration of the written submissions of the teacher;
 - 3.5.5 consideration of the reply submissions of the Associate-Superintendent of Human Resources; and,
 - 3.5.6 consideration of the reply submissions of the teacher.
 - 3.6 The Superintendent shall review and consider the information above, and deliberate in private without assistance from administration, taking into account the following:

- 3.6.1 The Superintendent may call upon independent legal advisors to assist the Superintendent on points of law or in the drafting of a decision regarding any preliminary objections and the written and reply submissions;
 - 3.6.2 If the Superintendent requires further information or clarification, both parties shall be notified in writing of the respective request. If any information requested is not readily available, the Superintendent may request a recess, or if necessary, an adjournment of the hearing to a later date; and
 - 3.6.3 In the case of an adjournment, no discussion whatsoever of the matters being assessed at the hearing may take place between the Superintendent and, the parties, their respective counsel or representatives, the Deputy Superintendent - Human Resources, or other members of administration until the hearing is reconvened.
- 3.7 The Superintendent shall reach a decision in the matter.
 - 3.8 All documentation, including any recording by electronic means, that is related to the hearing shall be returned to the Deputy Superintendent - Human Resources or designate immediately upon conclusion of the hearing and shall be retained or destroyed in accordance with legal requirements.
 - 3.9 Upon the conclusion of the hearing, the Superintendent shall ensure that the teacher and the Deputy Superintendent - Human Resources are provided with written notification of the decision as soon as possible, and where the decision is not favourable to the teacher, the teacher shall be advised by the Superintendent of any right of the teacher to undertake an appeal of the decision under the *Education Act*.

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Reference: *Education Act*, SA 2012, c E-0.3
Board Policy 11