

**TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

SUBCHAPTER 1. GENERAL PROVISIONS

777-1-1-9. Individual proceedings

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) "**Board**" shall mean the Statewide Virtual Charter School Board.

(2) "**Individual proceeding**" shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(b) **Computation of time.** Any period of time prescribed pursuant to the provision of this rule shall be computed in accordance with the provisions of the Administrative Procedures Act at 70 O.S. § 250.8.

(c) **Petitions.** An individual proceeding shall be initiated by filing a petition with the Secretary of the Statewide Virtual Charter School Board. The petition shall meet all of the following requirements:

(1) The Petition must include:

(A) A statement of the legal authority and jurisdiction under which the petitioner seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

(D) A statement or description of the request for the relief petitioner seeks from the Board.

(2) The Petition must clearly identify the petitioner(s) and be signed by the petitioner or counsel for the petitioner.

(d) **Informal disposition.** Nothing in this Section shall prevent informal disposition of a petition from being made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. In the event of an informal disposition of a petition, written notice signed by each party or counsel representatives shall be delivered to the Secretary of the Statewide Virtual Charter School Board prior to the time of the scheduled hearing.

(e) **Right to counsel.** All parties to an individual proceeding shall have the right to representation by legal counsel in accordance with the provisions of 75 O.S. § 310. The Board may be represented by its own counsel, or, if deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General, the Chairperson of the Board or a hearing officer appointed by the Board will rule on the evidence, competency of the witnesses and other questions of law.

(f) **Entry of appearance.** All parties or attorneys representing parties in an individual proceeding shall file an entry of appearance. The entry of appearance shall constitute the address of record for the party at which all documents in the individual proceedings will be served. The entry of appearance shall meet all of the following requirements:

(1) The case caption of the individual proceeding;

(2) The name and signature of the party or parties entering an appearance in the individual proceeding;

(3) The mailing address, telephone, fax number and e-mail address of the party or parties entering an appearance in the individual proceeding or, if represented by counsel:

(A) The name and signature of the attorney or attorneys entering an appearance in the individual proceeding on behalf of the party or parties;

(B) The name of the law firm of the attorney(s), if any; and

(B) The Oklahoma Bar Association number of the attorney(s).

(g) **Motions.** All requests for action in an individual proceeding before the Board shall be made in the form of a motion. Motions shall be filed with the Secretary of the Board, and shall comply with all of the following requirements:

(1) The motion must clearly and specifically state:

(A) The facts upon which the request is based;

(B) All legal grounds in support of the request; and

(C) The action or relief sought.

(2) The motion must be signed by the movant or counsel for the movant;

(3) The motion must include the name and contact information of record of the movant or counsel for the movant;

(4) The motion must be signed by the movant or counsel for the movant;

(5) The motion must be timely served upon all parties to the proceeding and shall include a certificate of service that complies with the provisions of (h)(3) of this Section.

(h) **Service.** Methods of service and proof of service of any notice, pleading, order, or other document required by this Section shall comply with the following provisions:

(1) **Methods of service.** Service of any notice, pleading, or order required by this Section shall be made by one of the following methods:

(A) By personal delivery, served by a person licensed to make service of process in civil cases;

(B) By certified mail with delivery shown by return receipt. Service by certified mail shall be effective on the date of receipt or, if refused, on the date refusal by the Respondent. Acceptance or refusal by any officer of a business or an authorized agent for a business shall constitute acceptance or refusal by the party addressed;

(C) By publication if it is shown that service cannot be made by any other means despite the exercise of due diligence; or

(D) Any other method authorized by 12 O.S. § 2005(B).

(2) **Proof of service.** Proof of service of any petition to initiate an individual proceeding shall be filed with the Secretary of the State Board of Education. Acknowledgment in writing of the document by the recipient, or appearance by the recipient at a hearing without objection to service, shall be considered proof of service.

(3) **Certificates of service.** All documents filed with the Secretary of the State in a pending individual proceeding and all documents requiring service in accordance with the provisions of this Section shall include a Certificate of Service that meets all of the following requirements:

(1) The Certificate of Service shall state "I hereby certify that on this _____ day of _____, _____, a copy of the foregoing document was mailed, postage prepaid, to:" and shall identify the name and address of all parties to whom the document was served.

(2) The Certificate of Service shall be signed by the party or counsel for the party charged with service of the document.

(i) **Formal hearing procedures.** A hearing on a petition shall be conducted by the Chairman of the Board or the hearing officer in accordance with 75 O.S. § 310 and the following procedures:

(1) **Initial hearing.** When a petition is filed, the Secretary shall promptly set the petition for an initial hearing. Notice of the hearing shall comply with the requirements of 75 O.S. § 309. At the hearing, the Board may choose to consider evidence and arguments in support of or in opposition to the petition, the Board may set the matter for further hearing.

(2) **Appointment of a hearing officer.** The Chairman of the Board shall preside over any hearing conducted in an individual proceeding in accordance with the provisions of this Section. Alternatively, the Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board upon a vote of the majority of the members of the Board.

(3) **Continuances.** Any party to the proceeding may request a continuance of the scheduled hearing in accordance with the following provisions:

(A) A party may request to continue a hearing scheduled in an individual proceeding by filing a motion for continuance with the Secretary of the Board. The motion for continuance shall meet all of the following requirements:

(i) The motion shall comply with all of the requirements of (g) of this Section;

(ii) The motion shall be filed at least five (5) business days prior to the scheduled hearing date, provided that this time requirement may be waived by the Board or hearing officer for good cause shown by the movant.

(B) The Board may continue a scheduled hearing by submitting written notification to all parties via certified mail, return receipt requested, or by electronic mail at least five (5) business days prior to the date of the scheduled hearing, provided that the time requirement may be waived by the Board or the hearing officer for good cause shown by the Board or counsel for the Board.

(C) If a motion for continuance is unopposed and the Board finds good cause for granting the motion, counsel for the Board shall prepare and sign a continuance order. The continuance order shall be filed with the Secretary of the Board and served in accordance with the requirements of (h) of this Section.

(D) If a motion for continuance is opposed, the non-moving party shall file a motion opposing the continuance stating all factual and legal grounds for denial of the motion. The Board or the hearing officer shall issue an order concerning the motion as soon as possible prior to the hearing. The order shall be filed with the Secretary of the Board, and copies of the order served in accordance with the provisions of (h) of this Section and by email if possible.

(4) **Discovery and subpoenas.** The Board or the hearing officer may require parties to an individual proceeding to attend discovery when necessary and appropriate for prompt adjudication of an individual proceeding conducted in accordance with the provisions of this Section. Discovery shall be conducted in accordance with 75 O.S. § 315 and the following provisions:

(A) **Depositions.** The parties, upon notice may take depositions of witnesses in the same manner prescribed for depositions in civil actions in the district courts of the State of Oklahoma. The depositions may be admitted into evidence by the Board or the hearing officer in the same manner as other evidence. Costs of depositions shall be borne by the deposing party.

(B) **Subpoenas.** Subpoenas for the attendance of a witness or for production of evidence may be issued in accordance with the following provisions:

(i) **Issuance of a subpoena.** The Chairman of the Board or the hearing examiner may direct the Secretary of the Board to issue a subpoena upon the motion of a party. The signature of the Secretary shall be sufficient authentication for issuance of any subpoena. A motion for issuance of a subpoena shall comply with the provisions of (h) of this Section and shall be filed with sufficient time to permit service of the subpoena at least five (5) business days prior to the hearing at which the attendance of the witness or ten (10) business days prior to the date production of records is required.

(ii) **Service of a subpoena.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(iii) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(iv) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding, the Board shall consider the issue of enforcement of the subpoena as soon as convenient. By resolution, the Board may direct initiation of appropriate judicial proceedings necessary to enforce the subpoena. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board or the hearing officer, at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred, provided that the Board in its final order may tax such costs to another party if justice so requires.

(j) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(k) **Presentation and consideration of evidence.** Presentation and consideration of evidence shall be conducted in accordance with the following procedures:

(1) **Witness and exhibit lists.** The parties to the hearing shall exchange witness and exhibit lists no later than five (5) business days prior to the hearing.

(2) **Admissibility and consideration of evidence.** The Board or hearing examiner may determine the order in which evidence shall be received and presented. Admission and consideration of evidence in an individual proceeding conducted in accordance with the provisions of this Section shall be conducted in accordance with the Administrative Procedures Act at 75 O.S. §§ 309 through 326 and the following provisions:

(A) **Official notice.** The Board or hearing officer may take notice of judicially cognizable facts or of generally recognized technical or scientific facts within the specialized knowledge of the State Department of Education. The Board or hearing officer shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(B) **Exclusion of witnesses.** A party may request the exclusion of witnesses to the extent and for the purposes stated in 12 O.S. § 2615. Exclusion of a witness shall not be considered a violation of the Oklahoma Open Meeting Act.

(C) **Testimony of witnesses.** All testimony of witnesses presented by parties shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties. Witnesses may also be questioned by the Board or the hearing officer.

(D) **Objections to evidence.** Objections to evidence may be made and shall be included in the record of the proceedings.

(E) **Documentary evidence and authentication.** Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.

(1) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(1) Opening statements by legal counsel of both parties;

(2) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;

(3) Closing arguments by legal counsel of both parties; and

(4) Submission of case to the Board or the hearing officer for decision.

(m) **Dismissal of an action.** Upon a hearing, if the petitioner fails to show a prima facie case for lack of sufficient evidence, the Board may dismiss the petition upon grounds of failure to prove sufficient facts in support of the petition or upon the recommendation of the hearing examiner on the same grounds.

(n) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(o) **Decision.** Decisions shall be issued in accordance with the following procedures:

(1) After hearing all evidence, and all witnesses, the Board or, if applicable, the hearing officer, shall render a decision on the petition.

(2) The decision shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the petitioner.

(3) If the petitioner fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (i) of this Section and without a demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the petition shall be dismissed.

(p) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the Board or hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(q) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (t) of this Section, the final agency order shall represent exhaustion of all administrative remedies. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued and signed by the Chairperson of the Board or the hearing officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(r) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(s) **Record of hearing.** The record of the hearing shall be set forth in such form and detail as the Chairperson or the Board may direct.

(1) In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (A) All pleadings, motions, and intermediate rulings;
- (B) Evidence received or considered during the individual proceeding;
- (C) A statement of matters officially noticed;
- (D) Questions and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The Secretary shall ensure that all proceedings, except for executive sessions, are electronically recorded. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. The Board may, but is not required to direct the recording of a proceeding to be fully transcribed and have a copy of the transcript placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense.

(t) Rehearing, reopening or reconsideration of an order. The ruling shall become final unless, within ten (10) calendar days of receipt of the notice of declaratory ruling, the petitioner files a written request for a reconsideration of the petition with the Secretary of the Board stating all grounds upon which the petitioner seeks reconsideration of the Board's ruling. A petition for rehearing, reopening, or reconsideration of an agency order issued pursuant to the provisions of this Section shall comply with the following procedures:

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

(A) Newly discovered or newly available evidence, relevant to the issues;

(B) Need for additional evidence adequately to develop the facts essential to proper decision;

(C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(D) Need for further consideration of the issues and the evidence in the public interest; or

(E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds justifying the rehearing shall be set forth by the Statewide Virtual Charter School Board which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Upon receipt of a written request for reconsideration in accordance with this subsection, the request shall be set on the agenda for consideration by the Statewide Virtual Charter at the next available regular meeting or at a subsequent regular or special meeting. Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(u) Judicial review. Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.