

# R134, Informal Adjudicative Proceedings Under the Utah Administrative Procedures Act<sup>1</sup>

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**R134-1. Purpose:** To provide guidelines and procedures for the application of the Administrative Procedures Act Title 63, Chapter 46b, and associated regulations, to the public institutions of higher education, the State Board of Regents, and the Utah Higher Education Assistance Authority.

## R134-2. References

- 2.1. Utah Code §53B-1-103 (Board: Powers and Authority)
- 2.2. Utah Code Title 63, Chapter 46b (Administrative Procedures Act)

## R134-3. Definitions

- 3.1. **"Adjudicative proceeding"**: an institutional action or proceeding described in Utah Code §63-46b-1.
- 3.2. **"Institution"**: the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State College of Utah, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, the Utah College of Applied Technology, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education.
- 3.3. **"Party"**: the institution or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.
- 3.4. **"Person"**: an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.
- 3.5. **"Presiding officer"**: the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.
- 3.6. **"Respondent"**: a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

## R134-4. Policy

- 4.1. **Exemptions:** The Utah Administrative Procedures Act, §63-46b-1, provides certain exemptions from the Act which affect higher education institutions. As a consequence of these statutory provisions adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be

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conducted solely according to federal procedures are not governed by the Utah Administrative Procedures Act.

**4.2. Campus Traffic and Parking:** Utah Code [§53B-3-106\(2\)](#) provides that "State institutions of higher education are 'political subdivisions' . . . as these terms are used in Title 41, Chapter 6." relating to Traffic Rules and Regulations. The Utah Administrative Procedures Act applies to "agencies" which as defined in [§63-46b-2\(1\)\(b\)](#) does not include "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by [Title 41, Chapter 6](#), hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.

**4.3. Informal Adjudicative Proceedings for Certain Admissions, Residence for Tuition Purposes, Financial Aid (including the Eligibility for and Collection of Student Loans), Campus Parking, Campus Event Participation, Former Student Matters, Former Employee Matters, and Other Matters not Exempted from the Administrative Procedures Act:** Adjudicative proceedings, undertaken by an institution, which affect matters other than (a) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, (b) personnel matters for all employees, (c) campus traffic, (d) contracts for the purchase and sale of goods and services by the institution, or (e) actions required by federal statute or regulation to be conducted solely according to federal procedures, are to be conducted informally according to the procedures set forth in these rules, enacted under the authority of the Utah Administrative Procedures Act. Adjudicative proceedings where parties other than students or employees are involved hereby authorized to be handled informally include, but are not limited to, admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, and former employee matters.

**4.4. Board Findings as to Appropriateness of Informal Adjudicative Proceedings:** The use of informal procedures as provided in paragraph 4.3 does not violate any procedural requirement imposed by a statute other than [Title 63, Chapter 46b](#); the rights of the parties to the proceedings will be reasonably protected by the informal procedures; the institutions' administrative efficiency will be enhanced by this categorization; and the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

**4.5. Substitution of Presiding Officer:** If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

**4.6. Institutional Variances with this Rule:** Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of [Title 63, Chapter 46b](#). Significant variations from the Board's rules and procedures must be approved by the Board.

#### R134-5. Procedures for Informal Adjudicative Proceedings

**5.1. Commencement:** An informal adjudicative proceeding shall be commenced by either (a) a notice of institutional action, if proceedings are commenced by the institution; or (b) a request for institutional action, if proceedings are commenced by persons other than the institution.

**5.2. Notice:** A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements: The notice shall be in writing, signed by a presiding officer if the

proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by his representative, and shall include:

- 5.2.1. the names and mailing addresses of all respondents and other persons to whom notice is being given;
- 5.2.2. the institution's file number or other reference number;
- 5.2.3. the name of the adjudicative proceeding;
- 5.2.4. the date that the notice of institutional action or the request for institutional action was mailed;
- 5.2.5. if a hearing is to be held, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;
- 5.2.6. if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;
- 5.2.7. a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;
- 5.2.8. a statement of the purpose of the adjudicative proceeding, the questions to be decided (to the extent known) or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and
- 5.2.9. the name, title, mailing address, and telephone number of the presiding officer.
- 5.2.10. The institution shall mail the notice of institutional action or the request for institutional action to each party.

**5.3. Answer Not Required:** No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

**5.4. Hearings:** The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

**5.5. Rights of Parties to Testify, Present Evidence, and Comment on the Issues:** In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation is normally limited to the named parties.

**5.6. Timely Notice:** Hearings will be held only after timely notice to all parties.

**5.7. No Discovery or Subpoenas:** Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.

**5.8. Access to Institution's Files:** All parties shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

**5.9. Intervention Prohibited:** Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

**5.10. Hearings Open to Parties:** All hearings shall be open to all parties. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

**5.11. Order of the Presiding Officer:** Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

5.11.1. the decision;

5.11.2. the reasons for the decision;

5.11.3. a notice of any right of administrative or judicial review available to the parties; and

5.11.4. the time limits for filing an appeal or request for review.

**5.12. Basis of Order:** The presiding officer's order shall be based on the facts appearing in the institution's files and on the facts presented in evidence at any hearings.

**5.13. Hearings Recorded:** All hearings shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

**5.14. Institution's Investigative Rights:** Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than [Title 63, Chapter 46a](#).

**5.15. Default:** The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

**5.16. Institutional Review:** If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in Utah Code [§63-46b-12](#).

**5.17. Institutional Reconsideration:** Within ten days after the date that an order on review is issued, or within ten days after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking

judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

**5.18. Exhaustion of Administrative Remedies:** A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by statute, only after exhausting all administrative remedies available, except that:

**5.18.1.** a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required;

**5.18.2.** the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

**5.19. Filing for Judicial Review:** A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 46b, Title 63.

**5.20. Judicial Review:** The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be reviewed by the district courts on the record according to the standards of [§63-46b-16\(4\)](#). The form of the petition and procedures for this process are set forth in Utah Code [§63-46b-15](#).

**5.21. Stay and Other Temporary Remedies Pending Final Disposition on Judicial Review:** Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

**5.22. Emergency Adjudicative Proceedings:** An institution may issue an order on an emergency basis without complying with the requirements of [Title 63, Chapter 46b](#) if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall:

**5.22.1.** limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

**5.22.2.** issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and

**5.22.3.** give immediate notice to the persons who are required to comply with the order.

If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and [Title 63, Chapter 46b](#).

**5.23. Declaratory Orders:** Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order: (a) declaring the applicability of the statute rule, or order in question to the specified circumstances; (b) setting the matter for adjudicative proceedings; (c) agreeing to issue a declaratory order within a specified time; or (d) declining to issue a declaratory order and stating the reasons for its action. The declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based; (b) the particular facts on which it is based; and (c) the reasons for its conclusions.