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Procedure for Hearing Appeals

Secs. 5-201-1—5-201-3.

Repealed, July 23, 1993.

Secs. 5-201-4—5-201-9. Reserved

Organization and Operation

Sec. 5-201-10. Definitions

For the purposes of Section 5-201-10 through 5-201-17, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Board" means the Employees' Review Board established by section 5-201 of the Connecticut General Statutes;

(2) "Employee" means any employee of the State of Connecticut who is not included in any collective bargaining unit of state employees established pursuant to section 5-275 of the Connecticut General Statutes, and who has achieved a permanent appointment to a position in the classified service following successful completion of a working test period. "Employee" does not include employees in collective bargaining units, persons appointed to state offices established by statute, persons holding positions in the unclassified service, including all officers and employees of the judicial and legislative department, persons in provisional, temporary, emergency and intermittent appointments, or persons in working test periods;

(3) "Intervenor" means any person who has been granted status as an intervenor in accordance with section 4-177a(b) of the Connecticut General Statutes;

(4) "Quasi-Public Agency Employee" means any employee of a quasi-public agency, as defined in section 1-120 of the Connecticut General Statutes, who is not included in any collective bargaining unit. "Quasi-Public Agency Employee" does not include employees in collective bargaining units, or officers or directors of a quasi-public agency;

(5) "Panel" means a hearing panel that hears and acts upon an appeal, consisting of either the full Board or any three of its members designated by the Board or, with the authorization of the Board, by the chairperson of the Board;

(6) "Parties" mean any employee filing an appeal, his or her appointing authority, the Secretary of the Office of Policy and Management, the Office of Labor Relations, and any other interested person granted party status in accordance with section 4-177a of the Connecticut General Statutes, or sections 5-201-10 through 5-202-17, inclusive, of the Regulations of Connecticut State Agencies; and

(7) "Secretary" means the Secretary of the Office of Policy and Management or the Secretary's authorized designee.

(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-11. Description of organization

(a) The Board consists of seven members appointed by the Governor in accordance with Conn. Gen. Stat. Sec. 5-201, one of whom is designated by the governor as Chairperson.

(b) The Board is in the Department of Administrative Services for administrative purposes only.

(c) A quorum of the Board shall consist of three members.

(d) The Board, or any three members designated by the Board, may serve as a hearing panel to hear an appeal.

(Effective July 23, 1993)

Sec. 5-201-12. Address; public access

(a) The Board is located at 165 Capitol Avenue, Hartford, CT 06106.

(b) Correspondence to the Board should be addressed to Chairperson, Employees' Review Board, 165 Capitol Avenue, Hartford, CT 06106.

(c) Any member of the public may obtain information to make inquiries or requests to the Board by mailing a letter to the Board at the above address, or by appearing in person at the office of the Board from 8:30 A.M. to 4:30 P.M. Monday through Friday excepting State holidays.

(d) A member of the public seeking copies of public records maintained by the Board shall submit the request to the Board in writing, and specify the document or documents desired, and whether or not a plain or certified copy is needed. The fee for the plain copies shall not exceed twenty-five cents per page. If the fee for such copies exceeds ten dollars, the Board may require prepayment. The fee for certifying copies shall be one dollar for the first page and fifty cents for each additional page. The board shall waive fees in accordance with section 1-212(d) of the Connecticut General Statutes.

(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-13. Powers of the board

The Board or any panel shall have the following powers:

- (1) to administer oaths and affirmations;
- (2) to certify to all official acts of the Board;
- (3) to issue subpoenas and compel the attendance and testimony of witnesses and the production of records, papers and documents;
- (4) to make investigations and hold hearings concerning the appeal presented to the Board; and
- (5) to make decisions on any appeal presented to the Board.

(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-14. Jurisdiction of the board

(a) The Board has the power to hear appeals from individual employees in the following cases:

- (1) When an employee has received an unsatisfactory performance evaluation;
- (2) When an employee is demoted;
- (3) When an employee is suspended;
- (4) When an employee is dismissed;
- (5) When an employee is aggrieved by alleged discrimination, except where an appeal has been filed with the Commission on Human Rights and Opportunities;
- (6) When an employee is aggrieved by alleged unsafe or unhealthy working conditions;
- (7) When an employee is aggrieved as a result of alleged violations involving the interpretation and application of a specific state personnel statute or regulation;
- (8) When an employee who is laid off or dismissed by reason of economy, lack of work, insufficient appropriation, change in department organization or abolition of position claims that the order of layoff or dismissal was not determined in accordance with section 5-241 of the Connecticut General Statutes;
- (9) When an employee claims that a personnel action has been taken or threatened against such employee in violation of section 4-61dd(b)(1) of the Connecticut General Statutes; and

(10) When an employee has been subjected to disciplinary action by his or her appointing authority based upon a finding that he knowingly and maliciously made false charges under section 4-61dd(c) of the Connecticut General Statutes.

(b) The Board shall not hear or consider appeals from employees or groups of employees in the following cases:

(1) Any claim arising from being laid off or dismissed by reason of economy, lack of work, insufficient appropriation, change in department organization or abolition of position other than one based on a claim that the order of layoff or dismissal was not determined in accordance with section 5-241 of the Connecticut General Statutes;

(2) Matters involving examinations, including application, rejection, type of examination and results;

(3) Matters involving compensation for class or classes;

(4) Matters involving the establishment of a new class or classes;

(5) Matters involving the classification of a position, occupational group or career progression level;

(6) Matters involving compliance with health and safety standards and the Connecticut Occupational Safety and Health Act; or

(7) Any claim based on alleged discrimination where an appeal has been filed with the Commission on Human Rights and Opportunities.

(c) The Board has the power to hear appeals from a group of employees in the following cases:

(1) When a group of employees is laid off or dismissed for reasons other than economy, lack of work, insufficient appropriation, change in departmental organization or abolition of positions, provided that each member of such group is appealing the same or a similar issue, as determined by the Board;

(2) When a group of employees is laid off or dismissed because of economy, lack of work, insufficient appropriation, change in departmental organization or abolition of positions and claim that the order of layoff or dismissal was not determined in accordance with section 5-241 of the Connecticut General Statutes, provided that each member of such group is appealing the same or a similar issue, as determined by the Board;

(3) When a group of employees is aggrieved as a result of alleged discrimination, provided that an appeal has not been filed with the Commission on Human Rights and Opportunities and that each member of such group is appealing the same or a similar issue, as determined by the Board;

(4) When a group of employees is aggrieved as a result of unsafe or unhealthy working conditions, provided that each member of such group is appealing the same or a similar issue, as determined by the Board; and

(5) When a group of employees is aggrieved as a result of violations involving the interpretation and application of a specific state personnel statute, regulation or rule, provided that each member of such group is appealing the same or a similar issue, as determined by the Board.

(d) The Board has the authority to hear appeals from an individual quasi-public agency employee in the following cases:

(1) When a quasi-public employee alleges that a personnel action has been taken or threatened against such quasi-public agency employee in violation of section 4-61dd of the Connecticut General Statutes; and

(2) When a quasi-public agency employee has been subjected to disciplinary action by his or her appointing authority based upon a finding that he knowingly

and maliciously made false charges under section 4-61dd of the Connecticut General Statutes.

(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-15. Method of and time limits for filing appeals

(a) In cases brought by an individual employee under section 5-202 of the Connecticut General Statutes other than cases of dismissal, demotion or suspension, and cases brought by an individual employee or a quasi-public employee under 4-61dd(c) of the Connecticut General Statutes other than cases of dismissal, demotion or suspension.

(1) First Level

(A) Any employee or quasi-public employee wishing to appeal shall present his or her grievance in writing to his or her supervisor or department chief or other employee as designated by his or her appointing authority not later than thirty calendar days after the date of the alleged violation. The grievance shall be submitted on a form designated by the Board and shall state the date of the violation, and the relief sought by the grievant.

(B) Not later than seven calendar days after the submission of the grievance, the First Level designee shall either respond to the grievance, or convene a meeting for the purpose of reviewing the grievance. If a meeting is convened, the First Level designee shall respond to the grievance not later than seven calendar days after the meeting.

(2) Second Level

(A) If the grievant is dissatisfied with the response at the First Level, he or she may present his or her grievance to his or her appointing authority or designated representative not later than seven calendar days after the response given at the First Level. The original grievance form containing the First Level response shall be used.

(B) Not later than seven calendar days after the submission of the grievance, the Second Level designee shall either respond to the grievance or convene a meeting for the purpose of reviewing the grievance. If a meeting is convened, the Second Level designee shall respond to the grievance not later than seven calendar days after the meeting.

(3) Third Level

(A) If the grievant is dissatisfied with the response at the Second Level, he or she may present his or her grievance to the secretary not later than seven calendar days after the response given at the Second Level. The original grievance form containing the First and Second Level responses shall be used.

(B) Not later than thirty calendar days after the submission of the grievance, the secretary shall either respond to the grievance or convene a meeting for the purpose of reviewing the grievance. If a meeting is convened, the secretary shall respond to the grievance not later than fifteen calendar days after the date of meeting.

(4) Board Appeal

(A) If the grievant is dissatisfied with the response at the Third Level, he or she may appeal the action to the Board not later than thirty calendar days after the completion of the Third Level review procedure.

(B) The grievant shall file a completed Grievance and Appeal packet with the Board and one copy with the Office of Labor Relations. Blank packets may be obtained from the grievant's appointing authority's personnel office or from the Board.

(b) In cases of dismissal, demotion or suspension brought by an individual employee under section 5-202 of the Connecticut General Statutes and cases of dismissal, demotion or suspension brought by an individual employee or a quasi-public employee under section 4-61dd(c) of the Connecticut General Statutes.

(1) Preliminary Review

(A) Any employee or quasi-public employee subject to dismissal, demotion or suspension wishing to appeal shall file a grievance with the secretary not later than thirty calendar days after the effective date of such action. The grievance shall be submitted on a form designated by the Board.

(B) The secretary shall respond to the grievance or convene a meeting to discuss the grievance not later than thirty calendar days after its receipt. In the event a meeting is held, the secretary shall respond to the grievance not later than fifteen calendar days after the date of the meeting.

(2) Board Appeal

(A) If a grievant is dissatisfied with the response from the preliminary review proceeding on a dismissal, demotion or suspension, he or she may appeal the action to the Board not later than thirty calendar days after the completion of the review proceeding.

(B) The grievant shall file a completed Grievance and Appeal packet with the Board and one copy with the Office of Labor Relations. Blank packets may be obtained from the employee's appointing authority's personnel office or from the Board.

(C) In the preliminary review proceedings and Board appeal, grievants are entitled to representation of their own choosing. No verbatim records shall be required in preliminary review proceedings, and no oaths or affirmations shall be administered at preliminary proceedings.

(D) The Board may consolidate appeals filed by different grievants involving the same or similar issues, provided each grievant may present evidence and argument. The Board may join multiple appeals filed by the same grievant.

(E) Any grievant alleging that any state officer, employee or appointing authority has taken or threatened to take any personnel action against any state employee in retaliation for the employee either filing an appeal with the Board, or a grievance in the preliminary review proceeding, may file an appeal with the Board within thirty days of knowledge of the specific incident giving rise to such claim.

(c) In cases brought by groups of employees.

(1) Any group of employees alleging that they have been laid off, dismissed or aggrieved as a result of alleged discrimination, unsafe or unhealthy working conditions or violations involving the interpretation and application of a specific state personnel statute, regulation or rule shall file an appeal with the board not later than thirty calendar days after the specific incident or effective date of action giving rise to such appeal.

(2) The group of employees shall file a completed grievance and appeal packet with the Board and one copy with the Office of Labor Relations. Blank packets may be obtained from the employees' personnel offices or from the Board.

(d) In cases brought under section 4-61dd(b)(4) of the Connecticut General Statutes.

(1) Any employee or quasi-public agency employee alleging that a personnel action has been threatened or taken against him in violation of section 4-61dd(b)(1) of the Connecticut General Statutes shall file an appeal with the Board not later

than thirty calendar days after the date he or she learned of the specific incident giving rise to such claim.

(2) The employee or quasi-public agency employee shall file a completed grievance and appeal packet with the Board and one copy with the Office of Labor Relations. Blank packets may be obtained from his or her personnel office or from the Board.

(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-16. Hearings

(a) Notice of Hearing

(1) Upon receiving an appeal, the Board shall issue a notice of hearing to the parties at least twenty-one calendar days before the hearing containing the following information:

(A) The time and place of the hearing;

(B) The Third Level (secretary) action forming the basis for the appeal;

(C) A citation to sections 5-201 and 5-202 of the Connecticut General Statutes as authority for the proceeding; and

(D) Whether the hearing is to be conducted by the full Board or a three member hearing panel, with the names of the members.

(2) Any party may request a postponement which shall be received at the Office of the Board no later than seven calendar days before the date of the hearing, except that the presiding officer will consider requests filed later than seven calendar days in extraordinary circumstances.

(3) Any panel member who believes that his or her participation in a Board appeal might create a conflict of interest or appearance of impropriety shall immediately notify the Chairperson who shall appoint a replacement member to serve on the panel.

(4) Any party may challenge and seek the disqualification of any panel member by filing such challenge at the office of the Board no later than ten calendar days before the hearing. For good cause shown, the panel or the Chairperson may extend such period. The members of the panel shall vote on the challenge. If the member of the panel is disqualified, the hearing shall be adjourned, the Chairperson shall appoint a replacement member, and a new notice shall be issued.

(5) The Chairperson shall replace any panel member who becomes unable to act on an appeal.

(b) Conduct of Hearing

(1) The Chairperson shall designate a member of the panel as presiding officer who shall be responsible for issuing subpoenas, determining admissibility of documentary and physical evidence, ruling on objections, and administering oaths. A party may appeal an evidentiary ruling of the presiding officer and request a vote of the panel. Such appeal must be made immediately after the ruling of the presiding officer.

(2) Hearings shall be open to the public, except that a panel may conduct a closed hearing upon the request of the employee or quasi-public employee who has taken the appeal to the Board. Appellants are entitled to representation of their own choosing.

(3) The panel shall cause a recording or stenographic record of any appeal to be made. The appellant shall, upon request, be furnished with a transcript of the proceedings produced from the recording or stenographic record, and shall pay the cost of such transcript as established by the Chairperson. In the event a tape recording is made, appellant may obtain a copy of the recording on blank tapes furnished by the appellant.

(4) Each party shall be afforded the opportunity:

(A) To inspect and copy relevant and material papers and documents; and

(B) To respond, to cross-examine, and to present evidence and arguments.

(5) The panel shall not be bound by any formal rules of evidence, and may receive any oral or documentary evidence but shall exclude irrelevant, immaterial or unduly repetitious evidence. Witnesses may be sequestered on the motion of the panel or at the request of any party. The panel has the right to inspect and copy all relevant materials, papers and documents, and examine witnesses.

(6) The panel may conduct on-site inspections of the premises involved in an appeal. The parties shall be afforded the opportunity to be present at such inspection.

(7) The order of presentation at hearings shall be as follows:

(A) Where the state raises issues of timeliness of filing, the state shall go first.

(B) Where the appellant raises issues of timeliness of the state's responses, the appellant shall go first.

(C) On jurisdictional issues, the party raising the issue shall go first.

(D) In cases involving employee discipline, the state shall go first.

(E) In cases other than those involving discipline, the appellant shall go first.

(F) The panel may alter the order of presentation where appropriate.

(8) A hearing may proceed in the absence of any party who has received due notice and who has not obtained a continuance. The appearing party shall present such evidence as is required by the panel to render a decision in the matter.

(9) The panel may require or grant requests for permission for the filing of briefs and reply briefs after the hearing.

(10) At the request of either party for good cause shown, or the panel, the record may be reopened prior to the issuance of the final decision, to receive new evidence or relevant argument.

(11) The chairperson shall designate the rights of any intervenor in the proceedings.

(c) Final Decision of Panel

(1) The panel shall render its final decision on the appeal not later than sixty calendar days after the close of evidence or the last due date for filing of briefs, whichever is later.

(2) The decision shall be based solely on the official record, shall be in writing and shall separately state the panel's findings of fact and conclusions of law necessary to the decision. The decision shall be signed by all panel members indicating concurrence or dissent. Any member may dissent with or without opinion.

(3) The final decision shall be delivered to all parties, or their authorized representatives, personally or by United States mail, certified or registered, postage prepaid, return receipt requested.

(4) Unless the action appealed from was arbitrary or taken without reasonable cause, the appeal shall be denied.

(5) If the appeal is sustained, the panel shall direct appropriate remedial action taking into consideration just and equitable relief to the employee and the best interests and effectiveness of state service. The appointing authority shall take such measures to comply with the remedial action not later than ten calendar days after the issuance date of the decision, unless the appointing authority appeals the decision in accordance with section 4-183 of the Connecticut General Statutes.

(6) A party may file with the Board a petition for reconsideration of the final decision not later than fifteen calendar days after personal delivery or mailing. Such petition must comply with the requirements of, and the Board shall handle such petition as set forth in section 4-181a of the Connecticut General Statutes.

(7) Either the appointing authority or the appellant aggrieved by a final decision of the panel may appeal therefrom in accordance with section 4-183 of the Connecticut

General Statutes. Any appellant who prevails in a decision of the Board shall be entitled to recover court costs and reasonable attorney's fees if such decision is appealed by the state and affirmed by the court in such appeal.

(d) Record of Hearing

The following documents shall constitute the record in any appeal:

- (1) Written notices;
- (2) Petitions, pleadings, notices and rulings;
- (3) Evidence received and considered;
- (4) Questions and offers of proof, objections and rulings thereon;
- (5) The official transcript, or recording or stenographic record of the proceeding; and
- (6) The final decision of the panel or Board.
(Effective July 23, 1993; amended November 12, 2008)

Sec. 5-201-17. Declaratory rulings

(a) Scope

Petitions for declaratory rulings may be filed on: (1) the validity of any regulation of the Board, and (2) the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision (as defined in subsection (3) of section 4-166 of the Connecticut General Statutes) on a matter within the jurisdiction of the Board. Any petition for a declaratory ruling not falling in one of these two categories will be rejected in writing by the Board as not being the proper subject for a petition for a declaratory ruling.

(b) Form and Content of Petitions.

(1) General. All petitions for declaratory ruling shall be addressed to the Board and either mailed or hand delivered to the Board at its office. All petitions shall be signed by the person filing the petition, unless represented by an attorney, in which case the attorney may sign the petition. The petition shall include the address of the person filing the petition, and the address of the attorney, if applicable.

(2) Petitions on Validity of Regulation. A petition for declaratory ruling on the validity of a regulation shall contain the following: (A) the section number and text of the regulation; (B) the specific basis for the claim of invalidity of the regulation; and (C) any argument by the petitioner in support of the claim of invalidity, with suggested remedy. Any petition filed which merely requests a ruling on the validity of the regulation, without a detailed claim of invalidity, will be rejected by the agency as incomplete.

(3) Petitions on Applicability of Statute, Regulation, or Final Decision to Specific Circumstances. A petition seeking a declaratory ruling on the applicability of a statute, regulation, or final decision on a matter within the jurisdiction of the Board to specified circumstances shall contain the following: (A) the specific statute, regulation, or final decision upon which the petition is sought; (B) a brief explanation of why the petitioner believes that the particular statute, regulation, or final decision is within the jurisdiction of the Board; (C) a detailed description of the specified circumstances upon which the petition is based; and (D) any argument by the petitioner as to why the petitioner believes that the particular statute, regulation, or final order either is or is not applicable to the specified circumstances. Any petition failing to identify the statute, regulation or final decision in question, or failing to adequately describe the specific circumstances will be rejected in writing by the Board as incomplete.

(4) Notice. Not later than thirty calendar days after the receipt of such petition, the Board shall provide written notice of the filing of the petition (A) to all persons

required by any law to receive notice, (B) to all persons who have requested notice of the filing of such petitions on the subject matter of the petition, and (C) to all persons who have requested notice of the filing of any such petitions with the Board. The notice required by this section shall not be required where the agency has rejected the filing of a petition as inappropriate or incomplete in accordance with subsection (a), subsection (b)(2) or subsection (b)(3) of this section.

(c) Rights of Persons to Proceeding.

(1) Petitioner as Party. The petitioner is automatically a party to any proceeding on the petition by virtue of having filed said petition, and need not seek designation as a party from the Board.

(2) Additional Parties. Any person, whether or not they have received notice of the petition, may file a petition to be made a party not later than forty-five calendar days after the date of filing of the petition. If the petition to become a party sets forth facts demonstrating that the petitioner's legal rights, duties or privileges will be specifically affected by the declaratory ruling to be issued, the Board shall grant the petition and designate the petitioner as a party.

(3) Intervenors. Any person, whether or not they have received notice of the petition, may file a petition to become an intervenor not later than forty-five calendar days after the date of filing of the petition. If the petition sets forth facts demonstrating that the petitioner's participation is in the interest of justice and will not disrupt the orderly conduct of the proceedings, the Board shall grant the petition and designate the petitioner as an intervenor. In addition, any person who files a petition for party status who fails to make the requisite demonstration for party status may be granted intervenor status.

(d) Board Proceedings on Petitions.

(1) Board Action. Not later than sixty calendar days after the filing of a complete petition for a declaratory ruling, the Board shall do one of the following:

(A) Issue a declaratory ruling in accordance with the request in the petition containing the names of all parties to the proceeding, the particular facts upon which it is based and the reasons for the conclusions contained therein;

(B) Order that the matter be the subject of a hearing as a contested case;

(C) Notify the parties that a declaratory ruling will be issued by a date certain;

(D) Decide not to issue a declaratory ruling and initiate regulation making proceedings; or

(E) Decide not to issue a declaratory ruling, stating the reasons for its action.

(2) Notice. A copy of the Board action taken in accordance with subdivision (1) of this subsection shall be delivered to the petitioner and all other parties either in person, or by United States mail, certified or registered, postage prepaid, return receipt requested.

(3) Hearing. Any hearing ordered pursuant to subparagraph (B) of subdivision (1) of this subsection shall be conducted in accordance with the procedures set forth in subsection (b) of section 5-201-16 of the Regulations of Connecticut State Agencies and a final decision shall be rendered in accordance with the provisions of subsection (b) of section 5-201-16 of the Regulations of Connecticut State Agencies.

(4) Effective Date, Appeal Date. Declaratory rulings shall be effective when personally delivered or mailed, or on such later date specified by the agency in the ruling, except that for the purposes of any appeal from the declaratory ruling, the date of personal delivery or mail shall control.

(5) Contested Case Appeals. Declaratory Rulings shall have the same status and binding effect as an order in a contested case, and shall be a final decision in a

contested case for the purposes of appeals in accordance with section 4-183 of the Connecticut General Statutes.

(6) Failure to Act. If the Board does not issue a declaratory ruling on a complete petition within 180 days after the filing of the petition, or later if agreed to by the parties, the Board shall be deemed to have decided not to issue a ruling.

(Effective July 23, 1993; amended November 12, 2008)