

**Administrative Procedures for Policy #1600 (Administration) Regarding Appeals
Rules of Procedure for Hearings Pursuant to Education § 6-202(a)(3)**

I. PURPOSE

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

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. These procedures apply only to appeals arising under Education § 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. Appeal refers to a request to the Board for a review of a decision by the Superintendent.
2. Appellant refers to the Employee who brings an appeal regarding a decision of the Superintendent to the Board for review.
3. Appellee refers to the Superintendent in an appeal before the Board.
4. Board refers to the Board of Education of Calvert County.
5. Board Member refers to any person properly elected or appointed to sit on the Board of Education of Calvert County up through the completion of that person's term.
6. Education refers to the Education Article of the Annotated Code of Maryland as supplemented.
7. Days refers to calendar days unless otherwise indicated.
 - a. When determining any period of days prescribed by these procedures or any applicable statute, the day of the act or event is not included in the determination.

- b. Saturdays, Sundays, and legal holidays are included in the determination.
 - c. When the last day of a period in these procedures 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 shall be extended to the next regular business day when the Board's central office is open.
8. Employee refers to a teacher, principal, supervisor, assistant superintendent, or other professional assistant, as set forth under Education § 6-202(a).
 9. Evidentiary hearing refers to a proceeding where Appellant and Appellee have an opportunity to present testimony, writings, or demonstrative objects to prove an alleged fact or proposition, by which the Board may be persuaded of the truth or falsity of a fact in issue.
 10. Filed or filing refers to 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.
 11. 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.
 12. Oral argument refers to the oral presentation before the Board of reasons for accepting, modifying, or rejecting the recommendation of the Superintendent.
 13. Party or parties includes the employee appealing the suspension or termination and the Superintendent.
 14. Presiding Officer refers to the Board's President or in the President's absence, the Vice President, a Board Member designated by the President or Vice President, or, in the absence of such designation, a Board 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.
 15. Quorum refers to the presence of three (3) or more Board Members.
 16. Request for Hearing refers to a demand that the Board conduct a hearing to review the recommendation of the Superintendent to suspend or dismiss the teacher, principal, supervisor, assistant supervisor, or other professional assistant, pursuant to Education § 6-202.
 17. State Board means the Maryland State Board of Education
 18. Superintendent means the Superintendent of Calvert County Public Schools or the Superintendent's designee.
 19. Written notice refers to documentation of the Superintendent's decision, including the provision of appeal rights.

C. Initiation of Requests for Hearing

Administration 1600.2

Procedures Written: 9/9/04; Legal Review 7/10/23

Procedures Revised: 11/1/06; 5/8/08; 5/2/14; 12/21/16; 2/05/21; 7/10/23

Page 2 of 8

1. Recommendation of Superintendent. All requests to the Board for a hearing under Education § 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 Education § 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 both written notice of the charges against him/her as a result of the Superintendent's recommendation for suspension or dismissal and written notice of the right to request a Board hearing.
3. Consequences of Failure to Timely File Request for Hearing. If a request for a hearing under Education § 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. 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.
6. Right to Use a Hearing Examiner. The Board reserves the right:
 - a. to conduct an evidentiary hearing,
 - b. to refer a request for hearing to a Hearing Examiner for the purpose of conducting an evidentiary hearing and preparing a recommended decision under Education § 6-203, or
 - c. to hear oral argument even if an evidentiary hearing or oral argument is not requested by the parties.
 - d. 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 Education § 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.
 - c. Written notice shall be effective upon the date said notice is sent via email and/or 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 occurs first.
3. Public and Private Hearings. All hearings held pursuant to Education § 6-202(a)(3) shall be private.
4. Stipulations to 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 evidence the parties intend to introduce. 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 to determine what evidence the parties may stipulate to..
5. Hearings Before a Hearing Examiner.
 - a. In those appeals where the Board refers the matter to a Hearing Examiner, 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.
 - b. The Hearing Examiner shall be an attorney admitted to practice before the Supreme Court of Maryland. The Hearing Examiner may not be the attorney to the Board or be connected in any way to the Board attorney.
 - c. 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:
 - 1) the transcript of the proceedings and exhibits, unless they have already been produced, and
 - 2) the Hearing Examiner's findings of fact, conclusions of law, and recommendation(s) and
 - 3) all documents submitted to the Hearing Examiner.
 - d. Within ten (10) days of the date of emailing and/or 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.

- e. After reviewing the record, the transcript, the recommendations, and the arguments of the parties, the Board shall render a decision.
6. Representation.
- a. 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.
 - b. All parties shall have the right to be accompanied, represented, and advised by counsel or a designated representative.
 - c. Appellants under Education § 7-305(d)(5) shall promptly inform the Board if an attorney or other representative represents them. 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.
 - d. The record does not need to be transcribed unless the appeal is initially heard by a Hearing Examiner pursuant to Education § 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.
 - e. The cost of any typewritten transcript of any proceedings, or a part of any proceedings, shall be paid by the party requesting it.
 - f. In those appeals where a transcript is prepared pursuant to Education § 6-203, the Board will pay the cost of the transcript.
8. Duties and Authority of Presiding Officer. The Presiding Officer shall oversee 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:
 - a. 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;

- b. 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, and further shall notify any party that by choosing to argue orally, the party thereby waives the right to file a written post-hearing memorandum; and
 - c. determine the date on which any written memorandum must be filed.
 - 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.
- 1. 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.
 - 2. In its written decision and Order the Board shall advise the parties of the right and procedures 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.
- 1. While a matter is under consideration by the Board, no Board Member shall communicate in any way outside the presence of all other parties with any individual with an interest in the matter, except for other Board Members or legal counsel for the Board. No information concerning a pending matter may be released by the Board, a Board Member, a member of the Calvert County Public Schools' administration, any party to the proceeding, their counsel, or their representatives unless it is a matter of public record.
 - 2. All Board Members must disclose to the Board such any ex parte communications and may no longer participate in that matter. Failure to report ex parte communication may prejudice the appeal and further may be cause for the Board Member's removal from the Board under Education § 3-302.
 - 3. Any party who engages in ex parte communications may prejudice their appeal.
- H. Confidentiality of Appeal Information. 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, any party to the proceeding, their counsel, or their representatives unless it is a matter of public record. Disclosure by Board Members of confidential appeal information may be cause for the Board Member's removal from the Board under Education § 3-302. Disclosure of confidential appeal information by Calvert County Public Schools employees may be cause for discipline up to and including termination.

- 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 Education § 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.