

**Administrative Procedures for Policy #1600 (Administration)
Regarding Appeals Rules of Procedure in Appeals and Hearings Pursuant to Education § 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 "Education"), for all appeals to the Board of Education of Calvert County (hereinafter the "Board") under Education § 7-305(d)(5), 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 § 7-305(d)(5), which concerns appeals from a determination by the Superintendent 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 for a review of a decision by the Superintendent.
2. Appellant refers to the student and parents/guardians of the student who bring 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 refer to calendar days unless otherwise indicated.

Administration 1600.3

Adopted: 9/9/04

Revised: 11/1/06; 5/8/08; 5/2/14; 12/21/16; 09/06/22; 7/10/23, 6/15/26

Reviewed without any changes:

Legal Review: 7/10/23

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- 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. 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 refers to 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., generally limited in time by the Board, by the parties to the proceedings.
 12. Party or parties includes the student appealing the disciplinary action and the Superintendent.
 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 § 7-305(d)(5) shall be from a written determination by the Superintendent that adversely affects the person or persons who seek the appeal. The Superintendent shall indicate in writing when a determination is "final" and shall provide information on the procedures to take 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 Ten (10) Days of the Notice. Each appeal to the Board under Education § 7-305(d)(5) shall be initiated by filing a signed and dated written notice of appeal with the Board. This written notice must be filed within ten (10) days after the Superintendent has sent a written determination regarding the suspension or expulsion decision to the student and the student's parent or guardian.
4. Consequences of Failure to Timely File Appeal. If a notice of appeal under Education § 7-305(d)(5) 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 § 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. The Appellant(s) shall file the completed Appeal Information Form with the Board within ten (10) days of the Appeal Information Form being sent to the Appellant(s).
 - b. Restriction on New Information. Any information or arguments not provided to the Superintendent for consideration will only be considered by the Board if the Appellant demonstrates to the Board's satisfaction that either the new information did not exist at the time of the Superintendent's consideration, 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.

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Revised: 11/1/06; 5/8/08; 5/2/14; 12/21/16; 09/06/22; 7/10/23, 6/15/26

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- 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 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 to Appellant.
 - d. Time for Filing General Responses. Subsequent to 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 that filing, and shall provide copies to the other party.
 - e. Time Period for Appeal Process. The Board shall have 45 days from the date the appeal was received to hear the appeal and issue a decision. This period may be extended if the parent, guardian, or his/her representative requests additional time. If due to extraordinary circumstances or unusual complexity of a particular appeal, the local board determines that it will be unable to hear an appeal and issue a decision within 45 days, it may petition the State Superintendent for an extension of time.
7. Failure to File Appeal Information Form or Timely File Response.
- a. For an appeal filed under Education § 7-305(d)(5), 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. Right to Conduct Evidentiary Hearing. The Board reserves the right, 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 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.

- 1. The standard of review of for appeals taken pursuant to Education § 7-305(d)(5) is whether the Superintendent's decision was arbitrary, unreasonable, or illegal. The appellant shall have the burden of persuasion.

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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 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.
 - a. Pursuant to Education § 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 by the Board.
 - b. The request for a public hearing shall be made in writing.
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 to the admissibility of all then known demonstrative evidence the parties intend to introduce into evidence, but at a minimum the Superintendent's witness list and a copy of the documents that the Superintendent will present must be provided to Appellant at least hearing 5 days before hearing. 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 may be stipulated to.
5. Hearings Before a Hearing Examiner.
 - a. Pursuant to Education § 6-203, the Board may, in its sole discretion, refer the appeal to a Hearing Examiner for the purpose of conducting an evidentiary hearing. 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.

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- c. After the production of the transcript and the filing of any post-hearing memoranda, the Hearing Examiner shall submit the record to the Board, the Appellant, and the Superintendent 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
 - 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, 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 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, 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.

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- 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 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.

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- 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 witness.
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.

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Adopted: 9/9/04

Revised: 11/1/06; 5/8/08; 5/2/14; 12/21/16; 09/06/22; 7/10/23, 6/15/26

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1. While a matter is under consideration by the Board, no 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 such 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 Rules of Procedure supersede all other procedures which may have been adopted by the Board governing contested matters appealed to the Board pursuant to Education § 7-305(d)(5).
- J. 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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