

**PART XIII. PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD**

Chap.		Sec.
201.	APPLICABILITY OF GENERAL RULES	201.1
211.	PRELIMINARY PROVISIONS	211.1
213.	CONTRIBUTIONS AND BENEFITS	213.1
215.	GENERAL ADMINISTRATION	215.1

**CHAPTER 201. APPLICABILITY OF
GENERAL RULES**

Sec.	
201.1.	Applicability of general rules.
201.2.	[Reserved].
201.2a.	Definitions.
201.3.	[Reserved].
201.3a.	Nonadjudicatory benefit appeal.
201.4.	[Reserved].
201.4a.	Adjudicatory benefit appeal and request for administrative hearing.
201.5.	[Reserved].
201.5a.	Authorization of Secretary of the Board.
201.6.	Motions practice.
201.7.	Service and return of subpoenas.
201.8.	Dismissal for nonappearance.
201.9.	Introduction of documents from the system's record.
201.10.	Briefs.
201.11.	Proposed opinion and recommendation.
201.12.	Oral argument before the Board.

Authority

The provisions of this Chapter 201 issued and amended under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h), unless otherwise noted.

Source

The provisions of this Chapter 201 adopted February 7, 1975, effective February 8, 1975, 5 Pa.B. 238; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (249393) to (249398), and (316193) to (316194).

§ 201.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), is applicable to the activities of and proceedings before the Board, except as provided in, or inconsistent with, this chapter.

Notes of Decisions

Timeliness

Teacher was ineligible for enhanced benefits in the Public School Employee's Retirement System because he failed to make required election by deadline; this section requires that the time of filing any document is the date it was received by the Board, not the date it was mailed. *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 787, 788 (Pa. Cmwlth. 2008).

§ 201.2. [Reserved].**§ 201.2a. Definitions.**

(a) In addition to the definitions in 1 Pa. Code § 31.3 (relating to definitions), as used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Adjudicatory benefit appeal—An appeal from the ESRC to the Board in which a formal hearing is requested and in which an adjudication of the Board is issued under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Board—The Public School Employees' Retirement Board.

Claimant—An individual who, or entity that, has requested an adjudicatory benefit appeal.

Executive Director—The appointed executive director of the System. The Executive Director of the System is also the Secretary of the Board.

ESRC—The Executive Staff Review Committee, which consists of the Executive Director and additional senior staff members as appointed by the Executive Director.

Hearing examiner—A presiding officer appointed to hear an adjudicatory benefit appeal in accordance with 1 Pa. Code § 35.185 (relating to designation of presiding officers).

Nonadjudicatory benefit appeal—An appeal to the ESRC, which is resolved without conducting a hearing or issuing an adjudication.

Party—An individual or entity participating in an adjudicatory benefit appeal, including an intervenor and any person or entity joined to the appeal.

Retirement Code—The Public School Employees' Retirement Code (24 Pa.C.S. §§ 8101—8535).

Secretary of the Board—The appointed Secretary of the Board as provided in the Retirement Code. The Secretary of the Board is also the Executive Director of the System.

Subordinate officer—

(i) An officer or employee of the System.

(ii) The term does not include the Executive Director, Secretary of the Board or the Board.

System—The Public School Employees' Retirement System.

(b) This section supplements 1 Pa. Code § 31.3; the definition of “subordinate officer” supersedes the definition in 1 Pa. Code § 31.3.

§ 201.3. [Reserved].**§ 201.3a. Nonadjudicatory benefit appeal.**

(a) Benefit appeals from actions of subordinate officers of the System shall be made to the ESRC and shall be nonadjudicatory.

(b) A letter from the System taking an action or making a determination on behalf of the System shall constitute action of a subordinate officer. A letter shall constitute action of a subordinate officer whether or not the letter states that an appeal must be taken within 30 days.

(c) An appeal to the ESRC shall be received by the System within 30 days after the date of the letter from the System taking an action or making a determination on behalf of the System. If a claimant fails to appeal an action or determination by a subordinate officer to the ESRC within the prescribed time, the action of the subordinate officer will become final.

(d) An appeal to the ESRC must be made in writing and addressed to:

Executive Staff Review Committee
Public School Employees'
Retirement System
P. O. Box 125
Harrisburg, Pennsylvania 17108-0125

(e) The ESRC will meet as necessary to review and decide nonadjudicatory benefit appeals. If the appeal is granted, the claimant will be notified in writing and the matter will be closed. If the appeal is denied, in full or in part, the claimant shall have the right to appeal the denial to the Board. The ESRC will send the claimant a denial letter explaining why the appeal is denied, and advise the claimant of the right to appeal to the Board and request an adjudicatory benefit appeal and administrative hearing within 30 days after the date of the denial letter.

(f) The Executive Director or a designee will maintain a record of the decisions of the ESRC and report to the Board the results of each decision by the ESRC, which will include a brief summary of the issues involved.

(g) This section supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

§ 201.4. [Reserved].**§ 201.4a. Adjudicatory benefit appeal and request for administrative hearing.**

(a) An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter.

(b) An adjudicatory benefit appeal and request for administrative hearing must be addressed to:

Appeal Docket Administrator
Public School Employees' Retirement Board
P. O. Box 125
Harrisburg, Pennsylvania 17108-0125

(c) If a claimant fails to appeal a decision of the ESRC to the Board within the prescribed time, the decision of the ESRC is deemed final.

(d) Appeals to the Board from the ESRC as to which no motions are filed under § 201.6 (relating to motions practice) will be referred to a hearing examiner under 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers) to conduct a hearing and prepare a recommended decision to the Board under 1 Pa. Code §§ 35.202 and 35.205 (relating to proceedings in which proposed reports are prepared; and contents of proposed reports).

§ 201.5. [Reserved].

§ 201.5a. Authorization of Secretary of the Board.

The Secretary of the Board will be authorized to execute and issue routine and uncontested orders on behalf of the Board, including, but not limited to, the following:

- (1) An order to dismiss when a claimant has withdrawn a request for an adjudication.
- (2) An order granting an extension of time to file a document.
- (3) An order granting the right of a third party to intervene in a pending appeal.

§ 201.6. Motions practice.

(a) *Preliminary objections.* The System may, before filing an answer, file preliminary objections directly with the Board. The preliminary objections will conform to Pa.R.C.P. No. 1028 (relating to preliminary objections).

(b) *Summary judgment.* The System or the claimant may file a motion for summary judgment directly with the Board. The motion must conform to Pa.R.C.P. Nos. 1035.1—1035.5.

(c) The Board will rule directly on preliminary objections or motions for summary judgment unless, by order, it delegates the matter to a hearing examiner to prepare a proposed opinion and recommendation under § 201.12 (relating to oral argument before the Board).

(d) This section supersedes 1 Pa. Code § 35.54 (relating to motions as to complaint).

Cross References

This section cited in § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing).

§ 201.7. Service and return of subpoenas.

(a) Service of subpoenas will be made by any of the methods authorized by Pa.R.C.P. No. 234.2(b) (relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the subpoena must include a notice that the witness may request in writing the payment of the witness fees provided in Pa.R.C.P. No. 234.2(c). The written request shall be made to the party (or his counsel) on whose behalf the subpoena is issued. The party (or his counsel) on whose behalf the subpoena is issued shall remit the witness fees to the witness within 14 days after the date of the letter requesting payment of witness fees or before the date of the hearing, whichever comes first.

(b) This section supersedes 1 Pa. Code § 35.142(b) (relating to service and return of subpoenas) and supplements 1 Pa. Code §§ 35.139 and 35.142(c) (relating to fees of witnesses; and subpoenas).

§ 201.8. Dismissal for nonappearance.

(a) Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.

(b) This section supplements 1 Pa. Code §§ 35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).

§ 201.9. Introduction of documents from the System's records.

(a) Documents from the System's records need not be certified or authenticated under 42 Pa.C.S. §§ 6103 and 6104(a) (relating to proof of official records; and effect of official records generally) to be admitted into evidence in an administrative hearing.

(b) Any subordinate officer who has access to the System's records, and has knowledge regarding the identity and mode of preparation of the records prepared by the System and the filing with, and maintenance of records by the System in the regular course of the System's business will be qualified to identify any documents or other records on file with the System in any hearing and to testify regarding the documents or other records.

(c) This section supplements 1 Pa. Code §§ 35.161 and 35.164 (relating to form and admissibility of evidence; and documents on file with agency).

§ 201.10. Briefs.

(a) After the close of the testimony, the hearing examiner will fix a briefing schedule. Unless otherwise agreed to by all parties and the hearing examiner, the claimant, or other party upon whom rests the burden of proof, shall file the first brief, followed by the brief of the System and a reply brief by the claimant or

other party who filed the first brief. Briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs). A party upon whom rests the burden of proof may not be denied the right to file a reply brief. Any party may waive the right to file a brief or reply brief, either on the record, or in writing to the hearing examiner, in either of which events, the hearing examiner will note that fact on the record, deduct the time allotted for the filing of the briefs from the briefing schedule and prepare an opinion and recommendation for the Board without the benefit of a brief on behalf of the party who elected to waive the filing of a brief.

(b) Both the claimant and the System shall be entitled to file letter briefs to the hearing examiner. The letter briefs need not conform to 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs), but the letter briefs may not be more than 3 pages in length.

(c) This section supplements 1 Pa. Code §§ 35.191 and 35.192.

§ 201.11. Proposed opinion and recommendation.

(a) Unless otherwise ordered by the Board, the hearing examiner will file a proposed opinion and recommendation to the Board in cases when an administrative hearing has been held before a hearing examiner. The contents of the proposed opinion and recommendation will be in accordance with 1 Pa. Code § 35.205 (relating to contents of proposed reports) and will also include a discussion of the matter. The proposed opinion and recommendation will not become the opinion and order of the Board unless it is adopted by the Board.

(b) The proposed opinion and recommendation shall be filed with the System, together with the transcript of testimony, exhibits and briefs, all of which shall become part of the record. At the same time the proposed opinion and recommendation is filed with the System, the hearing examiner will serve copies upon all parties and staff counsel.

(c) The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. When exceptions are filed, the Board will rule on the exceptions.

(d) Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions).

(e) This section supplements 1 Pa. Code §§ 35.202, 35.207 and 35.226(a)(2) (relating to proceedings in which proposed reports are prepared; service of proposed reports; and relating to final orders).

§ 201.12. Oral argument before the Board.

(a) The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board

to acquire an understanding of and to resolve the issues. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

(b) If a party filing exceptions to a recommendation of the hearing examiner wishes oral argument before the Board, the party shall file the request for oral argument with the exceptions.

(c) If a party seeks oral argument in a case in which exceptions have been filed by the System to a recommendation of the hearing examiner that is in favor of a claimant, the request for oral argument shall be filed with or before the party's response to the System's exceptions. In that case, the Secretary of the Board will grant oral argument and schedule it for the next available Board meeting.

(d) Oral argument will be limited to a maximum of 10 minutes for each party, unless otherwise directed by the Board. The claimant, as the party with the burden of proof, shall argue first. If there are more than two parties to the appeal, the Secretary of the Board will establish the order of argument consistent with who has the burden of proof. New evidence will not be accepted at the oral argument.

(e) At the conclusion of the oral argument, the Board will discuss and decide the case. The Board may table the case for further consideration at a future meeting. The Board may also elect to discuss all or part of the case in executive session in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(f) The Board's counsel will draft a proposed adjudication in accordance with the Board's decision. The proposed adjudication will be presented to the Board at the Board meeting next following the Board's determination of the case, unless the Board agrees to have the proposed adjudication issued without further review by the Board.

(g) This section supersedes 1 Pa. Code §§ 35.214 and 35.226(a)(2) (relating to oral argument on exceptions; and final orders).

[Next page is 211-1.]

201-8

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