

Regulation BEE-RA

Las Cruces Public Schools

Related Entries: BEE
Responsible Office: Board of Education

BOARD HEARINGS/APPEAL PROCEEDINGS

I. PURPOSE

To implement the policy of the Board of Education for holding public hearings or appeal proceedings.

II. BACKGROUND

These rules shall apply to all formal hearings before the Board in contested cases, except procedures concerning certified school instructors or certified school administrators, which proceedings shall be governed by the state statutes and rules and regulations of the Public Education Department, and except proceedings regarding student discipline which shall be governed by the Hearing Authority procedures set forth in Board Policy. Said rules shall not apply to conferences or other informal investigations or proceedings at or upon which no formal ruling or decision is made, or to any proceeding in a non-contested case.

III. PROCESS

A. The Hearings or Appeals

1. All requests for hearings or appeals shall be in writing to the President of the Board or the Superintendent.
2. Appeals or requests for hearing shall include a statement of the issues to be presented in said appeal or hearing.
3. All requests for appeals or hearings shall be made within 30 days of the decision or event of which a hearing or appeal is requested, unless governed otherwise by law.
4. The school district, through its attorney, shall outline a counter statement of charges and/or issues, if any, involved in the proceeding and serve that on the opposing party with a copy to be filed with the Superintendent.

B. Notice of Hearing

1. In personnel actions, notice of hearing shall meet all conditions and timelines as set forth by Public Education Department rules and regulations and State Statutes. The hearing may be closed by either the Board of Education or by the person requesting the hearing.
2. In all other cases involving appeals or hearings, written notice of date of hearing shall be sent by the President of the Board, or his designee, to all interested parties within 30 days of receipt of the request for an appeal or hearing and not less than ten (10) days prior to the hearing.

C. Parties – Representation

1. “Party” includes any person or agency named or admitted as a party. Any person or agency may be admitted as a party for limited purposes upon the satisfactory demonstration of the nature and extent of its interest to the Board.
2. All parties appearing at formal hearings shall have the right to appear in proper person or with counsel. All such parties shall have the right to be accompanied, represented, and advised by counsel.

D. Records – Transcript

1. The Board shall prepare, except when expressly prohibited by statute, an official record and file it with the Superintendent, which shall include all pleadings, recording or transcript of the hearing, exhibits, and other memoranda or material filed in the proceeding.
2. A stenographic record or electronic recording of the hearing shall be made at the expense of the Board. Cost of copying the electronic recording or copies of any documents and pleadings shall be paid by the party requesting such copy.

E. Presiding Officer

Duties and Authority – Each hearing shall be held before not less than a quorum of the Board. The President, or in his absence, the Vice President, and in the absence of both, a member designated by the President, shall be the presiding officer and shall have charge of the hearing, with authority to permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time. The presiding officer shall cause an oath to be administered to all witnesses testifying in the proceedings.

F. Order of Procedure

The order in which the parties shall present their case shall be determined by the presiding officer as follows:

1. In a hearing, the party requesting the hearing shall proceed first.
2. In all appeals, the appellant shall proceed first.
3. Each party shall have the right to present rebuttal evidence after both parties have presented their case.

G. Evidence

1. Each party may make an opening statement outlining what they intend to prove and state what the case is about.
2. The strict judicial rules of evidence shall not be applicable to hearings conducted hereunder, and, in each case, the Board may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs. The Board may in its discretion exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. The Board may take notice of judicially cognizable facts. The parties shall be notified either before or during the hearing of the material so noticed and shall be afforded an opportunity to contest the facts so noticed. Depositions may be taken and used as in civil proceedings.
3. Counsel for any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions, and motions; provided, however, that where a party is not represented by counsel, all such submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions, and motions shall be done and presented by the party.
4. The presiding officer, or any person designated for that purpose, may examine all witnesses called by any party. He may call as a witness any person whose testimony may be relevant. Any Board Member may examine any witness.

H. Briefs

Any party may submit briefs of the issues of fact and law involved in the hearing in such form as the presiding officer may designate.

I. Counsel

The presiding officer of the Board may request the Board attorney to participate in any hearing as counsel for the Board. Counsel separate from the Board attorney may be assigned to assist the District Administrator(s) at the hearing.

J. Final Argument

1. After both parties have presented their case and rebuttal evidence, if any, then the appellant or party requesting the hearing may make a final argument to the Board of his version of the facts and law applicable thereto.
2. The other party may answer with his version of the facts and law applicable thereto.
3. Then the appellant or party requesting the hearing may argue in rebuttal of the other party's answering argument.
4. The presiding officer of the Board may limit final arguments to a certain amount of time that is reasonable.

K. Decision and Order

Each decision and order of the Board shall be delivered in writing within ten (10) days after the hearing, unless it shall immediately follow the hearing, in which case it shall be delivered orally and thereafter in writing with copies to all parties. Each decision and order shall be accompanied by findings of fact and specific disposition of the case and shall be provided to all parties. Formal action of the Board shall be taken publicly at a Board meeting following the hearing, but no other information will be released by the Board or school administration as noted above.

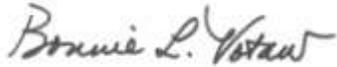
L. Appeals

Personnel who receive an adverse decision from the Board have a right of appeal under state law and should be given notice of that right to appeal that meets all conditions and timelines as set forth by the Public Education Department rules and regulations and State Statute.

M. Re-opening of Case

At any time after the hearing and prior to the service of the Board's decision, the person aggrieved may request the Board to reopen the case to receive additional evidence or for other cause. The granting or refusing of such request shall be within the Board's discretion. The Board may reopen the case on its own motion at any time within thirty (30) days after service of the Board's decision.

History: New Policy
Legal Reference:



President, Board of Education

Oct. 21, 2008

Date Approved