

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: April 23, 2013

TO: **BOARD OF EDUCATION**

FROM: S. Dallas Dance, Superintendent

SUBJECT: **REPORT ON THE PROPOSED REVISIONS TO BOARD OF
EDUCATION POLICY 8340, APPEAL BEFORE THE BOARD OF
EDUCATION**

ORIGINATOR: 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 8340.
This is the first reading

Attachment I – Policy Analysis
Attachment II – Policy 8340

**POLICY ANALYSIS FOR
BOARD OF EDUCATION POLICY 8340
APPEAL BEFORE THE BOARD OF EDUCATION**

Statement of Issues or Questions Addressed

Board of Education Policy 8340 outlines the rules of procedure for hearings and appeals held before and filed with the Board of Education. Policy 8340 is being revised to: (1) substitute the words “requests for hearing” for the word “appeals” in those actions filed pursuant to Section 6-202 of the Education Article in order to align the policy language with that found in the statute; (2) in Paragraph I.B., add the words “or the Superintendent or his/her staff;” (3) in Paragraph VI.D.4, substitute the word “Board” for “Superintendent; (4) in Paragraph VI.D.6, clarify that the Board and the Hearing Examiner will follow the standard of review established by COMAR 13A.01.05.05; (5) in Paragraph VII.A., delete Paragraphs 2 – 3, and address how the record for oral argument is prepared; and (6) in Paragraph VIII.C., add the words “in those cases where the Board holds an evidentiary hearing.” The attached revisions to the Policy reflect these recommendations.

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 1300, *Use of School Facilities*
2. Board of Education Policy 8341, *Appeal Before a Hearing Examiner*

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. *COMAR 13A.01.05, Appeals to the State Board of Education*
5. *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. Montgomery County Board of Education, Policy BLB, *Rules of Procedure in Appeals and Hearings*
3. 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 – April 23, 2013

Public comment – May 7, 2013

Third reading/vote – June 11, 2013

INTERNAL BOARD POLICIES: Operations

Appeal Before the Board of Education

I. Policy Statement

- A. Maryland law provides that the Board of Education of Baltimore County (Board) may hold hearings on certain matters arising out of a dispute or for appeals of decisions of the Superintendent.
- B. Neither the Board as a whole nor any individual member will discuss the case with the aggrieved party, or his/her designated representative, OR THE SUPERINTENDENT OR HIS/HER STAFF, prior to final action being taken by the Board.

II. Procedural Overview

- 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. The Board may consider the appeal itself or refer the appeal to a hearing examiner, as authorized by law. If referred to a hearing examiner, the procedures outlined in Board of Education Policy 8341, *Appeal Before a Hearing Examiner*, shall apply.
- C. For Board employees requesting an administrative appeal while a grievance on the same subject is being processed in accordance with the formal grievance procedure, such appeal will be held in abeyance until the grievance has reached Level III/arbitration of the Master Agreements' procedures.
- D. It is the responsibility of the party appealing to follow these 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 failures may constitute sufficient grounds for the Board to dismiss the appeal.

III. Applicability

- A. These rules govern appeals and hearings within the quasi-judicial responsibilities of the Board. They are not applicable to proceedings involving the Board's exercise of its legislative or policy-making function.
- B. Proceedings covered by this policy arise from proceedings pursuant to the Education Article, Sections 6-202(a), 6-203, and 4-205(c).
 - 1. Hearings under Section 6-202(a) are on recommendations of the Superintendent to suspend or dismiss professional and/or certificated personnel.
 - 2. Proceedings under Section 4-205(c) involve appeals from decisions of the Superintendent on controversies and disputes involving the rules and regulations of the Board or the proper administration of the county public school system.
 - 3. Hearings under Section 6-203 ARE HEARINGS HELD UNDER SECTIONS 4-205(c) AND 6-202, WHICH WERE REFERRED BY THE BOARD TO A HEARING EXAMINER. [involving Sections 4-205(c) and 6-202(a), which are referred by the Board for an initial hearing by a hearing examiner.]

IV. 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, advocate, or association/union official.
- 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 or any other delivery method which provides proof of delivery, 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 II above.

- F. *Presiding Officer* – Means the president of the Board, or in the president’s absence, the vice president; or in the absence of both, a member designated by the president or the Board.
- G. *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 (BCPS).

V. Initiation of Appeals

- A. All appeals filed with the Board shall be from a final action, decision, or recommendation of the Superintendent, or the Superintendent’s designated representative, which adversely affects the person or persons who are appealing.
- B. The appeal must be in writing and filed with the Board and include the following:
 - 1. The full name, mailing address, and telephone number for each appellant, or that of the appellant’s designated representative;
 - 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 taking the appeal or requesting a hearing.
- C. Deadlines
 - 1. Each appeal to the Board under Section 4-205(c) shall be initiated by filing a written notice of appeal with the Board within 30 days after written notice of the Superintendent’s final action or decision has been issued; or, where written notice is not reasonable, by publication or other communication reasonably designed to be available to persons adversely affected.
 - 2. Each request for a hearing under Section 6-202(a) shall be initiated by NOTING SUCH REQUEST [filing an appeal] with the Board within 10 days after the written notice of the Superintendent’s recommendation that a professional or certificated employee be suspended or dismissed.

3. In computing any period of time prescribed by these procedures or by applicable statute, the date of the Superintendent's decision is not to be 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 day thereafter.
4. For filing of documents with the Board, if the administrative offices of the school system are not open during its regular hours on the last day of the period, the documents shall be filed on the next day thereafter when administrative offices are so open.

D. Mailing of Notices and Decisions

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 shall be sent to the party's designated representative and such mailing shall constitute official notice to the party.

E. Compliance

1. If an appeal is not filed within the time periods set forth above or if an appellant fails to appear at a scheduled hearing, such failure shall constitute sufficient grounds for the Board to dismiss THE [an] appeal.

VI. Evidentiary Hearings

A. Applicability

1. The provisions of this paragraph apply to evidentiary hearings before the Board unless otherwise indicated.
2. The strict rules of evidence shall not apply to hearings conducted before the Board.
3. All testimony shall be given under oath.
4. Hearings will not be held in a public session of the Board, unless the appellant and the Superintendent agree in advance, in writing, or on the record that the hearing be public.

B. Notice

1. The Board will provide written notice of the date, time, and location of hearing to all parties.

C. Representation

1. A party may be accompanied, represented, and advised by an attorney or designated representative at all stages of an appeal.
2. If an individual is represented by an attorney or designated representative, the attorney or designated representative shall be responsible for:
 - a. Receiving all notices of hearings;
 - b. Filing of pleadings, motions or other papers;
 - c. Submitting evidence, examining, and cross-examining witnesses; and
 - d. Representing the party before the hearing examiner and at oral argument, if applicable.

D. Procedures

1. The party may submit in writing any particulars related to the case which he/she wishes the Board members to have an opportunity to study in advance. The Board will forward a copy of all documents provided by the appellant to the Superintendent.
2. The Superintendent may send to members of the Board any particulars related to the case which he/she wishes the Board members to have an opportunity to study prior to the hearing, with a copy to the aggrieved person or his/her attorney. The Superintendent shall not discuss the case with any member of the Board prior to the hearing.
3. The presiding officer shall have charge of the hearing with authority to permit the examination of witnesses, admit evidence, rule on admissibility of evidence, and adjourn or recess the hearing.
4. The BOARD [Superintendent] shall ARRANGE FOR THE PREPARATION OF [prepare] a stenographic or electronic record of any hearing.
5. Both sides in any hearing shall be given adequate time, in the judgment of the Board, for presentation of facts. Cross-examination shall be permitted, and representatives of both sides shall be given adequate opportunity for rebuttal.
6. IN APPEALS FROM DECISIONS OF THE SUPERINTENDENT OR THE SUPERINTENDENT'S DESIGNEE, THE BOARD AND ITS [The] hearing examiner shall follow the standard of review set forth in COMAR 13A.01.05.05.

VII. Oral Argument Before the Board

A. Applicability

1. The provisions of this paragraph apply to requests for oral argument from a recommendation rendered by a Board hearing examiner.
- [2. The strict rules of evidence shall not apply to hearings conducted before the Board.
3. All testimony shall be given under oath.]
2. [4.] ORAL ARGUMENTS [Hearings] will not be held in a public session of the Board, unless the appellant and the Superintendent agree in advance, in writing, or on the record that the hearing be public.
3. THE BOARD SHALL ARRANGE FOR THE PREPARATION OF A STENOGRAPHIC OR ELECTRONIC RECORD OF ANY ORAL ARGUMENT.

B. The Board's scheduler 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 and provide same to each Board member prior to the scheduled oral argument.

C. Oral argument shall be limited to 15 minutes per side, unless the Board indicates otherwise.

D. No additional evidence not contained in the record of the hearing will be considered by the Board.

VIII. Decision by the Board

A. In cases involving a decision of the Superintendent, the Board will not substitute its judgment for that of the Superintendent unless the decision is arbitrary, illegal, or unreasonable as defined by the Maryland State Board of Education.

B. In cases involving the discipline or discharge of a certificated employee, the Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.

1. The Superintendent has the burden of proof by a preponderance of the evidence.

- C. The Board shall deliberate on the facts, evidence, and testimony presented at the hearing **IN THOSE CASES WHERE THE BOARD HOLDS AN EVIDENTIARY HEARING.**
- D. Formal action of the Board will be taken publicly at a Board meeting.
- E. The Board shall notify the parties in writing of the decision of the Board.
 - 1. Each Opinion and Order of the Board shall be mailed in writing to all parties by certified mail or any other delivery method which provides proof of delivery.
 - 2. The hearing examiner's *Findings of Fact, Conclusions of Law, and Recommendation* shall accompany the Opinion and Order when applicable.

IX. Appeal of Board's Decision to State Board

Decisions of the Board may be appealed to the Maryland State Board of Education in accordance with that agency's procedures and timelines.

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
[*Annotated Code of Maryland, Education Article §7-305, Suspension and Expulsion*]
COMAR 13A.01.05, *Appeals to the State Board of Education*
COMAR 13A.05.09.07, *Dispute Resolution*

Related Policies: Board of Education Policy 1300, *Use of School Facilities*
[Board of Education Policy 5560, *Suspensions, Assignment to Alternative Programs, or Expulsions*]
Board of Education Policy 8341, *Appeal Before a Hearing Examiner*

Policy

Board of Education of Baltimore County

Adopted: 04/13/72

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Revised: 09/06/11

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REVISED: _____