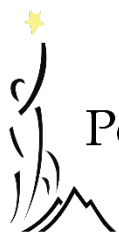


Administrative Appeal Procedures

Revised April 23, 2024



Personnel Board of Jefferson County

A Career. A Purpose. A Life.

Personnel Board of Jefferson County Administrative Appeal Procedures

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A. Introduction

These Administrative Appeal Procedures were promulgated under the authority of Section 22 of the Enabling Act of the Personnel Board of Jefferson County, Act. No. 248, H. 580, as amended, and were adopted by the Personnel Board of Jefferson County (Personnel Board) to establish guidelines to promote the just and efficient conduct of the administrative hearings provided to Classified Employees. Rule 12 of the Rules and Regulations of the Personnel Board¹ specifically addresses disciplinary actions and appeals. In addition, Rule 15 of the Rules and Regulations of the Personnel Board addresses hearings that may arise from a grievance. These administrative procedures are not intended in any way to circumvent, substitute and/or replace any of the requirements under the Enabling Act as executed through the Rules and Regulations of the Personnel Board and to the extent there is a direct conflict, the Enabling Act shall prevail.

B. The Appeal Process

With regard to disciplinary appeals, the role of the Personnel Board is to ensure that a Regular Employee of the Classified Service who, for cause, has been discharged, demoted, suspended for either a single suspension of more than five scheduled working days or more than a total of ten scheduled working days in the twelve-month period immediately preceding the suspension², or involuntarily placed on administrative leave without pay for more than five working days³, is provided a fair process under which the employee is provided written notice of the nature and substance of the disciplinary charge(s) brought against him and a reasonable opportunity to respond to the charge(s).

The Appointing Authority shall give notice to the disciplined Regular Employee of his or her rights regarding appeals to the Personnel Board. The most current version of the Rules and Regulations of the Personnel Board is available online at www.pbjcal.org, under the “Resources” menu option.

1. Who May Appeal and Types of Disciplinary Actions Which May Be Appealed

A Regular Employee who for cause is discharged, demoted, or suspended for either a single suspension of more than five scheduled working days or more than a total of ten scheduled working days in the twelve-month period immediately preceding the suspension⁴, or involuntarily placed on administrative leave without pay for more than five working days has the right of appeal to the Personnel Board.⁵ (Personnel Board Rules 12.1; 12.2; 12.14; and 13.20(c)).

A Regular Employee is defined as a Full-Time Classified Employee who has completed a Probationary Period and not thereafter separated from the Classified Service. A Probationary

¹ Where noted, the Rules and Regulations of the Personnel Board of Jefferson County are fully incorporated by reference herein. [cited as Personnel Board Rule #]

² See Rule 12.14

³ See Rule 13.20(c)

⁴ See Rule 12.14

⁵ Demotions governed by PBJC Rule 11.6(b), and suspensions governed by PBJC Rule 12.14, are excluded from the appeals provisions.

Period is defined as an uninterrupted twelve-month period of full-time paid service within a discrete class.⁶

2. Initiating the Appeal

An appeal is initiated by the Regular Employee filing a written Notice of Appeal with the Director of the Personnel Board within ten (10) calendar days after the date the employee receives written notice of the Appointing Authority's decision to discipline.⁷ The Personnel Director shall determine whether the appeal is timely filed, and whether the Personnel Board has jurisdiction to hear the matter. Matters eligible for appeal will be assigned a case number, designating the appealing employee as the "Complainant" and the employing agency as the "Respondent." The employing agency will receive notification of the appeal, and should immediately provide the Personnel Board with copies of any internal policy or procedure relied upon in making the decision to discipline the employee.

Personnel Board Rule 12.4 specifies the information the employee must include in the Notice of Appeal. Notice of Appeal forms are accessed from the "**FORMS**" menu of the Personnel Board website, www.pbjcal.org.

3. Time Calculations

In computing any period of time for deadlines under Rule 12 or these Administrative Appeal Procedures, the day of the act or event from which the designated period of time begins shall not be included. The last day of the defined time period shall be included and shall serve as the deadline, unless such day is a Saturday, Sunday, or holiday observed by the Personnel Board. In this event, the deadline is the next business day (as defined in Personnel Board Rule 1.3). Personnel Board closures can be found online at www.pbjcal.org.

4. Hearing Officer Role

Section 22 of the Enabling Act provides for a public hearing of disciplinary appeals. In most instances, the Personnel Board appoints a Hearing Officer to handle pre-hearing matters, take testimony, and submit a Report and Recommendation with Findings of Fact for consideration by the Three-Member Board. Upon consideration of the Report and Recommendation the Three-Member Board may modify, alter, set aside, or affirm the findings in the Report and Recommendation.

5. Representation by Counsel

Each party to the appeal may be represented by counsel. Counsel must file with the Personnel Board a written Notice of Appearance containing the name, mailing address, phone number, email address, and party represented, for each attorney participating in the appeal. The Notice of

⁶ See Rule 1.3

⁷ See Rules 12.3 and 12.4. An appeal is subject to dismissal if the employing agency failed to provide proper notice of the disciplinary action to the employee or to the Personnel Director.

Appearance must bear an attestation that the attorney is licensed to practice in the State of Alabama. After an appearance has been filed, all communications regarding the appeal will be directed to the attorney of record.

6. Filing and Service of Documents, Correspondence, and other Materials

All communications regarding the disciplinary appeal shall be directed to the Employee Relations Department of the Personnel Board and/or the appropriate attorney, not to the Hearing Officer. All submissions filed with the Personnel Board must be signed by the party or counsel and must reference the assigned case number. The communications should be filed with the Personnel Board by emailing er@pbjcal.org or through [hand-delivery to the Personnel Board office with attention to Employee Relations](#). The Employee Relations staff shall make a notation of the filing date on all pleadings and other documents. Each party to the appeal is responsible for serving copies of all pleadings and other documents to the other party or its attorney. All pleadings must contain a certification executed by the serving party identifying the parties served, the method or manner of service, and the date of service.

C. Pre-Hearing Requirements

1. Scope of Hearing/Issues to be Decided

The scope of the Hearing is limited to the disciplinary charge(s) that serve as the basis of the appeal. Matters outside the discipline at issue shall not be heard. When multiple pending appeals are related, the Director may determine that the appeals be consolidated and presented at the same Hearing.

2. Hearing Date and Length of Hearing

The Hearing Officer shall determine the length of the hearing, giving due consideration to the complexity of the matter to be heard. Rarely should hearings exceed more than one (1) business day.

The parties will be advised of the hearing date. If either party has a conflict with the hearing date, the party must, within three (3) business days after receiving notice of the hearing date, notify the Employee Relations staff of the conflict. If a party subsequently seeks to have the hearing date rescheduled, absent extraordinary circumstances, the party must file in writing no later than three (3) business days prior to the commencement of the hearing, a Motion to Continue specifying the grounds upon which the request is based. Continuances will not be routinely granted.

3. Initial Instructions to the Parties

The Personnel Board will issue, within five (5) calendar days of receipt of Notice of Appeal, a set of Initial Instructions to the parties. These instructions will advise the parties of the process and procedures that must be followed. Deadlines within the Initial Instructions shall be calculated in accordance with Section B.3, Time Calculations, above. A sample Initial Instructions to the Parties is attached as Appendix A.

4. Scheduling Order

The Personnel Board will issue, within fifteen (15) calendar days of receipt of the Notice of Appeal, a Scheduling Order providing instructions and deadlines for the parties. Among the information contained within the Scheduling Order will be a statement of the issues to be heard and a statement of the relief requested by the employee, as stated in the Notice of Appeal. Deadlines within the Scheduling Order shall be calculated in accordance with Section B.3, Time Calculations, above. A sample Scheduling Order is attached as Appendix B.

5. Discovery

The hearing process provides for limited discovery between the parties. The scope of discovery is limited to the narrow issues to be addressed upon appeal. Each party may submit to the other a Request for the Production of Documents. The Request for Production of Documents must be submitted no later than twenty (20) calendar days from the date the Notice of Appeal was received by the Personnel Board. No more than ten (10) document requests should be propounded on any one party. The Request for Production of Documents should be served directly upon the opposing party without a subpoena. A copy of the Request for Production of Documents should be provided to the Employee Relations Department of the Personnel Board on the same date that the request is served on the opposing party.

Responses to a Request for the Production of Documents should be submitted to the propounding party no later than thirty-five (35) calendar days from the date the Notice of Appeal was received by the Personnel Board (or no later than fifteen (15) calendar days after the discovery request was submitted). A copy of the response (i.e., pleading), not the underlying responsive documents, should be provided to the Personnel Board on the same date that the response is served on the opposing party. The Hearing Officer may preclude the introduction of evidence if a party refuses, without a legitimate basis, to respond to a discovery request. If a party believes that the discovery request seeks information that is neither relevant nor material to the limited scope of the hearing, the party may file an Objection or Motion to Quash the Request for the Production of Documents. Such motion must be filed within the fifteen (15) calendar day period in which to respond to the discovery request. If a party fails to produce documents within the fifteen (15) calendar day period, the propounding party may file a Motion to Compel Production. Such motion must be filed within three (3) business days after the deadline for the discovery response.

6. Witness and Exhibits

No later than forty-five (45) calendar days from the date the Notice of Appeal was received by the Personnel Board, each party shall submit to the Personnel Board a list of exhibits and witnesses to be called to testify at the hearing. The list of witnesses shall contain the following for each witness: 1) Name; 2) Employer; 3) Job Title; and 4) a brief description of the nature of testimony anticipated from said witness.

Witnesses should be limited to those that are essential to the case. It is critical that each witness is available and ready at the time they are called to testify. Stipulations as to all undisputed facts are encouraged and should be emailed to the Board (er@pbjcal.org) no later than three (3) business

days prior to the hearing. The Hearing Officer has the authority to recommend stipulations and to disallow testimony regarding matters that should have been the subject of stipulation.

Any exhibit that a party anticipates using at the hearing must be exchanged with the other party no later than sixty (60) calendar days from the date the Notice of Appeal was received by the Personnel Board and emailed as separate files to the Employee Relations Department (er@pbjcal.org). The Complainant must mark their exhibit files using the following naming scheme: Exhibit C1, Exhibit C2, Exhibit C3, etc., where "C" identifies the party offering the exhibit as the Complainant. The Respondent must name their exhibit files using the following naming scheme: Exhibit R1, Exhibit R2, Exhibit R3, etc., where "R" identifies the party offering the exhibit as the Respondent. All documents shall be legible. A full set of exhibits will be available digitally during the hearing.

The Personnel Board will digitally share exhibits on behalf of the party and will be able to highlight and point to sections of a document or the section or sections of a video or audio that should be played. Should rebuttal exhibits be necessary, the party should email the exhibit electronically to er@pbjcal.org so that the exhibit may be shared with the Hearing Officer and all parties and admitted as deemed appropriate by the Hearing Officer. The exhibit should be numbered according to the naming scheme described above. The Employee Relations staff will add Bates's number, as appropriate. If email of the exhibit is not possible, the party should inform the Employee Relations Department, who will work with the party to determine the manner of securing the exhibit for the Hearing Officer.

The Hearing Officer may exclude exhibits and witnesses not identified in accordance with this paragraph. The Hearing Officer may, in his or her discretion, subpoena witnesses or documentation she deems essential to the consideration of the disciplinary charge(s) being heard.

7. Subpoena Requests

If the party seeks to have the Personnel Board prepare a subpoena for the production of witnesses or documents, the party must file a "Subpoena Request" with the Employee Relations Department no less than fifty (50) calendar days from the date the Notice of Appeal was received by the Personnel Board, as indicated on the Appeal Form. The party must provide the complete name and street address of each person or entity to be subpoenaed. If any of the preceding information is not provided to the Personnel Board, the subpoena will not be prepared. The attorney requesting the witness's presence shall be responsible for the service of the subpoena.

Absent good cause shown, as ordered by the Hearing Officer, each party is limited to no more than 10 subpoenas. (See Personnel Board Rule 12.8(b)). Should a party request more than 10 subpoenas without an order from the Hearing Officer permitting same, only the first 10 subpoenas will be issued. Unless otherwise approved in advance by the Hearing Officer, all witnesses are expected to be present at the date and time appearing on the subpoena. In case of the failure of any person to comply with any subpoena issued by the Director, the Director may invoke the aid of the Circuit Court of Jefferson County. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as a contempt thereof.

8. Motions

All pre-hearing motions should be filed in writing with the Employee Relations Department of the Personnel Board. All motions must state the grounds for the motion and the relief requested. The non-moving party will be given three (3) business days in which to submit a written response or opposition to such motion. Motions shall be acted on in the manner outlined below:

Motion for Voluntary Withdrawal of the Appeal – Shall be acted on by the Director of the Personnel Board, whose decision shall be final.

Motion to Continue – Shall be acted on by the Hearing Officer, whose decision is final. Refer to Section C.2, Hearing Date and Length of Hearing.

Motion to Dismiss – Motions to dismiss may be filed for the limited purpose of determining whether the appeal was properly filed (e.g., within the appropriate time frame) or whether the matter has been adequately pursued by the parties (e.g., failure to participate or a joint settlement). Such motions shall be reviewed by the Hearing Officer. The Hearing Officer may deny the motion and hear the matter on the merits, or refer the motion to the Three-Member Board for decision. If the Hearing Officer denies the motion, the order of the Hearing Officer is final.

Motion to Stay – Shall be acted on by the Three-Member Board.

Motion to Compel – Shall be acted on by the Hearing Officer, whose decision is final.

Motion for Discovery – Shall be acted on by the Hearing Officer, whose decision is final.

Motion to Quash – Shall be acted on by the Hearing Officer, whose decision is final.

All Other Motions – The Hearing Officer shall decide and act on all other motions. The order of the Hearing Officer is final.

9. Settlement Agreements

Settlement negotiations and agreements should be conducted in advance of the hearing. The Three-Member Board must approve all settlement agreements. Any provision of the settlement agreement pertaining to the employment relationship must be in compliance with the Rules and Regulations of the Personnel Board and the Enabling Act. The parties are encouraged to communicate with the Personnel Board prior to the final execution of a settlement agreement to ensure that the terms reached are consistent with the Personnel Board's Rules and Regulations and the Enabling Act.

Should the parties reach a proposed settlement, a Joint Notice of Settlement should immediately be filed advising the Personnel Board that the parties have agreed to a resolution of the matter in dispute. Upon receipt of such notification, the Hearing Officer shall immediately stop the administrative process. The Hearing Officer will neither rule on nor make any recommendations regarding the terms of the proposed settlement. No later than seven (7) business days after notifying the Personnel Board of the settlement, the parties must submit to the Employee Relations Department a copy of the final written unexecuted agreement containing the terms and conditions of the settlement agreement. If the provisions of the settlement agreement relating to the terms and conditions of employment are consistent with the Rules and Regulations of the Personnel

Board, the parties shall fully execute the agreement, and it will be placed on the Personnel Board's agenda for review and approval.

If the parties fail to timely submit a fully executed settlement agreement after notifying the Personnel Board that settlement has been reached the matter will be placed on the Personnel Board's agenda at its next regular meeting in order for the parties to show cause why the settlement agreement should not be enforced or the matter should not immediately proceed to hearing.

D. Hearing Proceedings

1. Conduct of Hearing

The purpose of the hearing is to determine whether there is a sufficient basis for the disciplinary action or the employee's grievance. The Hearing Officer shall hear or receive evidence only on the disciplinary charge(s) as outlined in the Scheduling Order or on the specific grievance as described in the Personnel Board Director's determination on grievability. The Hearing Officer's review is de novo, thus the appeal will be decided without giving deference to previous conclusions of the Appointing Authority. The Hearing Officer shall not be bound to follow technical rules of evidence. All relevant and material evidence may be admissible, but the Hearing Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The Hearing Officer may, in his or her discretion, subpoena witnesses or documentation deemed essential to the consideration of the disciplinary charge(s) being heard.

All witnesses shall testify under oath and shall be subject to cross-examination. The Hearing Officer will afford the parties, witnesses, and representatives respect and fairness consistent with his or her duty to maintain decorum and exercise due diligence throughout the proceedings. The Hearing Officer shall exercise ultimate control over the manner and order of witness examination and the presentation of evidence. Exhibits received into evidence by the Hearing Officer during the hearing shall be filed as part of the record of the appeal. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer. Summations of the evidence and the law may be heard at the discretion of the Hearing Officer.

Failure to fully participate in the hearing and to abide by all orders, rules, regulations, and procedures may result in dismissal of the appeal. Failure of the Complainant to appear at the hearing may result in the hearing being canceled and the case closed. A Report and Recommendation will not be produced, and the Board Order will reflect that the party abandoned their claim.

For virtual hearing requirements, refer to the Supplement in Section F.

2. Burden of Proof

The Respondent (the Appointing Authority), shall have the burden of proving that there is substantial and legal evidence to support the disciplinary action taken.

3. Report and Recommendation

Unless expressly agreed to by the parties in writing or verbally on the record, within five (5) business days of the close of the hearing, the Hearing Officer shall submit a Report and Recommendation with Findings of Fact to the Employee Relations Department. Upon receipt and review, the Employee Relations Department will distribute the Report and Recommendation to the parties of record via email.

If the Hearing Officer determines that the employee is not guilty of the charge(s) alleged, the Hearing Officer should recommend reinstatement of the employee under such conditions as may be determined, including whether the employee should receive backpay and or any other benefits to which the employee may be entitled. If the Hearing Officer determines that the employee is guilty of the charge(s) alleged, the Hearing Officer shall include in their recommendation whether the employee shall be dismissed, demoted, suspended, or otherwise disciplined.

The parties may submit written objections to the Hearing Officer's Report and Recommendation to the Employee Relations Department within three (3) business days following its issuance. Any written objections to the Hearing Officer's Report and Recommendation must be based on specific factual findings and/or specific legal arguments.

4. Decision by the Board

The Three-Member Board must consider the Hearing Officer's Report and Recommendation and modify, alter, oppose or affirm said report and certify its findings to the Appointing Authority and any interested party. Unless the parties agree in writing, if the Personnel Board fails to act within forty-five (45) days after receipt of the Hearing Officer's Report and Recommendation, it shall become the order of the Personnel Board.

The Personnel Board meets monthly. Notices of meetings of Personnel Board are posted in accordance with the Alabama Open Meetings Act. Meeting notices, agendas, and minutes can be obtained from the Personnel Board website, www.pbjcal.org, under the **Public Meetings** menu option.

5. Compliance with Board Order

An Appointing Authority must immediately comply with all decisions and orders of the Personnel Board. The Appointing Authority must submit written confirmation of compliance to the Employee Relations Department within ten (10) calendar days following issuance of the Personnel Board's final Order. Failure to comply with the Order of the Personnel Board may lead to the initiation of appropriate legal action in the Circuit Court of Jefferson County to compel said compliance.

6. Judicial Review

Any decision rendered by the Personnel Board pursuant to Rule 12.6 or 12.11 is final and subject to appeal by either party to the Circuit Court of Jefferson County to review questions of law and whether the decision or order of the Personnel Board is supported by substantial and legal evidence. On appeal, the Circuit Court must review the record and affirm, reverse, remand or

render said cause. The decision of the Personnel Board controls until reversed on appeal. See Rule 12.13 for the specific requirements that govern the filing of the appeal.

E. Audio and Video Recording of Proceedings

1. Audio and Video Recording

The Personnel Board of Jefferson County conducts its business meetings in public, in accordance with the Alabama Open Meetings Act, Ala. Code § 36-25A-11 (1975).⁸ In addition, under the Personnel Board’s Enabling Legislation, the Personnel Board and its Hearing Officers are required to conduct certain disciplinary hearings in public.

As a general matter, the Personnel Board does not prohibit individuals present at meetings and disciplinary hearings from making audio or video recordings of the proceedings. All such recording must be conducted openly. In certain circumstances, however, recording may be prohibited by the Personnel Board or subjected to appropriate conditions.

To ensure that any audio or video recording is conducted “openly,” any person making an audio or video recording must inform the Hearing Officer or other presiding officer before commencing recording. The Hearing Officer may require that the individual making the recording do so in a manner that does not unduly disrupt or distract from the proceedings.

In circumstances where the further publication, dissemination or broadcasting of the audio or video recording could bring undue publicity, scandal, or disrepute to any person, or where private personally identifying information will be revealed or discussed, the Hearing Officer may temporarily halt or prohibit audio or video recording.

In all circumstances, the official record of the hearing shall be the designated recording, orders, transcripts, evidence, and other materials kept and maintained by the Personnel Board and its staff in accordance with Section 4 of the Open Meetings Act and the Enabling Act. Any individual making an audio or video recording is responsible for their own actions, and any subsequent actions in connection with the recording. The Personnel Board shall not be liable or responsible for any legal consequences arising out of any further transmission, duplication, dissemination, or publication of any such audio or video recording.

2. Obtaining Hearing Records from Personnel Board

The Personnel Board of Jefferson County maintains records of hearings consistent with state and federal law. The evidentiary records of hearings are stored and maintained electronically. A certified copy of the record from any public hearing can be obtained via service of subpoena to the

⁸ A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section. Ala. Code § 36-25A-6.

Personnel Director issued from a court of competent jurisdiction. Costs of subpoenaed documents, CD recordings, or transcripts will be assessed to the requestor for the production of such records.

F. Virtual Hearing Supplemental Information

1. General Information

Administrative hearings will be held as in-person hearings, unless a motion is made by a party for a virtual hearing no later than thirty days prior to the hearing and granted by the Hearing Officer. The Hearing Officer will generally deny any motion for a virtual hearing if the opposing party submits an objection to that motion.

If a motion for a virtual hearing is granted, the virtual hearing will be held through a virtual platform as determined by the Personnel Board. The Hearing Officer will be physically located within the Personnel Board Hearing Room and will be accompanied by an Employee Relations staff member who will provide technical support and handle activities, such as muting individuals, joining and disconnecting witnesses, electronically sharing exhibits, starting and stopping recording and addressing other technical needs.

Representatives for the Complainant and Respondent may be located within any location that meets the requirements for the virtual hearing outlined in Section F.2 Witnesses. The Personnel Board will join the individuals to the hearing beginning with the Hearing Officer, Attorney for the Complainant, Complainant, Attorney for the Respondent and Respondent Representative. Witnesses will be joined to testify when called and either returned to the waiting room or dismissed, if there are no further questions.

If the Hearing Officer or the Personnel Board determines at any time that the audio or video connection is not sufficient and/or is interfering with the hearing, the hearing shall be suspended and rescheduled to convene at a later time. It is the responsibility of a party or counsel to immediately inform the Personnel Board representative if they are experiencing technical issues by calling 205-279-3474 (ER main line) or 205-279-3478 (Employee Relations Manager).

2. Witnesses

The Personnel Board recommends that witnesses testify from the respective attorney's office, if applicable. A witness may testify from any location if the following equipment, resources, and location requirements are met:

- A computer, laptop, or internet-enabled tablet with video conference capabilities (camera, microphone and monitor)
- Access to the defined virtual conferencing platform
- An e-mail address and internet service with sufficient broadband for a video conference.
- A private location (e.g., a private office) quiet and free from interruption.
- A working phone that can be used to notify the Personnel Board of technical difficulties.

- A request to utilize space within the Personnel Board offices to provide witness testimony virtually may be made by either party by emailing er@pbjcal.org no later than 3 business days prior to the hearing.

The attorney calling the witness shall be responsible for providing each witness with the Personnel Board's acknowledgement notice prior to the hearing. Witnesses will be under oath. Unless a party or party representative, the witness shall be at a secure location with no other person present. If a witness, other than a party or party representative is testifying at the attorney's office, the attorney and the witness should be in separate rooms, each equipped with the necessary equipment described above and no other person should be present in the room in which the witness is testifying. The witness shall not provide details of his or her testimony with any other person during the pendency of the hearing. The hearing shall not be recorded by any party or witness.

The attorney calling the witness shall be responsible for ensuring the witness is able to participate in the virtual hearing. Virtual meeting information will be provided by the Personnel Board and shall be included on all subpoenas issued in the matter. If the witness is not able to participate in the virtual hearing, the respective attorney shall decide whether the witness is material and, if so, make arrangements for the witness to appear.

Appendices

- A. Sample Initial Instructions**
- B. Sample Scheduling Order**