

**193F—17.2(543D) Procedures for superintendent supervision.****17.2(1) Ministerial or nondiscretionary board actions.**

a. The superintendent's monitoring of ministerial or nondiscretionary board actions shall be flexible and designed to spot check compliance. The board shall provide any information that the superintendent requests to adequately monitor such actions. Final board action which is ministerial or nondiscretionary may be appealed to the superintendent by an aggrieved person within 20 days of the issuance of the board action. The written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period and shall specify:

- (1) The name of the person initiating the appeal;
- (2) The board action which is being appealed;
- (3) The specific facts or law alleged to be in error in the board action;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. The board may respond to the notice of appeal within 20 days of its receipt of the appeal. The superintendent shall issue a written decision as provided in subrule 17.1(4).

**17.2(2) Preclearance.** When the board seeks preclearance of a proposed board action, the board shall submit a written report which identifies the proposed action, describes the basis and support for the action, outlines the persons or markets which may be affected by the action, and attaches sufficient information from which the superintendent can make an independent, de novo evaluation of the substantive merits of the proposed action. The superintendent shall issue a written decision as provided in subrule 17.1(4).

**17.2(3) Review or appeal of final, discretionary board action.**

a. Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision following hearing, a written notice of appeal or request for review shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal or requesting review;
- (2) The board action which is being appealed or for which review is requested;
- (3) The specific facts or law alleged to be in error in the board action, or other specific reason(s) why such review is sought;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. A review initiated by the superintendent shall be in writing and shall inform the board and affected persons of the nature of the superintendent's concerns. The board may respond to the superintendent's review or notice of appeal within 20 days of the board's receipt of the appeal. A person notified of a superintendent's review may respond to the superintendent's review within 20 days of the issuance of the review. The superintendent shall issue a written decision as provided in subrule 17.1(4).

**17.2(4) Review or appeal of contested case decision.**

a. All board decisions in a contested case following hearing shall be provided to the superintendent when issued. If a timely review is initiated or a timely appeal is taken, the effectiveness of such final board action shall be delayed during the pendency of such review or appeal.

b. All board decisions in a contested case resolved by consent are final decisions, shall be provided to the superintendent when issued, and are subject to the review procedures set forth in subrule 17.2(3).

c. Any aggrieved party may appeal a proposed decision to the superintendent within 20 days after issuance of the proposed decision.

d. When a proposed decision is or may be anticompetitive, the board (regardless of whether the proposed decision is in favor of the state) may request review of the proposed decision.

e. The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

f. A notice of appeal or request for review must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The party or parties initiating the appeal or requesting review;

(2) The proposed decision or order which is being appealed or for which review is requested;  
(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought; and

(5) The grounds for such relief.

*g.* A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

*h.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

*i.* The superintendent shall issue a schedule for consideration of the review or appeal.

*j.* Unless otherwise ordered, within 20 days of the notice of appeal, request for review, or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

*k.* The record on appeal or review shall be the entire record made at hearing.

*l.* The superintendent shall issue a written decision as provided in subrule 17.1(4).

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