

3000 EMPLOYEE RELATIONS

3002 PUBLIC EMPLOYMENT RELATIONS BOARD

1.0 General Provisions

1.1 Computation of Time

- 1.1.1 In computing any period of time prescribed by or allowed by the Act, these Regulations or an Order of the Board, the day of the act or event after which the designated period of time begins to run shall be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
- 1.1.2 Whenever a party has the right or is required to do some act or take action within a prescribed period after service of a notice or other paper, and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period; provided, however, that three additional days shall not be added to any extension of such time that may have been granted.
- 1.1.3 When these rules require the filing of any document with the Board, such document must be received by the Board or the officer or agent designated to receive such document before the close of business on the last day of the time limit, if any, for such filing.

1.2 Form of Documents

- 1.2.1 All documents shall clearly show the title of the proceeding and the docket number, if any.
- 1.2.2 Any document or papers filed with the Board shall be filed with four (4) copies in addition to the original.
- 1.2.3 The original of each document shall be signed by the filing party, by an attorney or representative of record for the party, or by an officer of the party, and shall contain the addresses and telephone numbers of the person signing it.

1.3 Service and Filing of Documents: Proof of Service

- 1.3.1 Every document filed with the Board shall be served by the filing party upon all other parties to the proceedings, and shall include an affidavit of service naming all other parties and attorneys or representatives, if any, upon whom concurrent service was made. Service is defined as any method reasonably intended to provide timely written notice to those required by the Act to be so notified and includes but is not limited to mail and personal delivery.
- 1.3.2 Service upon an attorney or representative of record described in Regulation 1.5 shall constitute service upon the party.
- 1.3.3 Filing with the Board shall be complete when the document is received in the office of the Executive Director.
- 1.3.4 Service shall be complete upon personal delivery, depositing of the message or document with a telegraph company, charges prepaid, or depositing the message with the United States mail, properly addressed and stamped.

1.4 Records and Dockets. The official dockets and all original papers pertaining to proceedings before the Board shall be maintained at the principle office of the Board.

1.5 Appearances

- 1.5.1 Any attorney or other representative of a party desiring to participate in any proceeding before the Board and who wishes to be served with all papers shall file an appearance either by letter on a form provided by the Board, or by oral request at a hearing.
- 1.5.2 Any person who has been employed by the Board shall not be permitted to appear as an attorney or representative for any party in any case which was pending before the Board during the period of his/her employment.

1.6 Joinder of Parties

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- 1.6.1 No proceedings shall be dismissed because of nonjoinder or misjoinder of parties.
- 1.6.2 Upon motion of any party or upon motion of the Board, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as the Board or its representative, may deem just and proper. Such motions shall be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move will be deemed a waiver of all objections to a nonjoinder or misjoinder.
- 1.7 Intervention. Any party desiring to intervene shall make a motion for such intervention, stating the grounds upon which such party claims to have an interest in the petition. The party desiring to intervene shall send a copy of the motion to intervene to all parties who are named in the petition.
- 1.8 Consolidation or Severance
 - 1.8.1 Any two or more proceedings may be consolidated by the Board in its discretion, or upon the motion of either party, with the approval of the Board.
 - 1.8.2 Any proceeding may be severed by the Board in its discretion, or upon the motion of either party with the approval of the Board.
- 1.9 Construction of the Regulations. These regulations set forth rules for the efficient operation of the Board and the orderly administration of the Act. They are to be liberally construed for the accomplishment of these purposes and may be waived or suspended by the Board at any time and in any proceeding unless such action results in depriving a party of substantial rights.
- 1.10 Timeliness. Notwithstanding the provisions of Regulation 1.9, and so that the Act may be efficiently enforced and disputes thereunder swiftly resolved, the Board shall strictly construe all time limitations contained in the Act and in these Regulations.

2.0 Definitions

The following words and terms, when used in these Regulations shall have the following meanings. In addition, the definitions contained in 14 **Del.C.** §4002, 19 **Del.C.** §1602 and 19 **Del.C.** §1302 are incorporated herein by reference.

“**Act**” means the Public School Employment Relations Act, 14 **Del.C. Ch. 40**, the Police Officers' and Firefighters' Employment Relations Act, 19 **Del.C. Ch. 16**, and/or the Public Employment Relations Act, 19 **Del.C. Ch. 13**.

“**Board**” means Public Employment Relations Board or its duly authorized representative.

“**Executive Director**” means Executive Director or his/her duly authorized representative.

“**Party**” means Any public employee, group of public employees, employee organization or public employer filing or named in any proceeding before the Board.

3.0 Representation Proceedings

- 3.1 Bars to Petitions for Recognition. A representation petition shall be barred if:
 - 3.1.1 A valid majority status determination has been conducted for substantially the same appropriate bargaining unit during the previous twelve (12) months, or a certification of representative has been issued.
 - 3.1.2 There is an existing labor management agreement of three (3) years or less covering the employees in the proposed bargaining unit, provided that, a petition may be filed during the period between the 180th and 120th day before the expiration of the existing agreement.
 - 3.1.3 For contracts with a fixed term longer than three (3) years, the existing contract shall act as a bar only for the first three (3) years and a petition may be filed during the period between the 180th and 120th days before the expiration of the third year of the agreement.
- 3.2 Filing and Contents of Petition for Bargaining Unit Determination and Certification. A petition for bargaining unit determination and/or certification may be filed by an employee organization subject to 14 **Del.C.** §4011(e), 19 **Del.C.** §1611(e) and 19 **Del.C.** §1311(e). A public employer may file a petition

for bargaining unit determination under 14 **Del.C.** §4010(f), 19 **Del.C.** §1610(f) or 19 **Del.C.** §1310(f). Any such petitions shall contain the following:

- 3.2.1) Name, address and telephone number of the public employer and the name and title of the person to contact, if known;
 - 3.2.2 In case of petitions seeking a bargaining unit determination under either 14 **Del.C.** §4010, 19 **Del.C.** §1610 or 19 **Del.C.** §1310, a description of the bargaining unit claimed by the petitioner to be appropriate for the purpose of exclusive representation. Such descriptions shall indicate the general classifications of employees sought to be included and those sought to be excluded, and the approximate number of employees in the unit claimed to be appropriate;
 - 3.2.3 Name, address and telephone number of the recognized or certified exclusive representative, if any, that represents all or part of the employees within the bargaining unit claimed to be appropriate. If the exclusive representative is currently certified, the date of such certification and expiration of any applicable contract, if known to the petitioner;
 - 3.2.4 Any other relevant facts;
 - 3.2.5 Name and affiliation, if any, of the petitioner and its address and telephone number;
 - 3.2.6 The signature of the petitioner or the petitioner's representative, including title and telephone number; and
 - 3.2.7 A petition for bargaining unit determination and/or certification shall be accompanied by the showing of interest required by 14 **Del.C.** §4010, 19 **Del.C.** §1610 or 19 **Del.C.** §1310.
- 3.3 Contents of Petition for Decertification. A petition for decertification may be filed by a public employee or group of public employees. An employee organization or a public employer may not file a petition for decertification. A petition for decertification shall contain the following:
- 3.3.1 A statement that the employee organization presently certified as the exclusive representative is no longer the choice of the majority of the public employees in the appropriate bargaining unit;
 - 3.3.2 A showing of interest required by 14 **Del.C.** §4011(b), 19 **Del.C.** §1611(b) or 19 **Del.C.** §1311(b);
 - 3.3.3 Conform with the time periods required by 14 **Del.C.** §4011(b), 19 **Del.C.** §1611(b) or 19 **Del.C.** §1311(b).
- 3.4 Petition Validation
- 3.4.1 Validation of Petition: The Executive Director shall review the petition for the purpose of determining whether the petition satisfies the requirements of Regulations 3.1, 3.2 and/or 3.3. Upon request of the Executive Director, the public employer shall, within ten (10) days from the date of such request, supply the following:
 - 3.4.1.1 Written verification of the total number of employees in the proposed bargaining unit and a list of all employees in the proposed bargaining unit, including their classifications and work sites. This verification shall include the names of those employees who did not work during the most recent payroll period because they were ill, on vacation or otherwise on leave of absence. If the employer fails to supply the requested information within the time specified, the Executive Director shall assume the petitioner has submitted the requisite number of valid signatures.
 - 3.4.1.2 In the case of certification petition, the employer shall also file, in writing, any objections it may have to the bargaining unit requested in the petition. Such objections are to be made with specific reference to the basis for each objection.
 - 3.4.2 Review of the Executive Director's Petition Validation Decision. Any objections to the validation process shall be filed with the Executive Director, in writing, within five (5) days of the date upon which the Notice of Petition Validation is received. Any objections filed will be resolved by the Executive Director within fourteen (14) days of their receipt. Any such decision issued by the Executive Director in response to objections to the validation process shall be interlocutory and shall be subject to appeal to the full Board once a final determination is made on the petition itself.

- 3.4.3 Notice to the Parties. Upon validating the petition, the Executive Director shall notify the petitioner, the employer and, in the case of a decertification petition, the exclusive bargaining representative. A Notice of Certification/Decertification Petition shall be issued by the PERB and the employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary office of the public employer.
- 3.4.4 Stipulation of the Parties. If the employee organization and the public employer agree on the appropriate bargaining unit, the parties shall submit to the Executive Director a stipulation setting forth the agreement of the parties which may then be approved by the Executive Director unless the Executive Director objects to the stipulated bargaining unit definition. The Executive Director may object to the stipulation only if the stipulation is contrary to law or otherwise violates PERB procedures. If necessary, the Executive Director shall notify the parties of his/her objections within seven (7) days of the receipt of the stipulation. If there are no objections, the Executive Director shall issue a Bargaining Unit Determination. The employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary office of the public employer.
- 3.4.5 Hearings. Whenever bargaining unit appropriateness is properly at issue in a petition before the PERB, the Executive Director shall conduct a hearing for the purpose of receiving evidence necessary for resolution of the appropriateness issue(s). This hearing, when necessary, shall be convened within twenty-one (21) days of the filing of an objection to the proposed bargaining unit. Such hearing shall be conducted in accordance with the procedures set forth in Regulation 7.
- 3.4.6 Bargaining Unit Determination. In making a determination as to the appropriate bargaining unit, the Executive Director shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Executive Director may deem to be relevant. Such consideration must include any other statutory requirements set forth in 14 **Del.C.** §4010, 19 **Del.C.** §1610, or 19 **Del.C.** §1310.
- 3.4.6.1 Upon reaching his/her decision, the Executive Director shall issue a Notice of Bargaining Unit Determination, and where appropriate, order a representation election be held within thirty (30) days. The employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary office of the public employer.
- 3.4.7 Review of the Executive Director's Decision. The Executive Director's decision as the appropriate bargaining unit shall be subject to review by the Board in accordance with the procedures set forth in Regulation 7.
- 3.4.8 Modification of a Bargaining Unit. In the event that there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Board to consider modifying the designated bargaining unit, the public employer and/or the exclusive bargaining representative may file a petition with the Board which shall include the following:
- 3.4.8.1 The name of the employer;
- 3.4.8.2 The name of the exclusive representative;
- 3.4.8.3 A description of the bargaining unit;
- 3.4.8.4 A brief statement explaining the reasons for a modification of the bargaining unit.
- 3.4.9 A petition for modification of the designated bargaining unit shall be decided in accordance with the relevant procedures contained within Regulation 3.
- 3.5 Posting of Notice of Petition. Upon receipt of a petition under 14 **Del.C.** §4010 or §4011, or 19 **Del.C.** §1610 or §1611, or 19 **Del.C.** §1310 or §1311, the Board shall furnish the public employer with Notices of the filing of the petition, which shall be posted in all places where notices affecting public employees

involved in the proceeding are normally posted. The Notice shall remain posted for a period of ten (10) days from the date of receipt by the public employer.

- 3.6 Employee Organization Other than Petitioner. If, under the provisions of 14 **Del.C.** §4011(c), 19 **Del.C.** §1611(c), or 19 **Del.C.** §1311(c), an employee organization other than the petitioner seeks to be included on the election ballot, it must submit the required ten percent (10%) showing of interest within ten (10) days from the date of the Notice of Petition or Notice of Bargaining Unit Determination is posted by the public employer. In the case of a decertification election, the incumbent exclusive representative shall automatically be placed on the ballot, subject to the provisions of Section 4.1.2, concerning runoff elections.
- 3.7 Showing of Interest. The signatures constituting the showing of interest under 14 **Del.C.** §4010 or §4011, or 19 **Del.C.** §1610 or §1611 or 19 **Del.C.** §1310 or §1311, shall not be disclosed to any of the parties. The Executive Director shall determine the adequacy of the showing of interest as part of his investigation of the petition.

4.0 Election Procedures

4.1 Ballots

- 4.1.1 All elections shall be by secret ballot, at times, places and in such manner as the Board may direct. Such elections shall be conducted by the Executive Director, whose determination of all questions arising shall be final, subject however to review by the Board, in accord with the procedures set forth in Section 7.4.
- 4.1.2 Ballots shall be prepared and issued by the Board. Ballots shall contain the name of each representative and a choice of "No Representative". The place of priority on the ballot shall be determined by lot. In a runoff election, the choices listed shall be in the same places on the ballot with respect to each other as they were on the ballot for the prior inconclusive election.
- 4.1.3 Elections shall be conducted within thirty (30) days after the issuance of either a Bargaining Unit Determination or Notice of Decertification Petition (Attachment A). The date and time of an election shall be established by the Executive Director who will consider any mutual agreement by the parties. Unless otherwise designated by the Board, elections shall occur on a work day between hours mutually agreed upon by the parties. A list of the voting locations and the designation of which employees will vote at those locations will be available at each location.
- 4.1.4 Campaigning shall be controlled under 14 **Del.C.** §4007, 19 **Del.C.** §1607 or 19 **Del.C.** §1307.
- 4.1.5 Prior to the commencement of the election the Executive Director shall designate the polling area and no electioneering of any kind shall take place within this area during the election period.

4.2 Notice of Election

- 4.2.1 A Notice of Election (Attachment B) shall be posted in a conspicuous place in each building where affected employees work and in the office of the public employer. The Notice of Election shall be posted at least ten (10) days prior to the election.
- 4.2.2 The Executive Director shall supply the public employer with the Notice of Election at least seventeen (17) days prior to the election. It shall be the responsibility of the employer to post the Notice of Election.
- 4.2.3 The public employer shall complete and return the Certification of Posting form (Attachment C) to the Executive Director.

4.3 Voter Eligibility/Lists of Voters

- 4.3.1 Excelsior List. Within seven (7) days after the Executive Director has issued a Bargaining Unit Determination or a Notice of Decertification Petition, or otherwise directed that a representation election be conducted, the employer must file with the Executive Director an election eligibility list, containing the names and addresses of all eligible voters. The employer shall simultaneously provide copies of this list to all other parties to the election. Failure by the employer to comply with this requirement may be grounds for setting aside the election whenever proper objections are filed.

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- 4.3.2 All public employees who are included within the designated bargaining unit and who were employed as of the end of the pay period which immediately precedes an election or who were on approved leave of absence shall be eligible to vote.
- 4.3.3 At least seven (7) calendar days prior to the date of an election, the public employer shall submit to the Board and other parties appearing on the ballot, an alphabetical list of the names and classifications, and work sites of all eligible voters.
- 4.3.4 Any challenges to the validity or completeness of the employee eligibility list must be received, in writing, by the Executive Director not later than three (3) days prior to the date of the election. The writing shall set forth the reasons for the challenge. Listed employees who are not challenged as provided for above shall be eligible to vote and no further challenges to their eligibility will be honored at the polls.
- 4.4 Challenged Voters/Challenge Procedures. At the time of the elections:
 - 4.4.1 Any prospective voter may be challenged for cause.
 - 4.4.2 Any employee whose name does not appear upon the list certified by the Board as being a complete list of employees within the defined appropriate unit shall be challenged by an agent of the Board.
 - 4.4.3 A challenged voter shall vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the designated agent of the Board and then inserted in a specially identifiable form envelope provided by the Board and retained by the designated agent of the Board.
 - 4.4.4 The challenged ballots shall only be referred to if they could affect the outcome of the election. If challenged ballots must be referred to, then each challenge shall first be resolved. Upon resolution of the challenge, if the ballots are legitimate, they shall be counted.
- 4.5 Observers
 - 4.5.1 The public employer and each employee organization which appears on the ballot shall be permitted to appoint one election observer and one alternate for each voting location. The public employer and each employee organization which appears on the ballot shall complete Attachment D and return it to the Executive Director seven (7) days prior to the election. Detailed instructions for the election observers are found in Attachment E.
 - 4.5.2 The public employer and each employee organization which appears on the ballot shall also be permitted to appoint one representative to observe the official counting of the ballots by completing Attachment F and returning it to the Executive Director seven (7) days prior to the election.
- 4.6 Counting of Ballots
 - 4.6.1 In certification elections, an exclusive representative must receive a majority of the valid votes cast to be certified as the employee representative designated or selected by the employees in the defined appropriate unit.
 - 4.6.2 In decertification elections, an exclusive representative is decertified when a majority of the valid votes cast are for decertification.
 - 4.6.3 The Board will conduct runoff elections not more than forty five (45) days nor less than fifteen (15) days after an inconclusive election. The ballot in a runoff election shall contain the two choices on the original ballot that received the largest number of votes. Only one additional election shall be conducted pursuant to this section.
- 4.7 Voting Results. Upon completion of the counting of the ballots, the Executive Director shall advise the authorized representatives of the parties of the voting results in writing. (Attachment K)
- 4.8 Challenges and Exceptions
 - 4.8.1 Within five (5) days after receipt of the results of the voting, as provided for in Regulation 4.7 above, any party may file with the Executive Director the original and four copies of objections to the conduct of the election or conduct affecting the results of the election. Such objections shall contain a statement of the reasons therefore. Copies of such objections shall simultaneously be

served upon each of the other parties by the filing party and proof of service shall be filed with the Executive Director.

- 4.8.2 The original and four (4) copies of an answer to any filed objection may be filed with the Executive Director within five (5) days from the date of service of the objections. Copies of any such answer shall simultaneously be served by every other party, by the responding party, with proof of service being filed with the Executive Director. Any answer submitted shall contain a statement of facts upon which the refutation of the objection is based.
- 4.8.3 If objections are filed to the conduct of an election or to conduct affecting the results of an election, or if challenged ballots are sufficient in number to possibly affect the results of an election, the Executive Director shall investigate such objections or challenges. A hearing may also be held, in accord with the provisions set forth in Section 7, if deemed necessary.
- 4.8.4 The Executive Director shall either dismiss the objections and/or voter challenges, order the counting of some or all of the challenged ballots, or hold a hearing, if necessary. In all cases, he shall then certify the results of the election, or he may set aside the previous election and order a new election.
- 4.8.5 The decision of the Executive Director shall be subject to review by the Board in accordance with the procedures set forth in Section 7.4

5.0 Unfair Labor Practice Proceedings

5.1 Pleadings

- 5.1.1 The Board recognizes that the primary purpose of pleadings is the formation of issues. Consequently, all rules pertaining to pleadings shall be liberally construed towards effecting that end.
- 5.1.2 All paragraphs of pleadings shall be individually numbered.

5.2 Filing of Charges

- 5.2.1 A public employer, labor organization, and/or one or more employees may file a complaint alleging a violation of 14 **Del.C.** §4007, 19 **Del.C.** §1607, or 19 **Del.C.** §1307. Such complaints must be filed within one hundred and eighty (180) days of the alleged violation. This limitation shall not be construed to prohibit introduction of evidence of conduct or activity occurring outside the statutory period, provided the Board or its agent finds it relevant to the question of commission of an unfair labor practice within the limitations period.
- 5.2.2 All charges shall be filed with the Executive Director in writing in the form of complaints and shall be signed and sworn to before any person authorized to administer oaths.
- 5.2.3 The charge shall include the following information:
 - 5.2.3.1 The name, address, telephone number and affiliation, if any, of the charging party, and the title of any representative filing the charge.
 - 5.2.3.2 The name, address, and telephone number of the respondent or respondents, and any other party named in the charge.
 - 5.2.3.3 A clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

5.3 Answer to Charge

- 5.3.1 The respondent shall have seven (7) days within which to file a written Answer. Such Answer shall be specific as to each allegation set forth in the complaint and contain supporting documentation, where applicable. Answers shall be signed by the persons filing them, sworn to before any person authorized to administer oaths and shall then be filed with the Executive Director. A party who fails

to file an Answer or to specifically deny allegations in the complaint shall be deemed to have admitted the averments contained in the complaint that are not denied.

- 5.3.2 All new matter, including but not limited to affirmative defenses such as the jurisdiction of the PERB and the statute of limitations, shall be pleaded in the Answer under a separate heading entitled "New Matter".
- 5.4 Response to Answer. As to New Matter which is pleaded in the Answer in accord with Regulation 5.3.2 above, the Charging Party shall have five (5) days within which to file a written Response. Such Response should be specific as to each paragraph of new matter set forth in the Answer and contain supporting documentation where applicable. Responses shall be signed by the persons filing them and shall be filed with the Executive Director. A party who fails to file a Response to or to specifically deny allegations of new matter in the Answer shall be deemed to have admitted the new matter contained in the Answer that was not denied.
- 5.5 Stipulation of Facts. Following the filing of a Complaint, an Answer by the Respondent and a Response by the Petitioner, the parties may jointly submit to the Board a signed stipulation of facts, without a hearing. The request shall state whether the parties desire to present oral argument and/or file briefs.
- 5.6 Decision or Probable Cause Determination
- 5.6.1 Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Section 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or the submission of briefs.
- 5.6.2 If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred. Each of the parties shall receive a copy of this determination and a notice of hearing containing the date and place of the hearing which shall be conducted by the Executive Director in accordance with Section 7 herein. A decision based upon the pleadings is subject to review by the Board in accord with the provisions set forth in Section 7.4.
- 5.7 Informal Conference. At any time during the processing of a Complaint, the Executive Director may, at his discretion, arrange for an informal conference of the parties for purposes such as clarifying issues, reviewing facts, or taking other steps deemed necessary for the fair and expeditious resolution of the issue.
- 5.8 Amendments of Complaint and/or Answer
- 5.8.1 At the discretion of the Board, upon due notice to all parties, any complaint may be amended, in such manner as the Board may deem just and proper, at any time before the issuance of a final decision and order, as long as no new cause of action is added after the statute of limitations has run.
- 5.8.2 Any complaint, amended complaint, or any part thereof, may be dismissed by the Board on its own motion or any charge may, with the approval of the Board, be withdrawn by motion of the complainant at any time before issuance of a final decision and order, upon due notice to all parties.
- 5.8.3 Subject to the approval of the Board, an Answer may be amended in a timely manner, upon motion of the party filing it. Such motion shall be in writing, unless made at the hearing and before commencement of the testimony. In the event the Complaint is prejudiced by the amendment, a motion for continuance will be granted.
- 5.9 Prosecuting Authority. All cases in which complaints are actually processed by the Board shall be prosecuted before the Board by the representative of the party filing the charge.

- 5.10 Hearing. If, based upon the pleading, a hearing is determined to be necessary, the Executive Director or the designated Hearing Officer in the matter shall, wherever possible, schedule a hearing to be held not later than thirty (30) days from the close of the pleadings. Such hearings shall be conducted in accord with the provisions of Section 7.

6.0 Petitions for Declaratory Statement

6.1 Filing of a Petition

- 6.1.1 A public employer, an exclusive representative or a public employee may file a petition with the Board for a declaratory statement.
- 6.1.2 A petition may be filed when there exists a controversy concerning:
- 6.1.2.1 A potential unfair labor practice;
 - 6.1.2.2 Whether a matter is within the scope of collective bargaining as defined by statute; or
 - 6.1.2.3 The application of any statutory provision or regulation or order of the Board.
- 6.1.3 A controversy exists within the meaning of this Regulation when:
- 6.1.3.1 The controversy involves the rights and/or statutory obligations of a party seeking a declaratory statement;
 - 6.1.3.2 The party seeking the declaratory statement is asserting a statutory claim or right against a public employer, an exclusive representative or a public employee who has an interest in contesting that claim or right;
 - 6.1.3.3 The controversy is between parties whose interests are real and adverse; and
 - 6.1.3.4 The matter has matured and is in such a posture that the issuance of a declaratory statement by the Board will facilitate the resolution of the controversy.

6.2 Contents of a Petition

- 6.2.1 The full name, address and telephone number of the party seeking the declaratory statement and any other party who may have a right and/or interest adversely affected by the petition;
- 6.2.2 A clear and concise statement of the matter or matters in dispute for which a determination by the Board is sought;
- 6.2.3 A clear and concise statement of the facts underlying the controversy which shall indicate that the controversy is one which may be properly resolved under this section;
- 6.2.4 A statement that the dispute has arisen:
- 6.2.4.1 During the course of collective bargaining, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for bargaining;
 - 6.2.4.2 Over the contemplation of an act by one of the parties that the other contends is an unfair labor practice under the Acts; or
 - 6.2.4.3 Concerning the application of any provision of the Acts, or regulation or order of the Board.
- 6.2.5 A statement of the reason why a declaratory statement will assist in the prompt resolution of the controversy.

- 6.3 Response to Petition. Each party who receives the petition may, within five (5) days after receipt of the petition, respond to the petition by submitting a brief description of the nature of the controversy and a response to the petitioner's statement of the reasons why a declaratory statement would facilitate the resolution of the labor dispute.

6.4 Consolidation of a Petition

- 6.4.1 The Executive Director shall then dispose of the petition by declining to issue a declaratory statement or by requesting that the parties file briefs or by scheduling a hearing, if necessary, which shall be conducted in accordance with Section 7, or by issuing a declaratory statement.
- 6.4.2 If the Executive Director issues a declaratory statement, it shall be rendered within thirty (30) days from the date upon which the record is formally closed.

- 6.5 Review of the Decision. The decision of the Executive Director shall be subject to review in accordance with the procedures set forth in Regulation 7.4

7.0 Formal Hearings

7.1 Hearings Generally

- 7.1.1 The purpose of hearings under Regulation 7 is to develop a full and factual record upon which the Executive Director may make a decision. The party filing a complaint shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The principles of relevancy and materiality are paramount. The technical rules of evidence do not apply. The procedures set forth in Regulation 7 shall apply to all hearings.
- 7.1.2 All hearings shall be open to the public unless otherwise ordered by the Board.
- 7.1.3 All hearings shall be conducted by the Executive Director or his designated Hearing Officer, unless the Board delegates one of its members as the Hearing Officer or the Board decides the Board as a whole shall conduct a hearing, or these regulations provide for a hearing before the Board or a fact-finder. If a person other than the Executive Director conducts a hearing, he shall have the same powers and duties as the Executive Director possesses in connection with the conduct of the hearing. The Hearing Officer in any matter shall also be responsible for writing the decision on the matter heard.
- 7.1.4 An official record shall be made of all formal hearings, and as may otherwise be ordered by the Board. The official record shall be made by stenographer, tape recording or other method determined appropriate by the Board. If no objections to such transcript are filed with the Board within five (5) days of its issuance, the transcript shall become part of the record. Objections shall specify the matter objected to, the basis for the objection and the relief sought. The Board may, in its discretion, order a hearing on the objections. The Board shall make such changes as may be necessary to conform the transcript to the occurrences at the hearing and the conformed transcript shall then be duly certified by the Executive Director and shall be filed as a part of the record in the case. The certified transcript shall be treated as official and a part of such record for purposes of review upon appeal and shall be considered as prima facie accurate whenever thereafter offered in evidence.
- 7.1.5 The cost of the official record of the proceedings and the transcript required by the Board for its use shall be the responsibility of the Board. Additional transcripts obtained from the Board shall be at the expense of the requesting party.
- 7.1.6 The Hearing Officer shall have full authority to control the conduct of the hearing, including authority to admit or exclude evidence, question witnesses, rule upon motions and objections, and determine the order in which evidence shall be presented. The Hearing Officer in conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. The Hearing Officer may exclude plainly irrelevant evidence, unduly repetitive evidence, rebuttal and cross examination. The testimony of witnesses shall be under oath and witnesses shall be sworn by the Hearing Officer, who shall also have the authority to take any action during the progress of the hearing which will properly effectuate the policy of the Acts.
- 7.2 Decisions and Orders. Within thirty (30) days after the close of the record, the Executive Director shall issue a decision. The decision shall be in writing and contain a statement of the case, findings of fact, conclusions of law, and the appropriate remedy. A copy of the decision will be served upon each of the parties.
- 7.3 Briefs/Oral Argument. Prior to the issuance of a decision, the Executive Director may require the parties to submit briefs or present oral argument as to questions of law and appropriate remedies. The Executive Director shall establish, when necessary, appropriate guidelines for briefs, including schedule and length.
- 7.4 Review of the Executive Director's Decision. The Executive Director's decision shall be subject to review by the Board at the request of any party, or upon the Board's own motion. Such a request for

review by a party must be filed with the Board within five (5) days of the date upon which the party is served with the decision. If the Board, in its discretion, decides to hold a hearing in connection with its review of the Executive Director's decision, such hearing shall be conducted in accordance with Section 7 herein. The Board shall render a decision within thirty (30) days from the date of the official close of the appeal record, or the receipt of briefs, or the receipt of the official transcript, or from the date of its receipt of the appeal, whichever is appropriate.

7.5 Contemptuous Conduct. Contemptuous conduct shall be grounds for exclusion from the hearing and the refusal of a witness to answer any question which has been ruled to be proper shall be grounds for striking out all testimony previously given by such witnesses on related matters. Misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds, after due notice and hearing before the Board, for suspension or disbarment by the Board from further practice before it.

7.6 Depositions

7.6.1 Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and maintained by the Board. If any witness resides outside of the State or through illness or other cause is unable to testify before the Board, his or her testimony may, upon application, be taken by deposition.

7.6.2 Application to take depositions under this section shall be in writing or may be made orally at a hearing. The application shall set forth the reasons why such deposition should be taken, the name and post office address with zip code of the witness, and the time and place proposed for taking of the deposition. Such order shall be served on all parties. Such deposition may be taken before any court reporter authorized to administer oaths by laws of the State or of the United States or of the place where the examination is held. The cost of the deposition shall be borne by the party at whose request the deposition is ordered.

7.6.3 During the deposition all objections to the form of questions or evidence shall be waived unless made at the examination of the witness. The court reporter shall note any objection on the deposition. The testimony shall be subscribed by the witness in the presence of the court reporter, who shall attach his/her certificate stating that the witness was duly sworn or affirmed by him, and that the deposition is a true record of the testimony and exhibits given by the witness. If the deposition is not signed by the witness because he/she is ill, dead, cannot be found, refuses to sign it, or waives the right to sign it, such fact shall be included in the certificate of the court reporter and the deposition may then be used as fully as though signed. The court reporter shall immediately deliver an original and a copy of the transcript, together with his/her certificate, in person or by United States mail to the Board. The Board shall rule upon the admissibility of the deposition or any part of such deposition if offered in evidence or otherwise used at the hearing.

7.6.4 All errors or irregularities of compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is ascertained, or, with due diligence, might have been ascertained.

7.7 Witnesses and Subpoenas. The Board shall, where it deems necessary, subpoena witnesses and issue subpoenas requiring the production and examination of books, papers, or other documents it deems relevant to the issue before it. The parties involved in a hearing may, no later than seven (7) days before the hearing to which the subpoena pertains, request that the Board issue subpoenas. The Board may decline to honor such request for a subpoena if the Board determines that the evidence sought does not relate to the matter to be heard, that such subpoena request does not describe with sufficient particularity the evidence whose production is requested, or that the subpoena seeks to compel the appearance of witnesses who would offer testimony which would merely be repetitive of other witnesses who will be produced.

8.0 Mediation

8.1 Request for Mediation

In the event mediation is requested by one or more of the parties or in accord with 14 **Del.C.** §4014(a), 19 **Del.C.** §1614(a) or 19 **Del.C.** §1314(a), such request must be submitted in writing to the Executive Director and contain at least the following information:

- 8.1.1 The name, address and telephone number of the public employer and the name and title of its representative;
 - 8.1.2 The name, address and telephone number of the exclusive representative, and the name and title of its representative;
 - 8.1.3 A description of the bargaining unit, including the approximate number of public employees in the unit;
 - 8.1.4 The dates and duration of negotiation sessions;
 - 8.1.5 The termination date of the current agreement, if any; and
 - 8.1.6 A detailed statement of the facts giving rise to the parties' failure to reach agreement, including all issues in debate.
- 8.2 Supplemental Information. If the time limits specified in 14 **Del.C.** §4014(b), 19 **Del.C.** §1614(b) or 19 **Del.C.** §1314(b), are reached and either the public employer or the exclusive bargaining representative requests mediation, the parties shall jointly, within seven (7) days of such request, submit information supplementing that contained in the report to the board under 14 **Del.C.** §4014(a), 19 **Del.C.** §1614(a) and 19 **Del.C.** §1314(a). In particular this supplemental information should contain the dates and duration of any additional negotiation sessions and a detailed statement of all outstanding issues in dispute.

9.0 Fact-Finding

- 9.1 Processing of a Petition. The Executive Director may, at the request of either party or on his own initiative, schedule a hearing in order to determine whether a good faith effort has been made by both parties to resolve their labor dispute through collective negotiations and mediation and as to whether the initiation of fact-finding would be appropriate and in the public interest. The decision may be appealed to the Board in accordance with the provisions of Section 7.3.

10.0 Employee Organization Report

- 10.1 Contents of Report
- 10.1.1 Every employee organization and affiliates, which have or seek recognition as a representative of employees covered under this chapter shall, as a condition of recognition, file with the Board a registration report signed by its president or other appropriate and authorized officer.
 - 10.1.2 Registration shall be on a form prescribed by the Board and shall include, but not be limited to, the following:
 - 10.1.2.1 The name and address of the organization;
 - 10.1.2.2 The name and addresses of all officers;
 - 10.1.2.3 Address and telephone number of the organization's principal place of business and all subsidiary offices;
 - 10.1.2.4 All affiliated organizations;
 - 10.1.2.5 The number and nature of the bargaining unit;
 - 10.1.2.6 Fee schedules
 - 10.1.2.6.1 initiation fees
 - 10.1.2.6.2 dues
 - 10.1.2.6.3 fees other than the above
 - 10.1.2.7 Two copies of the organization's current constitute and by-laws; and
 - 10.1.2.8 Qualifications and restrictions of membership.

10.1.3 Such registration report shall be updated on an annual basis, not later than January 31, of each succeeding calendar year.

11.0 Subsequent Modifications

- 11.1 Basis for Modification of Regulations. The Board on its own motion, or upon application of any interested person setting forth reasonable grounds therefore, may consider modification of any or all of these regulations.
- 11.2 Hearing Prior to Modification. These regulations shall not be modified until such time as all interested persons are given notice of proposed changes and afforded an opportunity to present their respective views to the Board in writing and/or at a hearing conducted by the Board.

12.0 Binding Grievance Arbitration

PERB Arbitration Policy; Administration of Panel

12.1 Scope and Authority

This rule is issued by the Delaware Public Employment Relations Board (“PERB”) under Title 14, Public Education, of the Delaware Code, as amended. It applies to all arbitrators listed on the PERB Panel of Arbitrators, to all applicants for listing on the Panel, and to all persons or parties seeking selection of an arbitrator by PERB in connection with disputes which are to be submitted to grievance arbitration.

12.2 Policy

12.2.1 For those terms and conditions that are negotiated pursuant to Public School Employment Relations Act (14 **Del.C.** Ch. 40, as amended 2003), public school employers and the exclusive bargaining representative of public school employees shall negotiate written grievance procedures ending in binding arbitration by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement. The written grievance procedures shall be included in any agreement entered into between the public school employer and the exclusive bargaining representative, and shall include:

- 12.2.1.1 a provision to limit binding arbitration to claims that the terms of the collective bargaining agreement have been violated, misinterpreted, or misapplied;
- 12.2.1.2 a provision to prohibit claims relating to the following matters from being processed through binding arbitration:
 - 12.2.1.2.1 dismissal or nonrenewal of employees covered by Chapter 14 of Title 14;
 - 12.2.1.2.2 dismissal or nonrenewal of employees not covered by Chapter 14 of Title 14 unless the controlling collective bargaining agreement provides that such matters are subject to binding arbitration;
 - 12.2.1.2.3 Delaware law;
 - 12.2.1.2.4 rules and regulations of the Delaware Department of Education or State Board of Education;
 - 12.2.1.2.5 the content of or conclusions reached in employee observations and evaluations unless the controlling collective bargaining agreement for employees not covered by Chapter 14 of Title 14 provides that such matters are subject to binding arbitration;
 - 12.2.1.2.6 federal law;
 - 12.2.1.2.7 rules and regulations of the United States Department of Education;
 - 12.2.1.2.8 policies of the local school board; and
 - 12.2.1.2.9 matters beyond the scope of the public school employer’s authority;

- 12.2.1.3 a provision to select arbitrators by lottery from a panel of qualified arbitrators designated by the Public Employment Relations Board. In designating the panel, the Public Employment Relations Board shall prefer former judges who served on a Delaware constitutional court or on the United States District Court for the District of Delaware, and shall supplement the panel by adding qualified labor arbitrators;
 - 12.2.1.4 a provision to empower the Public Employment Relations Board to administer arbitration pursuant to regulations adopted by the Public Employment Relations Board;
 - 12.2.1.5 a provision to require that disputes relating to whether a matter is arbitrable be ruled upon by the arbitrator prior to hearing the merits of the dispute, and, if the arbitrator determines that the dispute is arbitrable, a provision to require that the same arbitrator schedule a second day of hearing to hear the merits of the dispute;
 - 12.2.1.6 a provision to assess against the losing party the arbitrator's fees and expenses incurred in determining whether a dispute is arbitrable;
 - 12.2.1.7 a provision to require that the arbitrator's fees and expenses incurred in deciding the merits of a dispute be evenly divided between the parties.
- 12.3 Administrative Responsibilities
- 12.3.1 The Public Employment Relations Board is the final agency authority on all questions concerning the Panel and PERB arbitration procedures.
 - 12.3.2 The Executive Director shall maintain a Panel of Arbitrators (the Panel); administer the procedures for binding grievance arbitration under the PSERA and select arbitrators by lottery from the Panel for requesting parties.
 - 12.3.3 The Executive Director shall:
 - 12.3.3.1 Review the qualifications of all applicants for listing on the Panel, interpreting and applying the criteria set forth herein.
 - 12.3.3.2 Review the status of all persons whose continued eligibility for listing on the Panel has been questioned.
 - 12.3.3.3 Recommend to the PERB the acceptance or rejection of applicants for listing on the Panel, or the withdrawal of listing on the Panel for any of the reasons set forth in Rule 12.4;
 - 12.3.3.4 At the request of the PERB, review grievance arbitration policies and procedures and make recommendations regarding such policies and procedures to the PERB.

Panel of Arbitrators; Admission and Retention

- 12.4 Panel and Status of Members
- 12.4.1 PERB shall designate a Panel of arbitrators consisting of persons who meet the criteria for listing contained in 12.5 and who remain in good standing. The Panel shall include not less than ten arbitrators and may be increased as necessary.
 - 12.4.2 Adherence of Standards and Requirements. Persons listed on the Panel shall comply with PERB rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the Executive Director. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes ("Code of Professional Responsibility"), as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.
 - 12.4.3 Status of Arbitrators. Persons who are listed on the Panel and are selected to hear arbitration matters do not become employees of PERB and/or the State of Delaware by virtue of their selection. Following selection, the arbitrator's relationship is solely with the parties to the dispute, except that arbitrators are subject to certain reporting requirements and to standards of conduct as set forth herein.
 - 12.4.4 Role of PERB: PERB has no power to:

- 12.4.4.1 Influence, alter, or set aside decisions of arbitrators on the Panel;
 - 12.4.4.2 Compel, deny, or modify payment of compensation to an arbitrator.
 - 12.4.5 Nominations and Panels. Upon receipt of a written request to arbitrate from parties to a collective bargaining agreement, the Executive Director will select an arbitrator, by lottery, pursuant to Rule 12.10 or 12.16. The selection of an arbitrator does not constitute a determination by PERB that an agreement to arbitrate exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.
 - 12.4.6 Rights of Persons Listed on the Panel. No person shall have any right to be listed or to remain listed on the Panel. PERB retains exclusive authority and responsibility to assure that the needs of the parties using its services are served. To accomplish this purpose, PERB may establish procedures for the selection of Panel arbitrators which include consideration of such factors as background and experience, availability, acceptability, and geographical location. PERB may also establish procedures for the removal from the Panel of those arbitrators who fail to adhere to provisions contained in these rules.
- 12.5 Listing on the Panel; Criteria for Listing and Retention
- Persons seeking to be listed on the Panel must complete and submit an application form which may be obtained from the Executive Director. Upon receipt of an executed application, the Executive Director will review the application, assure that it is complete and make such inquiries as are necessary. The Executive Director will review the completed application under the criteria in this section, and will forward to the PERB his or her recommendation as to whether or not the applicant meets the criteria for listing on the Panel. The PERB shall make all final decisions as to whether an applicant may be listed on the Panel. Each applicant shall be notified in writing of the PERB's decision and the reasons therefore.
- a. General Criteria. Applicants for the Panel will be listed on the Panel upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor relations disputes.
 - b. Proof of Qualification. Qualifications for listing on the Panel may be demonstrated by submission of five (5) arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes arising under collective bargaining agreements. Experience as a former judge who served on a Delaware constitutional court or on the U.S. District Court for the District of Delaware, or experience in relevant positions in collective bargaining, or as a hearing examiner in labor relations controversies will be considered in lieu of the required awards.
 - c. Advocacy. Any person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, must agree to cease such activity before being recommended for listing on the PERB Panel. Any person who does not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Panel, shall be recommended for removal by the Executive Director after the fact of advocacy is revealed.
- (1) Definition of Advocacy. An advocate is a person who represents employers, labor organizations, or individuals as an agent, employee, attorney, or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Consultants engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

- d. Duration of Listing, Retention. Listing on the Panel shall be by decision of the PERB based upon the recommendations of the Executive Director. The Executive Director may recommend, and the PERB may remove, any person listed on the Panel, for violation of this rule and/or the Code of Professional Responsibility. Notice of cancellation or suspension shall be given to a person listed on the Panel whenever a Panel member:
- (1) No longer meets the criteria for admission;
 - (2) Has become an advocate as defined in paragraph (c)(1) of this section;
 - (3) Has been repeatedly or flagrantly delinquent in submitting awards;
 - (4) Has refused to make reasonable and periodic reports in a timely manner to PERB, as required in these rules, concerning activities pertaining to arbitration;
 - (5) Has been the subject of complaints by parties who use PERB services, and the Executive Director after appropriate inquiry, concludes that just cause for cancellation has been shown;
- e. The Executive Director may, at his or her discretion, conduct an inquiry into the facts of any proposed removal from the Panel. An arbitrator listed on the Panel may only be removed after 60-day notice and an opportunity to submit a response or information showing why the listing should not be canceled. The Executive Director may recommend to the PERB whether to remove an arbitrator from the Panel. All determinations to remove an arbitrator from the Panel shall be made by the PERB. Removals may be for a period of up to two (2) years, after which the arbitrator may seek reinstatement.
- f. The Executive Director may suspend for a period not to exceed 180 days any person listed on the Panel who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall receive written notice of a suspension. They may appeal a suspension to the PERB. The decision of the PERB shall constitute the final action of the agency.

12.6 Inactive Status

A member of the Panel may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons.

Procedures for Arbitration Services

12.7 Freedom of Choice

Nothing contained in this part should be construed to limit the rights of parties who use PERB arbitration services to jointly select an arbitrator acceptable to them. Once a request is made to PERB, all parties are subject to the procedures contained in this part.

12.8 Procedures for Requesting an Arbitrator

- a. The Office of the Executive Director has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Delaware Public Employment Relations Board, Arbitration Services, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801.
- b. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator by lottery from the Panel and notify the parties. The parties may request selection of an arbitrator either jointly or unilaterally. Selection of an arbitrator is nothing more than a response to a request. It does not signify the adoption of any position by the PERB regarding the arbitrability of any dispute or the terms of the parties' contract.
- c. PERB reserves the right to decline to service any requests from parties with a demonstrated history of non-payment of arbitrator fees or other behavior which constrains the spirit or operation of the arbitration process.
- d. The parties are required to use the Request for Arbitrator Form which is included as Attachment M to these Delaware PERB Rules and Regulations and is also available from Delaware PERB, 4th

Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801, or by calling (302) 577-5070. Requests for Arbitration that do not contain all required information requested on the form may be rejected.

12.9 Arbitrability

- a. Disputes relating to whether a matter is arbitrable will be ruled upon by the arbitrator prior to hearing the merits of the dispute. If the arbitrator determines that the dispute is arbitrable, the same arbitrator shall schedule a second day of hearing to hear the merits of the dispute.
- b. The losing party shall be responsible for paying the arbitrator's fees and expenses incurred in deciding issues of arbitrability.

12.10 Selection of Arbitrators

- a. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator from the PERB Panel, by lottery, as required by 14 Del.C. §4013 (c)(3). The Executive Director will contact the randomly selected arbitrator to confirm that the arbitrator has available hearing dates within sixty (60) days. In the event that the arbitrator is not available for hearing within sixty (60) days, the Executive Director shall continue to make random selections by lottery, until an arbitrator is identified with hearing availability within sixty (60) days.
- b. Upon confirming the availability of the selected arbitrator, the Executive Director shall make a formal written appointment of the arbitrator, which shall include contact information for the parties. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the Executive Director. Consistent failure to follow these procedures may lead to a denial of future PERB arbitration service.
- c. All letters issued by the Executive Director appointing an arbitrator will have an assigned PERB case number. All future communications between the parties, the arbitrator and the PERB should refer to this case number. Copies of any correspondence confirming a scheduled hearing should be provided to PERB.
- d. The appointment of an arbitrator in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the arbitrator.

12.11 Conduct of Hearings

- a. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding.
- b. Representation: Any party may be represented in a grievance arbitration proceeding by counsel or other authorized representative.
- c. Stenographic Record: Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangement in advance of the hearing. The requesting party or parties shall pay the cost of the record. Whenever a stenographic record is made of a hearing, a copy of the transcript shall be provided to the arbitrator.
- d. Interpreters: Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service, [unless otherwise agreed to by the parties.]
- e. Attendance at Hearings: The arbitrator shall have the power to require the sequestration of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.
- f. Witness Expenses: The expenses of witnesses for either side shall be paid by the party producing such witnesses.
- g. Postponements: The arbitrator may, for good cause, postpone the hearing upon the request of a party or upon his or her own initiative and shall postpone when all of the parties agree thereto.

- h. Oaths: The arbitrator may require witnesses to testify under oath administered by any duly qualified person, and, if required by law or requested by either party, shall do so.
 - i. Order of proceedings: A hearing shall be opened by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties and counsel, if any; and by the receipt by the arbitrator of the demand and answer, if any, or the submission. Exhibits may, when offered by either party, be received in evidence by the arbitrator. The names of all witnesses and exhibits in the order received shall be made part of the record. The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.
 - j. Arbitration in the Absence of a Party or Representative: An arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party present to submit such evidence as may be required for the making of an award.
 - k.. Evidence: The parties may offer such evidence as is relevant and material to the dispute, and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator may subpoena witnesses and documents independently or upon the request of any party. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived the right to be present.
 - l. Evidence by Affidavit and Filing of Documents: The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as he or she determines to be proper after consideration of any objection to its admission. All documents that are not filed with the arbitrator at the hearing, but arranged at the hearing or subsequently by agreement of the parties, shall be provided to all parties. All parties shall be afforded opportunity to examine such documents.
 - m. Inspection: Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute after written notice to the parties, who may, if they so desire, be present at the inspection.
 - n. Closing of Hearing: The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearings closed. If briefs or other documents are to be filed, the hearing shall be declared closed as of the final date upon which such documents are received by the arbitrator.
 - o. Reopening of Hearing: The hearing may be reopened for good cause by the arbitrator or on the motion of either party at any time before the award is made. The arbitrator may reopen the hearing and shall have forty-five (45) days from the closing of the reopened hearing record to issue an award.
- 12.12 Decision and Award
- a. Arbitrators shall issue awards no later than forty five (45) days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the forty-five (45) day deadline will not invalidate the process or award. Failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the PERB Panel.
 - b. Form of award: The award shall be in writing, signed by the arbitrator, and shall be accompanied by an opinion, unless the parties have advised the arbitrator that a written opinion is not necessary.
 - c. Award upon Settlement: If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon request, set forth the terms of the agreed settlement in the form of an award.
 - d. Delivery of the Award: Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrator, addressed to the party at its last known address or to

- its representative; personal service of the award; or the filing of the award in any other manner that is permitted by law.
- e. Expenses: Arbitration expenses incurred in deciding the merits of a dispute, other than the cost of the stenographic record, but including required travelling and other expenses of the arbitrator, as well as the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be evenly divided between the parties. Arbitration expenses incurred in determining whether a dispute is arbitrable shall be paid by the losing party in accord with section 12.9 (b) herein.
 - f. The parties should inform the Executive Director whenever an award is unduly delayed. The arbitrator shall notify the Executive Director if and when the arbitrator (1) cannot schedule, hear, and/or render decisions promptly, or (2) learns a dispute has been settled by the parties prior to the decision.
 - g. Within fifteen (15) days after an award has been issued to the parties, the arbitrator shall advise the Executive Director that the case has been processed to completion.
 - h. While PERB encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.
- 12.13 Fees and Charges of Arbitrators
- a. All arbitrators listed on the Panel may charge a per diem and other predetermined fees for services, if the amount of such fees have been provided in advance to PERB. Each arbitrator's maximum per diem and other fees will be sent to the parties when an arbitrator is appointed. The arbitrator shall not change any fee or add charges without giving at least 30 days advance written notice to PERB. Arbitrators with dual business addresses must bill the parties for expenses from the least expensive business address to the hearing site.
 - b. Arbitrators shall divulge all charges to the parties immediately upon appointment.
 - c. PERB requests that parties notify the Executive Director of any arbitrator's deviation from the policies expressed in these rules. While PERB does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Executive Director for consideration. Similarly, repeated complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the PERB.
- 12.14 Reports and Biographical Sketches
- a. Arbitrators listed on the Panel shall execute and return all documents, forms and reports required by PERB. They shall also keep PERB informed of changes of address, telephone number, availability, and of any business or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in Section 12.5 (c) (1).
 - b. PERB will provide, upon request, biographical sketches on each person admitted to the Panel from information supplied by applicants. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. PERB reserves the right to decide and approve the format and content of biographical sketches.

Expedited Arbitration

12.15 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, PERB is offering expedited procedures that may be appropriate in certain cases that do not involve complex or unique issues. Expedited Arbitration is a mutually agreed upon process whereby arbitrator appointments, hearings and awards are acted upon quickly by the parties, PERB, and the arbitrators. The process is streamlined by mandating short deadlines and eliminating requirements for transcripts, briefs and lengthy opinions.

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- 12.16 Procedures for Requesting Expedited Arbitration.
- a. With the exception of the specific changes noted in this section, all PERB rules and regulations governing arbitration services shall apply to Expedited Arbitration.
 - b. Upon receipt of a joint Request for Appointment of an Arbitrator indicating that expedited services are desired by both parties, the Executive Director will appoint an arbitrator using the process defined by section 12.10 above, except that the Executive Director shall establish that the selected arbitrator is available to conduct the arbitration within 30 days.
- 12.17 Arbitration Process.
- a. Once notified of the expedited case appointment by the Executive Director, the arbitrator shall contact the parties within seven (7) calendar days.
 - b. The parties and the arbitrator must schedule a hearing within 30 days of the appointment date.
 - c. Absent mutual agreement, all hearings will be concluded within one day. No transcripts of the proceedings will be made and the filing of post-hearing briefs will not be allowed.
 - d. All awards must be completed within seven (7) working days after the hearing. These awards are to be brief, concise, and will not require extensive written opinion or research time.
- 12.18 Proper Use of Expedited Arbitration.
- a. PERB reserves the right to cease honoring requests for Expedited Arbitration if a pattern of misuse of this process becomes apparent. Misuse may be indicated by the parties' frequent delaying of the process or referral of inappropriate cases.
 - b. Arbitrators who exhibit a pattern of unavailability for appointments or who are repeatedly unable to schedule hearings or render awards within established deadlines will, after written warning, be considered ineligible for appointment for this service.

Last Revision Date: July 10, 1996

PERB Order 96-07-002: The Rules and Regulations, as modified on July 10, 1996, apply to the Public School Employment Relations Act, 14 **Del.C.** Ch. 40 (1982), the Public Employment Relations Act, 19 **Del.C.** Ch. 13 (1994), and the Police Officers' and Firefighters' Employment Relations Act, 19 **Del.C.** Ch. 16 (1986).