

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: April 8, 2008

TO: **BOARD OF EDUCATION**

FROM: Dr. Joe A. Hairston, Superintendent

SUBJECT: **CONSIDERATION OF THE PROPOSED CHANGES TO BOARD OF EDUCATION POLICY 8339 – APPEAL BEFORE HEARING EXAMINERS**

PRESENTERS:

RESOURCE PERSONS: P. Tyson Bennett, Esquire

RECOMMENDATION

That the Board of Education reviews and approves the proposed changes to policy 8339. This is the third reading of this policy.

Attachment I – Policy Analysis
Attachment II – Policy 8339

BOARD OF EDUCATION POLICY ANALYSIS

Revisions to Board of Education Hearing Policies

Policy 8339: Appeal Before Hearing Examiner

Policy 8340: Appeal Before the Board of Education

Statement of issues or questions to be addressed by the proposed policy

The Board of Education's Policy Review Committee continues its process of revising the Board's Internal policies. (8000 series)

The Committee, following advice of Board counsel, makes the following recommendations to its hearing policies:

Policy 8339: Appeal Before Hearing Examiner include: (1) Paragraph III - Substitute "Board" for "Hearing Examiner" to follow practice of the Board in sending the hearing notice; (2) Non-substantive edits.

Policy 8340: Appeal Before the Board of Education include: (1) Paragraph 2 - Deletion of reference to "informal" nature of hearing; (2) Paragraph 4 - Deletion of last sentence, to follow the practice of the school system providing and paying for the transcripts of Board hearings; (3) Paragraph 8 - Removal of "President" to follow current practice of the Board's attorney sending decisions of the Board to the parties and to provide more flexibility to the Board.

Note that, in addition to the above, the Policy Review Committee has recommended non-substantive changes for ease of reference.

Fiscal Impact on the school system

No fiscal impact is anticipated or contemplated by these revisions.

Relationship to other Board of Education Policies

These policies form the basis of the Board's procedures for hearings before the Board and are reference in Policy 5140 and Policy 5150.

Similar Policies adopted by other local school systems

ANNE ARUNDEL COUNTY BOARD OF EDUCATION

Policy 200.07, Investigations and Due Process

CECIL COUNTY BOARD OF EDUCATION

Policy BDEA, Procedures for Appeals to Board of Education from Decisions of County Superintendent

Policy BDEB, Procedures Governing Hearings in Matters of Suspension or Dismissal of Certificated Personnel

Policy BDEC, Procedures Governing Appeals to Board of Education in Extended
Suspension or Expulsion of Students

FREDERICK COUNTY BOARD OF EDUCATION
Policy 105, Appeal and Hearing Procedures

GARRETT COUNTY BOARD OF EDUCATION
Policy 110, Appeal to Board of Education
Policy 110.1, Hearing Procedure for Appeals Heard by Board of Education

HARFORD COUNTY BOARD OF EDUCATION
Policy 22-0018-000, Hearings Before the Board of Education of Harford County or
the Hearing Examiner

MONTGOMERY COUNTY BOARD OF EDUCATION
Policy BLB, Rules of Procedure in Appeals and Hearings

Legal Requirements, such as federal, state or local laws or regulations
Annotated Code of Maryland, Education Article, Sections 4-205 and 6-202

A draft of the proposed policies
See attached

Timeline
First Reader, February 26, 2008
Citizen Comment, March 11, 2008
Proposed Date of Approval, April 8, 2008

INTERNAL BOARD POLICIES: Operations

Appeal Before Hearing Examiner

I. Procedures for Hearing Examiners

When requests for hearings or appeals authorized under the Education Article[, Annotated Code of Maryland,] have been referred by the Board of Education OF BALTIMORE COUNTY (BOARD) to [a] THE BOARD'S hearing examiner, [selected by it,] pursuant to the Education Article, [Annotated Code of Maryland, and these procedures,] the following Rules of Procedure shall apply.

II. Selection of Panel of Hearing Examiners

The Board shall appoint a panel of at least five (5) hearing examiners annually. A hearing examiner must be an attorney admitted to practice before the Maryland Court of Appeals. The hearing examiner for each hearing shall be selected on a rotation basis among the members of the panel of hearing examiners in alphabetical order of last names. The compensation for hearing examiners shall be determined by the Board.

III. Notice of Hearing

Written notice of the hearing shall be sent by the [hearing examiner] BOARD to all parties not less than ten (10) days prior to the hearing, and it shall state the date, time, and place of the hearing. "Party" includes any person or agency named or admitted as a party. Any person or agency may be admitted as a party for limited purposes upon the satisfactory demonstration of the nature and extent of interest to the hearing examiner. All parties appearing at formal hearings shall have the right to appear in person or with counsel.

IV. Records – Transcripts

The hearing examiner shall prepare an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding. A stenographic record shall be made at the expense of the school system and shall be transcribed. Cost of copies of the transcript of any proceedings, or part thereof, shall be paid by the party requesting [such] THE copy.

V. Presiding Officer – Duties and Authority

The hearing examiner shall be the presiding officer and 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 hearing examiner shall cause an oath to be administered to all witnesses testifying during the proceedings.

A. Order of Procedure

The order in which the parties shall present their case shall be determined by the hearing examiner except that in case [of appeals of a suspension of an employee,] ARISING UNDER SECTION 6-202 OF THE EDUCATION ARTICLE, the Superintendent shall proceed first.

B. Examination of Witnesses and Introduction of Evidence

The strict Rules of Evidence shall not be applicable to hearings conducted hereunder [, and, in each case, the test of relevant to a material issue and whether it has substantial probative value with respect to such material issue]. The hearing examiner may limit or refuse to admit repetitive evidence and may curtail redundant [questioning] TESTIMONY. All testimony shall be given under oath. Any party or counsel for any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions, and motions. The hearing examiner may examine all witnesses called by any party. He/she may call as a witness any person whose testimony may be relevant.

C. Briefs

Any party may submit briefs of the issues of fact and law involved in the hearing in such form and within such time as the presiding officer may designate.

D. Findings

The findings of fact, conclusions of law, and recommendations of the hearing examiner shall be mailed (certified mail, return receipt requested) to the parties and the Board [of Education] not more than thirty (30) days after the [completion of the hearing and receipt of the transcript of the filing of briefs, if required or authorized] RECORD IS CLOSED.

VI. Argument

Within fifteen (15) days from the date of mailing by the hearing examiner of his/her findings of fact, conclusions of law, and recommendations as provided above, any party to the proceeding or the Board of Education shall have the right to request oral argument before the Board prior to its rendering a decision in the case. Upon receipt of such a request for oral argument, the Board shall within 30 days notify (by certified mail, return receipt requested) all parties to the hearing of the date, time and place of oral argument. Oral argument shall be limited to fifteen (15) minutes per side unless the Board indicates otherwise.

VII. [Decision] OPINION and Order

Each [decision] OPINION and [o]Order of the Board shall be mailed in writing, unless it shall immediately follow the hearing, in which case it shall be delivered orally and thereafter in writing, with copies sent (certified mail, return receipt requested) to all parties. Each [Decision] OPINION and Order shall be accompanied by findings of fact, conclusions of law, and A specific disposition of the case [and shall be provided to the individual]. Formal action of the Board shall be taken publicly at a Board meeting [following the hearing].

VIII. Mailing of Notices and Findings

In all hearings provided for herein, where a party in interest is represented by an attorney, all notices and mailings required by the Board or hearing examiner shall be sent to the attorney for the party and such mailing (certified mail, return receipt requested) shall constitute official notice to the party.

LEGAL REFERENCES: *ANNOTATED CODE OF MARYLAND*, EDUCATION ARTICLE § 4-205
ANNOTATED CODE OF MARYLAND, EDUCATION ARTICLE § 6-202

RELATED POLICIES: Board of Education Policy 8340

Policy
Adopted: 7/11/91
REVISED: _____

Board of Education of Baltimore County