



Waukegan Public Schools
Ethics Commission

HEARING PROCEDURES

Approved by the Ethics Commission _____

Ethics Commission
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HEARING PROCEDURES

Table of Contents

| | | |
|---------------|---|----|
| ARTICLE I | - PURPOSE..... | 3 |
| ARTICLE II | - DEFINITIONS..... | 3 |
| ARTICLE III | - DISQUALIFICATION OF ETHICS COMMISSION MEMBER... | 4 |
| ARTICLE IV | - PROBABLE CAUSE EXAMINATION | 4 |
| ARTICLE V | - CONSENT AGREEMENTS | 5 |
| ARTICLE VI | - PRE-HEARING CONFERENCE..... | 6 |
| ARTICLE VII | - CONTINUANCES..... | 7 |
| ARTICLE VIII | - SUBPOENAS | 7 |
| ARTICLE IX | - DISCOVERY | 8 |
| ARTICLE X | - PRE-HEARING EXCHANGE OF INFORMATION | 9 |
| ARTICLE XI | - VENUE AND HEARING | 9 |
| ARTICLE XII | - COUNSEL..... | 9 |
| ARTICLE XIII | - CHRONOLOGY OF THE ADMINISTRATIVE HEARING | 10 |
| ARTICLE XIV | - EVIDENCE | 11 |
| ARTICLE XV | - EX PARTE COMMUNICATIONS..... | 12 |
| ARTICLE XVI | - DEFAULT | 12 |
| ARTICLE XVII | - FINDINGS AND DECISION/EFFECT OF ELECTION..... | 13 |
| ARTICLE XVIII | - JUDICIAL REVIEW | 13 |

ARTICLE I – PURPOSE

The purpose of these procedures is to establish a uniform set of guidelines to be followed in connection with a Probable Cause Examination or an Administrative Hearing by the Waukegan Public Schools Ethics Commission concerning its limited jurisdiction over complaints related to the Gift Ban Act or Prohibited Political Activity.

ARTICLE II – DEFINITIONS

For purposes of these procedures:

- §2.01 "Administrative Hearing" means an administrative hearing, following the Commission's determination that Probable Cause exists to believe that a violation of the Board's Ethics Resolution has occurred.
- §2.02 "Commission" means the Waukegan Public Schools Ethics Commission.
- §2.03 "Complainant" means the person who verified the Complaint.
- §2.04 "Governmental Ethics Laws" mean state and local laws governing prohibited political activity, and receipt and disclosure of gifts.
- §2.05 "Party" means a Complainant or a Respondent.
- §2.06 "Parties" means both the Complainant and the Respondent.
- §2.07 "Probable Cause" means evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a violation of Governmental Ethics Laws has been committed and that the Respondent committed or caused the violation.
- §2.08 "Probable Cause Examination" means a proceeding conducted by the Commission for the purpose of making a determination whether Probable Cause exists.
- §2.09 "Respondent" means a person or entity that is alleged in a verified complaint to have violated Governmental Ethics Laws, and who is a party to a Probable Cause Examination or Administrative Hearing.
- §2.10 "Subpoena" means a written order requiring a witness's appearance at a Probable Cause Examination or an Administrative Hearing to give testimony, as authorized in accordance with the provisions of.
- §2.11 "Subpoena duces tecum" means a written order requiring the production of books, papers, records, or other items material to an alleged violation of Governmental Ethics Laws at issue, as authorized in accordance with the provisions of the Board's Ethical Conduct Resolution Section 5-5(4).

§2.12 “Violation” means an action or inaction which is prohibited by the Board’s Ethical Conduct Resolution.

ARTICLE III– DISQUALIFICATION OF ETHICS COMMISSION MEMBER

§3.01 Any member of the Ethics Commission is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified for cause in a court of law.

§3.02 A member of a Ethics Commission shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing. Once disqualified, that individual Commissioner shall not participate in any discussion, deliberation, or voting pertaining to any matter that is the subject of the hearing.

§3.03 Any Party may request the disqualification of a member of the Ethics Commission by filing an Affidavit or Declaration under penalty of perjury. A request against a member of the Ethics Commission must be made prior to the commencement of the Probable Cause Examination. The Affidavit or Declaration must state with particularity the grounds upon which it is claimed that a fair and impartial review cannot be accorded. Where the request seeks to compel the disqualification of a member of the Commission, the disqualification shall be determined by a concurring vote of all other members of the Commission. The Commissioner who is the subject of the request for disqualification shall not participate in the vote, but may participate in deliberations and discussions preceding the vote.

§3.04 Notwithstanding Section 3.02, the Parties may choose to accept any member of the Ethics Commission if all Parties waive the grounds for disqualification raised by a Commissioner. The waiver shall be included in the record of the hearing.

ARTICLE IV – PROBABLE CAUSE EXAMINATION

§4.01 Following receipt of the Complaint and the issuance of notices as required by Section 5-6(a) of the Board’s Ethical Conduct Resolution, the Commission will meet to determine the sufficiency of the Complaint and to reach a decision about whether Probable Cause exists to proceed. See also, paragraph 3.04 of the Commission’s Operating Procedures for information regarding the Probable Cause Examination.

§4.02 The following documents shall be made a part of the record of the Probable Cause Examination: the notice; the Complaint; any exhibits or documents appended to the Complaint, and any written response to the Complaint filed by the Respondent; and any waivers as to the disqualification of a member of the Ethics Commission. Although hearsay evidence may be considered, it will be given relatively little weight. During its initial review, the Commission will determine, based on the evidentiary and supporting materials provided, whether any further preliminary action is warranted. If so, the

Commission will determine whether it should defer proceedings pending the completion of such preliminary activity.

- §4.03 (a) After the probable cause examination, the Commission shall:
- (i) issue an order finding probable cause to believe that a Violation has occurred;
 - (ii) issue an order finding no probable cause to believe a Violation has occurred;
 - (iii) refer the matter to another governmental or law enforcement agency for further investigation.

(b) The Commission shall send a copy of the Commission's Order determining probable cause to the Complainant and the Respondent.

§4.04 If the Commission finds that Probable Cause exists, counsel for the Commission will prepare a Determination of Probable Cause which summarizes the essential findings of the Commission and issue notices to the Complainant and Respondent in accordance with the requirement of Section 5-6(b) of the Board's Ethical Conduct Resolution, stating the Commission's Determination of Probable Cause. In addition, counsel for the Commission will notify the attorney designated by the Waukegan Public Schools to prosecute such actions and transmit the appropriate documentary materials in accordance with the Ordinance.

§4.05 The Commission will complete action concerning the Probable Cause decision within seven business days after receiving the Complaint.

ARTICLE V – CONSENT AGREEMENTS

§5.01 At any time after the filing of a Complaint, in the discretion of the Commission and after consideration of such factors as the nature of the proceedings and the requirements of the public interest, a Consent Agreement may be entered between the Commission and the Respondent, if such an agreement will result in a just disposition of the issues involved.

§5.02 Any Consent Agreement containing consent findings and an Order disposing of a proceeding or any part thereof shall also provide that:

- (a) the Order shall have the same force and effect as an Order made after full hearing;
- (b) the entire record on which any Order may be based shall consist solely of the Complaint and the Consent Agreement;
- (c) further procedural steps before the Commission are waived;

- (d) any right to challenge or contest the validity of the Order and decision entered in accordance with the Consent Agreement is waived; and
- (e) the Order and Decision of the Commission is final.

ARTICLE VI - PRE-HEARING CONFERENCE

- §6.01 In the sole discretion of the Ethics Commission, the Ethics Commission may conduct a Pre-Hearing Conference prior to the Administrative Hearing. The Ethics Commission shall set the time and place for the Pre-Hearing Conference, and shall give reasonable written notice to all Parties.
- §6.02 Because of the time requirements of the Ordinance, a Pre-Hearing conference may be held for the purpose of facilitating the orderly completion of the hearing. Thus, a Pre-Hearing conference may deal with one or more of the following matters:
- (a) Preparation of stipulations;
 - (b) Clarification of issues;
 - (c) Rulings on identity and limitation of the number of witnesses;
 - (d) Objections to proposed evidence;
 - (e) Order of presentation of evidence and cross-examination;
 - (f) Rulings regarding issuance of Subpoenas;
 - (g) Time limits for the completion and exchange of discovery prior to an Administrative Hearing;
 - (h) Schedules for the commencement and conduct of a hearing;
 - (i) Exchange of witness lists and of exhibits or documents to be offered in evidence at a hearing;
 - (j) The disqualification of any person from participation in the hearing;
 - (k) Any other matters that may promote the orderly and prompt conduct of the hearing.
- §6.03 The Ethics Commission may conduct all or part of the Pre-Hearing Conference by telephone, videoconferencing, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

§6.04 The Ethics Commission shall issue a Pre-Hearing Order incorporating the matters determined at the Pre-Hearing Conference. The Ethics Commission may direct one or more of the Parties to prepare the Pre-Hearing Order or may direct that the Order be prepared by Ethics Commission counsel.

ARTICLE VII – CONTINUANCES

§7.01 The Ethics Commission may continue the Probable Cause Examination or the Administrative Hearing for good cause shown by one of the Parties to the hearing or upon request by any member of the Ethics Commission. Any request for a continuance by a Party must be made in writing and filed with the Commission in advance of the scheduled hearing date.

ARTICLE VIII – SUBPOENAS

§8.01 Subpoenas and Subpoenas *duces tecum* may be requested by any Party. The subpoenas will be issued by the attorney for the Commission, unless there is an objection made by a Commission member.

§8.02 Prior to a Probable Cause Examination, a Respondent may seek a Subpoena or Subpoena *duces tecum* in furtherance of its own investigation into matters relevant. However, a Respondent is not authorized to use a subpoena to obtain documentation from the Commission. The issuance of a subpoena will not provide the basis for a request for continuance in a scheduled hearing or meeting date.

§8.03 Prior to an Administrative Hearing, any Party may seek a Subpoena or Subpoena *duces tecum* in furtherance of its own investigation into matters relevant to the hearing, and is also entitled to conduct pre-hearing discovery in accordance with Article IX. A Party is not authorized to use a subpoena to obtain documentation from the Commission.

§8.04 Requests for Subpoenas and Subpoenas *duces tecum* must be made in accordance with Section 5-5(4) of the Board's Ethical Conduct Resolution.

§8.05 Requests for Subpoenas must be submitted no later than 20 calendar days before the date scheduled for commencement of the Administrative Hearing.

ARTICLE IX – DISCOVERY

§9.01 Prior to the date of the Pre-Hearing Exchange of Information as provided for in Article X, any Respondent may request from any other Party to the hearing:

- (a) the names and addresses of witnesses to the extent known to the other Party, including, but not limited to, those intended to be called to testify at the hearing; and

- (b) an opportunity to inspect and make a copy of any of the following in the possession or custody or under the control of any other Party to the hearing:
 - (1) A statement pertaining to the subject matter of the proceeding made by any Party to another Party or person;
 - (2) Statements of witnesses then proposed to be called to testify at the hearing and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (1) above; and/or
 - (3) All writings that any other Party then proposes to offer in evidence;

§9.02 In the event that a material witness is unavailable to testify at the hearing, any Party may petition the Ethics Commission for an order that the testimony of that material witness be taken by deposition in the manner prescribed by law for depositions under Rules 217 and 414 of the Rules of the Illinois Supreme Court. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The Complainant shall serve notice of the deposition and a copy of the petition on the other Parties at least three business days before the deposition.

§9.03 Requests for discovery must be made in writing. While no particular form must be used, the request must clearly and plainly state the information or items sought. Requests for discovery must be provided to the Party from whom the discovery is sought either by personal delivery or by certified mail, return-receipt requested.

§9.04 Concurrent with the service responsibilities set forth under Section 9.03, the Party seeking discovery shall ensure that all other Parties to the hearing are provided with a copy of the request for discovery.

§9.05 The Party responding to the discovery request shall respond within 10 calendar days, and shall ensure that all other Parties to the hearing are provided with a copy of all documents that are produced. The Party requesting documents shall be liable to reimburse the Party producing the documents for the reasonable photocopying expenses incurred by the producing Party.

§9.06 If a Respondent claims that a responding Party has failed to comply with a request for discovery pursuant to this Article, the Respondent may request a Pre-Hearing Conference in accordance with Article VI for the purpose of seeking to compel discovery.

§9.07 Nothing in this Article shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

ARTICLE X – PRE-HEARING EXCHANGE OF INFORMATION

No later than seven calendar days prior to the Administrative Hearing, all Parties to the hearing shall mail or deliver to all other Parties a list of all witnesses and a copy of all exhibits or documents that the Party anticipates offering into evidence at the hearing. The Commission will be served simultaneously with a copy of the list of expected witnesses.

ARTICLE XI – VENUE AND HEARING

- §11.01 A Commission Administrative Hearing or a Probable Cause Examination shall be held at the Waukegan Public Schools Lincoln Center unless the Commission, at its discretion, selects a different place to conduct the hearing or meeting.
- §11.02 Probable Cause Examinations shall be closed to the public under the applicable Section of the *Illinois Open Meetings Act*, 5 ILCS 120/1.02, unless all Parties request in writing that the hearing be open to the public and the Commission concurs. Deliberations by the Commission following receipt of evidence will be closed.
- §11.03 Portions of the Administrative Hearing may be open to the public. An Administrative Hearing concerning an alleged violation of either Section 3 the Board's Ethical Conduct Resolution (Gift Ban) or Section 2 of the Board's Ethical Conduct Resolution (Prohibited Political Activities), which the Commission has elected to retain for hearing, will be scheduled to occur within four weeks of the Commission's receipt of the original Complaint. The Commission will make determinations about what portions of the Administrative Hearing will be closed sessions.
- §11.04 Alternatively, the Commission may elect to refer to the Waukegan Public Schools Attorney a possible violation of Section 3 of the Board's Ethical Conduct Resolution (Gift Ban) for prosecution as a business offense in the courts of the Nineteenth Judicial Circuit by an attorney for the District in accordance with Section 6(e) of the Board's Ethical Conduct Resolution.
- §11.05 Prosecution of an alleged violation of Section 2 of the Board's Ethical Conduct Resolution (Prohibited Political Activity) will be promptly referred to the attorney for the Waukegan Public Schools or the Lake County State's Attorney for criminal prosecution in accordance with Section 6(d) of the Board's Ethical Conduct Resolution.

ARTICLE XII – COUNSEL

- §12.01 Each Party has the right to attend the hearing, and may be represented by legal counsel or any other representative of his or her choosing. Counsel will file an appearance with the Commission at the commencement of representation.
- §12.03 The Ethics Commission will be advised by legal counsel appointed for that purpose by the Waukegan Public Schools.

ARTICLE XIII – CHRONOLOGY OF THE ADMINISTRATIVE HEARING

The chronology contained in this Article provides the basic order of proceedings during the Administrative Hearing. The Ethics Commission, at its discretion, may modify this chronology in the interests of conducting an efficient and expedient hearing, unless such modification prevents due process from being afforded to all parties to the Hearing.

- §13.01 The Ethics Commission calls the matter for hearing and asks the Parties and any counsel present to identify themselves. The Ethics Commission takes official notice of any official positions or offices within the Waukegan Public Schools, which are held by any of the Parties. Unless the Commission appoints a Hearing Officer, the Commission Chairperson will preside at the Administrative Hearing.
- §13.02 The following documents shall be made a part of the Administrative Hearing record: the notice of hearing; the Complaint; the Probable Cause determination and findings; and any waivers as to the disqualification of a member of the Ethics Commission.
- §13.03 Any Party may make an opening statement. If the Complainant and Respondent both wish to make an opening statement, the Complainant proceeds first. The Respondent may reply after the Complainant's opening statement or may reserve an opening statement until after the Complainant concludes his or her case.
- §13.04 The Complainant puts on his or her case first.
- §13.05 The Respondent puts on his or her case after the Complainant concludes. If there is more than one Respondent, the order of presentation may be decided by mutual agreement of the Respondents or, if necessary, by the Ethics Commission.
- §13.06 After the initial presentation of evidence by both sides, the Parties, beginning with the Complainant, may introduce evidence in rebuttal. Such evidence should be limited to matters already raised in the presentation of the Complainant's or Respondent's case.
- §13.07 Each Party may make a closing argument. The Complainant proceeds first. The Respondent follows after the Complainant's closing argument. The Complainant may conclude the closing argument phase with a rebuttal.
- §13.08 These procedures do not authorize the making of a motion for dismissal or a motion for nonsuit or directed findings at any time during the hearing.

ARTICLE XIV – EVIDENCE

§14.01 Oral evidence shall be taken only under oath. The oath may be administered by the Ethics Commission Chairperson or the Hearing Officer. The oath is obtained by an affirmative response to the following statement: "Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?"

§14.02 Each Party shall have these rights:

- (a) To call and examine witnesses;
- (b) To introduce exhibits;
- (c) To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
- (d) To impeach any witness regardless of which Party first called him or her to testify;
- (e) To object for sound reasons to the evidence presented by an adverse Party.

§14.03 A Party may redirect and recross, subject only to the limitations imposed by the Ethics Commission.

§14.04 The Complainant may call and examine any Respondent as if under cross-examination even if that Respondent does not first testify in his or her own behalf.

§14.05 Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Rulings on the admission of evidence will be made by the Chairperson or the Hearing Officer or the member presiding.

§14.06 At an Administrative Hearing, hearsay evidence may be used for the purpose of supplementing or explaining other evidence; however, upon timely objection, hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case.

§14.07 The Ethics Commission has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

ARTICLE XV – EX PARTE COMMUNICATIONS

§15.01 Except as otherwise provided in this Section, while the proceeding is pending, the members of the Ethics Commission shall not participate in any communications with any Party, representative of a Party, or any person who has a direct or indirect interest

in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all Parties, to participate in communication.

- §15.02 No pleading, letter, document, or other writing shall be filed by a Party unless a copy thereof together with any exhibit or attachment is provided to all other Parties to the proceeding.
- §15.03 Communications prohibited under Section 15.01 do not include communications concerning matters of procedure or practice, including requests for continuances that are not in controversy. It also does not prohibit communications between a Party and the Ethics Commission when the opposing Party has had a default entered pursuant to Article XVI.
- §15.04 If, while the proceeding is pending, an Ethics Commissioner receives a communication of a type that would be in violation of this Article, he or she shall promptly disclose the content of the communication on the record and give all Parties an opportunity to address it.

ARTICLE XVI – DEFAULT

- §16.01 In the event a Respondent fails to appear at an Administrative Hearing, the Ethics Commission may direct that the scope of the hearing be narrowed. At its discretion, the Ethics Commission may conduct the Hearing notwithstanding the absence of the Respondent or, in the alternative, dispense with the Hearing and take under submission Respondent's express written admissions, stipulations entered into between the Parties, and any other written evidence submitted by a Party who was present at the Administrative Hearing.
- §16.02 In the event of the Respondent's default, and within seven business days after a decision by the Commission that either (1) there is probable cause to believe that the Respondent has committed a violation of Governmental Ethics Laws, or (2) the Respondent has committed a violation of Governmental Ethics Laws, the Respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The Commission, in its discretion, may vacate the decision and grant a re-hearing on a showing of good cause. As used in this Section, good cause includes, but is not limited to, any of the following:
- (a) Failure of the person to receive notice of the hearing; or
 - (b) Mistake, inadvertence, surprise, or excusable neglect.

ARTICLE XVII – FINDINGS AND DECISION/ EFFECT OF ELECTION

- §17.01 Following the receipt of evidence and the conclusion of the Examination or Hearing, the members of the Commission will convene in closed session for deliberations and a

decision on the matters presented and any further or related rulings as appropriate. Pursuant to Section 5(e) of the Board's Ethical Conduct Resolution, the Commission will render its decision within 30 days of the conclusion of the Administrative Hearing, unless the Complaint is filed during the 60 days prior to an election and the Respondent is a candidate in that election.

§17.02 If the Respondent is a candidate, then the timelines set forth herein concerning pre-hearing conferences and discovery, as set forth above, will not apply and the Commission will complete the Administrative Hearing within seven days after the Complaint is filed and will render its decision prior to the election, if possible.

ARTICLE XVIII – JUDICIAL REVIEW

§18.01 Judicial review may be had by filing a complaint for administrative review in accordance with the provisions of the *Illinois Code of Civil Procedure*, 735 ILCS 5/3-101, *et. seq.*

§18.02 The 35 day statute of limitations contained in the *Illinois Code of Civil Procedure*, 735 ILCS 5/3-103 shall apply to judicial review of enforcement decisions made by the Commission.