

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: July 12, 2011
TO: **BOARD OF EDUCATION**
FROM: Dr. Joe A. Hairston, Superintendent
SUBJECT: **APPEALS AND HEARINGS HANDBOOK**
ORIGINATOR: Margaret-Ann F. Howie, Esq., General Counsel
RESOURCE PERSON(S): Patricia S. Clark, Policy and Compliance Officer

INFORMATION

That the Board of Education is informed of the Appeals and Hearings Handbook, *Questions and Answers on Appeals and Hearings Before the Board of Education of Baltimore County.*

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QUESTIONS AND ANSWERS ON APPEALS AND HEARINGS
BEFORE THE
BOARD OF EDUCATION OF BALTIMORE COUNTY

Available in the following translations: <ul style="list-style-type: none">• Chinese• Korean• Spanish• Urdu
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IT IS STRONGLY RECOMMENDED THAT YOU READ THIS ENTIRE DOCUMENT IN ORDER TO UNDERSTAND THE BOARD'S HEARING PROCESS

I. *Introduction*

- A. You are receiving this document because you have requested a hearing before the Board of Education of Baltimore County (Board) and this hearing has been assigned to one of the Board's hearing examiners OR HAS BEEN SCHEDULED TO BE HEARD BY THE BOARD. This document explains, broadly, the procedure used for these hearings, and will tell you what to expect. This document is not intended to provide legal advice or counsel on the substance of your case. For legal advice about your case, you should consult with an attorney.
- B. ONCE YOUR APPEAL HAS BEEN REFERRED TO A HEARING EXAMINER, ALL CORRESPONDENCE CONCERNING YOUR HEARING BEFORE THE BOARD'S HEARING EXAMINER WILL BE SENT TO YOU BY THE BOARD'S SCHEDULER.
- C. YOU MUST PROVIDE THE BOARD'S SCHEDULER WITH YOUR CURRENT CONTACT INFORMATION, OR THE CONTACT INFORMATION FOR YOUR REPRESENTATIVE, INCLUDING YOUR COMPLETE ADDRESS AND HOME TELEPHONE NUMBER OR A TELEPHONE NUMBER WHERE YOU OR YOUR REPRESENTATIVE MAY BE REACHED DURING BUSINESS HOURS.
- D. [B.] You OR YOUR REPRESENTATIVE will receive a written notice that includes the date, time, and place of the hearing. This HEARING notice will contain THE NAME OF [contact information for] the hearing examiner selected to conduct your hearing.
- E. [C.] You WILL RECEIVE [should also have received] a copy of the Board's policies on hearings, Policies 8339 and 8340. Specific procedures are addressed in these policies. If the policies are not included in the information provided to you, you may either request a copy of the policies or the policies are available online at <http://www.bcps.org>.
- [F. ***It is strongly recommended that you read this entire document in order to understand the Board's hearing process.***]

II. *Do I need an attorney or may I represent myself?*

- A. An individual may represent him/herself in any hearing before A BOARD [the] hearing examiner; no person is required to have an attorney. However,

- you have a right to appear with an attorney or someone who is not an attorney, such as AN ADVOCATE, or AN ASSOCIATION/[a] union representative.
- B. The SUPERINTENDENT [school system] will be represented by an attorney.
 - C. If you choose to be represented by an attorney OR DESIGNATED REPRESENTATIVE [, union representative], please notify the Board's scheduler of the name and contact information of your attorney or representative.
 - D. IF YOU HAVE INFORMED THE BOARD'S SCHEDULER THAT YOU ARE REPRESENTED, ALL NOTICES ABOUT THE HEARING WILL BE SENT TO YOUR DESIGNATED REPRESENTATIVE AND NOT TO YOU. YOU SHOULD CONSULT DIRECTLY WITH YOUR REPRESENTATIVE IF YOU HAVE QUESTIONS ABOUT YOUR HEARING.
- III. *What types of proceedings are covered by this procedure?*
- A. Appeals and hearings covered by this document include formal hearings before hearing examiners in matters arising under Sections 4-205 and 6-202 of the Education Article of the *Annotated Code of Maryland* as well as oral arguments before the Board.
 - B. This document does not address student suspensions and expulsions, employee collective bargaining agreement, grievances or meetings about any of these matters.
- IV. *Who will conduct the hearing?*
- A. The Board SELECTS [employs] a panel of independent hearing examiners to conduct hearings where evidence is gathered. These persons are not employees of the Board or of the Superintendent.
 - 1. As required by Board Policy, the hearing examiner must be an attorney admitted to practice in Maryland.
 - 2. The hearing examiner assigned to listen to your case REVIEWS [analyzes] the [relevant facts, based on the] evidence and argument presented at the hearing, APPLIES [reviews] relevant law, and issues a RECOMMENDATION [decision] on the issues in question.
 - B. IN SOME INSTANCES, THE BOARD WILL CONDUCT HEARINGS WITHOUT A HEARING EXAMINER.
- V. *What will the hearing examiner know about my case?*
- A. The hearing examiner will not have any advance notice about the specifics of your dispute. He/She will only have received your letter of appeal to the Board. You will be able to provide any necessary evidence during the hearing itself.
- VI. *May I contact the hearing examiner to discuss my case?*
- A. No. The hearing examiner may not speak with you unless all parties are present by phone or in person.

- B. If you have a matter that needs to be addressed by the hearing examiner prior to or after the hearing, please contact the Board's scheduler listed on your hearing notice.
- VII. *What happens at the hearing before the hearing examiner?*
- A. The hearing will be recorded by a Court Reporter. All individuals giving testimony will be required to TAKE AN [do so under] oath.
 - B. This is your opportunity to present your side of the case and your story. **You should bring any documents or witnesses that you believe support your case and that you wish to be considered by the hearing examiner.**
If you decide to bring such documents, you will need the original and four copies of any documents you wish to use. THE ORIGINAL MAY BE NEEDED TO SHOW TO THE HEARING EXAMINER; COPIES WILL BE DISTRIBUTED AS FOLLOWS: one for YOUR RECORDS [you], one for the official record, one for the hearing examiner, and one for the Superintendent's counsel.
 - C. You may bring witnesses to the hearing before the hearing examiner. They will be required to testify under oath.
 - D. The formal rules of evidence and procedure do not apply to the proceedings before hearing examiners.
 - E. Neither the Board nor any of its hearing examiners has the authority to subpoena documents or witnesses.
 - F. The hearing examiner is required to control the hearing, including the examination of witnesses, rule on the admissibility of evidence, and postpone, continue, or recess the hearing.
 - G. You, or your attorney or representative, may submit evidence, examine and cross-examine witnesses, and make objections and motions.
 - H. In a hearing on a dismissal or suspension of certificated employees (under Section 6-202 of the Education Article), the Superintendent shall proceed first. In administrative appeals (under Section 4-205 of the Education Article), the Appellant shall proceed first. The hearing examiner may vary the order of presentation.
 - I. The Superintendent may appear in person, or through counsel or a designated representative, and shall be afforded the same rights as a party to submit evidence, examine and cross-examine witnesses, and make objections and motions.
 - J. The hearing examiner may limit or decline to admit cumulative or repetitive evidence, and may restrict redundant or duplicative testimony. The hearing examiner may encourage, but may not require, the parties to make an agreement as to matters not in dispute and to reduce cumulative evidence.
 - K. The hearing examiner has no authority to compel any witness to testify.
 - L. Hearings ordinarily will be limited to no more than three hours, and each of the parties will be allotted up to one and one half hours to present that party's side of the case. The hearing examiner may extend the time for the hearing as he/she deems necessary or upon request of a party.

- VIII. *What will happen if I am unable to attend the hearing before the hearing examiner?*
- A. If you cannot attend your hearing, you must send a written request TO THE BOARD'S SCHEDULER as soon as you know that you are unable to attend. **Your request must be received no later than 10 CALENDAR days prior to the scheduled date of the hearing.** [You should send a copy of your request for postponement to the Board's scheduler.] The Board's scheduler will forward your request, along with the supporting documentation, to the hearing examiner. The request must establish good cause for your inability to attend the hearing and include supporting documentation. For example, if there is a health-related reason why you are unable to attend the hearing, you must provide a doctors note confirming the reason. Similarly, if you have vacation or travel plans, you must provide proof of your plans. **JUST BECAUSE YOU HAVE FAILED TO HIRE COUNSEL AND HAVE COUNSEL ENTER AN APPEARANCE WILL NOT BE CONSIDERED AS A VALID REASON TO RECEIVE A POSTPONEMENT IF THE HEARING DATE IS IN THE NEAR FUTURE.** The hearing examiner will decide whether the hearing will be postponed. If you fail to appear, your case will be dismissed.
 - B. **If you file your written request for a postponement less than 5 CALENDAR days before the scheduled date of the hearing, you must provide proof that you had an emergency reason for being unable to appear.** You should send a copy of your request for postponement to the Board's scheduler. The Board's scheduler will forward your request, along with supporting documentation, to the hearing examiner. The hearing examiner will decide whether the hearing will be postponed. If your request is denied, you must attend the hearing as scheduled. *Do not assume that your request has been granted.* You should call the Board's scheduler listed on your hearing notice to determine if the request to postpone was granted. Generally, a hearing will not be rescheduled, postponed, or continued if the postponement request is received within **5 CALENDAR days** of the scheduled date, unless the parties agree or the hearing examiner approves the request.
 - C. If your request for postponement is not granted and you fail to appear, your case will be dismissed.
 - D. Any request for additional postponement(s) that is not approved by the hearing examiner will result in your case being dismissed.
- IX. *What happens after the hearing before the hearing examiner?*
- A. The hearing examiner may ask you to provide additional written information or legal memoranda to support your case. The hearing examiner will provide you with the necessary deadlines for providing this information.
 - B. A transcript of the hearing will be provided at the expense of the Board. Either party may request a copy of the transcript at no charge to that party.
 - C. The hearing examiner has **30 calendar days** following the close of the hearing and receipt of the transcript, and any legal memoranda, or further argument, to issue his/her *Findings of Fact, Conclusions of Law, and Recommendation* to

the Board, unless otherwise agreed by the parties. A copy of the hearing examiner's Recommendation will be sent to you OR TO YOUR REPRESENTATIVE by certified mail OR ANY OTHER DELIVERY METHOD WHICH PROVIDES PROOF OF DELIVERY.

- D. Failure by the hearing examiner to submit the decision within the stated time does not mean that any party has become the prevailing party in the dispute.
- X. *What may I do if I disagree with the hearing examiner's recommendation?*
- A. If you do not agree with the hearing examiner's recommendation, any party to the proceeding may request oral argument before the Board.
- B. **If you request oral argument, you will have 15 calendar days from the date of the hearing examiner's decision to make your request. This request must be FILED WITH THE BOARD OF EDUCATION, in writing; electronic communications will not be accepted.**
- C. Your request for oral argument shall be CONSIDERED [deemed] timely filed within the **15 calendar days** if your appeal request: (1) has been delivered to the Board's administrative office on or before the papers are due; or (2) has been deposited in the United States mail before the papers are due.
- XI. *What will happen at the oral argument before the Board?*
- A. You will receive a written notice of the date, time, and LOCATION [place] of the oral argument before the Board [(at one of its scheduled meetings)] from the administrative assistant to the Board.
- B. Prior to the hearing, each Board member will be provided with a copy of the hearing examiner's Recommendation and the official record of the proceedings.
- C. Generally, the hearing will be scheduled during one of the Board's regularly scheduled meetings.
- D. Hearings, arguments, and other proceedings before the Board shall be held in closed session except as provided by law or otherwise approved by the Board.
- E. No new additional evidence not contained in the record of the hearing will be considered by the Board.
- XII. *What will happen if I am unable to attend the oral argument before the Board?*
- A. If you cannot attend oral argument, you must send a written request to reschedule your hearing as soon as you know that you are unable to attend.
- B. You should direct your request for postponement to the Board, WITH A COPY TO THE SUPERINTENDENT'S COUNSEL. The Superintendent, through his counsel, may object to your request.
- C. If you do not attend the oral argument and if you have failed to contact the Board about your attendance, your appeal will not be considered and your case will be dismissed.
- XIII. *Will the Board members speak to me about my hearing?*

- A. No. While a matter is under consideration by the Board or by a hearing examiner, no Board member may discuss the case with any party or his/her representative outside of the presence of all other parties, or consider communications in writing without supplying copies to all other parties and providing an opportunity for a response. Information concerning a pending matter may not be released publicly by the Board, a Board member, a hearing examiner, or a staff member unless it is a matter of public record.

XIV. *Final action by the Board.*

- A. Following oral argument, the Board will issue an opinion and order. The opinion and order will be in writing and will be mailed to you OR, IF REPRESENTED, TO YOUR REPRESENTATIVE.
- B. Formal action of the Board will be taken publicly at a Board meeting. For cases involving students, all references to the student will be by first and last initial.
- C. Decisions of the Board may be appealed to the Maryland State Board of Education. The procedures for appealing matters to the MARYLAND State Board of Education may be found in the *Code of Maryland Regulations* (COMAR), Title 13A, Section 01.05.01-.11.
- D. You should consult with an attorney concerning your rights to appeal.

XV. *Will the hearings be postponed due to inclement weather?*

- A. The hearings will only be cancelled if Baltimore County Public Schools **and administrative offices** are closed. Any delayed school openings will not affect the time of the hearing.
- B. Weather-related announcements concerning Baltimore County Public Schools and Board meetings will be broadcast on the following radio station: WBAL AM 1090. You may also call 410-887-5555 to hear the latest school system closings.

XVI. *How will I contact the Board's Scheduler or the Board of Education Offices?*

- A. **Board's Scheduler:**
Office of Law
6901 Charles Street
Towson, MD 21204
410-887-4060
Attention: MRS. JEANETTE MURRAY [Ms. Aleasha Lewis]
- B. **Board of Education Office:**
Board of Education of Baltimore County
6901 Charles Street
Towson, MD 21204
410-887-4126
Attention: Mrs. Brenda Stiffler

Legal Advice - The staff of the Board's offices cannot give legal advice to you on the subject of your appeal. You should consult a lawyer if you wish to determine your rights in your appeal.

Last Revised: JULY 12, 2011[July 13, 2010]