

**OFFICE OF ADMINISTRATIVE HEARINGS (OAH)  
GUIDELINES FOR PREHEARING  
AND HEARING PROCEDURE DISCHARGE FOR CAUSE HEARINGS  
NDCC 15.1-15-08**

1. A school board or counsel for a school board will make a written request to OAH for the appointment (designation) of an administrative law judge (ALJ) from OAH to preside as hearing officer at a pending discharge for cause hearing.
2. The day the request is received, or within a day or two after receiving the request, an ALJ will be appointed by the director of OAH. (OAH will make every effort to get these matters assigned as soon as possible.)
3. On the day appointed, or within a day or two of being appointed, the ALJ will schedule a prehearing conference. (The appointed ALJ will make every effort to get a prehearing conference scheduled as soon as possible.)
  - a. Present at the conference will be the parties, and/or their counsel, and the ALJ. The school board may have a representative present at the conference, if it chooses, either the school board president or the president's designee. If the school board chooses not to have a representative present, counsel for the school board must assure the ALJ that the school board has been or will be consulted about scheduling the hearing. Participants in the prehearing conference will be notified in writing about the conference (likely notices will be faxed or emailed).
  - b. The purpose of the prehearing conference is for the ALJ to discuss with the conference participants discovery, the filing of the statement of charges, anticipated witnesses (including any anticipated minor witnesses and the swearing in of witnesses if there are a large number of witnesses), anticipated invitees, documentary evidence, anticipated motions, any due process concerns, anticipated requests for a continuance, scheduling the hearing, closing the hearing (i.e. oral closing argument or briefs) whether the hearing shall remain closed to the public except for those allowed under N.D.C.C. § 15.1-15-08 (3), and any other preliminary matters necessary for the conduct of the hearing.
  - c. The ALJ will set the time and place for the hearing. See N.D.C.C. § 15.1-15-08 (1). At the prehearing conference, the participants and the ALJ will discuss the scheduling of the hearing. If the parties or their counsel and the ALJ agree, the ALJ will schedule the hearing according to the agreement. If there is not an agreement, the ALJ will schedule the hearing giving consideration to the requirements of the statute and the convenience of the parties and their counsel, the school board, and the ALJ. Generally, the hearing will be scheduled to be held on weekdays during the hours of 4:00 pm and 12 midnight, and the hearing may be scheduled for more than one day, if necessary. The scheduled hearing may include a Saturday hearing day upon agreement of all the participants. Parties may be asked to prepare to complete the hearing on the scheduled day(s), i.e. both

parties presenting their cases on the scheduled day(s). A second day of hearing will not necessarily be scheduled to accommodate a contemplated request for a continuance.

4. Either at or shortly after the prehearing conference, the ALJ will direct the school board to publish notice of the hearing and provide to the individual being discharged a list of charges at least five days before the hearing. See N.D.C.C. § 15.1-15-08 (1).
5. A continuance may be requested by the individual subject to discharge, or that person's counsel, either prior to the scheduled hearing or during the scheduled hearing. The request must be made in writing or at the prehearing conference, if made prior to the scheduled hearing. The request must be specific about the number of days requested (not to exceed seven days). If a request for a continuance longer than seven days is made, a showing of good cause for a longer continuance must be made. See N.D.C.C. § 15.1-15-08 (4).
6. Near the beginning of the hearing, after appearances are made, the ALJ will detail hearing procedure and instructions for participation by school board members. School board members may ask questions about hearing procedure and the instructions given by the ALJ. The parties or their counsel may ask questions about hearing procedure. The ALJ will also inform school board members (if the ALJ has not already done so at the prehearing conference by advising a school board representative) that the ALJ may not advise the school board about any substantive matters, decision making, or writing or issuing a decision, only about hearing procedure. The ALJ will also inform school board members (if the ALJ has not already done so at the prehearing conference by advising a school board representative) that at the conclusion of the hearing, after providing all of the evidence presented at the hearing to the school board and closing the hearing, the ALI's participation in the hearing is ended. See N.D.C.C. § 15.1-15-08 (6). The hearing will close following oral argument given by the parties or their counsel, or the setting of a schedule to file briefs.
7. Near the beginning of the hearing, after appearances are made, before the ALJ details hearing procedure and instructions for participation by school board members, the ALJ will confirm the intent of the school board and the individual subject to discharge about whether the hearing shall be closed or open, and advise those present at the hearing accordingly, in conformance with N.D.C.C. § 15.1-15-08 (3).
8. If a party is calling numerous witnesses, the ALJ may swear that party's witnesses en masse. This may be discussed at the prehearing conference.

**End of McClusky School District #19 Exhibit DKBD-E**