

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5.1 STATE PERSONNEL BOARD

PREAMBLE

**1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:**

July 24, 2024

**2. Article, Part, or Section Affected (as applicable)                      Rulemaking Action**

|            |       |
|------------|-------|
| R2-5.1-101 | Amend |
| R2-5.1-103 | Amend |
| R2-5.1-104 | Amend |

**3. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 41-781

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:**

Notice of Rulemaking Docket Opening; {Editor Register to complete}

**5. The agency’s contact person who can answer questions about the rulemaking:**

Name: Zachariah Tolliver  
Title: Executive Director  
Division: Arizona State Personnel Board  
Address: 1740 W. Adams Street, Suite 3007, Phoenix, AZ 85007  
Telephone: (602) 542-3888  
Email: [appeals@personnel.az.gov](mailto:appeals@personnel.az.gov)  
Website: [personnel.az.gov](http://personnel.az.gov)

**6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

In response, the Arizona State Personnel Board (“ASPB”) is entering the expedited rulemaking process for the purpose of updating our rules to reflect current statute with respect to time frames and dates. In addition, we’ve utilized the existing language to amend sections as well as adding minimal language to ensure routing of materials. Also, we repealed one section that was no longer required, while adding an additional section regarding communication amongst parties.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Arizona State Personnel Board (“ASPB”) is most similar to that of a “court.” As a result, we’ve utilized existing court practices to ensure we have an integrity filled due process with respect to our rules. Most amendments that occurred were to reflect current statutes,

while other amendments and new additions were implemented to ensure the ASPB is functioning in a court like sense with respect to every matter. In reference, we observed outside state Personnel Boards, as well as, the State of Arizona judicial system to ensure we are up-to-date with current practices.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

The rulemaking the Arizona State Personnel Board is undergoing is to ensure the rules are comprehensible for those layman or self-represented. In addition, this aids the appeal and whistleblower complaint process as we refine our rules to ensure the integrity of the process is intact.

**9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):**

This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

**10. Where, when, and how a person may provide written comments on the proposed expedited rule:**

A person may submit written comments no later than the close of record to the person listed under Item #5. Or in-person at the oral proceeding to be held on Friday, October 11, 2024 at the address under item #5 from 9:00 a.m. to 12:00 p.m.

Close of Record: October 9, 2024.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

(Editor's Note: All agencies answer the first part of the question here.)

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not Applicable.

**c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.**

Not Applicable.

**12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:**

Not Applicable.

**13. The full text of the rules follows:**

**TITLE. 2 ADMINISTRATION**

**CHAPTER 5.1 STATE PERSONNEL BOARD**

**ARTICLE 1. GENERAL PROVISIONS**

**Section**

R2-5.1-101. Definitions

R2-5.1-103. Appeal Procedures

R2-5.1-104. Complaint Procedures

**ARTICLE 1. GENERAL PROVISIONS**

**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. “Agency” for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41-741.
2. “Appeal” means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. “Appellant” means a permanent covered employee in covered service who files an appeal with the Board.
4. “Complainant” means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. “Complaint” means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee.
6. “Day” means a calendar day, unless otherwise stated.
7. “Deposition” means a form of discovery in which testimony of a witness given under oath or affirmation and subject to cross examination is recorded in writing prior to a hearing.
8. “Hearing” means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to present oral or written evidence.
9. “Hearing officer” means a person appointed by the Board, including any member of the Board to act as the trier of fact.
10. “Respondent” means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. “Subpoena Ad Testificandum” means a legal document issued under authority of the Board to compel the appearance of a witness at a hearing.

12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness ~~to appear and to bring specified documents, records, or things.~~ or entity to provide specific records.

### **R2-5.1-103. Appeal Procedures**

**A.** Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783. The appeal shall include:

1. The appellant's name, telephone number, address and email address, if applicable;
2. The name of the agency taking the disciplinary action being appealed;
3. The name, telephone number, address, and email address of the appellant's representative, if applicable;
4. A specific response to the causes for disciplinary action upon which the appeal is based; and
5. The action requested of the Board.

~~**B.** Change of address. An appellant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the appellant's or respondent's prior address shall be deemed to have been received.~~

~~**C.**~~ **B.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

~~**D.**~~ **C.** Hearing officer. The Board, including any member of the Board, may assign an appeal or may direct staff to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the appeal to another hearing officer.

**D.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is written by request or motion with copies to all parties.

~~**E.** Change of hearing officer~~ Request to strike hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

**F.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, the docket number assigned by the Board and the name and contact infor-

mation of the hearing officer at least 20 days before the date of the hearing.

**G.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

**H.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within ~~30~~ 60 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

**I.** Nature of hearing.

1. Every hearing shall be open to the public unless the appellant requests a confidential hearing.

2. A party may be self-represented or may designate a representative as provided by law.

3. Every hearing shall be conducted as a quasi-judicial proceeding.

4. All witnesses shall testify under oath. ~~or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years.~~

5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. ~~The respondent has the burden of proof and shall present its case first.~~

6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist. and advise the Board.

**J.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Board and shall pay the reasonable cost for duplication.

**K.** Burden of Proof. The respondent has the burden of proof and shall present its case first.

**L.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

**K M.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

**L N.** Exhibits. A party introducing an exhibit shall furnish the opposing party and the Board office with a copy of the exhibit no later than ~~40~~ 14 calendar days prior to the hearing. Both parties should be prepared with ~~two~~ three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

**M O.** Witnesses. No later than ~~40~~ 14 days prior to the hearing, parties shall ~~exchange~~ furnish the opposing party and the Board office with a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

**N P.** Exclusion of witnesses. Upon the request or motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

**O Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

**P R.** Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

**Q S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

**R T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

~~S. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist and advise the Board.~~

**T U.** Proposed findings of fact. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

**U V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

**V W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting within 15 calendar days from receipt of the appellant or respondent objections but must be 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

**W X.** Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.

**X Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.

~~Y~~ Z. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

**R2-5.1-104. Complaint Procedures**

**A.** Complaint. An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than 10 calendar days after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:

1. The complainant's name, telephone number, address, and email address, if applicable;
2. The name, telephone number, address, and email address of the complainant's representative, if applicable;
3. A concise statement of the facts constituting the alleged prohibited personnel practice;
4. The name of the agency or employee believed to have knowingly committed the prohibited personnel practice; and
5. The date and place of the alleged prohibited personnel practice.

~~**B.** Change of address. A complainant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the complainant's or respondent's prior address shall be deemed to have been received.~~

~~**C.**~~ **B.** Routing of complaint. The Board shall provide a copy of a complaint to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

~~**D.**~~ **C.** Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.

~~**E.**~~ **D.** Hearing officer. The Board, including any member of the Board, may assign a complaint or may direct staff to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the complaint to another hearing officer.

~~**F.**~~ **E.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in pending matter unless:

- a. All parties are present;
- b. It is during a scheduled proceedings, where an absent party fails to appear after proper notice; or
- c. It is written by request or motion with copies to all parties.



- F.** ~~Change of hearing officer~~ Request to strike Hearing Officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.
- G.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, the docket number assigned by the Board and the name and contact information of the hearing officer at least 20 days before the date of the hearing.
- H.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.
- I.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within ~~30~~ 60 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.
- J.** Nature of hearing.
1. Every hearing shall be open to the public unless the complainant requests a confidential hearing.
  2. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding.
  3. All witnesses shall testify under oath or by affirmation. ~~and a record of the proceedings shall be made and kept by the Board for three years.~~
  4. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. ~~The complainant has the burden of proof and shall present its case first.~~
  5. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist.
- K.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to Board office and shall pay the reasonable cost for duplication.
- L.** Burden of Proof. The complainant has the burden of proof and shall present its case first.
- ~~K~~ M.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The com-

plainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

**L N.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

**M O.** Exhibits; Witness List. A party introducing an exhibit shall furnish the opposing party and the Board with a copy of the exhibit no later than ~~10~~ 14 calendar days prior to the hearing. Both parties should be prepared with ~~two~~ three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence. In addition to, parties shall furnish the opposing party and the Board office with a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

~~**M.** Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.~~

**O P.** Exclusion of witnesses. Upon the request or motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

**P Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

**Q R.** Telephonic testimony. The complainant or respondent may request through a request or motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or

witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

**R S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

**S T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.

~~**T.** Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist and advise the Board.~~

**U.** Proposed findings of fact. Complainant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

**V.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

**W.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting within 15 calendar days from receipt of the appellant or respondent objections but must be 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

**X.** Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request

**Y.** State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed

against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

**Z.** Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532

AGENCY CERTIFICATE

NOTICE OF PROPOSED EXPEDITED RULEMAKING

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter # and heading:**

Title. 2 Administration, Ch.5.1 State Personnel Board,

**3. Code Citation for the Chapter:**

Title. 2. A.A.C., Chapter 5.1 State Personnel Board.

**4. Article, Part, or Section Affected (as applicable)**

**Rulemaking Action**

R2-5.1-101

Amend

R2-5.1-103

Amend

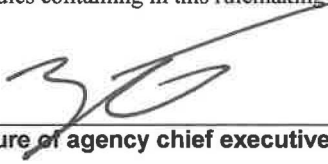
R2-5.1-104

Amend

**5. The rules contained in this rulemaking package are true and correct as proposed.**

The rules containing in this rulemaking package are true and correct as proposed by the Arizona State Personnel Board.

**6.**



September 17, 2024

\_\_\_\_\_  
Signature of agency chief executive officer in ink\*

\_\_\_\_\_  
Date signed

Zachariah Tolliver

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Typed name of signer\*

\_\_\_\_\_  
Title of signer

\* Signature of signer and typed name must match

**AGENCY RECEIPT**

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter number and heading:**

Chapter 5.1 State Personnel Board

**3. Code Citation for the Chapter:**

Title. 2. A.A.C., Chapter 5.1 State Personnel Board.

**4. Any Subchapter, if applicable; Article; Part, if applicable; and Section involved in the rulemaking, listed in alphabetical and numerical order:**

Article 1. General Provisions

R2-5.1-101

Subsection 11 and 12

R2-5.1-103

-Subsection: D, F, I, J, K, P, U, W

R2-5.1-104

-Subsection; E, F, G, J, K, L, O, P, R, T, V,

**Article, Part, or Section Affected (as applicable)**

**Rulemaking Action**

R2-5.1-101

Amend

R2-5.1-103

Amend

R2-5.1-104

Amend