

Purpose

To provide guidelines by which an aggrieved party will follow in appealing a decision or recommendation of the superintendent to the local Board of Education or to the Maryland State Board of Education.

Definitions

N/A

Policy Statement

When provided by law, parents, students, employees, and interested parties may have a right to ask the Board of Education to review certain decisions or recommendations of the superintendent.

When provided by law, an aggrieved party may appeal to the superintendent. After reviewing the nature of the appeal, the superintendent may refer the matter to his designee to either make a decision on his behalf or to make a recommendation for his consideration. The superintendent may direct that a decision of his designee will constitute the decision of the superintendent. If the superintendent decides to personally review the matter, he may or may not conduct a hearing or interview the parties involved. The procedures used in any hearing or interview before the superintendent will be established by the superintendent at his discretion depending upon the nature of the issue to be addressed. When provided by law an aggrieved party may have a further appeal to the local Board of Education and, subsequently in the event of an adverse decision to the Maryland State Board of Education.

In accordance with the Education Article of the Annotated Code of Maryland, the local Board of Education has authority to conduct appeals and hearings in three different types of cases:

1. Section 4-205c Appeals – Controversies and Disputes

Section 4-205c provides for an appeal of a decision by the superintendent regarding controversies and disputes involving the rules and regulations of the county Board or the proper administration of the county public school system.

2. Section 7-305c Appeals – Student Suspension or Expulsion for more than 10 days

Section 7-305c provides for an appeal based on a finding by the superintendent or designee that suspension of a student for more than 10 days or expulsion of a student is warranted.

3. Section 6-202a Hearing – Suspension or dismissal of a certificated employee

Section 6-202a provides for a hearing based on a superintendent's recommendation to suspend or dismiss a certificated employee.

Procedures to File an Appeal

All appeals to the Board shall be from a final decision of the superintendent or the superintendent's designee that adversely affect the person or persons who are appealing.

1. Section 4-205c Appeals – Controversies and Disputes

Each 4-205c appeal shall be initiated by filing a written notice of appeal with the Board within 30 calendar days after written notice of the superintendent's decision or final action has been given to the person or persons affected.

2. Section 7-305c Appeals – Student Suspension or Expulsion for more than 10 days

Each 7-305c appeal shall be initiated by filing a written notice of appeal with the Board within ten (10) calendar days after written notice of the superintendent's decision or final action has been given to the person or persons affected.

3. Section 6-202a Hearing – Suspension or dismissal of a certificated employee

On the recommendation of the county superintendent, a county Board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for: (1) immorality; (2) misconduct in office (including knowingly failing to report suspected child abuse in violation of Article 5-704 of the Family Law Article); (3) insubordination; (4) incompetence; or (5) willful neglect of duty.

Each request for a 6-202a hearing shall be initiated by filing a written request for a hearing with the Board within 10 calendar days after the Individual has received a copy of the charges against him/her and the superintendent's recommendation. Failure to respond to the superintendent's recommendation within this timeframe automatically forfeits the right to request a hearing.

General Procedures for Appeals and Hearings

A request for an appeal or hearing to be considered by the Board is initiated by submitting a letter of intent to the Superintendent of Schools. When a request for an appeal or hearing has been made the party/parties requesting the appeal or hearing must submit the following information in a manner so that it is received within seven (7) calendar days of the scheduled hearing.

- a. A statement by the person filing the appeal that they agree or disagree with all or part of the findings of the superintendent.
- b. A concise statement of the issues presented by the appeal
- c. A citation of all laws, policies, regulations, etc. which the person filing the appeal believes have been violated and in what manner.
- d. A concise statement of the facts upon which the person filing the appeal relies in order to support their position.
- e. A copy of all documents upon which the person appealing relies or believes is relevant.
- f. A statement of the relief sought.

With the advice of Board counsel, the President of the Board shall decide in each case whether to hear the merits of the case or refer the matter to a hearing examiner, who will hear the matter on the merits, make findings of fact and conclusion of law for review by the Board. In such cases, the Board shall afford the opportunity for oral argument before making its decision.

Appeals which are heard by the Board without a hearing examiner may be conducted one of three ways (1) full evidentiary hearing, (2) review of written documents with oral arguments, (3) review of written documents. Subject to applicable law, the President of the Board with the advice of Board counsel shall decide the type of hearing to be conducted and whether or not all voting members of the Board should be present for the hearing. With the advice of Board counsel the Board President shall also decide whether the matter shall be dismissed without a hearing because the appeal was not timely filed, the appeal is moot, the appeal does not raise basis for appeal, the appellant lacks standing to bring the appeal, or the Local Board has no jurisdiction over the appeal. In evidentiary hearings and/or oral arguments conducted by the Board, the presiding officer of the Board may request the Board attorney to participate in any hearing as counsel for the Board. The presiding officer may request such attorney to assist in directing the orderly flow of evidence presented to the Board in the same manner as hearings before a hearing examiner.

Subject to applicable law, all hearings before the Board shall be conducted in private.

If an appeal or request for a hearing is not filed within the period set forth above, or if the statements required are not submitted within the time period set forth above, such failure shall constitute sufficient grounds for the Board to dismiss an appeal or request for hearing. **If any required statements are not provided in a timely manner the Board Attorney may communicate such failure to the Board President who shall have the authority to cancel or postpone any hearing that may have been set.**

In those circumstances where the Board determines that an employee collective bargaining agreement provides for disputes and conflicts to be referred to an arbitrator pursuant to the grievance procedure, the Board shall not hear appeals involving such disputes or claims.

Unless the Board President has determined that all voting members of the Board should be present for the hearing, the Board shall use a panel of three (3) voting members, selected by the president on a rotating basis, for appeals and hearings. The panel will present a recommendation to the full Board for a final decision.

For all 4-205c, 6-202a, and 7-305c appeals/hearings, the Board may have the proceedings heard first by a hearing examiner designated by the Board, who shall be an attorney admitted to practice before the Maryland Court of Appeals.

Notice of Hearing

Once the Board has determined the type of proceeding to be used, a written notice of the hearing shall be sent to all parties not less than ten (10) days prior to the hearing by the hearing examiner or the Board's attorney. The written notice of the hearing shall contain the date, time and place of the hearing. "Party" includes any person or agency named or admitted as a party.

Any person or agency may be admitted as a party for limited purposes upon the satisfactory demonstration of the nature and extent of interest to the hearing examiner. All parties appearing at formal hearings before a hearing examiner shall have the right to appear in person or with counsel.

Standard of Review

The standard of review in appeals under section 4-205c and section 7-305c is whether the superintendent's decision is arbitrary, unreasonable, or illegal. The appellant has the burden of persuasion.

The board will exercise its independent judgment in hearings under Section 6-202a in determining whether to accept, reject, or modify the superintendent's recommendation. The superintendent has the burden of persuasion in hearings under section 6-202a.

Records - Transcripts

The presiding officer shall preserve an official record, which shall include all pleadings, testimony, exhibits, and other memorandum or material filed in the proceeding. A transcript will not be prepared unless requested by the Board or unless an appeal is taken to the State Board.

A stenographic record of that part of the proceeding which involves the presentation of evidence shall be made at the expense of the Board. The record need not be transcribed, however, unless the appeal is initially heard by a hearing examiner pursuant to Code Section 6-203 or is requested by a party to the controversy, the superintendent, the Board, the State Superintendent, or the State Board as the case may be. The cost of a stenographic record of any proceeding, shall be paid by the party making the request. In those appeals where a transcript is prepared pursuant to Code Section 6-203, the Board will pay the cost of the transcript.

A person, who files an appeal from the action of the Allegany County Board of Education and is responsible for paying for the transcript, shall pay a transcription deposit to the Board of Education at the time of filing their appeal. Said deposit shall be in the amount of two hundred fifty dollars (\$250.00). If the cost of transcription exceeds that amount, the additional amount shall be paid immediately upon

presentation of the bill for the transcription. If the transcription cost is less than two hundred fifty dollars (\$250.00), the appellant shall be immediately reimbursed the difference.

Duties and Responsibilities of the Presiding Officer

In hearings before the Board, the Board attorney shall conduct the hearing. In hearings before a hearing examiner, the hearing examiner shall be the presiding officer. The presiding officer shall have charge of the hearing with authority to permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time. The presiding officer shall cause an oath to be administered to all witnesses testifying during the proceedings.

Order of Procedure

The order in which the parties shall present their case shall be determined by the presiding officer except in cases of appeal of a suspension of an employee, in which case the superintendent shall proceed first.

Examination of Witnesses and Introduction of Evidence

The strict rules of Evidence shall not be applicable to hearings conducted hereunder. In each case, the test of admissibility shall be determined by whether proposed evidence shall be relevant to a material issue and whether it has substantial probative value with respect to such material issue. The presiding officer may limit or refuse to admit repetitive evidence and may curtail redundant questioning. All testimony shall be given under oath. Any party, or counsel for any party may submit evidence, examine or cross-examine witnesses, and file objections, exceptions, and motions. The presiding officer or any Board member in the case before the Board may examine all witnesses called by any party. He/she may call as a witness, any person whose testimony may be relevant. When a full evidentiary hearing is not held, the Board attorney shall introduce such background documents as may be necessary to present the case, and the Board will set appropriate rules for oral argument. Oral argument shall be limited to 15 minutes for each party unless the Board indicates otherwise. In some limited cases hereinafter described, the Board may elect to proceed without oral argument, and the matter may be decided by the Board solely on written evidence presented by the superintendent and the written submissions of the parties. Such cases will include bus route and out-of-district permit decisions.

Briefs

Any party may submit briefs of the issues of fact and law involved in the hearing in such form and within such time as the presiding officer may designate.

Findings

In proceedings before a hearing examiner, the findings of fact, conclusions of law, and recommendations of the hearing examiner shall be mailed to the parties and the Board of Education not more than thirty (30) days after the completion of the hearing and receipt of the transcript of the filing of briefs, if required or authorized.

Argument

In proceedings before a hearing examiner, any party to the proceeding or the Board of Education shall have the right to request oral argument before the Board. Such elections shall be made within fifteen (15) days from the date of the mailing by the hearing examiner of his/her findings of fact, conclusions of law, and recommendations as provided above. Upon receipt of such a request for oral argument, the Board shall within thirty (30) days notify (by certified mail, return receipt requested) all parties to the hearing of the date, time and place of oral argument. Oral argument shall be limited to fifteen (15) minutes for each party unless the Board indicates otherwise.

Ex Parte Communications

While a matter is under consideration by the Board after a hearing, no member shall receive communications from or communicate orally with any party outside the presence of all other parties or in writing without supplying copies to all other parties and providing an opportunity for response.

Decision and Order

Each decision and order of the board shall be mailed in writing, unless it is communicated immediately follow the hearing, in which case it shall be delivered orally and thereafter in writing, with copies sent to all parties. Each decision and order shall be sent to all parties. Each decision and order shall be accompanied by findings of fact, conclusions of law and specific disposition of the case and shall be provided to the individual. If required, formal action of the Board shall be taken publicly at a Board meeting following the hearing. Such action may be included in the Board's consent agenda if the Board has already rendered a decision.

Mailings of Notices and Findings

In all hearings provided herein, where a party in interest is represented by an attorney, all notices and mailing required by the Board or hearing examiner shall be sent to the attorney for the party and such mailings shall constitute official notice to the party.

Appeal of the County Board's Decision

Decisions by the county board may be appealed to the Maryland State Board of Education in accordance with that agency's procedures and timelines.

Legal Reference			
Policy History	Adopted November 11, 1997	Reviewed January 11, 2005	Revised - May 11, 2004 February 8, 2005 May 14, 2013, 1 st Reading June 11, 2013, 2 nd Reading Oct. 8, 2013, 1 st Reading Nov. 12, 2013, 2 nd Reading March 10, 2015, 1 st Reading April 23, 2015, 2 nd Reading