

**Administrative Procedures for Policy #1600 (Administration) Regarding Appeals**

**Rules of Procedure for Hearings Pursuant to §6-202(a)(3)**

I. PURPOSE

- A. The purpose is to provide Rules of Procedure, adopted pursuant to the authority of §4-108(4) of the Education Article to the Annotated Code of Maryland (hereinafter the "Code") under Code §6-202(a)(3), unless other procedures are specifically required by statute, State Board of Education regulations or contrary policies adopted by the Board.

II. PROCESS AND CONTENT

A. Applicability.

1. These procedures govern hearings within the Board's quasi-judicial function. They are not applicable to proceedings involving the Board's exercise of its legislative or policy-making functions.
2. Proceedings covered by these procedures arise under Code §6-202(a)(3) on the request of a teacher, principal, supervisor, assistant superintendent, or other professional assistant following the Superintendent's recommendation to suspend or dismiss that employee.

B. Definitions.

1. Board means the Board of Education of Calvert County.
2. Code refers to the Education Article of the Annotated Code of Maryland as supplemented.
3. Days refer to calendar days unless otherwise indicated. In computing any period of time prescribed by these procedures or by any applicable statute, the day of the act or event is not included in the calculation of time. Saturdays, Sundays, and legal holidays shall be counted. In calculating the number of days required to perform an act under these procedures, if the last day falls on a Saturday, Sunday, legal holiday, or other day when the Board's central office is closed, then the last day for performance of the act under these procedures shall be extended to the next regular business day when the Board's central office is open.
4. Employee for purposes of this policy refers to a teacher, principal, supervisor, assistant superintendent, or other professional assistant, as set forth under Code §6-202(a).
5. Evidentiary hearing refers to the proceeding in which the Employee and Superintendent have an opportunity to present testimony, writings, or material objects offered in proof of an alleged fact or proposition by which the

Board may be persuaded of the truth or falsity of a fact in issue. The Board will determine whether this hearing will be heard by a Hearing Examiner or the Board.

6. Filed or filing as used in these procedures means the actual receipt of a notice of request for hearing, memorandum, or other filing by the Board's central office on or before the last day for filing in accordance with these procedures.
7. Hearing refers to a Board proceeding where evidence is taken to determine issues of fact and to render a decision on the basis of that evidence.
8. Oral argument is the oral presentation before the Board of reasons for accepting, modifying, or rejecting the recommendation of the Superintendent.
9. Party or parties includes the Superintendent and the employee.
10. Presiding Officer means the Board's President or in the President's absence, the Vice President, a member designated by the President or Vice President, or, in the absence of such designation, a member designated by the Board. In the event that the Board refers the appeal to a Hearing Examiner, the designated Hearing Examiner shall be the Presiding Officer for the evidentiary hearing.
11. Quorum consists of three (3) members of the Board of Education.
12. Request for Hearing refers to a request for the Board of Education to conduct a hearing to review the recommendation of the Superintendent to suspend or dismiss the teacher, principal, supervisor, assistant supervisor, or other professional assistant making such request for hearing, pursuant to the provisions of §6-202 of the Education Article of the Annotated Code of Maryland.
13. State Board means the Maryland State Board of Education
14. Written notice as it applies to an action by the Superintendent or the Board shall be effective upon the date said notice is postmarked and deposited in the United States mail for first-class delivery postage pre-paid to the party's last known address or the date of actual delivery whichever first occurs.

C. Initiation of Requests for Hearing.

1. Recommendation of Superintendent. All requests to the Board for a hearing under Code §6-202(a)(3) shall be from a recommendation of the Superintendent to the Board for suspension or dismissal of a teacher, principal, supervisor, assistant superintendent, or other professional assistant.
2. Requests Must Be Filed Within Ten (10) Days of Written Notice. Each request for a Board hearing under Code §6-202(a)(3) shall be initiated by filing a written request for a hearing with the Board within ten (10) days after the Board has sent the Employee written notice of the charges against him/her as a result of the Superintendent's recommendation for suspension or dismissal along with written notice of the right to request a Board hearing.

3. Failure to Timely File Request for Hearing. If a request for a hearing under Code §6-202(a)(3) is not filed within the time period set forth in these procedures, the Board may act upon the Superintendent's recommendation without a hearing.
4. Hearing Date. If a hearing is requested, it shall be convened promptly but may not be set within the ten (10) day period after the Board has sent its written notice of the charges.
5. Right to Use a Hearing Examiner. The Board reserves the right, at any time in its discretion, to conduct an evidentiary hearing, to refer a request for hearing to a Hearing Examiner for the purpose of conducting an evidentiary hearing and preparing a recommended decision under Code §6-203, or to hear oral argument even if an evidentiary hearing or oral argument is not requested by the parties. The Board also reserves the right to request that the parties submit additional documentation or information.

D. Standard of Review and Burden of Persuasion.

1. The Board shall exercise its independent judgment based on the evidence and testimony before it in rendering a final decision on whether to accept, reject or modify the recommendation of the Superintendent in matters coming before it under §6-202(a)(3). The Superintendent shall have the burden of persuasion.

E. Hearings.

1. Applicability. The provisions herein apply to both evidentiary hearings and oral arguments before the Board or a Hearing Examiner designated by the Board, unless otherwise indicated.
2. Notice.
  - a) Written notice of hearings shall be given by the Board, or its designee, to all interested parties not less than ten (10) days prior to the hearing.
  - b) Such notice shall state the date, time, and place of the hearing.
3. Public and Private Hearings. All hearings held pursuant to Code §6-202(a)(3) shall be private.
4. Potential Documentary Evidence. In the interest of expediting the hearing, counsel for or representatives of the Employee and the Superintendent are encouraged to stipulate at least five (5) days prior to the date of the hearing to the admissibility of all then known demonstrative evidence the parties intend to introduce into evidence. In the interest of assisting the parties to so stipulate, the Board's attorney may conduct a conference call with counsel or representatives of the parties prior to the date of the hearing.
5. Hearings Before a Hearing Examiner.
  - a) Pursuant to Code §6-203, the Board may, in its sole discretion, refer the appeal to a Hearing Examiner for the purpose of conducting an evidentiary hearing. At all times, however, the Board retains the right

to conduct an evidentiary hearing on its own, without a Hearing Examiner. In those appeals where a Hearing Examiner is utilized, the Hearing Examiner shall serve as the Presiding Officer over that hearing and shall, subject to Board review, rule on all evidentiary issues, objections, and other issues that are raised during the hearing. After the production of the transcript and the filing of any post-hearing memoranda, the Hearing Examiner shall submit to the Board, the Appellant, and to the Superintendent the record of the Hearing Examiner which shall include: a) the transcript of the proceedings and exhibits, unless they have already been produced, and b) the Hearing Examiner's findings of fact, conclusions of law, and recommendation(s) and c) all documents submitted to the Hearing Examiner.

- b) The Hearing Examiner shall be an attorney admitted to practice before the Maryland Court of Appeals. The Hearing Examiner may not be the attorney to the Board or be connected in any way that attorney.
  - c) Within ten (10) days of the date of mailing of the record and the findings, conclusion and recommendation(s) of the Hearing Examiner, either party may request the right to argue orally before the Board. The Board will notify the parties of the date for argument and specify the time the parties will have for their presentations. Arguments will be limited strictly to the record before the Board.
  - d) After reviewing the record, the transcript, the recommendations, and the arguments of the parties, the Board shall render a decision.
6. Representation. All parties appearing at Hearings under these procedures shall have the right to appear in person, through counsel, or through a representative of their choice. All parties shall have the right to be accompanied, represented, and advised by counsel or a designated representative. Persons requesting a hearing under Code §6-202(a)(3) shall advise the Board if they are represented by an attorney or other representative promptly after filing the notice of request for a hearing. Failure to give prompt notice of representation may result in the postponement of a scheduled hearing.
7. Records – Transcripts.
- a) The Presiding Officer shall prepare or cause to be prepared an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material files in the proceedings.
  - b) Accurate records of all hearings, disputes, or controversies shall be kept by the Superintendent in order that, if an appeal is taken, the records are available for submission to the appropriate entity.
  - c) A written, taped, or electronic record of that part of the proceedings 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 §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 any typewritten transcript of any proceedings, or a part of any proceedings, shall be paid by the party requesting it. In those appeals where a transcript is prepared pursuant to Code §6-203, the Board will pay the cost of the transcript.

8. Duties and Authority of 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 in a proceeding.
9. Quorum. Each Board hearing where a Hearing Examiner is not used shall be held before no less than a quorum of the Board.
10. Order of Proceedings. Unless determined otherwise by the Presiding Officer, the order of proceedings shall be as follows:
  - a) The parties shall advise the Presiding Officer if there are any stipulations of fact and stipulations as to the admission of any documents.
  - b) Superintendent's opening statement.
  - c) Employee's opening statement.
  - d) Presentation of Superintendent's case.
  - e) Presentation of Employee's case.
  - f) Superintendent's Closing Statement.
  - g) Employee's Closing Statement.
11. Examination of Witnesses and Introduction of Evidence.
  - a) Strict judicial rules of evidence are not applicable to evidentiary hearings conducted hereunder. The Presiding Officer, however, shall have the discretion with respect to the admission of evidence and shall determine whether evidence offered is relevant or material to an issue in controversy or has sufficient probative value to warrant its admission.
  - b) The Presiding Officer may limit or reject cumulative or repetitive evidence and may curtail redundant questioning of a witness. In the interests of expedition, the Presiding Officer shall encourage the parties to stipulate to matters not in dispute and to evidence offered for purposes of corroboration that would be cumulative. All testimony shall be given under oath.
  - c) In evidentiary hearings provided for in these procedures, a party, individually or by or through counsel or other representative, may submit evidence, examine and cross-examine witnesses, make objections, and file exceptions and motions.

- d) The Superintendent may appear in person or through counsel or a designated representative and shall be accorded the same rights as a party to submit evidence, examine and cross-examine witnesses, make objections, and file exceptions and motions.
  - e) The Presiding Officer shall have the right to examine all witnesses and to call as a witness any person whom he or she believes to be in possession of relevant and material evidence. In hearings before the Board, any Board member and Counsel for the Board may examine any witnesses.
12. Written Memoranda. The Presiding Officer shall have the right to request the parties to submit written memoranda on disputed issues of fact or law that may arise during the course of the hearing, and shall, upon request, afford any party the right upon conclusion of evidence to either argue orally at that time or submit a written post-hearing memorandum upon receipt and review of the transcript and exhibits. In the latter case, the Presiding Officer shall determine the date on which the written memorandum must be filed. Any party choosing to argue orally before the Presiding Officer shall thereby waive the right to file a written post-hearing memorandum.
13. Counsel for the Board. In all matters before the Board, the Board shall have the right to have an attorney present as its counsel and may request their attorney to participate in any matters as counsel for the Board.
- F. Decisions and Order. Whenever the Board is required to issue a decision and Order, it may either orally, or in writing, issue a summary Order stating its determination and follow that promptly with a written decision and Order setting forth the findings of fact, conclusions of law and rationale that constituted the basis for its determination.
- G. In its written decision and Order the Board shall advise the parties of the right to appeal the Board's decision to the Maryland State Board of Education as may be provided under state law or regulation.
- H. Ex-Parte Communications. While a matter is under consideration by the Board, no member shall receive communications from, or communicate orally with, any individual, other than Board members or legal counsel for the Board, concerning matters properly before the Board, outside the presence of all other parties. No information concerning a pending matter may be released by the Board, a Board member, or a member of the Calvert County Public Schools' administration or any party to the proceeding, their counsel, or representatives unless it is a matter of public record.
- I. Effect on Other Procedural Regulations. These procedures supersede all other procedures which may have been adopted by the Board governing contested matters appealed to the Board pursuant to Annotated Code of Maryland §6-202(a)(3).
- J. Extension and Shortening of Time. For good cause, the Board, upon its own motion or at the request of either party, may at any time shorten or extend the time provided under these procedures for filing any document or providing any notice except in those instances where the time is specified by state law.