

## **Section 7-Appeal and Mitigation**

### **Appeal Process - Overview**

Upon appeal, the Board of Education or a designated committee thereof shall hear the matter promptly but in no event later than fifteen (15) school days from the receipt of notice of appeal in the Superintendent's office. Each party shall be afforded the opportunity to present witnesses and be represented by counsel. Unless a public hearing is requested by the student or parent or guardian, the hearing shall be conducted out of the presence of all persons except those whose presence is deemed necessary or desirable by the Board. The appeal to the Board of Education shall not operate as a stay of the decision of the Superintendent, and the decision of the Board of Education shall be final.

The function of the Board of Education is to hold a hearing to determine whether the testimony and exhibits presented support the charge upon which the expulsion was based. The Board delegates to the Superintendent of Schools the responsibility for determining the duration of the expulsion and considering readmission. The Superintendent shall consider mitigating circumstances in making such decisions.

## **APPEAL PROCESS**

**(Must be requested within ten (10) school days of the Superintendent's Designee's Decision.)**

1. A Board of Education Panel shall hear the appeal no later than (15) school days from the receipt of the appeal notice. (Summer — Hearings not held until (15) school days after the beginning of classes.) Board of Education Panel consists of (3) Board Members, Counsel for the Superintendent, Technician (record electronically), Appeals Officer , and witnesses.
2. Each party (Board of Education and Student) shall have the opportunity to present witnesses and be represented by counsel. Administrative hearing is not a court of law.
3. Unless a public hearing is requested by the student or parent/guardian, the hearing will be conducted outside the presence of all except those whose presence is deemed necessary or desirable by the Board.
4. De Novo Hearing (new hearing) - Board Panel members receive only the student's name and the charges.
  - a. The student has the right to testify or not testify. If a student testifies, he/she may be cross-examined by Board members or counsel for the Superintendent. If a student chooses not to testify, that cannot be construed to mean the student is guilty.
  - b. The defense attorney may cross-examine witnesses. If there is no attorney, the parents may ask the Superintendent's witnesses questions.
  - c. The attorney and/or parents/guardians will have an opportunity to present their case, including witnesses.
  - d. This is an administrative hearing, and hearsay evidence is admissible, although it does not carry the weight of eyewitness testimony.
5. The scope of the Board hearing is to determine if policy was violated or due process was violated. The function of the Board is to hold a hearing to determine whether the testimony and exhibits presented support the charge(s) upon which the expulsion was based. The Board delegates to the Superintendent of Schools the duration of an expulsion and considerations for readmission. The hearing will last approximately one hour.
6. At the completion of the testimony, Board members will deliberate without the presence of staff members or the family and reach a decision. The decision will be given to the Appeals Officer Mr. Hill. The family of the defense attorney

may call the Appeals Officer (410-887-7656) after 8:30 a.m. on the morning following the hearing.

7. The decision of the Board is final.

# BALTIMORE COUNTY PUBLIC SCHOOLS

Towson, Maryland 21204

## BOARD HEARING PROCEDURES FOR BOARD CHAIRPERSON

### I. Hearing

- A. Seating: Center - panel; Left - school administrators; right - student, parents, attorney. All witnesses wait in the lobby until called.
- B. Appeals Officer will introduce student, parent, and all guests. Identify spokesperson for the group, usually the attorney.
- C. Appeals Officer will introduce Board Panel - spokesperson is Chairman.
- D. Appeals Officer will introduce school representatives - spokesperson is Attorney for the Superintendent.
- E. Appeals Officer will turn over proceedings to Chairman of Board Panel.

### II. Hearing Procedures

- A. Chairperson will review the "Expulsion Checklist" verbally with all persons at the hearing.
- B. Chairperson will ask for opening statements - Superintendent's Attorney first, followed by spokesperson for student.
- C. Attorney for Superintendent will present his/her case first, calling all witnesses.
- D. Witnesses will be questioned by the Superintendent's Attorney, then spokesperson for student, followed by Board Panel.
- E. Student/Parent/Guardian case will be presented second, calling all witnesses. If student testifies - must be informed of rights.
- F. Witnesses are questioned by spokesperson for student, then Superintendent's Attorney, followed by Board Panel.
- G. The Appeals Officer will bring in all witnesses, and swear in witnesses with oath, name, and position.
- H. All witnesses may be asked questions by either side and Board Panel, but in the proper order, side that calls witness, opposing side, and lastly Board Panel members. Witness may be recalled.
- I. Closing Statements - Superintendent's Attorney and then parent.

- J. All leave the room during deliberations. School personnel and student/parent/guardian should leave the room.  
Parents/Guardians/Attorney may call the Appeals Officer the next day after the appeal after 8:30 a.m.
  
  - K. Appeals Officer will be contacted by the Board Panel after it has reached its decision. That decision after will be communicated to all parties the next day.
    - 1. Upheld - 30 days to appeal to Maryland State Department of Education
    - 2. Overturned - return to school by contacting the Superintendent's Designee for reinstatement; he will contact the school.
    - 3. Note any concerns of the Board Panel.
- III. After Hearings
- A. Appeals Officer will notify all parties by phone the next day.
  
  - B. Letters are sent to all parties of the decision by the Appeals Officer.
  
  - C. File kept with all correspondence and tapes of case by Appeals Officer.

# SUSPENSION / EXPULSION APPEALS

## CHECKLIST

Items to be mentioned by the Assistant to the Superintendent, Attorney, or Chairman of Hearing Panel to ensure consistency:

- Hearings are electronically recorded to provide a tape of the hearings.
- De Novo Hearing - a new hearing - panel members have received only the student's name and the charges.
- Scope of the Board Panel's authority is simply to determine if the policy was violated based on the testimony presented.
- Students have the right to testify or refrain from testifying. If the student testifies, the Board members and the attorney for the Superintendent may cross-examine him/her. If the student chooses not to testify, that cannot be construed to mean the student is guilty. (Usually our attorney or defense attorney explains this for the record.)
- If there is no defense attorney, explain that parents/guardians may ask the Superintendent's witnesses questions regarding their testimony. The parents/guardians will also have an opportunity to present their case, including witnesses.
- Explain that this is an administrative hearing and hearsay evidence is admissible, although it does not have the same weight as eyewitness testimony.
- Ask whether the Appeals Officer has explained procedures and background information and if the parents/guardians (attorney) have any questions.
- At the completion of the testimony, indicate that Board members will deliberate without the presence of staff members and reach a decision. That decision will be given to the Appeals Officer. The family or the defense attorney may call the Appeals Officer after 8:30 a.m. the following morning to hear the decision.

## EXPULSION APPEAL LIST

(Completed by the Appeals & Mitigation Officer)

STUDENT NAME: \_\_\_\_\_ SCHOOL: \_\_\_\_\_ GRADE: \_\_\_\_\_

SUSPENSION DATE: \_\_\_\_\_ EXPULSION DATE: \_\_\_\_\_ DOB: \_\_\_\_\_

PARENT(S) GUARDIAN(S): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: (HOME) \_\_\_\_\_ (WORK) \_\_\_\_\_

### STUDENT FOLDER CHECK LIST

#### Notice of Suspension - Home School

\_\_\_\_\_ Board Policy 5550 - "Disruptive Behavior"  
List:

\_\_\_\_\_ Board Policy 5540 "Alcoholic Beverages and Drugs"  
List:

\_\_\_\_\_ Student Verification Handbook \_\_\_\_\_ Principal's Signature

\_\_\_\_\_ Special Education/504 Verification Form – Principal's Signature

#### Expulsion Letter - Superintendent's Designee

\_\_\_\_\_ Statement identifying Board of Education violations

Recommendations: Expulsion \_\_\_\_\_ Transfer \_\_\_\_\_ Other \_\_\_\_\_

Alternative Program Assignment \_\_\_\_\_

Parent signature indicating acknowledgment of the right to appeal with  
a letter to the Superintendent of Schools

**Teacher Reports**

\_\_\_\_\_ Grades  
\_\_\_\_\_ Attendance  
\_\_\_\_\_ Interventions

**Witnesses** - Evidence has more credibility with eyewitness present at actual hearing

Adults: (name and position)      Students: (name and grade)

\_\_\_\_\_ **Defendant(s)**

\_\_\_\_\_ **Written descriptive action statement by the witness as evidence**

**Special Education student as defendant** - Place red dot on the folder label for special education students.

Federal Census Code \_\_\_\_\_      Level of Services \_\_\_\_\_

Special Form A-1 is attached and indicates when the IEP conference was held and that the offense is **NOT attributed to the student's handicapping condition.**

\_\_\_\_\_ (Date)

\_\_\_\_\_ IEP Team notes for this specific case

*There is no need for the Superintendent's Designee to receive or process an expulsion referral when a student's offense is attributed to his handicapping condition. However, if a parent refuses to attend an IEP conference during the five-day suspension period, the Superintendent's Designee can preview the case for an expulsion pending final determination of the handicapping condition.*

\_\_\_\_\_ Parental Rights document signed \_\_\_\_\_ (Date)

\_\_\_\_\_ FAPE Recommendations; Completed, Signed \_\_\_\_\_(Date)

\_\_\_\_\_ IEP \_\_\_\_\_ (Date)

\_\_\_\_\_ Educational Assessment \_\_\_\_\_ (Date)

\_\_\_\_\_ Psychological Assessment \_\_\_\_\_ (Date)

\_\_\_\_\_ Behavioral Assessment \_\_\_\_\_ (Date)

\_\_\_\_\_ Behavior Management Plan \_\_\_\_\_(Date)

## **Mitigation Process - Overview**

Immediately following the final determination of expulsion and after the appeal process has ended or the appeal process has been waived, the Executive Director of Student Support Services may consider, in consultation with the appropriate parties, mitigating circumstances to determine the duration of an expulsion and consider readmission to the appropriate day school program. A written request must be sent to the Executive Director of Student Support Services.

The Executive Director may consider the following circumstances in consideration of early readmission: the student's disciplinary history; present effort in the academic program, including attendance and citizenship; whether the offense for which the student was expelled caused disruption; whether the readmission would cause a disruption to the school program; health and safety issues; implications for the school; and/or recommendations of the school staff.

The process of mitigation may take two to four weeks from the date of receipt of the letter to the Executive Director requesting the mitigation. During this time, the student should attend an alternative education program and be in the process of completing any requirements for reinstatement, such as the substance abuse program, if required.

## STUDENT MITIGATION

### What is Student Mitigation?

- Capitalizing upon the “teachable moment.”
- Providing the student with an opportunity for reflection and insight.
- Utilizing the discipline code to **teach** students, not **punish** them.
- Providing meaningful opportunities for the student to make restitution.
- Helping the student contribute to the welfare of the school and the community.
- Providing assistance and support to obtain needed school system and community services.
- Case management and follow-up with the family and the school from the Department of Student Support Services.
- Successful reentry into the home school or other appropriate instructional program.
- Based upon **Policy 5560**: “The Superintendent shall consider mitigating circumstances in making such [readmission] decisions.” “**Consideration of Readmission**” guidelines defined in the *Student Handbook*.

## STUDENT MITIGATION PROCESS

If an appeal of the expulsion (10 days have elapsed) is not requested and the student (parents/guardians) provide a written request for mitigation, the process begins.

The following circumstances are considered:

1. Present academic effort
2. Attendance and citizenship
3. Disciplinary history
4. Nature of the offense/degree of disruption
5. Effects of the student’s readmission upon the school
6. Health and safety implications for the school
7. Recommendations of the school staff

## Student Mitigation

The student and parents/guardians are invited to attend a “mitigation interview” after the 10 day appeal deadline.

The interview includes:

1. Reviewing of the *Student Handbook*
2. Reviewing of mitigation and the reasons for it
3. Providing an opportunity for the student and participants to discuss the issues at hand
4. Allowing the student to discuss his/her disciplinary record and grades
5. Inquiring as to the perceived mitigating circumstances
6. Requiring the student to reflect upon the behavior(s) leading to expulsion
7. Discussing steps to be taken prior to re-enrollment (per the expulsion), regardless of the outcome of mitigation
8. Eliciting references for collateral interview from those who are able to vouch for the student.

After the student mitigation interview, the decision-making phase is entered:

- Collateral interviews are conducted.
- The school principal is consulted, and issues regarding the student’s record, as well as the impact upon the school should the student return, are considered.
- All student records, Superintendent's Designee records, mitigation interview, school consultation, agency, and collateral interview data are compiled and reviewed.
- The Appeals and Mitigation Officer develops a proposed recommendation for mitigation.
- The Appeals and Mitigation Officer discusses the proposal with the Superintendent's Designee and Principal or his/her representative.
- The Executive Director reviews and acts upon the recommendations made by the Appeals and Mitigation Officer.
- The student and parents/guardians are notified of the mitigation decision within two to four weeks after the request for mitigation.

To ensure that the mitigation is “instructive”:

- Any recommendations or “terms” of the mitigation must be completed.
- A mechanism must be in place to monitor these and to ensure that the student and his or her family have the necessary support(s).
- The Appeals and Mitigation Officer will put into place a process to coordinate any recommended services for the student. This process will include consideration of school system, outside agency, and service learning opportunities.

## **MITIGATION PROCESS**

**(A letter must be sent to the Executive Director of Student Support Services once the appeal process has ended.)**

1. The Appeals and Mitigation Officer shall conduct a review of the expulsion case and conduct an interview with the student and parents/guardians to hear the request for mitigation. This process will also include interviews with administrators, teachers, support personnel, and the Superintendent's Designee.
2. Mitigation involves the review of:
  - Disciplinary history
  - Present academic effort
  - Attendance and citizenship
  - Nature of the offense and the disruption caused
  - Possible consequences resulting from readmission
  - Health and safety issues
  - Implications for the school
  - Recommendations of the school staff.
3. The Appeals and Mitigation Officer will conduct an interview with the student and parents. The parents and student must present specific mitigating reasons why the term of the expulsion should be reduced or changed due to extenuating circumstances.
4. The Appeals and Mitigation Officer will present the case recommendation to the Executive Director for a final decision.
5. Parents and students will be notified in writing of the decision of the Executive Director within two weeks after the mitigation interview.