

Chapter 6 Administrative Review

6.01 Purpose

The purpose of this chapter is to establish procedures for reviewing District decisions.

6.02 Applicability

These procedures apply to any person or governmental unit adversely affected by a District decision.

6.03 Opting Out of Chapter 68

The procedures established by this chapter apply to the review of District decisions. These procedures apply instead of the procedures established by secs. 68.01 to 68.12, Wis. Stats., according to sec. 68.16, Wis. Stats.

6.04 Initial Review

- (1) Any person or governmental unit adversely affected by a District decision may request that the District review the decision.
- (2) The District shall review a decision if the director of the division that made the decision receives a request for review within 30 days after the person or governmental unit received notice of the original decision.
- (3) A request for review shall be in writing and shall contain facts and reasons supporting modification or reversal of the decision.
- (4) Within 30 days after receiving the request for review, the division director or a designee shall either review the original decision and provide a response or provide a notice indicating when the review will be complete. The division director or the designee may affirm, reverse, or modify the original decision. The division director or the designee shall provide a written explanation. If the decision is adverse to the person or governmental unit requesting review, then the decision shall explain the procedures necessary for an administrative appeal and the date when the notice of appeal is due.

6.05 Administrative Appeal

- (1) Any person or governmental unit adversely affected by a review according to sub. (2) may appeal the decision. To commence an appeal, the appellant shall provide a notice of appeal to the division director within 30 days after the District placed the review in the mail with first-class postage paid.
- (2)
 - (a) Within 60 days after the District receives the notice of appeal, the District shall hold a hearing, except as provided in par. (b). At least 10 days before the hearing, the District shall mail or otherwise deliver notice of the hearing.
 - (b) In the absence of a dispute regarding scientific or technical facts, the decision-maker shall decide the case using summary judgment procedures and only the written record.
- (3) The District shall select an impartial person to be the decision-maker. This person shall be someone who did not participate in the deliberations leading to the decision under review. The decision-maker shall be a person licensed to practice law in Wisconsin.
- (4) Attorneys may represent the parties and file briefs; present evidence; and call, examine, and cross-examine witnesses.
- (5) The decision-maker may issue subpoenas upon the application of a party and the showing of good cause.
- (6) Discovery of District information shall be limited to public records directly related to the case. When providing these records, the District shall waive any fees that the District would normally charge for a records request.
- (7) The decision-maker shall hold a pre-hearing conference if requested by any party.
- (8) At least five days before the hearing or as directed by the decision-maker, the parties shall jointly submit a list of exhibits, witnesses, and a summary of the disputed facts and law. The decision-maker may require that exhibits be filed and marked before the hearing.
- (9) Witnesses shall be sworn by the decision-maker.
- (10) The decision-maker shall maintain a complete record of the proceedings. As directed by the decision-maker, the District shall provide a court reporter or other recording device.
- (11) The decision-maker shall admit all testimony having reasonable probative value and shall exclude irrelevant or repetitious testimony. The decision-maker is not bound by common law or statutory rules evidence. The decision-maker shall apply any rules of privilege generally recognized by law.

- (12) The appellant shall have the burden of proof and persuasion. To prevail on scientific or technical issues, appellants shall show that the District used erroneous facts or improper techniques. If an appellant shows only that different techniques could lead to different conclusions, then the District shall prevail.
- (13) Within 20 days after the completion of the hearing or the close of the record, whichever is later, the decision-maker shall mail or otherwise deliver to all of the parties a written conclusion and explanation.
- (14) If the decision is not subject to judicial review, then the decision-maker shall provide the record of the case to the District's custodian of records within 45 days after the decision is issued.

6.06 Finality

A decision is not final until all available administrative remedies provided by this section have been exhausted, for the purposes of:

- (1) seeking judicial review, according to sec. 68.13, Wis. Stats.; or
- (2) appealing to the Public Service Commission, according to sec. 200.59(5), Wis. Stats., regarding whether charges, rules, or practices established according to sec. 200.59, Wis. Stats., are unreasonable or unjustly discriminatory.