

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 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 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 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

- 45 hearing within 21 calendar days after receipt of the petition shall constitute an  
46 admission of the charges and a waiver of the right to a hearing.  
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- 48 (4) If a hearing has not been timely requested, the charges made by the  
49 Superintendent shall be accepted as fact and the only matter that shall be  
50 considered by the School Board is whether suspension or dismissal is appropriate  
51 based upon the charges and what discipline shall be imposed.  
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- 53 (5) If an employee fails to request a hearing, the employee or the employee's  
54 representative may ask to address the agenda item when it is presented to the  
55 School Board. The employee or the employee's representative shall be provided 10  
56 minutes to address the School Board. The Staff Attorney, on behalf of the  
57 Superintendent, shall be provided 10 minutes to respond. If the employee or the  
58 employee's representative asserts that the charges are not true, the School Board  
59 Attorney shall remind the employee or the employee's representative that the  
60 charges are accepted as fact because of the failure to request a hearing. The only  
61 matter to be advocated is the appropriateness of the recommended discipline.  
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- 63 (6) Administrative Hearing Requested  
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- 65 (a) When the employee requests a hearing within the specified time, the School  
66 Board may suspend the employee without pay in accordance with the  
67 Superintendent's recommendation in cases of dismissal. There shall be no  
68 action upon the recommendation for dismissal until receipt of a  
69 recommended order from the impartial hearing officer.  
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- 71 (b) When the employee requests a hearing, and the Superintendent's  
72 recommendation is for imposition of a suspension, the agenda item shall be  
73 pulled and there shall be no action upon the Superintendent's  
74 recommendation for suspension until receipt of a recommended order from  
75 the impartial hearing officer.  
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- 77 (c) All requests for hearings concerning employee discipline to which an  
78 employee is entitled shall be referred to the Division of Administrative  
79 Hearings under Section 1012.33, Florida Statutes. The School District shall  
80 provide facilities for the hearing and shall provide the impartial hearing officer  
81 a transcript of proceedings.  
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- 83 (d) When the recommended order is received, the Superintendent shall present  
84 an agenda item prepared by the Staff Attorney to the School Board.  
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- 86 (e) When a hearing has been conducted and a recommended order has been  
87 issued and is being presented to the School Board for action, the following  
88 procedures shall control:

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1. Findings of Fact. If no exceptions or appeals have been filed by any party, the findings of fact made by the impartial hearing officer shall be considered as fact and the only issue remaining for the School Board is to decide the penalty.
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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.
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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 with the School Board and to make comments concerning the disciplinary action being recommended by the Superintendent or the impartial hearing officer.
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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 impartial hearing officer.
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5. Impartial Hearing Officer's Decisions or Recommendations. If the impartial hearing officer'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.
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6. Exceptions and Appeals
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- 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.
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- b. In all cases, all portions of the record, including the transcript, the impartial hearing officer's recommendation, decision or any exceptions or appeals 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 the Friday before the School Board meeting at which the recommended order is being addressed.
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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.
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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 received or considered.
- d. Proffers of proof and objections and rulings thereon.
- e. Proposed findings and exceptions.
- f. Any decision, opinion, proposed or recommended order or report by the impartial hearing officer.
- g. All staff memoranda or data submitted to the impartial hearing officer during the hearing or prior to its disposition after notice of the submission to all parties.
- h. All matters placed on record after an ex-parte communication pursuant to Section 120.66(2), F.S.

- 182 i. The official transcript.  
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184 9. The decision of the School Board shall be based solely on the record  
185 and no School Board member shall consider any matters not  
186 contained in the record as a basis for deciding the case.  
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188 10. Final Order  
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190 a. The School Board shall enter a final order that rules upon all  
191 exceptions filed by a party.  
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193 b. The School Board member presiding over the meeting at which  
194 the order is adopted shall execute final orders.  
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196 c. Each final order shall contain a statement that judicial review is  
197 available under Section 120.68, F.S., and that the appeal may be  
198 taken by filing a notice of appeal with the School Board office  
199 within 30 calendar days of the rendition of the final order.  
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201 (7) Arbitration Hearing Requested  
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- 203 (a) When the employee requests an arbitration hearing within the specified time,  
204 the School Board may suspend the employee without pay in accordance with  
205 the Superintendent's recommendation in cases of dismissal.  
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207 (b) When arbitration is requested submission of a grievance to arbitration shall  
208 be initiated by the grievant, counsel or by his/her representative, by filing a  
209 written request with the American Arbitration Association and with the  
210 Superintendent, pursuant to the Step III Grievance Procedures of the  
211 applicable Collective Bargaining Agreement.  
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213 (c) The disposition of the grievance made by the arbitrator shall be binding on  
214 both parties.  
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216 (d) Following receipt of the disposition of the grievance, the Board will adopt the  
217 arbitrator's order. The item will be brought to the Board at a public meeting of  
218 the Board.  
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220 (e) Chapter 120 Florida Statutes is not applicable to an arbitration hearing.  
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223 **STATUTORY AUTHORITY:** 120, 1001.41, 1001.42, 1001.43, 1012.27, 1012.33,  
224 1012.40, F.S.  
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226 Adopted: 2/27/07 (Formerly: Policy 1.80)

227 Revised: 7/31/07