

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: July 12, 2011

TO: **BOARD OF EDUCATION**

FROM: Dr. Joe A. Hairston, Superintendent

SUBJECT: **REPORT ON THE PROPOSED CHANGES TO BOARD OF EDUCATION POLICY 8339 (NEW POLICY 8341), APPEAL BEFORE HEARING EXAMINER**

PRESENTERS: Margaret-Ann F. Howie, Esq., General Counsel

RESOURCE PERSON(S): Patricia S. Clark, Policy and Compliance Officer

RECOMMENDATION

That the Board of Education reviews the proposed changes to Policy 8339.
This is the first reading.

Attachment I – Policy Analysis
Attachment II – Policy 8339

**POLICY ANALYSIS FOR
BOARD OF EDUCATION POLICY 8339
APPEAL BEFORE HEARING EXAMINER
(RENAMED AS, “POLICY 8341, APPEAL BEFORE A HEARING EXAMINER”)**

Statement of Issues or Questions Addressed

Board of Education Policy 8339 outlines the rules of procedure for hearings referred by the Board of Education to the Board’s hearing examiners. Policy 8339 is being revised to: (1) Renumber the policy so that it will now follow Policy 8340, *Appeal before the Board of Education*; (2) Define certain key terms; (3) Authorize the hearing examiner, under certain circumstances, to issue findings and recommendations without having to hold a hearing; (4) More clearly specify the timelines for appeals to the Board; (5) Clarify that mailings to an appellant’s representative constitute notice to the appellant; (6) Indicate that the local Board’s decision may be appealed to the Maryland State Board of Education; and (7) Conform to the Policy Review Committee’s editing conventions.

Cost Analysis and Fiscal Impact on School System

No fiscal impact is anticipated by the revision of this policy.

Relationship to Other Board of Education Policies

1. Board of Education Policy 5560, *Suspensions, Assignment to Alternative Programs, or Expulsions*
2. Board of Education Policy 8340, *Appeal Before the Board of Education*
2. Board of Education Policy 8366, *Ethics Review Panel*

Legal Requirements

1. *Annotated Code of Maryland, Education Article §4-205, Powers and Duties of County Superintendent.*
2. *Annotated Code of Maryland, Education Article §6-202, Suspension and Dismissal of Teachers, Principals and Other Professional Personnel.*
3. *Annotated Code of Maryland, Education Article §6-203, Hearing Examiner in Certain Counties and Baltimore City.*
4. *Annotated Code of Maryland, Education Article §7-305, Suspension and Expulsion.*
5. *COMAR 13A.01.05, Appeals to the State Board of Education*
6. *COMAR 13A.05.09.07, Dispute Resolution*

Similar Policies Adopted by Other Local School Systems

1. Frederick County Board of Education, Policy 105, *Appeal and Hearing Procedures*
2. Harford County Board of Education, Policy 22-0018-000, *Hearings Before the Board of Education of Harford County or the Hearing Examiner*
3. Montgomery County Board of Education, Policy BLB, *Rules of Procedure in Appeals and Hearings*
4. Prince George’s County Board of Education, Policy 4200, *Employee and 4-205 Appeals Before the Board of Education*

Draft of Proposed Policy

Attached

Other Alternatives Considered by Staff

No other alternatives were considered

Timeline

First Reading – July 12, 2011

Public Comment – August 9, 2011

Third Reading/Vote – September 6, 2011

INTERNAL BOARD POLICIES: Operations

Appeal Before A Hearing Examiner

I. PURPOSE [Procedures for Hearing Examiners]

PRIOR TO THE BOARD OF EDUCATION OF BALTIMORE COUNTY (BOARD) RENDERING A FINAL DECISION, THE BOARD MAY REFER APPEALS [When requests for hearings or appeals] authorized under the Education Article OF THE *ANNOTATED CODE OF MARYLAND* [have been referred by the Board of Education of Baltimore County (Board)] to the Board's hearing examiner. [, pursuant to the Education Article,] The following Rules of Procedure shall apply FOR ALL APPEALS REFERRED TO A BOARD HEARING EXAMINER.

II. [II. Selection of Panel of] Hearing Examiners

- A. 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.
- B. 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.
- C. The compensation for hearing examiners shall be determined by the Board.

III. DEFINITIONS

- A. *APPELLANT* – MEANS THE INDIVIDUAL OR ENTITY APPEALING A FINAL DECISION OF THE SUPERINTENDENT OR A RECOMMENDATION OF THE SUPERINTENDENT.
- B. *DAYS* – MEANS CALENDAR DAYS
- C. *DESIGNATED REPRESENTATIVE* – MEANS A PARTY'S ATTORNEY, AN ADVOCATE, OR ASSOCIATION/UNION REPRESENTATIVE.
- D. *FILE* – MEANS THE DELIVERY OF DOCUMENTS TO THE ADMINISTRATIVE OFFICE OF THE BOARD ON OR BEFORE THE DOCUMENTS ARE DUE, OR DEPOSITING THE PAPERS IN THE UNITED STATES MAIL BEFORE THE DATE THE PAPERS ARE DUE.
- E. *PARTY* – MEANS AN APPELLANT, RESPONDENT, OR ANY PERSON OR ENTITY ALLOWED TO PARTICIPATE AS A PARTY IN

INTEREST REGARDING ISSUES OUTLINED IN PARAGRAPH V BELOW.

- F. *WRITTEN NOTICE* – MEANS TO DEPOSIT SAID NOTICE IN THE UNITED STATES MAIL, STAMPED AND ADDRESSED TO THE ADDRESSEE AT THE MAILING ADDRESS PROVIDED BY THE APPELLANT OR APPEARING IN THE RECORDS OF THE BALTIMORE COUNTY PUBLIC SCHOOLS.

IV. PROCEDURES AND DEADLINES

THE PROCEDURES FOR EACH TYPE OF APPEAL ARE LISTED BELOW. IT IS THE RESPONSIBILITY OF THE PARTY APPEALING TO FOLLOW THE PROCEDURES AND TO FILE ALL DOCUMENTS BY THE SPECIFIED DEADLINES. IF AN APPEAL IS NOT FILED WITHIN THE STIPULATED TIME PERIOD, OR IF THE REQUIRED DOCUMENTATION TO BE PROVIDED BY THE PARTY IS INCOMPLETE, OR IF THE PARTY FAILS TO APPEAR AT A SCHEDULED HEARING, SUCH FAILURE MAY CONSTITUTE SUFFICIENT GROUNDS FOR THE HEARING EXAMINER TO RECOMMEND THAT THE BOARD DISMISS THE APPEAL OR FOR THE BOARD TO DISMISS THE APPEAL.

V. APPEALS AND TIMELINES

- A. ALL APPEALS TO THE BOARD SHALL BE FROM A RECOMMENDATION, FINAL ACTION, OR DECISION OF THE SUPERINTENDENT, OR THE SUPERINTENDENT’S DESIGNATED REPRESENTATIVE.
- B. PROCEEDINGS COVERED BY THIS POLICY ARISE UNDER THE EDUCATION ARTICLE OF THE *ANNOTATED CODE OF MARYLAND*:
 - 1. SECTION 4-205(c) APPEALS - APPEALS FROM DECISIONS OF THE SUPERINTENDENT WITH RESPECT TO INTERPRETATION OF MARYLAND SCHOOL LAW; BYLAWS OF THE STATE BOARD OF EDUCATION; MATTERS RELATING TO CONTROVERSIES AND DISPUTES INVOLVING THE RULES AND REGULATIONS OF THE COUNTY BOARD OR THE PROPER ADMINISTRATION OF THE SCHOOL SYSTEM.
 - a. AN APPEAL FILED PURSUANT TO SECTION 4-205(c) MUST BE FILED IN WRITING WITH THE BOARD WITHIN THIRTY (30) DAYS OF THE DECISION OF THE

SUPERINTENDENT OR THE SUPERINTENDENT'S DESIGNATED REPRESENTATIVE.

2. SECTION 6-202 APPEALS - APPEALS TAKEN BY CERTIFICATED PERSONNEL REGARDING A RECOMMENDATION BY THE SUPERINTENDENT THAT A CERTIFICATED EMPLOYEE BE DISMISSED OR SUSPENDED.
 - a. AN APPEAL FILED PURSUANT TO SECTION 6-202 MUST BE FILED IN WRITING WITH THE BOARD WITHIN TEN (10) DAYS OF THE SUPERINTENDENT'S RECOMMENDATION.
- C. THE APPEAL MUST BE FILED WITH THE BOARD AND INCLUDE THE FOLLOWING:
 1. THE FULL NAME, MAILING ADDRESS, AND TELEPHONE NUMBER FOR EACH PARTY, OR THE PARTY'S DESIGNATED REPRESENTATIVE, WHO IS TAKING THE APPEAL;
 2. A COPY OF THE DECISION FROM WHICH THE APPEAL OR REQUEST FOR HEARING IS BEING TAKEN;
 3. A CONCISE STATEMENT OF THE ISSUES PRESENTED AND THE FACTS ABOUT WHICH THE PERSON OR PERSONS IS TAKING THE APPEAL OR REQUESTING A HEARING.
- D. TIME AND NOTICE REQUIREMENTS
 1. IN COMPUTING ANY PERIOD OF TIME PRESCRIBED BY THESE PROCEDURES OR BY APPLICABLE STATUTE, THE DATE OF THE SUPERINTENDENT'S DECISION OR RECOMMENDATION IS NOT INCLUDED; SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS SHALL BE COUNTED. IN THE EVENT THAT THE LAST DAY COMPUTED FALLS ON A SATURDAY, SUNDAY, OR SCHOOL SYSTEM HOLIDAY, THE PERIOD SHALL EXTEND TO THE FIRST BUSINESS DAY THEREAFTER.
 2. FOR FILING OF DOCUMENTS WITH THE BOARD, IF THE ADMINISTRATIVE OFFICES OF THE SCHOOL SYSTEM ARE NOT OPEN DURING ITS REGULAR BUSINESS HOURS ON THE LAST DAY OF THE PERIOD, THE DOCUMENTS SHALL BE FILED ON THE NEXT DAY THEREAFTER WHEN THE ADMINISTRATIVE OFFICES ARE OPEN.
- E. MAILING OF NOTICES AND FINDINGS
 1. IN ALL HEARINGS PROVIDED FOR HEREIN, WHERE A PARTY IN INTEREST IS REPRESENTED BY COUNSEL, AN ADVOCATE OR ASSOCIATION/UNION OFFICIAL, ALL

NOTICES AND MAILINGS REQUIRED BY THE BOARD OR HEARING EXAMINER SHALL BE SENT TO THE PARTY'S DESIGNATED REPRESENTATIVE AND SUCH MAILING SHALL CONSTITUTE OFFICIAL NOTICE TO THE PARTY.

VI. HEARING PROCEDURE

A. ACKNOWLEDGEMENT

1. THE BOARD SHALL PROMPTLY ACKNOWLEDGE RECEIPT OF THE APPEAL IN WRITING AND SEND A COPY OF THE APPEAL AND THE ACKNOWLEDGEMENT TO THE SUPERINTENDENT.
2. THE BOARD WILL FORWARD THE APPEAL TO THE BOARD'S SCHEDULER REQUESTING THAT THE MATTER BE SET FOR HEARING BEFORE A HEARING EXAMINER, UNLESS THE BOARD DEEMS IT APPROPRIATE TO SCHEDULE AN ORAL ARGUMENT OR A PROCEEDING WITHOUT A HEARING EXAMINER.

B. [III.] Notice of Hearing

1. Written notice of the DATE, TIME, AND LOCATION OF A HEARING REGARDING AN APPEAL UNDER THIS POLICY SHALL BE FORWARDED BY THE BOARD'S SCHEDULER TO ALL PARTIES.
2. THE NOTICE OF hearing shall be sent by the Board'S SCHEDULER to all parties not less than ten (10) days prior to the hearing. NOTHING IN THIS POLICY SHALL PRECLUDE THE BOARD FROM SCHEDULING A HEARING ON AN EXPEDITED BASIS IF NECESSITATED BY LAW OR AGREED TO BY THE PARTIES. [, 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.]

C. REPRESENTATION

1. All parties appearing at formal hearings shall have the right to appear in person or with counsel, OR A DESIGNATED REPRESENTATIVE OF THEIR CHOICE.
2. ALL PARTIES SHALL HAVE THE RIGHT TO BE ACCOMPANIED, REPRESENTED, AND ADVISED BY COUNSEL.

D. HEARING RECORD [IV. Records – Transcripts]

1. The hearing examiner shall prepare an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding.
 2. A stenographic record OF ALL HEARINGS shall be PREPARED [made] at the expense of the school system. THE RECORD NEED NOT BE TRANSCRIBED, HOWEVER, UNLESS REQUESTED BY A PARTY TO THE CONTROVERSY OR BY THE HEARING EXAMINER. [and shall be transcribed. Cost of copies of the transcript of any proceedings, or part thereof, shall be paid by the party requesting the copy.]
- E. [V.] Presiding Officer – Duties and Authority
1. 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.
 2. The hearing examiner shall cause an oath to be administered to all witnesses testifying during the proceedings.
- F. [A.] Order of Procedure
1. The order in which the parties shall present their case shall be determined by the hearing examiner, except that in case arising under Section 6-202 of the Education Article, the Superintendent shall proceed first.
- G. [B.] Examination of Witnesses and Introduction of Evidence
1. The strict Rules of Evidence shall not be applicable to hearings conducted hereunder.
 2. The hearing examiner may limit or refuse to admit repetitive evidence and may curtail redundant testimony.
 3. All testimony shall be given under oath.
 4. Any party or counsel for any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions, and motions.
 5. 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.
- H. [C.] Briefs
1. 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.
- VII. [D.] Findings

- A. THE HEARING EXAMINER SHALL ISSUE *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 not more than thirty (30) days after the record is closed.
- B. THE HEARING EXAMINER SHALL DISTRIBUTE OR MAIL TO ALL PARTIES, OR THE PARTY'S REPRESENTATIVE, THE *FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION*.
- C. THE *FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION* WILL BE MAILED TO THE APPELLANT OR HIS/HER REPRESENTATIVE BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED, OR BY ANY OTHER DELIVERY METHOD WHICH PROVIDES PROOF OF DELIVERY.

VIII. [VI.] ORAL Argument

- A. ANY PARTY TO THE PROCEEDING MAY REQUEST TO APPEAR IN PERSON TO PRESENT ORAL ARGUMENT BEFORE THE BOARD PRIOR TO ITS RENDERING A FINAL DECISION.
- B. A REQUEST FOR ORAL ARGUMENT MUST BE FILED WITH THE BOARD 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]
- C. THE RULES OF PROCEDURE FOR ORAL ARGUMENT BEFORE THE BOARD ARE OUTLINED IN BOARD OF EDUCATION POLICY 8340, *APPEAL BEFORE THE BOARD OF EDUCATION*.

[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. Opinion and Order

Each Opinion and 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 Opinion and Order shall be accompanied by findings of fact, conclusions of law, and a specific disposition of the case. Formal action of the Board shall be taken publicly at a Board meeting.

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, *POWERS AND DUTIES OF COUNTY SUPERINTENDENT*.
Annotated Code of Maryland, Education Article §6-202, *SUSPENSION AND DISMISSAL OF TEACHERS, PRINCIPALS AND OTHER PROFESSIONAL PERSONNEL*.
ANNOTATED CODE OF MARYLAND, EDUCATION ARTICLE §6-203, *HEARING EXAMINER IN CERTAIN COUNTIES AND BALTIMORE CITY*.
COMAR 13A.01.05, *APPEALS TO THE STATE BOARD OF EDUCATION*
COMAR 13A.05.09.07, *DISPUTE RESOLUTION*

Related Policies: Board of Education Policy 8340, *APPEAL BEFORE THE BOARD OF EDUCATION*

Policy
Adopted: 07/11/91
Revised: 04/08/08
REVISED: _____

Board of Education of Baltimore County