INTERNAL BOARD POLICIES: Operations

Appeal Before A Hearing Examiner

I. Purpose

Prior to the Board of Education of Baltimore County (Board) rendering a final decision, the Board may refer appeals authorized under the Education Article of the Annotated Code of Maryland to the Board’s hearing examiner. The following Rules of Procedure shall apply for all appeals referred to a Board hearing examiner.

II. Hearing Examiners

A. The Board shall appoint a panel of at least five (5) hearing examiners annually. A hearing examiner must be an attorney admitted to practice before the Maryland Court of Appeals.

B. The hearing examiner for each hearing shall be selected on a rotating basis among the members of the panel of hearing examiners in alphabetical order of last names.

C. The compensation for hearing examiners shall be determined by the Board.

III. Definitions

A. Appellant – Means the individual or entity appealing a final decision or recommendation of the Superintendent/Designee.

B. Designated Representative – Means a party’s advocate or association/union representative.

C. File or Filed – Means received by the Board.

An appeal will 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 or registered or certified or express 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.

D. 

*Party* – Means either an appellant or any person or entity allowed to intervene or participate as a party in interest regarding issues outlined in Paragraph V below.

E. Superintendent/Designee – The Superintendent or the Superintendent’s designated representative.

F. 

*Written Notice* – Means to deposit said notice in the United States mail, stamped and addressed to the addressee at the mailing address provided by the appellant or appearing in the records of the Baltimore County Public Schools (BCPS).

IV. Procedures and Deadlines

A. The procedures for each type of appeal are listed below. It is the responsibility of the party appealing to follow the procedures and to file all documents by the specified deadlines.

B. If an appeal is not filed within the stipulated time period, or if the required documentation to be provided by the party is incomplete, or if the party fails to appear at a scheduled hearing, such failure may constitute sufficient grounds for the hearing examiner to recommend that the Board dismiss the appeal or for the Board to dismiss the appeal.

V. Appeals and Timelines

A. All appeals to the Board shall be from a recommendation, final action or decision of the Superintendent/Designee.

B. Proceedings covered by this policy arise under the Education Article of the *Annotated Code of Maryland*:

1. 

   Section 4-205(c) Appeals
   a. Section 4-205(c) appeals are those filed from decisions of the Superintendent with respect to interpretation of Maryland School Law; bylaws of the State Board of Education; matters relating to controversies and disputes involving the rules and
regulations of the Board or the proper administration of the school system.

b. An appeal filed pursuant to Section 4-205(c) must be filed in writing with the Board within thirty (30) calendar days after the date of the decision of the Superintendent/Designee.

2. Section 6-202(a) Request for Hearing

a. Section 6-202(a) requests for hearings are those filed by certificated personnel regarding a recommendation by the Superintendent/Designee that a certificated employee be dismissed or suspended.

b. A request for hearing filed pursuant to Section 6-202(a) must be filed in writing with the Board within ten (10) calendar days after the date of the Superintendent/Designee’s recommendation.

C. The appeal or request for hearing must be filed with the Board and include the following:

1. The appellant’s full name, or, if represented by an attorney or a designated representative, the name of his/her attorney or designated representative;

2. The appellant’s current mailing address and telephone number where the appellant or his/her attorney/designated representative may be reached during regular business hours;

3. A copy of the decision from which the appeal or request for hearing is being taken;

4. A concise statement of the issues presented by the appeal for decision by the hearing examiner; and

5. A concise statement of the facts about which the appellant is taking the appeal or requesting a hearing.

D. Time and Notice Requirements

1. In computing any period of time prescribed by these procedures or by applicable statute, the date of the Superintendent/Desigenee’s decision or recommendation is not included; Saturdays, Sundays and legal holidays shall be counted. In the event that the last day computed falls on a Saturday, Sunday or school system holiday, the period shall extend to the next day which is not a Saturday, Sunday or school system holiday.

2. For filing of documents with the Board, if the administrative offices of the school system are not open during its regular business hours
on the last day of the period, the documents shall be filed on the next day thereafter when the administrative offices are open.

E. Mailing of Notices and Findings
In all hearings provided for herein, where a party is represented by an attorney or a designated representative, all notices and mailings required by the hearing examiner shall be sent to the party’s attorney or designated representative and such mailing shall constitute official notice to the party.

VI. Hearing Procedure

A. Acknowledgement
1. The Board shall promptly acknowledge receipt of the appeal or request for hearing in writing and send a copy of the appeal and the acknowledgement to the Superintendent.
2. The Board will forward the appeal or request for hearing to the Board’s scheduler and request the matter be set for hearing before a hearing examiner, unless the Board deems it appropriate to schedule an oral argument or a proceeding without a hearing examiner.

B. Notice of Hearing
1. Written notice of the date, time and location of a hearing regarding an appeal or request for hearing under this policy shall be forwarded by the Board’s scheduler to all parties.
2. The notice of hearing shall be sent by the Board’s scheduler not less than ten (10) calendar days prior to the hearing. Nothing in this policy shall preclude the Board from scheduling a hearing on an expedited basis if necessitated by law or agreed to by the parties.

C. Representation
1. Individuals may represent themselves in any hearing before the Board or its hearing examiners.
2. An individual may be accompanied, represented and advised by an attorney or designated representative at all states of the appeal.
3. If an individual is represented by an attorney or designated representative, the attorney or designated representative shall be responsible for:
   A. Receiving all notices of hearings;
   B. Filing of all pleadings, motions or other papers;
   C. Submitting evidence, examining and cross-examining witnesses; and
D. Representing the individual before the hearing examiner and, if applicable, at oral argument before the Board.

D. Hearing Record
1. The hearing examiner shall prepare an official record, which shall include all pleadings, testimony, exhibits and other memoranda or material filed in the proceeding.
2. A stenographic record of all hearings shall be prepared at the expense of the school system.

E. Presiding Officer – Duties and Authority
1. The hearing examiner shall be the presiding officer and 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.
2. The hearing examiner shall cause an oath to be administered to all witnesses testifying during the proceedings.

F. Order of Procedure
1. 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.
2. In appeals filed under Section 4-205 of the Education Article, the appellant shall have the burden of proof by a preponderance of the evidence.
3. In requests for hearings filed under Section 6-202 of the Education Article, the Superintendent shall have the burden of proof by a preponderance of the evidence.

G. Examination of Witnesses and Introduction of Evidence
1. The strict Rules of Evidence shall not be applicable to hearings conducted hereunder.
2. The hearing examiner may limit or refuse to admit repetitive evidence and may curtail redundant testimony.
3. All testimony shall be given under oath.
4. Any party or counsel for any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions and motions.
5. The hearing examiner may examine all witnesses called by any party.
H. 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.

VII. Findings

A. The hearing examiner shall issue *Findings of Fact, Conclusions of Law and Recommendation* not more than thirty (30) calendar days after receipt of the transcript and closing memoranda, if applicable. The hearing examiner may extend that time for good cause.

B. The hearing examiner shall distribute or mail to all parties, or the party’s representative, the *Findings of Fact, Conclusions of Law, and Recommendation*.

C. The *Findings of Fact, Conclusions of Law, and Recommendation* will be mailed to the Superintendent’s attorney and to the appellant or his/her attorney or designated representative by certified mail/return receipt requested, or by any other delivery method which provides proof of delivery.

VIII. Decision of the Board

A. In the event that either party requests oral argument within the applicable time period set forth in Paragraph IX herein, such oral argument shall be scheduled as soon as practicable.

B. If oral argument has not been requested, the matter shall be scheduled, to the extent possible, by the Board for determination at a Board meeting not less than sixteen (16) calendar days, and not more than thirty (30) calendar days, from the date of receipt of the hearing examiner’s *Findings of Fact, Conclusions of Law and Recommendation*.

IX. Oral Argument

A. Any party to the proceeding may request to appear in person to present oral argument before the Board prior to its rendering a final decision.
B. A request for oral argument must be filed with the Board within fifteen (15) calendar days from the date of the hearing examiner’s Findings of Fact, Conclusions of Law, and Recommendation.

C. The rules of procedure for oral argument before the Board are outlined in Board of Education Policy 8340, Appeal Before the Board of Education.

X. Inclement Weather
Hearings scheduled before a hearing examiner will be cancelled due to inclement weather as follows:
A. When the closure announcement states schools and central offices are closed for the day, the hearing will be cancelled and rescheduled.
B. When the closure announcement states central administrative offices are on a delayed opening, a hearing scheduled before noon will be cancelled and rescheduled.
C. When the closure announcement states central administrative offices are dismissing early, a hearing scheduled after noon will be cancelled and rescheduled.

Legal References: Annotated Code of Maryland, Education Article §4-205, Powers and Duties of County Superintendent
Annotated Code of Maryland, Education Article §6-202, Suspension OR [and] Dismissal of Teachers, Principals Supervisors, Assistant Superintendents or other Professional Assistants
Annotated Code of Maryland, Education Article §6-203, Hearings
COMAR 13A.01.05, Appeals to the State Board of Education
COMAR 13A.05.09.07, Dispute Resolution

Related Policy: Board of Education Policy 8340, Appeal Before the Board of Education

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

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