

Milwaukee Public Library Board of Trustees Operating Guidelines (revised November 2024)

I. Closed Session

A. Purpose

Library trustees should be aware that Wisconsin's open meetings law is designed to support the principle that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business". To this end, all meetings of all state and local government bodies must be publicly noticed and held in places reasonably accessible to members of the public unless otherwise expressly provided by law. The specific statutory exemptions that may allow for a closed session are in Wisconsin Statutes 19.85.

B. Requirements

Wisconsin's Open Meetings Law places very specific requirements on library boards for notice and conduct of meetings. Closed library board sessions are allowed for certain purposes. The meeting notice must indicate any contemplated closed session, the subject matter of the closed session discussion, and the specific statutory provision allowing a closed session. For most personnel-related issues, the relevant exemption is provided in Wisconsin Statutes 19.85(1)(c) which allows closed sessions when the employment, promotion, compensation, or performance evaluation data of any public employee under the jurisdiction of the particular government body is being considered.

Other exemptions may include:

19.85(1)(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

19.85(1)(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

Closed session is also possible under Wisconsin Statutes 19.85(1)(b) if the Board has jurisdiction over an appeal of a dismissal, demotion or discipline of an employee; however, the board must give the employee notice of any evidentiary hearing held prior to final action and to any meeting at which final action might be taken. Notice to the employee must include a statement that the employee can demand that the evidentiary hearing be held in open session.

A complete list of closed session exemptions is in Wisconsin Statutes 19.85(1).

The process for going into closed session is as follows:

1. The board must first convene in open session.
2. The chief presiding officer must announce to all present at the meeting the intention of going into closed session and the purpose of the closed session.
3. The chief presiding officer must state the specific section of the law, by statute number (e.g. Section 19.85(1)(c) for a director evaluation session), which allows for the closed meeting. This announcement should be recorded in the minutes.
4. A motion, second and roll call vote, with the vote of each board member recorded in the minutes. A majority vote is required to convene in closed session.

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5. Attendance at the closed session is limited to the board, necessary staff, and any other persons whose presence is needed for the business at hand.
6. Closed session discussions must be limited to the subject announced in the meeting notice and the chief presiding officer's announcement.
7. Certain votes may possibly be legally taken in closed session. To avoid any question, it is a sound practice to take votes after reconvening into open session. Board actions, whether taken in open or closed session, must be recorded in the minutes and be open to public inspection. Secret ballots are only allowed for the election of board officers.
8. The board may legally reconvene in open session as long as that intent was noted in the public notice of the meeting. If there was no notice given that the board intended to reconvene in open session, the board is required to wait at least 12 hours after the completion of the closed session before reconvening in open session.

II. MPL Board Finance and Personnel Committee/Employee Appeals Procedure

A. Appeals

1. Pursuant to Wis. Stat. §§ 63.43 (1) and 63.44, no regularly appointed employee (an employee who has passed his, her, or their probationary period) can be removed, discharged, or reduced except for just cause. Written notice of the removal, discharge, or reduction, with the reasons for the action, shall be furnished by the Library Director or his/her designee to the employee; a regularly appointed employee who has received this notice may file a written request to appeal that decision to the Finance and Personnel Committee of the Library Board ("Finance and Personnel Committee") in the manner provided by this procedure.
2. Pursuant to Wis. Stat. § 63.43(2), regularly appointed employees who are suspended for a period in excess of fifteen (15) days may appeal their suspensions to the Finance and Personnel Committee and regularly appointed employees who receive a second or subsequent suspension within a six month period, regardless of the time period of the suspensions, may appeal the second or subsequent suspension to the Finance and Personnel Committee in the manner provided by this procedure.
3. A request to appeal must be in writing, signed by the employee, and mailed or delivered to the Secretary of the Board, Milwaukee Public Library at 814 W. Wisconsin Ave., Milwaukee, WI 53233-2385, within three business days from the time the notice of the removal, discharge, reduction, or suspension is furnished to the employee. Appellants must use the Appeal Process form to initiate the appeal. (Attachment I). Failure on the part of an employee to file a timely appeal within 3 business days shall result in the appeal not being considered. The employee will be notified in writing if the appeal is not timely.
4. The appellant, or counsel for the appellant, must advise the Secretary of the Board, as soon as practicable, if the appellant intends to appear with counsel at the appeal hearing.

B. Hearing Procedure

The following procedure applies to appeals before the Finance and Personnel Committee.

All references to numbers of days set forth in this procedure shall mean calendar days.

1. Upon receiving a notice of appeal, the Secretary to the Board shall set a date for hearing on the reason(s) for removal, discharge, reduction, or suspension of the employee, with the employment action subject to the hearing being limited to the employment action defined by the Secretary of the Board, consistent with these Guidelines. The hearing shall be conducted within forty-five (45) days from the receipt of the notice of appeal unless the appellant waives the 45-day time requirement in writing. If the 45-day time requirement is waived, the appeal shall be scheduled at a mutually convenient date occurring as soon as administratively feasible.

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Additionally, if it appears to the Secretary of the Board that the 45-day time requirement is not practicable, the Secretary may ask the appellant for a waiver.

2. The Library Director and appellant shall be served with a notice of the date, time, and place of the hearing by regular U.S. mail. If the appellant is represented by counsel, communications will be with the counsel of record.
3. The Secretary of the Board or the Chair of the Finance and Personnel Committee has the authority to grant each party one adjournment prior to the scheduled appeal hearing date, based upon the Secretary's determination that cause exists. A request for an adjournment must be made in writing and shall state the reasons for the adjournment. Notwithstanding the above, the Finance and Personnel Committee may adjourn the appeal hearing at any time upon terms it deems just. Rescheduling of the appeal hearing will be done as soon as administratively feasible.
4. The hearing may be presided over by the Chair of the Committee or a Hearing Examiner designated at the discretion of the Committee. The hearing will be recorded.
5. The Secretary of the Board, the Chair, or the Hearing Examiner, may hold a pre-hearing conference for the purpose of clarifying and narrowing the issues to be addressed at the appeal hearing, identifying witnesses, reviewing proposed exhibits, signing subpoenas (if requested) to be served by a representative of the requesting party, identifying stipulated facts, and making pre-trial rulings as necessary for the administrative record. The stipulation of facts, witness list, and copies of admitted exhibits shall be provided to the Finance and Personnel Committee or the Hearing Examiner prior to the commencement of the hearing. The Secretary of the Board or the Chair of the Finance and Personnel Committee will advise the parties as to the relevance and suitability of the documents and/or testimony that each party intends to submit or elicit at the appeal hearing. Each party shall bring three copies of each available exhibit the party intends to submit into evidence and shall also identify all witnesses that the party intends to call at the appeal hearing. The failure of a party to identify a witness or furnish copies of proposed available exhibits at the pre-hearing conference may result in either the Finance and Personnel Committee excluding the evidence or, an adjournment of the hearing so that the opposing party and the Finance and Personnel Committee can review this new evidence.
6. Issues to be determined at the appeal hearing: Disciplinary appeal hearings are quasi-judicial proceedings intended to determine the facts in as direct and simple a manner as possible. Generally, the issues to be determined by the Finance and Personnel Committee in a disciplinary appeal hearing are whether there was cause for the department to impose the disciplinary action and whether the degree of disciplinary action imposed was reasonable under the circumstances. If the Finance and Personnel Committee finds there was cause for imposition of discipline, it has the authority to sustain or modify the level of disciplinary action imposed by the department.

The appeal hearing shall provide the appellant a reasonable opportunity to present pertinent evidence and testimony to demonstrate: (1) that the employee did not commit the acts or the performance issues did not occur as alleged; (2) that, even if the employee committed the acts or the performance issues occurred as alleged, such activity does not constitute misconduct; (3) that even if the employee committed misconduct, the degree of discipline imposed is too harsh or severe; (4) that the employee did not have a reasonable basis to know that the conduct would result in discipline; or (5) a combination of any of these matters which would justify or compel modification of the department's action.

7. Order of presentation: The presentations by both parties shall be 10 minutes in length or as brief and closely-related to the issue(s) as possible. While the Finance and Personnel Committee directs the proceedings, the following order of presentation is generally followed: (1) each party will be given an opportunity to make a brief opening statement outlining what that party believes its evidence will show; (2) the department presents

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its evidence first; (3) the appellant then presents his, her, or their evidence; (4) the department may be allowed to submit rebuttal evidence after the appellant presents his, her, or their case; and (5) after the Finance and Personnel Committee has heard all the testimony, each party will be given the opportunity to make a brief closing statement summarizing its position.

Witnesses shall be sworn and their testimony taken under oath. Witnesses' testimony should be limited to facts or other information about which they have direct knowledge. Witnesses are subject to reasonable and relevant cross-examination by the opposing party. Questioning of the witness should be as concise as possible and the questions shall not include argument or commentary.

Throughout the appeal hearing, Finance and Personnel Committee members will be given an opportunity to ask their own questions to aid the Finance and Personnel Committee in its consideration of the evidence. The Chair of the Finance and Personnel Committee shall exercise reasonable control over the questioning of witnesses so as to effectively (1) ascertain the truth, (2) ensure that the testimony is relevant and probative, and (3) protect the witness from harassment or undue embarrassment.

8. Rules of evidence: The scope of evidence that will be considered by the Finance and Personnel Committee is limited to evidence that is relevant to the issues set forth in the disciplinary notice. Although not bound by the Wisconsin Rules of Evidence, the Finance and Personnel Committee must base its decision on evidence that is reliable. Therefore, the parties should limit their reliance on hearsay evidence, since that evidence may be deemed unreliable by the Finance and Personnel Committee. The Finance and Personnel Committee determines the relevance and credibility of the evidence and the weight that will be given to a particular piece of documentary evidence or to the testimony of a witness.
 - a. Disciplinary Appeal: The burden of proof is on the department to establish by a preponderance of the evidence that there was cause for the action taken. A preponderance of the evidence means that, to a reasonable certainty, the action of the department is supported by the greater weight of credible evidence.
 - b. Separation Appeal: At the conclusion of the hearing, the Committee shall determine whether the decision to separate the appellant was reasonable.
9. Burden of proof: The burden of proof is on the department to establish by a preponderance of the evidence that there was cause for the action taken. A preponderance of the evidence means that, to a reasonable certainty, the action of the department is supported by the greater weight of credible evidence.
10. The Finance and Personnel Committee, after all of the facts have been considered may, remain or convene, in executive session to consider the disciplinary or separation action under appeal. However, all voting by members of the Finance and Personnel Committee shall be conducted in open session. The Finance and Personnel Committee shall make a finding and recommendation to the Board as to whether the disciplinary or separation action should be sustained, modified, or set aside or whether a substitute disposition of the disciplinary or separation action should be ordered. The findings and recommendations of the Finance and Personnel Committee shall be memorialized in writing.
11. Failure to appear at the appeal hearing: If the appellant does not appear at the appeal hearing, the Finance and Personnel Committee may dismiss the appeal with prejudice. This action would preclude an appellant from bringing the appeal back to the Finance and Personnel Committee.
12. The Finance and Personnel Committee will report its recommendation to the Board at the next scheduled meeting and the Library Board shall act upon the Committee's recommendations and notify the employee of the Board's decision in writing. The decision and findings of the Finance and Personnel Committee, when approved by the Library Board, shall be final and shall be filed in writing with the Library Board with copies to the Library Director, and employee or counsel of record. (Until the findings of the Board are approved,

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the employment action of the Library Director or designee remains in full force and effect). The City Service Commission shall receive a copy of the decision.

REVISIONS

Reviewed and approved by the City Attorney's Office January 14, 2013

Reviewed and approved by the Milwaukee Public Library Board of Trustees January 22, 2013

Reviewed and approved by the Milwaukee Public Library Board of Trustees June 2020

Reviewed and approved by the Milwaukee Public Library Board of Trustees November 2024

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ATTACHMENT I

MILWAUKEE PUBLIC LIBRARY EMPLOYEE APPEAL FORM

Date:

To: The Finance and Personnel Committee, Milwaukee Public Library Board in care of the Secretary of the Board, the Library Director

Please take notice that I appeal the following decision, which I received on the day of , 20 :

- The
- demotion
 - discharge
 - suspension exceeding 15 days
 - suspension for a second time within a 6-month period
 - separation

Print Name

Signature

Title

Department/Library

Further, please take notice that I intend to appear by counsel:

Name:

Address:

Phone:

Please attach the disciplinary or separation notice for the action that you are appealing. Please attach a brief statement indicating the basis of your appeal.

This appeal is dated this day of , 20 .

Signature of appellant:

Sign and submit this form to the Secretary of the Board, the Library Director, at Milwaukee Public Library at 814 W. Wisconsin Ave., Milwaukee, WI 53233-2385, within three business days from the date the notice is received by the employee.

Note: Library Administration may modify this form as needed.