

Michigan Office of Administrative Hearings and Rules
611 West Ottawa Street; 2nd Floor, Ottawa Building
Lansing, MI 48933
Phone: (517) 335-8658 FAX: (517) 335-9512

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Michigan Office of Administrative Hearings and Rules (MOAHR) at MOAHR-Rules@michigan.gov.

1. Agency Information:

Agency name:	Michigan Department of Education		
Division/Bureau/Office:	State Tenure Commission		
Name, title, phone number, and e-mail of person completing this form:	Robert Taylor Administrative Law Specialist 517-241-6985 Taylorb1@michigan.gov		
Name of Departmental Regulatory Affairs Officer reviewing this form:	Mary Fielding		

2. Rule Set Information:

MOAHR assigned rule set number:	2018-053 ED
Title of proposed rule set:	State Tenure Commission Rules

3. Purpose for the proposed rules and background:

The State Tenure Commission rules were most recently amended in 2012 following amendment of the Teachers' Tenure Act in 2011. MCL 38.71 to 38.191 (2011 PA 101). The primary general purposes of the proposed amendments are to clarify and simplify the requirements for filing appeals to the State Tenure Commission. The proposed rules reorganize and clarify some of the rules so that requirements related to the filing of appeals in tenure matters are logically and clearly presented. The proposed rules reduce the burden on parties in tenure appeals by expanding electronic filing options and methods of service of claims of appeal, removing requirements that parties file certain outdated and unnecessary pleadings, and removing the requirement that parties file six copies of various pleadings.

4. Summary of proposed rules:

In addition to amendments that simply align the rules with Legislative Service Bureau standards regarding the use of passive voice versus active voice and "shall" versus "must" and regarding proper statutory citations, and amendments that otherwise simply improve the grammar of the rules, the proposed amendments are as follows.

PART 1. GENERAL PROVISIONS AND DECLARATORY RULINGS

R 38.131 Definitions.

- Definition of "electronic submission" is added.
- Definition of "person" is aligned with section 5(i) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.205.

R 38.132 Meetings of commission; hours of commission office.

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- “Session” is changed to “meeting” to align with the catchline of the rule.
- The hours of the State Tenure Commission office are clarified.

R 38.133 Office of commission.

The address, email address, facsimile number, telephone number, and web address of the commission are added.

R 38.135 Request for declaratory ruling.

- Several proposed changes align this rule with the general declaratory ruling rule of the Michigan Department of Education (Mich Admin Code, R 340.1352, as amended in 2016). (A purely grammatical error (use of “on” instead of “to” before “any person known” in subrule (3)) was corrected after the public comment period.)
- References to a “notice” of a request for declaratory ruling are omitted, as there is no requirement to file such a “notice.”
- Subrule (8) is deleted as duplicative of the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, and section 9(2) of article VII of the Teachers’ Tenure Act, 1937 (Ex. Sess.) PA 4, MCL 38.139(2).

R 38.139

This rule is rescinded because it only memorializes the rescission of other rules. Such “rescission rules” are no longer used in the Michigan Administrative Code.

PART 2. APPEAL PROCEDURES

R 38.141 Representation; appearance; withdrawal.

Subrule (2) is amended to align with the corresponding rule of the Michigan Office of Administrative Hearings and Rules (formerly the Michigan Administrative Hearing System (MAHS)), Mich Admin Code, R 792.10107(2).

R 38.142 Form of pleadings and documents; signature.

- In subrule (1), the obsolete, unenforced requirement that pleadings be on “bond” paper is deleted, as are other unnecessary requirements related to the appearance of pleadings.
- In subrule (2), proposed changes related to the required number of copies of pleadings and other documents are intended to decrease the burden on parties.

R 38.143 Claim of appeal.

- In general, proposed changes to this rule are intended to provide clarity and to consolidate all requirements for initiating an appeal with the State Tenure Commission.
- The requirement that an appellant file and serve a notice of claim of appeal when he or she files a claim of appeal is deleted as obsolete and unnecessary.
- General requirements in R 38.145 regarding the timing of the State Tenure Commission’s receipt of a claim of appeal (i.e., before the close of business on the final day of the appeal period) are added to this rule.
- Current R 38.144, which requires service of the claim of appeal on the controlling board by personal delivery or by registered or certified mail (return receipt requested) is rescinded

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and that issue is addressed in this rule, which will allow service of the claim of appeal by personal delivery or by first class mail, thereby reducing the burden on appellants.

- The suggested forms of the notice of claim of appeal and claim of appeal are deleted. Instead, the requirements currently reflected in those suggested forms are incorporated, as appropriate, in the text of the rule. Templates for a claim of appeal and a proof of service will be readily accessible on the State Tenure Commission's web site, thus easing the burden on parties, including unrepresented teachers, to create pleadings that comply with legal requirements. (To make the rules consistent and to ease access for educators, particularly those unrepresented by attorneys, the complicated web address in subrule (3) was changed after the public comment period to align with the simple web address in R 38.133. Both addresses lead directly to the same web page.)

R 38.144

This rule is rescinded because its subject matter is moved to R 38.143, as proposed to be amended.

R 38.145 Filing.

- Subrules (1) and (3) are amended to clarify that the State Tenure Commission shall receive pleadings and other documents in their entirety before 5 p.m. on the last day of the applicable timeline.
- In subrule (2), unnecessary, unenforced requirements related to filing by fax are deleted. The definition of "electronic submission" in Rule 38.131, as amended, expands options for that method of filing to include email and other methods approved by the State Tenure Commission.
- Other proposed changes are for purposes of clarity and reorganization.

R 38.146 Service; mailing; proof of service.

- This rule is reorganized and clarified. Subrules are created to delineate the distinct subject matters addressed in the rule.
- In subrule (1), the expanded methods of electronic submission of pleadings and other documents are incorporated into this general rule about service.
- The introductory reference to service of the claim of appeal is deleted as unnecessary in light of proposed changes to R 38.143.

R 38.147 Answer.

In subrule (2), the requirement that the appellee file multiple copies of an answer is deleted, thus reducing the burden on school districts.

R 38.149 Joinder or dismissal of parties and consolidation of cases.

Unnecessary, cumbersome language is deleted from this rule, which is simplified to reflect that joinder and dismissal of parties and consolidation of cases are matters addressed to the discretion of the administrative law judge.

PART 3. MOTION PRACTICE

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R 38.151 Motions, general provisions.

- Current subrule (3) is deleted and, in proposed subrules (1) and (3), the requirements that briefs be filed with motions and responses to motions are deleted as unnecessary, thus decreasing the burden on parties. (In subrule (2), a comma was inadvertently inserted between “motion” and “and.” That error has been corrected.)
- Subrule (8) is amended to add Detroit and the county of the appellee as locations where the administrative law judge may hold a motion hearing.

R 38.152 Motion for more definite statement.

- The rule is clarified to state that a motion for a more definite statement may be filed if a claim or appeal or answer does not reasonably inform the other party of the nature of the claim or defense.
- The rule is amended to allow the filing of a motion for more definite statement at any time.

R 38.153 Motion to strike.

The second sentence of this rule is deleted because it is inaccurate in that pleadings do not contain “evidence.”

R 38.155 Motion for summary disposition.

Proposed changes to this rule add clarity.

R 38.156 Motion for adjournment or continuance of hearing.

- The unnecessary second sentence of this rule is deleted.
- A sentence is added to clarify that any adjournment or continuance is subject to MCL 38.104, which requires (in MCL 38.104(5)(g)) that a hearing conclude no later than 75 days after a claim of appeal is filed.

PART 4. PREHEARING CONFERENCE

R 38.161 Scope of prehearing conference.

- This rule is clarified to provide that the ALJ may determine that a prehearing conference is not required.
- The matter of pre-hearing briefs is added to the list of issues addressed at a prehearing conference.

R 38.162 Prehearing summary.

The requirement that the prehearing summary cover all matters discussed is deleted as unnecessary; the parties retain the right to object to the prehearing summary.

R 38.163

This rule is rescinded because the subject matter (pre-hearing brief) is included in R 38.161 as proposed to be amended.

R 38.165

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This rule is rescinded as unnecessary and misleading because, although it purports to allow parties to waive rules related to prehearing conferences and prehearing summaries, the approval of the administrative law judge is required. The decision about the need for a prehearing conference is clearly placed with the administrative law judge in R 38.161 as proposed to be amended, and the parties may object to the prehearing summary issued by the administrative law judge under R 38.162.

PART 5. HEARINGS, EXCEPTIONS, AND CORRECTION OF MISTAKES

R 38.171

This rule is rescinded as unnecessary because it just repeats section 4(2) of Article IV of the Teachers' Tenure Act, MCL 38.104(2).

R 38.172 Conduct of evidentiary hearing; stipulations of fact; objections; rules of evidence; rules of privilege; official notice.

- Language in subrule (2) that duplicates R 38.141 is deleted.
- Current subrule (8) is deleted as unnecessary.
- A new subrule (9) is added to clarify that the general rules of the Michigan Office of Administrative Hearings and Rules, Michigan court rules, and the Administrative Procedures Act's provisions about contested cases apply if these rules do not address a matter.

R 38.173 Subpoenas.

- To the extent that the first three sentences of subrule (1) repeat section (4)(5)(f) of Article IV of the Teachers' Tenure Act, MCL 38.104, they are deleted. Other parts of subrule (1) are moved to other subrules.
- The statement that, "The ALJ may stay further proceedings until the subpoena is obeyed" is deleted in light of the statutory timelines for the conduct of tenure appeals (MCL 38.104); staying proceedings is always within the discretion of the ALJ, subject to the statutory timelines.
- The requirement that the administrative law judge sign blank subpoenas is deleted, leaving the matter to the discretion of the administrative law judge.
- Subrule (3) incorporates Michigan court rules; unnecessary language in that subrule is therefore deleted.

R 38.174 Discovery.

The reference to R 38.171 is deleted because that rule is rescinded.

R 38.174a Physical and mental examination.

Proposed changes to this rule add clarity.

R 38.176 Exceptions, cross-exceptions, statement in support of preliminary decision and order, supporting briefs.

- The requirements that parties file multiple copies of exceptions, statements in support, briefs, and motions are deleted, thus easing the burden on parties.

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- The unnecessary and unenforced requirement that parties file copies of motions that are the subject of exceptions is deleted.
- The requirements of parallel citations of Michigan statutes and of page references regarding preservation of issues for review are deleted as unnecessary and unenforced.

R 38.179 Correction of mistakes.

The catchline of this rule is amended to align with the rule, which concerns more than “clerical” mistakes.

5. List names of newspapers in which the notice of public hearing was published and publication dates (attach copies of affidavits from each newspaper as proof of publication).

Detroit Free Press, July 31, 2019
Grand Rapids Press, July 31, 2019
Marquette Mining Journal, July 31, 2019

6. Date of publication of rules and notice of public hearing in *Michigan Register*:

August 1, 2019 (MR 13, pp 61-76)

7. Time, date, location, and duration of public hearing:

10:00 a.m. to noon
Wednesday, August 14, 2019
Michigan Library & Historical Center, 1st Floor Forum, 702 W. Kalamazoo St., Lansing, MI 48915

2:30 p.m. to 4:30 p.m.
Wednesday, August 14, 2019
Michigan Library & Historical Center, 1st Floor Forum, 702 W. Kalamazoo St., Lansing, MI 48915

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

https://www.michigan.gov/mde/0,4615,7-140-37818_6555---,00.html

9. List of the name and title of agency representative(s) attending public hearing:

Jennifer Cook, departmental analyst, Office of Administrative Law

Mary Fielding, regulatory affairs officer and administrative law specialist, Office of Administrative Law

10. Persons submitting comments of support:

No one submitted comments of support.

11. Persons submitting comments of opposition:

No one submitted comments of opposition.

Agency Report to JCAR

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments Made at Public Hearing	Written Comments	Agency Rationale for Change	Rule Number & Citation Changed
1.	None	None	None		
2.					
3.					
4.					

13. Date report completed:

September 23, 2019
