

Administrative Procedures for Policy #1600 (Administration) Regarding Appeals

Rules of Procedure in Appeals and Hearings Pursuant to §7-305(d)(5)

I. PURPOSE

- A. The purpose is to provide Rules of Procedure, adopted pursuant to the authority of §4-108(4) of the Education Article of the Annotated Code of Maryland (hereinafter "Code"), for all appeals to the Board of Education of Calvert County (hereinafter the "Board") under Code §7-305(d)(5), unless other procedures are specifically required by statute, State Board of Education bylaws, or contrary policies adopted by the Board.

II. PROCESS AND CONTENT

A. Applicability.

1. These procedures govern appeals and hearings within the Board's executive and/or 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 §7-305(d)(5) on appeals from a determination by the Superintendent or Superintendent's designee that suspension of a student for more than ten (10) days or the expulsion of a student is warranted.

B. Definitions.

1. Appeal refers to a request to the Board of Education for a review of an alleged error or alleged injustice purportedly committed by the Superintendent or the Superintendent's designee.
2. Board means the Board of Education of Calvert County.
3. Code refers to the Education Article of the Annotated Code of Maryland as supplemented.
4. Days refers 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.
5. Evidentiary hearing refers to the proceeding in which the Appellant and Appellee have an opportunity to present testimony, writings, or

demonstrative evidence 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 appeal, 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 affirmance, reversal, modification, etc., generally limited in time by the Board, by the parties to the proceedings.
9. Party or parties includes the student appealing the disciplinary action and the Superintendent.
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. State Board means the Maryland State Board of Education.
13. 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 which ever first occurs.

C. Initiation of Appeals.

1. Final Action Required. All appeals to the Board under Code §7-305(d)(5) shall be from a written determination by the Superintendent or the Superintendent's designee that adversely affects the person or persons who seek the appeal. The Superintendent or the Superintendent's designee shall indicate when a determination is "final."
2. Appeal Must Be Filed Within Ten (10) Days. Each appeal to the Board under Code §7-305(d)(5) shall be initiated by filing a signed and dated written notice of appeal with the Board within ten (10) days after the Superintendent or the Superintendent's designee has sent a written determination on the suspension or expulsion decision to the student and the student's parent or guardian.
3. Failure to Timely File. If a notice of appeal under Code §7-305(d)(5) is not filed within the time period set forth in these procedures, the appeal shall be dismissed.

4. Termination of Superintendent's Jurisdiction. Upon the filing of an appeal to the Board, the Superintendent no longer has jurisdiction to review new or additional information concerning the subject of the appeal unless instructed to do so by the Board.
5. General Processing of Appeal.
 - a. Appeal Information Form Required within Ten (10) Days. Upon receipt of a notice of appeal for a matter falling under Code §7-305(d)(5), the Board shall assign a docket number and send the Appellant(s) a copy of the Board's Appeal Information Form. Within ten (10) days after the Appeal Information Form has been sent to the Appellant(s), the Appellant(s) shall file the completed Appeal Information Form with the Board.
 - b. Restriction on New Information. Information or arguments not submitted to the Superintendent or Superintendent's designee for consideration will not be considered by the Board unless the Appellant demonstrates to the Board's satisfaction that the new information did not exist, or for good reason beyond the control of Appellant, could not be produced at the time that the matter was considered by the Superintendent or the Superintendent's designee. In such cases the Board may, in its discretion:
 - 1) Refer the new information to the Superintendent for consideration and comments before accepting or rejecting it.
 - 2) Remand the entire matter back to the Superintendent for reconsideration, in which case the Superintendent's decision will be treated as a new "final" decision necessitating a new appeal being filed pursuant to these procedures; or
 - 3) Reject the information or arguments so offered.
 - c. Superintendent's Response. Within twenty (20) days of receipt of the Appeal Information Form, the Superintendent or Superintendent's designee shall file a written response to the appeal, together with all materials in support of the response, with the Board, with a copy of the response to Appellant.
6. Time for Filing General Responses. Subsequent to the Superintendent or Superintendent's designee's written response to the appeal, any party may file a written response to any filing within ten (10) days of the date of said filing, with copies to the other party.
7. Failure to File Appeal Information Form or Timely File Response.
 - a. If the Appellant(s) on an appeal filed under Code §7-305(d)(5) fails to file an Appeal Information Form within the time period set forth in these procedures, the Board, in its sole discretion, may dismiss the appeal for lack of timeliness.

- b. If a party fails to file a response within the time periods set forth herein, the Board, in its sole discretion, may elect to omit the response from consideration and from the record.
8. Right to Conduct Evidentiary Hearing. The Board reserves the right, at any time in its discretion, to conduct an evidentiary hearing, to refer the appeal 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 standard of review of Code 7-305(d)(5) appeals hereunder is whether the Superintendent's decision was arbitrary, unreasonable, or illegal. The appellant has the burden of persuasion.

E. Evidentiary Hearings

1. Applicability. The following provisions apply to an evidentiary hearing before the Board or a Hearing Examiner designated by the Board.
2. Notice.
 - a. Written notice of hearings shall be given by the Board or its designee to all interested parties not less than five (5) days prior to the hearing. Such notice shall state the date, time, and place of the hearing.
3. Public and Private Hearings.
 - a. Pursuant to Code §7-305(d)(5), unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the Board.
 - b. The request for a public hearing shall be made in writing.
4. Potential Documentary Evidence. In the interest of expediting the hearing, counsel for or representatives of the Appellant 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 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. 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.
 - c. After reviewing the record, transcript, recommendations, and arguments of the parties, the Board shall render a decision.
6. Representation. All parties appearing at the Hearings under these procedures shall have the right to appear in person or 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. Appellants under Code §7-305(d)(5) shall advise the Board if an attorney or other representative represents them, promptly after filing the notice of appeal or 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, Board, or its designee 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 otherwise determined 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. Appellant's opening statement.
 - d. Presentation of Superintendent's case.
 - e. Presentation of Appellant's case.
 - f. Superintendent's Closing Statement.
 - g. Appellant'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 interest 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 objection, 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 witness.

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 Orders. Whenever the Board is required to issue a decision and Order as the result of an appeal from a final decision of the Superintendent, 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.
1. 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.
- G. 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.
- H. Effect on Other Procedural Regulations. These Rules of Procedure 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 § 7-305(d)(5).
- I. Extensions 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.