

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 School Board delegates authority to the Superintendent to place employees on administrative leave without pay under the following conditions:
 - (a) The Superintendent may place an employee on administrative leave without pay from the date a recommendation for termination is made by the Department of Professional Standards and Equity until the School Board meeting at which the Superintendent's recommendation for suspension without pay pending termination will be heard. If an employee is placed on administrative leave without pay under this paragraph the matter must be heard by the School Board within 60 work days of the date of initiation of the administrative leave without pay.
 - (b) As a final resolution to an employee's pending disciplinary matter the Superintendent may suspend an employee without pay for up to 10 work days.
- (4) 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

46 Board meeting at which the recommendation of the Superintendent shall be
47 presented. When the recommendation is for dismissal, the Superintendent may
48 recommend suspension without pay and benefits pending the outcome of the
49 hearing if one is requested. If the employee wishes to speak concerning the
50 Superintendent's recommendation of suspension without pay, pending the result of
51 an administrative hearing concerning the dismissal recommendation, the employee
52 must notify the Superintendent of such desire by 4:00 p.m. on the Friday before the
53 School Board meeting at which the matter is addressed. Any comments the
54 employee or their representative wishes to make at the meeting concerning the
55 suspension without pay, pending the result of an administrative hearing, shall be
56 limited to the reasons the suspension without pay should not be imposed. The
57 employee shall not advocate their version of the facts of the case, nor present any
58 evidence at that time. The employee or the employee's representative shall be
59 provided 10 minutes to address the School Board. The Staff Attorney, on behalf of
60 the Superintendent, shall be provided 10 minutes to respond. Failure to request a
61 hearing within 21 calendar days after receipt of the petition shall constitute an
62 admission of the charges and a waiver of the right to a hearing.

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64 (5) If a hearing has not been timely requested, the charges made by the
65 Superintendent shall be accepted as fact and the only matter that shall be
66 considered by the School Board is whether suspension or dismissal is appropriate
67 based upon the charges and what discipline shall be imposed.

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69 (6) If an employee fails to request a hearing, the employee or the employee's
70 representative may ask to address the agenda item when it is presented to the
71 School Board. The employee or the employee's representative shall be provided 10
72 minutes to address the School Board. The Staff Attorney, on behalf of the
73 Superintendent, shall be provided 10 minutes to respond. If the employee or the
74 employee's representative asserts that the charges are not true, the School Board
75 Attorney shall remind the employee or the employee's representative that the
76 charges are accepted as fact because of the failure to request a hearing. The only
77 matter to be advocated is the appropriateness of the recommended discipline.

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79 (7) Administrative Hearing Requested

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81 (a) When the employee requests a hearing within the specified time, the School
82 Board may suspend the employee without pay in accordance with the
83 Superintendent's recommendation in cases of dismissal. There shall be no
84 action upon the recommendation for dismissal until receipt of a
85 recommended order from the impartial hearing officer.

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87 (b) When the employee requests a hearing, and the Superintendent's
88 recommendation is for imposition of a suspension, the agenda item shall be
89 pulled and there shall be no action upon the Superintendent's
90 recommendation for suspension until receipt of a recommended order from
91 the impartial hearing officer.

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- 93 (c) All requests for hearings concerning employee discipline to which an
94 employee is entitled shall be referred to the Division of Administrative
95 Hearings under Section 1012.33, Florida Statutes. The School District shall
96 provide facilities for the hearing and shall provide the impartial hearing officer
97 a transcript of proceedings.
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- 99 (d) When the recommended order is received, the Superintendent shall present
100 an agenda item prepared by the Staff Attorney to the School Board.
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- 102 (e) When a hearing has been conducted and a recommended order has been
103 issued and is being presented to the School Board for action, the following
104 procedures shall control:
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- 106 1. Findings of Fact. If no exceptions or appeals have been filed by any
107 party, the findings of fact made by the impartial hearing officer shall be
108 considered as fact and the only issue remaining for the School Board
109 is to decide the penalty.
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 - 111 2. Persons to be Heard. Persons other than those involved in the case
112 shall not be heard except as their comments are included in the record
113 of the hearing.
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 - 115 3. Time Limit for Speakers. The employee or their representative shall be
116 provided 10 minutes and the attorney representing the Superintendent
117 shall be provided 10 minutes to review the record with the School
118 Board and to make comments concerning the disciplinary action being
119 recommended by the Superintendent or the impartial hearing officer.
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 - 121 4. No Retrials. When the recommended order is presented to the School
122 Board for action, the matter shall not be retried as a new trial. No new
123 evidence shall be allowed to be introduced when the School Board is
124 considering a recommended order from the impartial hearing officer.
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 - 126 5. Impartial Hearing Officer's Decisions or Recommendations. If the
127 impartial hearing officer's decisions or recommendations are not in
128 accordance with those of the Superintendent's earlier or subsequent
129 recommendations, the Superintendent shall state his/her recommen-
130 dations and the reasons therefore on the record prior to comment by
131 the parties.
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 - 133 6. Exceptions and Appeals
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 - 135 a. Written exceptions to the recommended order of a Division of
136 Administrative Hearings, administrative law judge, and any
137 proposed final order shall be filed with the School Board office
138 and served on the opposing party no later than 15 calendar
139 days from the date the recommended order was received by

140 the Superintendent, unless parties specifically agree to a
141 different time period. Failure to timely file exceptions shall
142 constitute an acceptance of all portions of a recommended
143 order to which exceptions have not been filed.

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145 b. In all cases, all portions of the record, including the transcript,
146 the impartial hearing officer's recommendation, decision or any
147 exceptions or appeals filed thereto and each side's proposed
148 findings of fact and proposed final orders, shall be distributed to
149 the School Board members no later than the Friday before the
150 School Board meeting at which the recommended order is
151 being addressed.

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153 7. Options Concerning Recommended Orders

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155 a. The School Board may adopt the recommended order as the
156 Final Order of the School Board.

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158 b. The School Board may reject or modify the conclusions of law
159 and interpretations of administrative rules over which it has
160 substantive jurisdiction.

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162 c. The School Board may not reject or modify the findings of fact
163 contained in the recommended order unless the School Board
164 first determines from a review of the complete record and
165 states with particularity in the order that the findings of fact
166 were not based upon competent, substantial evidence or that
167 the proceedings on which the findings were based did not
168 comply with the essential requirements of the law.

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170 d. The School Board may accept the recommended penalty in a
171 recommended order but may not reduce or increase it without a
172 review of the complete record. If the School Board increases or
173 decreases the recommended penalty, it must state with
174 particularity its reasons for doing so and cite to the record to
175 justify the action.

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177 8. The Record

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179 The official record in a case shall consist only of the following:

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181 a. All notices, pleadings, motions and intermediate rulings.

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183 b. A statement of matters officially recognized.

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185 c. Evidence received or considered.

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- 187 d. Proffers of proof and objections and rulings thereon.
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189 e. Proposed findings and exceptions.
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191 f. Any decision, opinion, proposed or recommended order or
192 report by the impartial hearing officer.
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194 g. All staff memoranda or data submitted to the impartial hearing
195 officer during the hearing or prior to its disposition after notice
196 of the submission to all parties.
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198 h. All matters placed on record after an ex-parte communication
199 pursuant to Section 120.66(2), F.S.
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201 i. The official transcript.
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203 9. The decision of the School Board shall be based solely on the record
204 and no School Board member shall consider any matters not
205 contained in the record as a basis for deciding the case.
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207 10. Final Order
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209 a. The School Board shall enter a final order that rules upon all
210 exceptions filed by a party.
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212 b. The School Board member presiding over the meeting at which
213 the order is adopted shall execute final orders.
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215 c. Each final order shall contain a statement that judicial review is
216 available under Section 120.68, F.S., and that the appeal may
217 be taken by filing a notice of appeal with the School Board
218 office within 30 calendar days of the rendition of the final order.
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220 (8) Arbitration Hearing Requested
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222 (a) When the employee requests an arbitration hearing within the specified time,
223 the School Board may suspend the employee without pay in accordance with
224 the Superintendent's recommendation in cases of dismissal.
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226 (b) When arbitration is requested submission of a grievance to arbitration shall
227 be initiated by the grievant, counsel or by his/her representative, by filing a
228 written request with the American Arbitration Association and with the
229 Superintendent, pursuant to the Step III Grievance Procedures of the
230 applicable Collective Bargaining Agreement.
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232 (c) The disposition of the grievance made by the arbitrator shall be binding on
233 both parties.

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- (d) Following receipt of the disposition of the grievance, the Board will adopt the arbitrator's order. The item will be brought to the Board at a public meeting of the Board.
- (e) Chapter 120 Florida Statutes is not applicable to an arbitration hearing.

STATUTORY AUTHORITY: Chapter 120, 1001.41, 1001.42, 1001.43, 1012.27, 1012.33, 1012.40, F.S.

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