



**Seattle Public Schools**

**HEARING EXAMINER  
RULES OF PRACTICE AND PROCEDURE  
FOR APPEALS OF SEPA DETERMINATIONS  
PURSUANT TO SPS POLICY NO. 6890**

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## **SECTION 1 GENERAL PROVISIONS**

### **1.01 APPLICABILITY**

These Hearing Examiner Rules (Rules) are adopted pursuant to SPS Policy No. 6890 for matters assigned to the SPS Hearing Examiner by the Superintendent to provide a recommendation for the disposition of SEPA appeals filed under SPS Policy No. 6890.

### **1.02 EFFECTIVE DATE**

These Rules apply to all matters properly before the Hearing Examiner on or after the Rules' effective date.

### **1.03 INTERPRETATION OF RULES**

- (a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine their application.
- (b) When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process. The Hearing Examiner may look to the Superior Court Civil Rules for guidance.

## **SECTION 2 APPEAL RULES**

### **2.01 SCOPE**

Unless stated otherwise, Rules in this section apply to all matters before the Hearing Examiner.

### **2.02 DEFINITIONS**

The following definitions apply unless the context requires otherwise:

- (c) "Affidavit" - a written or printed statement of facts confirmed by oath or affirmation of the person making it, before one having authority to administer oaths.
- (d) "Appeal" - a challenge to a decision or other action that the Hearing Examiner is authorized to review.
- (e) "Appeal hearing" - a hearing held by the Hearing Examiner to consider an appeal of a decision that the Hearing Examiner is authorized to review.
- (f) "Appellant" - the person, organization, or other entity who files a complete and timely appeal of a decision.
- (g) "Business days" - days other than Saturday, Sunday, and legal holidays.
- (h) "Days" - calendar days.
- (i) "Declaration" - a written or printed statement of facts declared or certified to be true and correct under penalty of perjury under the laws of the State of Washington.
- (j) "Ex parte communication" - a direct or indirect communication between a proponent, opponent, or a party and the Hearing Examiner, made outside a hearing or properly scheduled conference, and outside the presence of all other parties, regarding the merits of a matter pending before the Hearing Examiner.
- (k) "Hearing Examiner" or "Examiner" – The Hearing Examiner is the person appointed by the Superintendent pursuant to SPS Policy No. 6890 to make recommendations to the Superintendent for the disposition of SEPA appeals.
- (l) "Law" - federal or state statute or regulation, Code, City ordinance or regulation, or common law.

- (m) "Motion" - a request made to the Hearing Examiner for an order or other ruling.
- (n) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative.
- (o) "Party" - the person, organization, or other entity that has filed an appeal; the SPS SEPA Responsible Official who made the decision that is the subject of the appeal; and the SPS entity that is the proponent of the matter that is the subject of the appeal.
- (p) "Regular business hours" – 8 a.m. to 5 p.m.
- (q) "Representative" - the individual or firm designated by a party to be the official contact person and to speak for the party. A representative is not required to be an attorney.
- (r) "Responsible Official" is the SPS official responsible for SEPA threshold determinations and determinations that an environmental impact statement is adequate under SPS Resolution 6890 and other applicable law.
- (s) "Rules" - the Hearing Examiner Rules of Practice and Procedure, as currently amended.
- (t) "SEPA" – The State Environmental Policy Act, Chapter 43.21C RCW.
- (u) "SPS" – Seattle Public Schools.
- (v) "Superintendent" – the SPS Superintendent.
- (w) "Timely" - within the time prescribed by applicable law or, in the absence of applicable law, the time prescribed by Hearing Examiner Rule or order.

### **2.03 HEARING EXAMINER'S JURISDICTION**

The Hearing Examiner has jurisdiction to hear and make recommendations to the Superintendent on SEPA appeals filed pursuant to SPS Policy 6890.

### **2.04 COMPUTATION OF TIME**

Unless otherwise provided by law, computation of any period of time for matters before the Hearing Examiner begins with the first day after the day on which the act or event that started the time period occurred. When the last day of the time period so computed is a Saturday, Sunday, or national, state or City holiday, the time period extends to the end of the next business day.

## 2.05 FILING OF APPEALS

- (a) Compliance with Rules. All appeals must comply with these Rules and with the requirements established in the law under which the appeal is filed.
- (b) Timeliness. To be timely, an appeal must be received in the office of the SEPA Responsible Officer during regular business hours no later than the last day of the appeal period. An appeal may be submitted via electronic mail or U.S. Mail. Appeals filed in any format after regular business hours are deemed filed on the next business day. Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal.
- (c) Fee. Any filing fee required by School Board resolution must accompany an appeal or be paid by credit or debit card (VISA and MASTERCARD only) by telephone, during regular business hours, no later than the last day of the appeal period. A filing fee cannot be paid by third-party check. A filing fee may be refunded if the Hearing Examiner determines that he or she lacks jurisdiction to hear the appeal.
- (d) Contents. An appeal must be in writing and contain the following:
  - (1) Identification of the matter being appealed;
  - (2) A brief statement as to how the appellant is aggrieved as defined in SPS Policy 6890;
  - (3) A brief statement of the appellant's issues on appeal, noting appellant's specific objections to the decision being appealed;
  - (4) The relief requested, such as reversal or modification;
  - (5) Signature, address, telephone number, and electronic mail address of the appellant and the appellant's designated representative, if any. All appellants must provide an electronic mail address for acceptance of service of pleadings, motions, and orders. Failure to include an electronic mail address shall be cause to dismiss the appeal.
- (e) Multiple appeals. More than one appeal may be filed concerning the same appealable decision or other action. However, each such additional appeal must be accompanied by the filing fee to the extent required by School Board resolution.

## 2.06 DISMISSAL

The Hearing Examiner may recommend to the Superintendent that an appeal be dismissed without a hearing if the Hearing Examiner determines that it is untimely or otherwise fails to comply with the rules for filing an appeal, fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous, or brought merely to secure delay. This rule does not affect

the Superintendent's independent authority to dismiss such an appeal.

## **2.07 CLARIFICATION**

On the motion of a party, or at the Hearing Examiner's own initiative, the Hearing Examiner may require that the appellant provide clarification, additional information, or other submittal that the Hearing Examiner deems necessary to demonstrate the basis for the Hearing Examiner's jurisdiction, or to make the appeal complete and understandable. A request for clarification must be made in a timely manner so that other parties have a reasonable opportunity to respond before hearing.

## **2.08 WITHDRAWAL**

- (a) An appeal may be withdrawn only by the appellant, in writing.
- (b) Where an appeal is filed by more than one person, or by an organization or other entity, the appeal may be withdrawn only by the person designated as the party representative.
- (c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

## **2.09 PARTY REPRESENTATIVE REQUIRED**

When a party consists of more than one person, or is an organization or other entity, the party shall designate an individual or firm to be its representative and provide written notification to the Hearing Examiner and the other parties of contact information for the representative, including an electronic mail address. The rights of such a party shall be exercised by the party representative. Notice or other communication to the party representative is notice or communication to the party.

## **2.10 NOTICE OF APPEARANCE**

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and serve a copy of the notice on the other parties at the earliest possible time in the proceedings.

## **2.11 NOTICE OF HEARING**

- (a) Contents. The notice of hearing shall include:
  - (1) The time, place, and nature of the hearing. If SPS determines that the hearing will be held on a virtual video platform such as ZOOM or an equivalent, the notice will also include the link to attend the hearing and a telephone number.
  - (2) A brief statement of the issue to be considered.

- (b) Method of Notice. Notice of hearing shall be given to each party in person, by U.S. mail, or by electronic mail.

## **2.12 FILING AND SERVICE OF DOCUMENTS**

- (a) Documents may be filed with the office of the SEPA Responsible Official in hard copy or via electronic mail.
- (b) Documents are deemed filed with the Hearing Examiner on receipt at the office of the SEPA Responsible Official on business days during regular business hours unless the Hearing Examiner has specified otherwise. Documents filed in any format on non-business days, or outside regular business hours, are deemed filed on the next business day.
- (c) Documents shall be served on all parties personally, by first-class, registered, or certified mail, or by electronic mail. Service by electronic mail shall at all times be deemed to constitute acceptable service.
- (d) Unless otherwise provided by the Hearing Examiner or by agreement of the parties, service is complete at the time documents are personally delivered or are confirmed as having been sent via electronic mail. Unless earlier receipt is shown, service by mail is complete on the third day after deposit in the regular facilities of the US mail of a properly stamped and addressed letter or packet unless the third day falls on a non-business day, in which case service is complete on the first business day after the third day.

## **2.13 EXPEDITIOUS PROCEEDINGS**

Hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid delay.

## **2.14 CONSOLIDATION**

All cases under the jurisdiction of the Hearing Examiner relating to the same matter should be consolidated for hearing. The Hearing Examiner may order consolidation on the Hearing Examiner's own initiative or at the request a party.

## **2.15 PREHEARING CONFERENCE**

- (a) On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may hold a conference prior to the hearing to consider:
  - (1) Identification, clarification, and simplification of the issues;
  - (2) Potential for mediation of the dispute;
  - (3) Disclosure of witnesses to be called and exhibits to be presented;

- (4) Discovery;
  - (5) Motions;
  - (6) Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the case.
- (b) Prehearing conferences may be held by telephone conference call or a remote video platform such as ZOOM.
  - (c) The Hearing Examiner shall give email notice to all parties of any prehearing conference.
  - (d) All parties shall be represented at any prehearing conference.
  - (e) Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken and deadlines imposed, and rulings on motions made at the conference.

## **2.16 INTERFERENCE PROHIBITED**

In performing adjudicative functions, and preparing recommendations, the Hearing Examiner is an independent official and is not responsible to, or subject to the supervision or direction of, any elected official, any officer or employee of any department, or any other person whether or not associated with SPS.

## **2.19 PRESIDING OFFICIAL**

The Examiner conducting a hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the proceedings, to gather facts necessary for making the recommendation, and to maintain order. The Examiner has all powers necessary to these ends including, but not limited to the following:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Rule on offers of proof and receive evidence;
- (d) Rule on procedural matters, objections and motions;
- (e) Question witnesses and request additional exhibits;
- (f) Permit or require oral or written argument, briefs, proposed findings of fact and conclusions, or other submittals the Examiner finds appropriate, and determine the timing and format for such submittals;
- (g) Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for a fair hearing; and
- (h) Hold conferences for settlement, simplification of issues, or for any other proper purpose.

## **2.20 DISQUALIFICATION OR RECUSAL OF AN EXAMINER**

- (a) In the event of personal bias, prejudice, financial interest, or other reason substantially affecting the examiner's objectivity, an Examiner should recuse himself/herself from hearing a matter.
- (b) Prior to hearing, a party who reasonably believes that the Examiner assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion that a different Examiner be assigned to the matter. The request should be made at the earliest possible time, preferably no later than 7 business days prior to the day the hearing is to begin. The request must set forth the reasons for the belief that the assigned Examiner cannot remain objective in hearing the matter.
- (c) The fact that an Examiner has considered the same or a similar issue or proposal in another matter or has made a ruling adverse to the interests of the party in the same or another matter, is not a basis for disqualification.
- (d) In case of disqualification or recusal, the matter shall be assigned to a different Examiner.

## **2.21 PARTIES' RIGHTS AND RESPONSIBILITIES**

- (a) Each party in an appeal proceeding has the right to notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.
- (b) Parties have the right to be represented by an attorney. Representation by an attorney is not required.
- (c) Where a party has designated a representative, the representative shall exercise the rights of the party.
- (d) Unless otherwise provided by order of the Hearing Examiner, if a party expects to offer a document as an exhibit at the hearing, the party shall supply a copy of the document to each party either before or at the hearing.

## **2.22 DEFAULT**

The Hearing Examiner may recommend that an appeal be dismissed by the Superintendent where, without good cause, the appellant fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

## **2.23 HEARING FORMAT**

- (a) Although generally informal in nature, appeal hearings have a structured format to elicit relevant evidence efficiently while providing the parties a

fair opportunity for hearing.

- (b) The order of presentation is generally as follows:
- Examiner's introductory statement;
  - Parties' opening statements (optional);
  - Appellant's presentation of evidence;
  - SPS's presentation of evidence;
  - Rebuttal;
  - Parties' closing arguments.

The order of presentation at hearing does not alter or shift any burden or presumption established by applicable law.

## **2.24 BURDEN AND STANDARD OF PROOF**

- (a) The Hearing Examiner accords deference or other presumption to the decision being appealed as directed by applicable law.
- (b) Where the applicable law provides that the appellant has the burden of proof, the appellant must show by the applicable standard of proof that the Responsible Official's decision or action does not comply with the law authorizing the decision or action.
- (c) Unless otherwise provided by applicable law, the standard of proof is a preponderance of the evidence.

## **2.25 CONDUCT OF HEARING**

- (a) Hearings are conducted in person unless SPS determines otherwise. In the event SPS determines that in person hearings should not occur, all hearings will be held remotely via ZOOM or a similar remote video platform. SPS will develop ZOOM hearing protocols and make these available to the appeal representatives and all identified witnesses.
- (b) If any party, witness, or participant is unable or unwilling to participate in a hearing through the remote video function in ZOOM or a similar remote platform, the Hearing Examiner or SPS will make available a call-in number and email address for use during the hearing.

## **2.26 TESTIMONY AND ARGUMENT**

- (a) All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony. All witnesses are subject to cross-examination by the other party.
- (b) The rules of privilege apply to the extent recognized by law.

- (c) Although Hearing Examiner hearings are open to the public, those who are not parties are generally not permitted to testify in appeal hearings unless called as witnesses by a party.
- (d) The Examiner may limit the length of testimony to expedite the proceedings. The maximum practicable advance notice of such time limitations will be provided. If parties are unable to complete their testimony and arguments within the allotted time, and the hearing will not be continued, an opportunity will be provided to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.
- (e) The Examiner may allow testimony via teleconference or videoconference or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or for a videoconference, to both hear and see) testimony given in this manner and to question the person giving such testimony. Any costs associated with electronic conferencing shall be borne by the party requesting it.

## **2.27 EXPECTED CONDUCT AND APPEARANCE OF FAIRNESS**

- (a) All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.
- (b) The appearance of fairness doctrine applies to proceedings under these Rules.
- (c) Except for communications regarding procedural matters (which are permitted), no party or other person, organization or other entity shall communicate or attempt to communicate ex parte with the Examiner.
- (d) If a prohibited ex parte communication is made, the communication shall be publicly disclosed by the Examiner: any written communications, and a memorandum summarizing the substance of and participants in all oral communications, shall promptly be made available to the parties for review and an opportunity provided for them to rebut the communications.

## **2.28 MOTIONS**

- (a) All motions shall state the order or relief requested and the grounds for the motion. All motions other than those made during a hearing shall be in writing. Every motion, response, and accompanying paper shall be served on each party representative on the day it is filed with the Hearing Examiner.
- (b) Within 7 days after service of a written motion, or such other time as may

be designated by the Hearing Examiner, any other party may file a written response. After the Hearing Examiner has received any written responses, or the 7 days or other designated time has elapsed, the Hearing Examiner may rule on the motion. Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

- (c) The Hearing Examiner may provide for the filing of a reply or other additional briefing on a motion and may call for oral argument prior to ruling.
- (d) For motions made at hearing, and motions made for the extension of time or to expedite the hearing, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.
- (e) Motions to dismiss all or part of an appeal, other dispositive motions, and motions to exclude evidence (testimony or exhibits) shall be filed at the earliest possible time in the proceedings in order to allow time for the other party to respond, as provided in subsection (a) above, and to ensure that the Examiner will consider the motions on the merits.

## **2.29 EVIDENCE**

- (a) Evidence, including hearsay, may be admitted if the Examiner determines that it is relevant to the issue on appeal, comes from a reliable source, and has probative value. Such evidence is that on which responsible persons would commonly rely in the conduct of their important affairs.
- (b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.
- (c) Documentary evidence may be received in the form of copies or excerpts. The Examiner may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

## **2.30 OFFICIAL NOTICE**

- (a) The Hearing Examiner may take official notice of judicially cognizable facts. In addition, the Examiner may take notice of general, technical, or scientific facts within his or her specialized knowledge.
- (b) Before a recommendation is issued, parties must be notified of the facts or material noticed and their source and afforded an opportunity to contest or rebut them.
- (c) A Hearing Examiner recommendation may refer to and utilize any issued

## Hearing Examiner decision

### **2.31 SITE INSPECTION**

Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to an appeal prior to the close of the record. Unless otherwise provided by the Examiner, site visits include only the Examiner; interested parties may not accompany or approach the Examiner during a site visit.

### **2.32 CONTINUING OR REOPENING HEARING**

- (a) A scheduled hearing may be continued on the Examiner's initiative, or on the motion of a party for good cause shown. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a continued hearing need not conform to the time requirements for the original notice.
- (b) If the Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time, and place of the new hearing, no further notice is required.
- (c) Following the close of the hearing and/or the record, but prior to issuing a recommendation, the Examiner may reopen the record and/or the hearing for good cause and may permit or require written briefs or oral argument.
- (d) If a matter is reopened after conclusion of the hearing, parties shall be provided no less than 10 days' notice of the reopened hearing.

### **2.33 LEAVING THE RECORD OPEN**

- (a) At the conclusion of the hearing, the Examiner may close the hearing, but leave the record open to receive argument or for other good purpose. Parties shall be provided notice of any evidence received after hearing and shall have an opportunity to review the evidence and file rebuttal evidence or argument.
- (b) Except as provided in this Rule, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner.

### **2.34 HEARING EXAMINER'S RECOMMENDATION**

- (a) Issuance. The Hearing Examiner shall issue a written recommendation and SPS shall provide a copy to each party representative within fourteen days of the closing of the hearing, unless an extension is agreed to by all parties

to the appeal. A copy of the recommendation and the certificate of service shall be made part of the case record.

- (b) Recommendation on Relief Requested. In accordance with applicable law, the Hearing Examiner's recommendation may be to affirm, reverse, modify, or remand the Responsible Official's decision that is the subject of the appeal.
- (c) Contents. A recommendation of the Hearing Examiner on an appeal shall include, but not be limited to, a statement regarding the following:
  - Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
  - Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based upon the evidence presented at hearing and those matters officially noticed. (This may include recitation of relevant provisions of applicable law.)
  - Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
  - Recommendation. The Hearing Examiner's decision as to the outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and, unless otherwise provided by applicable law, supported by substantial evidence in the record.

## **2.35 RECORD**

The record of an appeal includes:

- Responsible Official's decision or action being appealed;
- Appeal statement;
- Evidence received or considered;
- Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Hearing Examiner's file;
- Statement of matters officially noticed, if any;
- Findings, conclusions and recommendation of the Hearing Examiner;
- Recording or transcription of the hearing (if requested by the Hearing Examiner or by a Party); and
- Final Decision of Superintendent on the appeal

## **2.36 CLERICAL ERRORS**

Clerical mistakes in decisions, recommendations, orders, or other parts of the

record, and errors arising from oversight or omission, may be corrected by order on the Hearing Examiner's initiative, or in response to the motion of a party.

### **2.37 PROCEEDINGS RECORDED**

All proceedings before the Hearing Examiner shall be recorded or reported by a Court Reporter. The reports of hearings are part of the official case record. Transcripts of the recordings are made available to the public upon request, subject to payment of the cost of transcription.

### **2.38 CERTIFIED TRANSCRIPT OF PROCEEDINGS**

- (a) Anyone desiring a certified transcript of a hearing must arrange and pay for the preparation of the transcript. The completed transcript must be returned to the Hearing Examiner for certification.
- (b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to form and content of the transcript and shall provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

### **2.39 RECORDING DEVICES**

Photographic and recording equipment may be permitted at hearings with the approval of the Hearing Examiner. The Examiner may deny or condition use of such equipment as she or he deems necessary to avoid disruption to the proceedings or prejudice to any party.