

DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
PUBLIC SCHOOL RETIREMENT BOARD - GENERAL HEARING RULES

(By authority conferred on the State Office of Administrative Hearings and Rules
by Executive Order 2005-1, MCL 445.2021.)

PART I. PROCEDURAL RULES

R 38.1371 Applicability and definitions.

Rule 71. (1) These rules apply to hearings held under the jurisdiction of the public school employees' retirement board.

(2) As used in these rules:

(a) "Act" means the school employees retirement act of 1980, 1980 PA 300, MCL 38.1301.

(b) "Administrative record" means the application and related documents considered by the staff of the retirement system in reaching its determination.

(c) "Application" means a request for a benefit provided by the act. "Application" also includes a request to reopen a closed application and a reapplication.

(d) "Board" means the retirement board as defined in MCL 38.1322.

(e) "Closed application" means a request by an individual for a benefit provided by the act that was withdrawn by the individual or otherwise never decided by the retirement system or the board.

(f) "Good cause," as used in R 38.1374 and R 38.1382(2), means the legitimate failure to file a document or a witness list in a timely manner and does not include a person's own careless neglect or inattention to the requirements of R 38.1374 and R 38.1382(2).

(g) "Presiding officer" means presiding officer as defined in MCL 24.279 and 24.280.

(h) "Reapplication" means a request by an individual for a benefit provided by the act that was previously decided by the staff of the retirement system or the board.

(3) The terms defined in 1980 PA 300, MCL 38.1301 et seq; and 1969 PA 306, MCL 24.201 et seq; have the same meaning when used in these rules.

History: 2009 AACCS.

R 38.1372 Notice of hearing.

Rule 72. Notification of any hearing shall state the date, time, place, and issues involved. Notice shall be mailed by first-class mail at least 35 days before the hearing.

History: 2009 AACS.

R 38.1373 Appearance.

Rule 73. (1) If a party is represented by an attorney, the attorney shall file a written appearance.

(2) An appearance made at a hearing shall be made in person either by the individual who requested the hearing or by legal counsel.

History: 2009 AACS.

R 38.1374 Filing of documents.

Rule 74. If a document is not filed and served within the time limits established by these rules, the presiding officer or the board shall strike the document unless the individual serving the document establishes good cause as to why the document was not filed and served timely.

History: 2009 AACS.

R 38.1375 Service.

Rule 75. (1) A party shall serve all documents filed in a contested case on all other parties and the presiding officer. Service shall be made in person or by first-class mail with postage fully paid and addressed to the individual to be served at the individual's last known address.

(2) The date of service shall be the date of personal service or the date that the document is placed in first-class mail.

(3) A party who files a document in a contested case hearing shall file a proof of service that establishes the document was simultaneously and properly served on all other parties.

History: 2009 AACS.

R 38.1376 Pre-hearing conference; scope.

Rule 76. (1) If a presiding officer determines that a pre-hearing conference will aid in the efficient resolution of the contested case, the presiding officer may direct the parties or their attorneys to participate in a pre-hearing conference, either in person or by telephone, to do any of the following:

(a) State and simplify the factual and legal issues involved.

(b) Consider motions to be disposed of before hearing and other preliminary matters.

(c) Identify proposed documentary evidence and determine its authenticity, if possible.

(d) Estimate the time for hearing.

(e) Consider other matters that may aid in the resolution of the contested case.

(2) The presiding officer may provide a written summary of the items discussed to each party after the pre-hearing conference.

(3) At a pre-hearing conference, the presiding officer may direct the parties to file a hearing brief as to any of the issues involved in the action. If the parties are directed to submit hearing briefs, then the parties shall submit briefs to the presiding officer not less than 10 days before the hearing, unless a different date is set by the presiding officer.

History: 2009 AACS.

R 38.1377 Presiding officer.

Rule 77. (1) The state office of administrative hearings and rules shall designate presiding officers in contested case proceedings.

(2) A presiding officer shall issue orders that are necessary for the fair and efficient determination of the issues presented. These include, but are not limited to, an order in response to a motion to do any of the following:

- (a) Extend the time to file a closing argument.
- (b) Extend the time to file exceptions and/or replies.
- (c) Adjourn a hearing.

(3) A party shall comply with an order of a presiding officer.

(4) Neither the presiding officer nor any attorney in a contested case may issue a subpoena.

History: 2009 AACS.

R 38.1378 Adjournment or continuance of hearing.

Rule 78. A hearing shall not be adjourned or continued except upon an order of the presiding officer. Unless made during a hearing, all motions and requests for an adjournment, or a continuance, shall be filed in writing and state concisely the reasons why an adjournment or continuance is necessary.

History: 2009 AACS.

R 38.1379 Hearing record.

Rule 79. A verbatim record shall be made of each hearing held. Upon request, a party may order a transcript. The requestor shall pay the cost of the transcript.

History: 2009 AACS.

R 38.1380 Form; time for filing motion.

Rule 80. (1) A request to the presiding officer for an order in a pending action shall be by motion, in writing, unless made during a hearing. The request shall state the

relief or order sought, the grounds and authority on which the request is based, and be signed by the party or the party's attorney.

(2) A copy of the written motion and brief, if any, shall be served in accordance with R 38.1375(1). If a motion or response is supported by affidavit, then the affidavit shall be filed and served with the motion or response.

(3) A party opposing a motion shall serve a response and any brief and supporting affidavit or affidavits within 14 days after service of the motion unless otherwise ordered by the presiding officer.

(4) The presiding officer may limit or dispense with oral arguments on motions.

History: 2009 AACCS.

R 38.1381 Motion for summary disposition.

Rule 81. (1) A party may move for summary disposition on all or any part of the claim at any time. The motion shall state that the moving party is entitled to summary disposition on 1 or more of the following grounds and shall specify the grounds on which the motion is based:

(a) The petitioner has failed to state a claim upon which relief can be granted.

(b) There is no genuine issue as to a material fact, except as to the relief to be granted.

(c) The board lacks jurisdiction of the subject matter.

(d) The claim or defense is barred because it is untimely.

(e) The claim or defense is barred because of some other legal impediment or other disposition of the claim.

(2) If the motion for summary disposition is based on subrule (1)(a) of this rule, then only pleadings may be considered. A motion based on subrule (1)(b), (c), (d) or (e) of this rule shall be supported by affidavits or other documentary evidence and shall specifically identify the issues on which the moving party believes there is no genuine issue of material fact. The affidavits, together with the pleadings and documentary evidence then filed in the action, or submitted by the parties, shall be considered. If a motion is made under subrule (1)(b) of this rule and supported as provided in this rule, then an adverse party shall, by affidavits or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for hearing.

(3) A presiding officer shall rule on a motion for summary disposition in a proposal for decision.

History: 2009 AACCS.

R 38.1382 Discovery.

Rule 82. (1) Discovery shall not be allowed in any contested case hearing conducted under the act or these rules except depositions may be taken upon written approval of the board where it is established that it is impractical or impossible to otherwise obtain the evidence. If the board approves the

taking of a deposition, it shall be taken in conformity with the Michigan court rules.

(2) The petitioner shall serve a list of witnesses 20 days before the scheduled hearing date. If the petitioner wishes to testify, he or she shall be included in the witness list. The respondent shall serve a list of witnesses 10 days before the scheduled hearing date. A party shall not call as a witness a person who was not included on a witness list unless the presiding officer finds that the party has established good cause as to why the person was not included on the party's witness list.

History: 2009 AACS.

R 38.1383 Closing arguments.

Rule 83. The presiding officer shall notify the parties whether written or oral closing arguments shall be scheduled and the time deadlines for such arguments.

History: 2009 AACS.

R 38.1384 Proposal for decision.

Rule 84. The presiding officer shall prepare a proposal for decision within a reasonable time after the closing of the record. It shall include findings of fact, conclusions of law, and a recommended decision. The proposal for decision shall be served on each of the parties and the hearing coordinator of the retirement system.

History: 2009 AACS.

R 38.1385 Considerations of documents.

Rule 85. (1) Any documents submitted by or on behalf of the applicant more than 30 days after the date of the notification set forth in R 38.1372 shall not be considered except upon a showing of good cause.

(2) The presiding officer shall admit the administrative record if offered into evidence at the hearing.

History: 2009 AACS.

R 38.1386 Testimony; telephone and other electronic means.

Rule 86. A presiding officer shall not take the testimony of a witness by way of a telephone conference call or other electronic means unless all of the following occur:

(a) The party who wants to take such testimony serves a motion at least 10 days before the date of the hearing.

(b) The presiding officer concludes that it is impractical or impossible to otherwise obtain the testimony.

(c) The presiding officer concludes that the witness is not needed to appear in person so that the witness's appearance and demeanor may be observed for credibility purposes.

History: 2009 AACCS.