

Administrative Procedures for Policy #1600 (Administration)
Regarding Appeals Rules of Procedure for Appeals and Hearings Pursuant to Education § 4-205(c)(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 of the Annotated Code of Maryland (hereinafter “Education”), for all appeals to the Board of Education of Calvert County (hereinafter the “Board”) under § 4-205(c)(3), unless other procedures are specifically required by statute or the Maryland State Board of Education’s bylaws.

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. These procedures apply only to appeals arising under Education § 4-205(c)(3), which concern appeals from decisions of the Superintendent on controversies and disputes involving the rules and regulations of the Board, the true intent and meaning of Maryland’s public school laws, the State Board of Education’s bylaws, and the proper administration of the Calvert County Public Schools.

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 party 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 means 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.

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- 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. 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.
 9. 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.
 10. 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.
 11. Oral argument refers to the oral presentation before the Board of reasons for affirmance, reversal, modification, etc., by the parties to the proceedings, and generally limited in time by the Board.
 12. Party or parties includes each person, group, or entity named or admitted as a party, including a student, a parent, parent surrogate, or guardian of a student, and shall include the Superintendent. The Presiding Officer may permit any other person, group, or entity to participate in the hearing for limited purposes upon satisfactory and timely demonstration of the nature and extent of its interest.
 13. 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.
 14. Quorum refers to the presence of three (3) or more Board Members of the Board.
 15. State Board means the Maryland State Board of Education.
 16. Superintendent means the Superintendent of Calvert County Public Schools or the Superintendent's designee.
 17. Written notice refers to documentation of the Superintendent's decision, including the provision of appeal rights.

C. Initiation of Appeals

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1. Final Action Required. All appeals to the Board under Education § 4-205(c)(3) shall be from a final action or decision of the Superintendent that adversely affects the person or persons who seek the appeal. The Superintendent shall indicate in writing when an action or decision is final and shall provide information on the procedures to file an appeal.
2. Notice of the Action. Notice of the action by the Superintendent or the Board shall be effective upon the date the 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 which ever first occurs.
3. Appeal Must Be Filed Within Thirty (30) Days. Each appeal to the Board under Education § 4-205(c)(3) shall be initiated by filing a signed and dated written notice of appeal with the Board. This written notice must be filed within thirty (30) days after the Superintendent has sent written notice of the final action or decision.
4. Consequences of Failure to Timely File Appeal. If a notice of appeal under Education § 4-205(c)(3) is not filed within the time period set forth in these procedures, the appeal shall be dismissed.
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. 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 Education § 4-205(c)(3), the Board shall assign a docket number and send the Appellant(s) a copy of the Board's Appeal Information Form. The Appellant(s) shall file the completed Appeal Information Form with the Board within ten days of the Appeal Information Form being sent to the Appellant(s).
 - b. Restriction on New Information. Any information or arguments not submitted to the Superintendent for consideration will only be considered by the Board if the Appellant demonstrates to the Board's satisfaction that the new information did not exist, or, for reasons beyond the control of Appellant, the new information could not be produced at the time that the matter was considered by the Superintendent. 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

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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 shall file with the Board a written response to the appeal, together with all materials in support of the response, with a copy of the response sent to Appellant.
 - d. After the filing of the Superintendent’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 Timely File Appeal Information Form or Response.
- a. For an appeal filed under Code § 4-205(c)(3), if the Appellant(s) 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. Appeals Based on Written Submission. On appeals that are subject to Education § 4-205(c)(3), the Board may consider the appeal based solely upon the documents and arguments submitted by the parties in writing without holding an evidentiary hearing or oral argument, except where:
- a. the appeal involves a constitutionally protected liberty or property interest,
 - b. the Appellant’s written submission to the Board sets forth specific factual allegations of unlawful discrimination or arbitrariness, or
 - c. the Board, in its discretion, determines that an evidentiary hearing or oral argument is appropriate.
9. Right to Conduct Evidentiary Hearing. The Board reserves the right to conduct an evidentiary hearing, to refer an appeal to a Hearing Examiner for the purpose of conducting an evidentiary hearing and preparing a recommended decision under Education § 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. The standard of review for appeals taken pursuant to Education § 4-205(c)(3) is whether the Superintendent’s decision was arbitrary, unreasonable, or illegal. The appellant shall have the burden of persuasion.
- E. Evidentiary Hearings

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1. Applicability. The provisions herein 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 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 § 4-205(c)(3) shall be private unless the Board in its exclusive discretion determines that the issue or issues involved should be subject to a public hearing.
4. Stipulations to 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 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 appeal 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 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;
 - 2) the Hearing Examiner's findings of fact, conclusions of law, and recommendation(s); and

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- 3) all documents submitted to the Hearing Examiner.
 - d. 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 to make arguments to the Board. The Board may, in its sole discretion grant or deny such a request. 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, transcript, recommendations, and 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, through counsel, or through a representative of their choice.
 - b. All parties shall have the right to be accompanied, represented, and advised by counsel.
 - c. Appellants under Education § 4-205(c)(3) shall promptly inform the Board if an attorney is to represent 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 filed in the proceedings.
 - b. Accurate records of all hearings, disputes, or controversies shall be kept by the Superintendent, Board, or its designee in order so 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 is not required 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.

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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 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. Appellant's opening statement.
 - c. Superintendent's opening statement.
 - d. Presentation of Appellant's case.
 - e. Presentation of Superintendent's case.
 - f. Appellant's Closing Statement.
 - g. Superintendent'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 objections, and file 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 motions.

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- 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 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.
- 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 Maryland 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 any ex parte communications and may not 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. 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 § 4-205(c)(3).
- 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 Maryland law.

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