

# The Commissioner of Teacher Professional Conduct

## Commissioner's Rules of Practice and Procedure

These rules are made pursuant to section 8.6 of *The Education Administration Act*, C.C.S.M. c. E10 ("the Act"). If there is any inconsistency between the Act and these rules, the Act governs.

### DEFINITIONS

In these rules:

<b>"address"</b>	includes: <ol style="list-style-type: none"><li>1. an email address;</li><li>2. a street address;</li><li>3. a postal address, if different from a street address; or</li><li>4. a facsimile number.</li></ol>		
<b>"commissioner"</b>	means the commissioner appointed under section 8.2 of the Act;		
<b>"complainant"</b>	means a person who made a complaint under section 8.9 of the Act;		
<b>"complaint"</b>	means a complaint made to the commissioner under section 8.9 of the Act;		
<b>"department"</b>	means the Manitoba Department of Education and Early Childhood Learning;		
<b>"director"</b>	means the director of certification appointed under section 6 of the Act;		
<b>"employer"</b>	means an employer as defined under section 8.1 of the Act;		
<b>"employer who made a report"</b>	means an employer who made a report to the commissioner under section 8.10 of the Act;		
<b>"hearing"</b>	means a hearing by a panel following a referral by the commissioner under section 8.23 of the Act;		
<b>"investigation"</b>	means an investigation by the commissioner under section 8.14 of the Act;		
<b>"investigated teacher"</b>			
		<b>"panel"</b>	means a teacher about whom a complaint or report is made, and includes a teacher about whom the commissioner has initiated an investigation;
		<b>"party"</b>	means a panel established under section 8.24 of the Act;
		<b>"referral"</b>	includes the commissioner, an investigated teacher, suspended teacher or teacher under referral;
		<b>"report"</b>	means a referral by the commissioner under section 8.23 of the Act;
		<b>"suspended teacher"</b>	means a report about a teacher made under section 8.10 of the Act;
		<b>"suspension"</b>	means a teacher whose teaching certificate has been suspended under section 8.17 of the Act;
		<b>"teacher"</b>	means a suspension of a teaching certificate under section 8.17 of the Act;
		<b>"teacher under referral"</b>	means a teacher who holds a teaching certificate under the Act, and includes a teacher whose certificate has been suspended, or a person certified as a clinician pursuant to a regulation under the Act; and
			means a teacher with respect to whom a referral has been made.

# GENERAL PROVISIONS

## ADDRESS FOR SERVICE AND SENDING NOTICES

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- 1.** The commissioner may use as the address of a teacher the last known address of the teacher shown in the records of the director, unless the teacher requests in writing that the commissioner use another address.
- 2.** The commissioner may use any address shown on a report, or the last known address of an employer shown in the records of the director, to send any notice, correspondence or other document required to be sent to the employer.
- 3.** The commissioner may use any address shown on a complaint to send any notice, correspondence or other document required to be sent to the complainant.
- 4.** If the commissioner is required to send a notice, correspondence or other document to any other person, the commissioner may use any address available to the commissioner.
- 5.** If there is no address available to the commissioner for any person, the commissioner may send the notice, correspondence or other document in such manner as the commissioner deems best.
- 6.** Any changes to an address must be provided to the commissioner in writing, and until a change is provided in writing, any notice, correspondence or other document sent in accordance with these rules will be deemed to be validly sent.

## NOTICE TO AND FROM THE COMMISSIONER

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- 7.** A teacher, complainant, employer or any other person who is required to file or submit a notice, complaint, report, document or other thing to the commissioner must:
  - a.** email it to: [tcs@gov.mb.ca](mailto:tcs@gov.mb.ca);
  - b.** fax it to: 204-945-1625; or
  - c.** mail it to: 309-1181 Portage Ave., Winnipeg, MB R3G 0T3.

## DATE OF RECEIPT

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- 8.** A notice, complaint, report, document or other thing required to be filed, submitted or sent by a person to the commissioner will be deemed to have been received:
  - a.** if delivered in person by courier, or by mail, on the actual date received by the commissioner's office; or
  - b.** if sent by facsimile or email, on the date received by the commissioner's office, except that any facsimile or email sent after 4:00 p.m. CST will be deemed received at 9:00 a.m. CST on the next business day.

- 9.** A notice, document or other thing required to be sent by the commissioner to a person:
  - a.** if delivered in person, by registered mail, or by a courier who obtains a written confirmation of delivery, will be deemed to have been received on the date it is delivered;
  - b.** if sent by regular mail, will be deemed to have been received on the earlier of the date it is delivered or the fifth business day after the date it was sent; or
  - c.** if sent by facsimile or email, will be deemed to have been received on the date it was sent, except that any facsimile or email sent after 4:00 p.m. CST will be deemed received at 9:00 a.m. CST on the next business day.

## DOCUMENTS

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- 10.** If a teacher, complainant, employer, or any other person submits a notice, complaint, report, document or other thing to the commissioner, where possible the notice, complaint, report, document or other thing should be in a form that may be photocopied, electronically scanned, or otherwise reasonably easily reproduced.

## PROTECTING PRIVACY INTERESTS

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- 11.** In order to protect the privacy interests of a person about whom information may be disclosed in the course of a complaint, report, investigation or referral, the commissioner may make an order respecting the use or disclosure of that information by the person to whom it is disclosed including:
  - a.** directing that the information be removed or redacted from any notice, complaint, report, document or other thing;
  - b.** limiting or restricting the copying, scanning or any other reproduction of the information, and
  - c.** expressly limiting use of the information to the preparation for or response to a complaint, report, investigation or referral.

## LEGAL REPRESENTATION

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- 12.** If a teacher is represented by legal counsel, the teacher must give the commissioner written notice of the name, address, telephone number and email address, if any, of their legal counsel. On receipt of that notice, any notices or documents that the commissioner is required to send to the teacher will be sent to their legal counsel and will have the same effect as if sent to the teacher.
- 13.** If a teacher's legal counsel withdraws as their legal counsel, the legal counsel must immediately provide written notice to the commissioner.

## TIMELINES, EXTENSIONS AND WAIVERS

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- 14.** If a person fails to provide a notice, document or other thing, or fails to take action within the time or by the date set by these rules or the commissioner, the commissioner may take such action as the commissioner considers appropriate.
- 15.** Unless the Act or these rules state otherwise, at any time prior to the start of a hearing, a person may request that the commissioner extend a timeline or deadline, vary an order, or waive or vary a requirement set by these rules.
- 16.** A request for extension of a timeline or deadline, waiver or variation under Rule 15 must:
  - a.** be in writing;
  - b.** set out the reasons for the request; and
  - c.** be made before the timeline or deadline expires, if applicable.
- 17.** The commissioner may, at the commissioner's discretion, request any other person to make a submission with respect to a request for an extension, waiver or variation under Rule 15, prior to making a decision regarding the request.
- 18.** On a request being made under Rule 15, the commissioner may extend a timeline or deadline, vary an order or waive or vary a requirement set by these rules. The commissioner may grant a request for an extension, waiver or variation before or after the timeline or deadline expires.
- 19.** The commissioner, on the commissioner's own initiative, may waive or vary a requirement set by these rules, and may shorten or lengthen any time limit in these rules as the commissioner considers appropriate or necessary.
- 20.** The commissioner must notify the person who made the request and any other person that the commissioner believes should be informed of a decision made under Rule 18 or Rule 19.

# REPORTS AND COMPLAINTS

## FORM OF REPORTS AND COMPLAINTS

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- 21.** All complaints must be submitted using the complaint form, found at [www.edu.gov.mb.ca/k12/commissioner/docs/complaint\\_form.pdf](http://www.edu.gov.mb.ca/k12/commissioner/docs/complaint_form.pdf)
- 22.** All reports must be submitted using the report form, found at [https://www.edu.gov.mb.ca/k12/commissioner/docs/employer\\_report.pdf](https://www.edu.gov.mb.ca/k12/commissioner/docs/employer_report.pdf)
- 23.** Notwithstanding Rule 21 and Rule 22, the commissioner may accept a complaint or report which is not submitted on the applicable form.
- 24.** The commissioner must acknowledge receipt to the person who made a complaint or report within 7 days of receiving the complaint or report.

# INVESTIGATIONS

## NOTICE OF INVESTIGATION

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- 25.** Within 30 days of providing notice under section 8.14(3) of the Act, or as soon thereafter as is practicable, the commissioner must provide the investigated teacher with a copy or summary of a complaint or report, as applicable.
- 26.** If the commissioner is of the opinion that the identity of a complainant, student or any other person referred to in a complaint, report or summary of a complaint or report, as applicable, should not be disclosed, the commissioner may remove or redact any information identifying the person prior to sending the complaint, report or summary to the investigated teacher.

## GIVING EVIDENCE AND PRODUCTION OF DOCUMENTS

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- 27.** A person who is required to provide evidence or produce documents under section 8.15 of the Act must comply as soon as practicable and, in any event, by the date and time set by the commissioner.

## INTERVIEWS

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- 28.** If the commissioner intends to interview a person under section 8.16(c) of the Act, the commissioner may request an interview in writing or by telephone, and may, at the commissioner's discretion, hold interviews in person, by telephone or by any electronic means.
- 29.** If the commissioner intends to interview an investigated teacher, the investigated teacher may have their legal counsel or agent present.

## INVESTIGATION REPORT

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- 30.** The commissioner must provide a copy of an investigation report to an investigated teacher that summarizes the findings of the investigation and sets out the evidence supporting those findings and must provide the investigated teacher at least 28 days to respond in writing to the investigation report.
- 31.** After receiving and considering any written response provided by the investigated teacher to the investigation report, the commissioner may investigate further and may provide a supplemental investigation report to the investigated teacher, and if a supplemental investigation report is provided, the commissioner must provide the investigated teacher at least 14 days to respond in writing to the supplemental investigation report.

## SUSPENSION BEFORE A HEARING

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- 32.** The commissioner must provide written reasons for ordering, varying or rescinding a suspension, but may keep confidential any information identifying a complainant, student or other person, if the commissioner is of the opinion that the identity of the complainant, student or other person should not be disclosed.
- 33.** At any time prior to a hearing, a suspended teacher may request that the suspension be varied or rescinded, and such a request must:
  - a.** be in writing,
  - b.** be addressed to the commissioner, and
  - c.** include reasons for the requested variation or rescission of the suspension.
- 34.** The commissioner may consider a request to vary or rescind the suspension based solely on the written request by the teacher, or, at the discretion of the commissioner, may consider hearing a further submission by the suspended teacher in person, or by telephone or other electronic means.
- 35.** If the commissioner denies the request to vary or rescind the suspension, the commissioner must provide written reasons to the suspended teacher within 14 days.

# EVIDENCE

## DISCLOSURE OF EVIDENCE

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- 36.** After a referral has been made, and at least 28 days prior to the start of the hearing, the commissioner or counsel acting on behalf of the commissioner must provide to the teacher under referral:
- a.** a list of every document relevant to the referral in the commissioner's possession or control, regardless of whether the commissioner or counsel acting on behalf of the commissioner intends to produce that evidence at the hearing, and
  - b.** a summary of the anticipated evidence of any person whom the commissioner or counsel acting on behalf of the commissioner intends to call as a witness at the hearing.
- 37.** The commissioner or counsel acting on behalf of the commissioner will, upon request by a teacher under referral, or may on their own initiative, provide a copy of any document described in Rule 36(a) to the teacher under referral, within a reasonable period of time.
- 38.** After a referral has been made, and at least 14 days prior to the start of the hearing, the teacher under referral must provide to the commissioner or counsel acting on behalf of the commissioner:
- a.** a list of every document the teacher under referral intends to produce at the hearing, and
  - b.** a summary of the anticipated evidence of any person whom the teacher under referral intends to call as a witness at the hearing.
- 39.** Upon request by the commissioner or counsel acting on behalf of the commissioner, a teacher under referral will, within a timeline specified by the commissioner, provide to the commissioner or counsel acting on behalf of the commissioner, a copy of any document described in Rule 38(a).
- 40.** There is a continuing obligation on the commissioner or counsel acting on behalf of the commissioner, and on a teacher under referral, to make disclosure consistent with the obligations set out in these rules, up to and during the hearing.

## EXPERT EVIDENCE

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- 41.** The commissioner or counsel acting on behalf of the commissioner, or the teacher under referral, may call an expert to give evidence of the expert's opinion at the hearing, if they deliver the following to the other party at least 45 days prior to the start of the hearing:
- a.** a copy of any expert report;
  - b.** a summary of the expert's anticipated evidence;
  - c.** a statement of the facts and assumptions upon which the expert's opinion is based; and
  - d.** a statement of the expert's qualifications.
- 42.** Instead of calling an expert to give evidence, the commissioner or counsel acting on behalf of the commissioner, or the teacher under referral, may introduce an expert report stating the opinions of an expert if they deliver the following to the other party at least 45 days prior to the start of the hearing:
- a.** a copy of the expert report;
  - b.** a statement of the facts and assumptions upon which the expert's opinion is based;
  - c.** a statement of the expert's qualifications; and
  - d.** notice that the expert report is being delivered under this rule.
- 43.** When an expert report has been delivered to the commissioner or counsel acting on behalf of the commissioner, or to a teacher under referral, either can, at least 14 days prior to the hearing date, require the party relying on the expert report to make the author of it available for cross examination at the hearing.
- 44.** The party calling an expert to give evidence will be responsible for the cost of the expert's attendance, including reasonable costs of transportation, accommodation and fees, subject to any order of a panel under section 8.31(1) of the Act.
- 45.** The commissioner or counsel acting on behalf of the commissioner, or a teacher under referral, may respond to a summary of an expert's anticipated evidence or to an expert report by calling another expert to give evidence of the other expert's opinion at the hearing, if they deliver the following to the other party at least 14 days prior to the hearing:
- a.** a written summary of the other expert's anticipated evidence, if they intend to call the other expert to give evidence at the hearing, or an expert report;
  - b.** a statement of the facts and assumptions upon which the other expert's opinion is based; and
  - c.** a statement of the other expert's qualifications.
- 46.** A statement of qualifications in an expert report is proof that the expert has those qualifications, unless there is evidence to the contrary.



## PRE-HEARING CONFERENCES

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- 47.** At any time after a referral, and before a hearing begins, the teacher under referral may request in writing that the commissioner set a prehearing conference, or the commissioner may, on the commissioner's own initiative, set a pre-hearing conference.
- 48.** The commissioner may require that a pre-hearing conference be conducted in person, by telephone or by other electronic means.
- 49.** The commissioner must set the manner, date, time and location of the pre-hearing conference, and must give notice to the teacher under referral of the pre-hearing conference, including the manner, date, time and location set by the commissioner.
- 50.** Notice of a pre-hearing conference must be given at least 14 days prior to the date set for it, unless otherwise ordered by the commissioner.
- 51.** A teacher under referral may request a different manner, date, time or location for a pre-hearing conference, and that request must:
  - a.** be in writing,
  - b.** set out the reasons for the request and preferred alternatives; and
  - c.** be delivered to the commissioner at least two days prior to the scheduled pre-hearing conference.
- 52.** If the commissioner does not grant a request made under Rule 51, then the pre-hearing conference will be held as scheduled.
- 53.** If a teacher under referral or their legal counsel, if any, does not attend the pre-hearing conference as scheduled, the commissioner may make any order that could have been made had they attended it, without any further notice to the teacher under referral.
- 54.** At a pre-hearing conference, the commissioner may:
  - a.** address any written proposals from the commissioner or teacher regarding a consent resolution agreement, or the willingness of either party to make or agree to such a proposal;
  - b.** review compliance with any previous orders; and
  - c.** make any further orders required to facilitate the hearing.

# HEARING DATES

## SETTING A HEARING DATE

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- 55.** The commissioner may require that a hearing be conducted in person, by telephone or other electronic means, in writing, or any combination of those.
- 56.** The commissioner must set the manner, date, time and location of the hearing, at or without a pre-hearing conference, and must give notice to the teacher under referral of the hearing, including the manner, date, time and location set by the commissioner.
- 57.** Notice of a hearing must be given to the teacher under referral at least 28 days prior to the date set for it, unless the teacher under referral consents to a shorter notice period.

## ADJOURNMENT OF HEARING DATE

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- 58.** A teacher under referral may request a different manner, date, time or location for a hearing, and that request must:
  - a.** be in writing,
  - b.** set out the reasons for the request, and
  - c.** be delivered to the commissioner as soon as the reason for the change is known to the teacher under referral.
- 59.** Failure to make a request for a change under Rule 58 as soon as practicable may be taken into consideration when the commissioner considers the request.
- 60.** The commissioner may change the manner, date, time or location of a hearing after considering a request under Rule 58, or on the commissioner's own initiative, at or without a pre-hearing conference.
- 61.** Notice of a change under Rule 60 must be given to the teacher under referral, and if a new date is set for the hearing, notice of the new hearing date must be given at least 28 days prior to the new hearing date, unless the teacher under referral consents to a shorter notice period.

## ORDERS

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- 62.** At a pre-hearing conference or otherwise prior to the start of the hearing, the commissioner may make any order which the commissioner considers appropriate or necessary to facilitate a hearing and the just and timely resolution of one or more matters relating to the referral, and without limitation, the commissioner may make orders:
- a.** respecting the necessity or desirability of amendments to the referral;
  - b.** consolidating all or part of a referral with another referral, or ordering separate hearings for different allegations made in a referral;
  - c.** setting the same or different dates for hearing evidence and submissions by the parties with respect to determining findings under section 8.29 of the Act, and with respect to determining an order under section 8.30 of the Act, if any;
  - d.** imposing time limitations and terms and conditions on the exchange of documents, expert reports, admissions, agreed statements of facts, witness lists, written summaries of anticipated evidence of witnesses, written submissions, authorities relied on or any other thing;
  - e.** directing that the evidence of any witness be given by affidavit or other means;
  - f.** imposing measures to protect the privacy interests of a complainant, a person who is under the age of 21 years old or any other witness who may require or may have requested measures to protect their privacy while giving evidence or being cross-examined; and
  - g.** restricting public access to the commissioner's records or documents or to a panel's records or documents.
- 63.** At any time prior to or during a hearing, the commissioner or counsel acting on behalf of the commissioner, or a teacher under referral, may request the panel to make an order under section 8.26 of the Act, requiring a person to attend a hearing to give evidence, or to produce for the panel a document or other thing in the person's possession or control that is relevant to a matter before the panel, or both.
- 64.** An order made by the panel under section 8.26(1)(a) of the Act shall, at least 7 days prior to the hearing, be personally served on the person required to attend a hearing to give evidence.
- 65.** Notwithstanding Rule 64, the panel may require a person to attend a hearing to give evidence, despite the person having been served with an order under section 8.26(1)(a) of the Act within 7 days prior to the hearing.
- 66.** An order made by the panel under section 8.26(1)(b) of the Act shall, at least 7 days prior to the hearing, be sent to the person required to produce for the panel a document or other thing in the person's possession or control.
- 67.** Notwithstanding Rule 66, the panel may require a person to produce a document or other thing in the person's possession or control, despite the person having been sent an order under section 8.26(1)(b) of the Act within 7 days prior to the hearing.

- 68.** At any time prior to or during a hearing, the commissioner or counsel acting on behalf of the commissioner, or a teacher under referral, may request the panel to set aside or vary an order made under section 8.26 of the Act.
- 69.** After hearing submissions from the commissioner or counsel acting on behalf of the commissioner, and the teacher under referral, the panel may set aside or vary an order under section 8.26 of the Act on such terms as the panel considers appropriate or necessary.
- 70.** Prior to the hearing, the commissioner must set out all orders made at any pre-hearing conference or otherwise prior to the start of the hearing, in writing, and must send a copy of this list to:
  - a.** the teacher under referral; and
  - b.** the panel.

## HEARING PROCEDURE

### EVIDENCE

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- 71.** The panel may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.
- 72.** Witness testimony at a hearing must be under oath or affirmation administered by the chair of the panel.
- 73.** At a hearing, the commissioner or counsel acting on behalf of the commissioner, and the teacher under referral each have a right to:
  - a.** examine or cross-examine any witness; and
  - b.** present evidence in reply to any evidence presented or allegations made by the other party.
- 74.** The panel may reasonably limit examination or cross-examination of a witness, if it is satisfied that the examination or cross-examination has been sufficient to fully and fairly disclose all matters relevant to the referral, or if it determines that it would be inappropriate or an abuse of process to allow the examination or cross-examination to continue.
- 75.** The panel may examine any witness who gives evidence in a hearing.

## ORDER OF HEARINGS

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- 76.** The hearing will proceed in the following order:
- a.** the chair of the panel will introduce the panel and ask other persons present at the hearing to introduce themselves;
  - b.** the chair of the panel will address any relevant preliminary matters;
  - c.** the commissioner or counsel acting on behalf of the commissioner will make an opening statement, including a summary of the reasons for the referral, the findings of the investigation and the evidence supporting those findings, the witnesses who will be called to testify and any other issues to be addressed during the hearing;
  - d.** the teacher under referral or their legal counsel or agent may make an opening statement;
  - e.** witnesses may be called, first by the commissioner or counsel acting on behalf of the commissioner, and then by the teacher under referral;
  - f.** each witness will be examined by the party that calls them to testify, then may be cross-examined by the other party, and then examined by the panel;
  - g.** the teacher under referral may testify or provide a statement, then may be cross-examined by the commissioner or counsel acting on behalf of the commissioner, and then examined by the panel;
  - h.** other than the teacher under referral, witnesses may not be present during the testimony of other witnesses;
  - i.** the commissioner or counsel acting on behalf of the commissioner may make a closing submission;
  - j.** the teacher under referral or their legal counsel may make a closing submission;
  - k.** if, during their closing submission, either party provides fresh evidence to the panel, the other party will have a right to cross-examination with respect to that evidence; and
  - l.** after each party has had an opportunity to make a closing submission, the chair of the panel will conclude the hearing.
- 77.** In accordance with section 8.25 of the Act, on request by one of the parties or on its own initiative, prior to or during the hearing, the panel may vary or make determinations about the application of any of these rules as the panel may consider appropriate or necessary, including respecting the order of the hearing.

## RECORDING HEARINGS

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- 78.** The panel must record or transcribe its hearings.
- 79.** If, by a mechanical or human failure or other accident, the recording or transcription of a hearing is destroyed, interrupted or incomplete, the validity of the hearing is not affected.
- 80.** No other person is permitted to record a hearing.