Questions and Answers on Appeals and Hearings Before the Board of Education of Baltimore County

2020-2021
QUESTIONS AND ANSWERS ON APPEALS AND HEARINGS BEFORE THE BOARD OF EDUCATION OF BALTIMORE COUNTY

IT IS STRONGLY RECOMMENDED THAT YOU READ THIS ENTIRE DOCUMENT IN ORDER TO UNDERSTAND THE BOARD OF EDUCATION’S HEARING PROCESS

I. Introduction

A. You are receiving this document because you have requested a hearing before the Board of Education of Baltimore County (Board). When such requests are made, the Board has the option of: (1) assigning this hearing to one of the Board’s hearing examiners; (2) hearing the case itself; or (3) convening a panel of the Board members to hold a hearing. This document explains, broadly, the procedure used for Board hearings and will tell you what to expect. Note, however, that the Board has the option of altering, amending or changing the procedures in this document based upon its unique needs and the unique nature of a specific case. You will be notified should the procedures in this document differ from those used for your hearing or case. This document is not intended to provide legal advice or counsel on the substance of your case. For legal advice about your case, you should consult with an attorney.

B. When your appeal has been referred to a hearing examiner, the Board’s scheduler will send all correspondence concerning your hearing before the Board’s hearing examiner to you or to your attorney (or to your designated representative) as in Paragraph II below. You do not need an attorney, and your designated representative does not need to be an attorney; you may represent yourself when you have a hearing with the hearing examiner. When your appeal will be heard by the Board, you will receive notice about your hearing from the Board scheduler or from the Board office.

C. You must provide the Board’s scheduler with your current contact information, or the contact information for your attorney or designated representative, to include complete mailing address and home telephone number or a telephone number where you or your representative may be reached during business hours.

D. You and your attorney (or your designated representative) will receive a written notice that includes the date, time and place of the hearing. If your appeal has been referred to a hearing examiner, this hearing notice will contain the name of the hearing examiner selected to conduct your hearing. If the Board is conducting the hearing, it will be stated in the notice.

E. You will receive a copy of the Board’s policies on hearings, Policy 8340 and Policy 8341. Specific procedures are addressed in these policies. If the policies are not included in the information provided to you, you may either request a copy of the policies, or the policies are available on the school system’s Web page at the following links:

II. Do I need an attorney or may I represent myself?

A. Individuals may represent themselves in any hearing before a Board hearing examiner or before the Board; no person is required to have an attorney.

B. An individual may be accompanied, represented and advised by an attorney or a person who is not an attorney, such as an advocate or an association/union representative (in this document, called “designated representative”) at all stages of an appeal.

C. The Superintendent will be represented by an attorney.
D. If you choose to be represented by an attorney or by a designated representative, you are required to notify the Board’s scheduler of the name and contact information of your attorney or designated representative.

E. If you have informed the Board’s scheduler that you are represented by an attorney or by a designated representative, the attorney or designated representative shall be responsible for:

1. Receiving all notices of hearings;
2. Filing of all pleadings, motions or other papers;
3. Submitting evidence, examining and cross-examining witnesses; and
4. Representing you before the hearing examiner and, if applicable, at oral argument before the Board.

Please be advised that, once you decide to use an attorney or a designated representative, the Board’s scheduler will communicate directly with that person about all aspects of your appeal.

F. You should speak directly with your attorney or designated representative if you have questions about your hearing.

III. What types of proceedings are covered by this procedure?

A. Appeals and hearings covered by this document include formal hearings before hearing examiners in matters arising under Sections 4-205 and 6-202 of the Education Article of the Annotated Code of Maryland - as well as oral arguments before the Board - in matters arising under Sections 6-202(a), 4-205(c) and 7-305 of the Education Article of the Annotated Code of Maryland.

1. Hearings under Section 6-202(a) are on recommendations of the Superintendent/designee to suspend or dismiss certificated personnel.
2. Proceedings under Section 4-205(c) involve appeals filed from decisions of the Superintendent/designee with respect to controversies and disputes involving the rules and regulations of the Board or the proper administration of the county public school system.
3. Proceedings under Section 7-305, when referred to the hearing examiner, are on decisions of the Superintendent/designee’s to suspend a student for more than 10 school days or expel the student. (See, Policy 5560)

B. This document does not address employee collective bargaining agreement grievances, labor arbitrations or meetings about any of these matters.

IV. What are the deadlines for filing a notice of appeal with the Board?

A. Appeal filed under Section 4-205(c) of the Education Article

1. Under Section 4-205(c), a written notice of appeal shall be filed with the Board within 30 calendar days after the date of the Superintendent/Desigenee’s decision or final action.
2. The time period for filing a written appeal with the Board begins on the day after the date of the Superintendent/Desigenee’s decision or final action.¹
3. If the 30th calendar day falls on a Saturday, Sunday or on a day that the administrative offices of the school system are closed, the notice of appeal must be filed with the board on the very next business day that the administrative offices of the school system are open.

B. Appeal filed under Section 6-202(a) of the Education Article

1. A written request for hearing before the Board, or a request for hearing before an

¹ For example, if the date of the decision is May 1st, the 30-day time period for filing the appeal begins on May 2nd and expires on May 31st.
arbitrator, shall be filed with the Board within ten (10) calendar days after the date of the Superintendent/Designee’s recommendation that a professional or certificated employee be suspended or dismissed.

2. If the request does not specify that the hearing be before an arbitrator, the request shall be considered a request for hearing before the Board.

3. The time period for filing a request for hearing begins on the day after the date of the Superintendent/Designee’s recommendation.2

4. If the 10th calendar day falls on a Saturday, Sunday or on a day that the administrative offices of the school system are closed, the request for hearing must be filed with the Board on the very next business day that the administrative offices of the school system are open.

C. Appeal filed under Section 7-305 of the Education Article and Board Policy 5560, Suspensions and Expulsions

1. Under Section 7-305, a written notice of appeal must be filed with the Board within 10 calendar days after the Superintendent/Designee’s decision.

2. The time period for filing a written appeal with the Board begins on the day after the date of the Superintendent/Designee’s decision or final action.3

3. If the 10th calendar day falls on a Saturday, Sunday or on a day that the administrative offices of the school system are closed, the notice of appeal must be filed with the Board on the very next business day that the administrative offices of the school system are open.

V. Who may file motions?

A. Preliminary motions:

1. Any party to a proceeding may file a preliminary motion with the hearing examiner or with the Board. The following matters are considered appropriate for such preliminary motions:
   a. Lack of standing;
   b. Timeliness;4
   c. Lack of jurisdiction over the subject matter;
   d. Failure to exhaust available remedies; or
   e. Request for ruling on the record.

2. The motion shall be in writing and state the reasons and legal authorities in support of the request.

3. The motion shall be forwarded to the Board’s scheduler, who will forward the motion to the hearing examiner assigned to hear motions.

4. A copy of the motion must be forwarded to the other party, or the party’s attorney or to the designated representative.

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2 For example, if the date of the decision is May 1st, the 10-day time period for requesting a hearing begins on May 2nd and expires on May 11th.

3 For example, if the date of the decision is May 1st, the 10-day time period for filing the appeal begins on May 2nd and expires on May 11th.

4 In accordance with Board policies 8340 and 8341, an appeal shall be deemed to have been timely filed with the Board if the appeal has been: (1) delivered to the administrative office of the Board on or before the appeal is due; or (2) deposited in the United States mail, as registered or certified or express mail or priority mail or deposited with a delivery service such as Federal Express, UPS or DHL that provides verifiable tracking of the item from the point of origin before the appeal is due.
5. The party against whom a motion is directed may file any response within 15 calendar days after being served with the motion. Unless otherwise directed, the response shall be filed with the Board’s scheduler, who will forward the response to the hearing examiner.

B. Motions made during or after a hearing:
Motions may be filed with the designated hearing examiner during or after the close of the evidentiary proceeding.

C. Ruling on the motion:
1. The hearing examiner shall issue an order not more than fifteen (15) calendar days after receipt of the motion and response to the motion, if applicable. The hearing examiner may extend that time for good cause.
2. A copy of the hearing examiner’s order will be sent to the Superintendent’s attorney and to you or, if you are represented, to your attorney or your designated representative by certified mail or any other delivery method which provides proof of delivery.

VI. Who will conduct the hearing?

A. The Board selects a panel of independent hearing examiners to conduct hearings where evidence is gathered. These persons are not employees of the Board or of the Superintendent.
1. As required by Board policy, the hearing examiner must be an attorney admitted to practice law in Maryland.
2. The hearing examiner assigned to listen to your case reviews the evidence and argument presented at the hearing, applies relevant law and issues a recommendation on the issues in question.
3. The hearing examiner is independent and neutral. The hearing examiner will not give legal advice to any party or witness.

B. In some instances, the Board, and not a hearing examiner, will conduct hearings.

VII. What will the hearing examiner know about my case?

The hearing examiner will not have any advance notice about the specifics of your dispute. He/She will only have received your letter of appeal to the Board and the recommendation, final action or decision of the Superintendent or the Superintendent’s designated representative. You will be able to provide any necessary evidence during the hearing itself.

VIII. May I contact the hearing examiner to discuss my case?

A. No. The hearing examiner may not speak with you unless all parties are present by phone or in person.

B. If you have a matter that needs to be addressed by the hearing examiner prior to or after the hearing, please contact the Board’s scheduler listed on your hearing notice.

IX. What happens at the hearing before the hearing examiner?

A. The hearing will be recorded by a court reporter. All individuals giving testimony will be required to take an oath.

B. This is your opportunity to present your side of the case and your story.
1. You should bring any documents or witnesses that you believe support your case and that you wish to be considered by the hearing examiner.
2. If you decide to bring such documents, you will need the original and four (4) copies of any documents you wish to use. The original may be needed to show to
the hearing examiner; copies will be distributed as follows: one for your records, one for the official record, one for the hearing examiner and one for the Superintendent’s counsel.

C. You may bring witnesses to the hearing before the hearing examiner. They will be required to testify under oath. The hearing examiner shall have the authority to sequester witnesses.

D. Neither the Board nor any of its hearing examiners has the authority to subpoena documents or witnesses.

E. The strict rules of evidence do not apply to the proceedings before hearing examiners.

F. The hearing examiner will preside over the hearing and shall control the hearing with authority to: examine witnesses; rule on the admissibility of evidence; and adjourn, postpone or continue the hearing.

G. You, or your attorney or your designated representative, may submit evidence, examine and cross-examine witnesses and file objections, exceptions and motions.

H. The Superintendent may appear in person, or through counsel or a designated representative, and shall be afforded the same rights as a party to submit evidence, examine and cross-examine witnesses and make objections and motions.

I. The hearing examiner may limit or refuse to admit cumulative or repetitive evidence and restrict redundant or duplicative testimony. The hearing examiner may encourage, but may not require, the parties to make an agreement as to matters not in dispute and to reduce cumulative evidence.

J. The hearing examiner has no authority to compel any witness to testify.

K. Hearings ordinarily will be limited to no more than three hours, with each of the parties allotted up to one and one half hours to present their case. The hearing examiner may extend the time for the hearing as he/she deems necessary or upon request of a party.

L. The use of cell phones during the hearing is prohibited.

M. The Board’s offices and grounds are tobacco-free and smoke-free. The use of tobacco products, including electronic cigarettes, is prohibited.

X. Order of Procedure and Burden of Proof

A. The order in which the parties shall present their case shall be determined by the hearing examiner, except that in cases arising under Section 6-202 of the Education Article, the Superintendent shall proceed first.

B. In requests for hearings under Section 6-202 of the Education Article, the Superintendent shall have the burden of proof by a preponderance of the evidence.

C. In appeals filed pursuant to Section 4-205 of the Education Article, the appellant shall have the burden of proof by a preponderance of the evidence.

XI. What will happen if I am unable to attend the hearing before the hearing examiner?

A. If you cannot attend your hearing, you must send a written request to the Board’s scheduler as soon as you know that you are unable to attend. **Your request must be received no later than ten (10) calendar days prior to the scheduled date of the hearing.**

   1. The Board’s scheduler will forward your request, along with the supporting documentation, to the hearing examiner. **The request must establish good cause for your inability to attend the hearing and include supporting documentation.** For example, if there is a health-related reason why you are unable to attend the hearing, you must provide a doctor’s note confirming the reason. Similarly, if you have vacation or travel plans, you must provide proof of your plans. (Note: The mere fact that you have submitted these items does not mean that the hearing examiner will grant the request for postponement.)

   2. Failing to hire an attorney and have counsel enter an appearance will not be considered as a valid reason to receive a postponement.
3. The hearing examiner will decide whether the hearing will be postponed. If you fail to appear, your case will be dismissed.

B. **If you file your written request for a postponement fewer than five (5) calendar days before the scheduled date of the hearing, you must provide proof that you had an emergency reason for being unable to appear.** You, or your attorney or designated representative, should send a copy of your request for postponement to the Board’s scheduler. The Board’s scheduler will forward your request, along with supporting documentation, to the hearing examiner.

1. An **emergency reason** may include, for example: (i) a sudden illness or injury occurring within the five (5) calendar days prior to the hearing; or (ii) a change in employment or work assignment occurring within the five (5) calendar days prior to the hearing.

2. Proof of **emergency reason** includes written medical documentation or employer documentation that verifies both the emergency and the timing of the emergency. The documentation must be signed by a medical provider or employer’s representative or person with similar authority.

3. The hearing examiner will decide whether the hearing will be postponed. (Note: The mere fact that you have submitted these items does not mean that the hearing examiner grant the request for postponement.) If your request is denied, you must attend the hearing as scheduled. **Do not assume that your request has been granted.** You should call the Board’s scheduler listed on your hearing notice to determine if the request to postpone was granted.

4. Generally, a hearing will not be rescheduled, postponed or continued if the postponement request is received within five (5) calendar days of the scheduled date, unless the parties agree or the hearing examiner approves the request.

C. If your request for postponement is not granted and you fail to appear, your case will be dismissed.

D. Any request for additional postponement(s) that is not approved by the hearing examiner will result in your case being dismissed.

**XII. What happens after the hearing before the hearing examiner?**

A. The hearing examiner may ask you to provide additional written information or legal memoranda to support your case. The hearing examiner will provide you with the necessary deadlines for providing this information.

B. A transcript of the hearing will be provided to each party at the expense of the Board.

C. The hearing examiner has **thirty (30) calendar days** after receipt of the transcript and any closing legal memoranda to issue his/her **Findings of Fact, Conclusions of Law and Recommendation** to the Board. The hearing examiner may extend that time for good cause.

D. A copy of the hearing examiner’s recommendation will be sent to the Superintendent’s attorney and to you or, if you are represented, to your attorney or designated representative by certified mail or by any other delivery method that provides proof of delivery.

E. Failure by the hearing examiner to submit the recommendation within the stated time does not mean that any party has become the prevailing party in the dispute.

**XIII. What may I do if I disagree with the hearing examiner’s recommendation?**

A. If you do not agree with the hearing examiner’s recommendation, you may request oral argument before the Board. The Superintendent may also do so.

B. Pursuant to Board Policy 8340(VII) and Board Policy 8341(IX), the parties have a right to request oral argument before the Board of Education prior to the Board rendering its final decision in this matter. The Hearing Examiner’s Recommendation will include a “notice of rights.” A request for oral argument must be filed with the Board **in writing** within
fifteen (15) calendar days of the date this notice of rights is mailed\(^5\) and should be addressed to the Board of Education of Baltimore County, 6901 Charles Street, Towson, MD 21204. No e-mails, facsimile or other forms of electronic communications will be accepted.

C. Your request for oral argument shall be considered timely filed within the fifteen (15) calendar days of the hearing examiner’s decision if, before the expiration of fifteen (15) calendar days from the date the Hearing Examiner’s decision was mailed, your request for oral argument has been: (1) delivered to the Board’s administrative office on or before the request for oral argument is due; or (2) deposited in the United States mail as registered or certified or express mail or priority mail or deposited with a delivery service such as Federal Express, UPS or DHL that provides verifiable tracking of the item from the point of origin before the request for oral argument is due.

D. The rules of procedure for oral argument before the Board are found in Policy 8340(VII).

XIV. **What will happen at the oral argument before the Board?**

A. You, or your attorney or designated representative, will receive a written notice of the date, time and location of the oral argument before the Board from the senior executive assistant to the Board.

B. Prior to the hearing, each Board member will be provided with a copy of the hearing examiner’s Recommendation and the official record of the proceedings.

C. Generally, the hearing will be held on the same day as one of the Board’s regularly scheduled meetings. Each side will have fifteen (15) minutes to present at oral argument, unless the Board decides to give each side more time.

D. Hearings, arguments and other proceedings before the Board shall be held in closed session.

E. The Board will consider only that evidence entered in the record before the hearing examiner. No new or additional evidence not contained in the record of the hearing before the hearing examiner will be considered by the Board.

XV. **What will happen if I am unable to attend the oral argument before the Board?**

A. If you cannot attend oral argument, you must send a written request to reschedule your hearing as soon as you know that you are unable to attend.

B. You should direct your request for postponement to the Board of Education Office, with a copy to the Superintendent’s counsel. The Superintendent, through counsel, may object to your request.

C. If you do not attend the oral argument and if you have failed to contact the Board’s office about your attendance, your appeal will not be considered and your case will be dismissed.

XVI. **Will the Board members speak to me about my hearing?**

A. No. While a matter is under consideration by the Board or by a hearing examiner, Board members may not discuss the case with any party, or his/her attorney or designated representative, outside of the presence of all other parties or consider communications in writing without supplying copies to all other parties and providing an opportunity for a response.

B. Information concerning a pending matter may not be released publicly by the Board, a Board member, a hearing examiner or a staff member unless it is a matter of public record.

XVII. **Final action by the Board.**

\(^5\) The Hearing Examiner’s Recommendation will include a Notice of Rights, along with a Certificate of Service. The date that the Recommendation is mailed to the parties is noted on the Certificate of Service.
A. Following oral argument, the Board will issue an Opinion and Order. The Opinion and Order will be in writing and will be mailed to you or, if you are represented, to your attorney or designated representative by certified mail or any other delivery method which provides proof of delivery.

B. Formal action of the Board will be taken publicly at a Board meeting.

C. Decisions of the Board may be appealed to the Maryland State Board of Education. The procedures for appealing matters to the Maryland State Board of Education may be found in the Code of Maryland Regulations (COMAR), Title 13A.01.05.

D. If you do not understand this document, the Board’s appeal policies or the hearing process, it is highly recommended that you consult with an attorney concerning your appeal rights.

XVIII. Will the hearings be cancelled due to inclement weather?

A. Hearings before a Hearing Examiner
   1. Hearings will be cancelled when the closure announcement states all schools and central administrative offices are closed for the day.
   2. Hearings scheduled before noon will be cancelled when the closure announcement states that central administrative offices are on a delayed opening.
   3. Hearings scheduled after noon will be cancelled when the closure announcement states that central administrative offices are dismissing early.

B. Oral argument before the Board of Education
   Oral argument before the Board will cancelled only when the closure announcement states that the Board meeting is cancelled.

C. Weather-related announcements concerning Baltimore County Public Schools and Board meetings will be communicated on the school system’s Web page and broadcast on local radio and televisions stations. You may also call school system’s information hotline at 443-809-5555 for school system closing updates.

XIX. How will I contact the Board’s Scheduler or the Board of Education office?

A. **Board’s Scheduler**
   Baltimore County Public Schools
   Attention: Board Scheduler
   Office of Law
   6901 Charles Street
   Towson, MD 21204
   443-809-4060

B. **Board of Education Office**
   Board of Education of Baltimore County
   6901 Charles Street
   Towson, MD 21204
   443-809-4126
   E-mail: boe@bcps.org (For questions only; not to be used to file an appeal.)
REQUESTS FOR ACCOMMODATION

Requests for accommodation must be submitted to the Board’s scheduler no fewer than 30 calendar days before the scheduled proceeding for which the accommodation is requested. The request should include the name of the person needing accommodation (e.g., party, witness, attorney), the nature of the disability or impairment, and the type of accommodation(s) requested. If requesting a sign language interpreter, specify type: American Sign Language interpreter (ASL), certified deaf interpreter (CDI) or communication access real time translation (CART).

SPOKEN LANGUAGE INTERPRETER

The Board of Education will provide an interpreter for hearings and appeal-related proceedings. Interpreters are provided at no cost for individuals who are parties to the proceedings. Only Board-appointed interpreters can serve as official interpreters. Family or friends cannot serve as official interpreters. To request a spoken language interpreter, please submit a written request to the Board’s scheduler no fewer than 30 calendar days before the scheduled proceeding for which the interpreter is requested.

LEGAL ADVICE

The staff of the Board’s offices cannot give legal advice to you on the subject of your appeal. You should consult a lawyer if you wish to determine your rights in your appeal.