

POLICY

BOARD OF EDUCATION OF MONTGOMERY COUNTY

Related Entries: BLB-EA, BLC, BLC-EA, GJC-RA, JGA-RB

Rules of Procedure in Appeals and Hearings

A. PURPOSE

To provide Rules of Procedure adopted pursuant to the authority of the Education Article, The *Annotated Code of Maryland*, Section 4-107(4) and 6-203(g), which govern all appeals to the Board of Education and all hearing before the Board of Education requested on a recommendation by the superintendent to the Board or a final decision of the superintendent which is contested by persons who are adversely affected, unless other procedures are specifically required by statute or bylaws of the State Board of Education or policies/regulations of the Montgomery County Public Schools, such as those applicable to special education and student transfer appeals

B. PROCESS AND CONTENT

1. Applicability

- a) These rules govern appeals and hearings within the quasi-judicial responsibilities of the Board of Education. They are not applicable to proceedings involving the Board's exercise of its legislative or policy-making function.
- b) Proceedings covered by these rules arise under the Education Article, Sections 6-202(a), 6-203(c), 7-304(c), and 4-205(c) and local board proceedings permitted under the Education Article.
- c)
 - (1) Hearings under Section 6-202(a) are on recommendations of the superintendent to suspend or dismiss professional and/or certified personnel. (Section 6-201(b)(iv)).
 - (2) Appeal hearings under Section 7-304(c) are from a finding by the superintendent that suspension of a student for more than 10 days or expulsion of a student is warranted.

- (3) Proceedings under Section 4-205(c) are on 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.
- (4) Hearings under Section 6-203 are those under Sections 4-205(c) and 6-202 which are referred by the Board for an initial hearing by a hearing examiner.

2. Definitions

- a) *Filed or filing* as used in these rules means received by the Board of Education.
- b) *Written notice* under these rules shall be complete upon actual delivery or upon deposit of said notice in the United States mail, stamped and addressed to the addressee at the mailing address provided or appearing on the records of the Montgomery County Public Schools.
- c) *Party or parties* include each person, group, or entity named or admitted as a party, including a student, a parent, parent surrogate, or guardian of a student, and shall include the superintendent. The presiding officer may permit any other person, group, or entity to participate for limited purposes upon satisfactory demonstration of the nature and extent of its interest.
- d) *Presiding officer* means the hearing examiner in hearings before the hearing examiner. In hearings before the Board, the presiding officer means the president; or in the president's absence, the vice president; or in the absence of both, a member designated by the president, or, in the absence of such designation, by the Board.
- e) *Board* means the Board of Education of Montgomery County.

3. Initiation of Appeals or Requests for Hearings

- a) All appeals to the Board shall be from a final action or decision of the superintendent or the superintendent's designated representative which adversely affects the person or persons who are appealing. For purposes of this paragraph, the failure of the superintendent or the person designated to act upon an appeal within 60 days may, at the option of the appellant, be deemed a denial by the superintendent for purposes of appeal to the Board.

- b) All requests to the Board for hearing under Section 6-202(a) shall be from a recommendation of the superintendent to the Board for suspension or dismissal of a teacher, principal, associate superintendent, or other professional employee who requests the hearing.

- c)
 - (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 given to the person or persons affected or, where written notice is not reasonable, by publication or other communication reasonably designed to be available to persons adversely affected. (Section 4-205(4)).

 - (2) Each request for a hearing under Section 6-202(a) (as to recommendation for professional employee suspension or dismissal) shall be initiated by filing a written request for hearing with the Board within 10 days after the Board has sent the individual a copy of the charges against him/her and has given the individual written notice of the superintendent's recommendation and the meeting (which shall be more than 10 days after the written notice) at which the recommendation will be considered by the Board if no hearing is requested.

Such notice shall advise the individual of the right to request a hearing before the Board.

 - (3) Each appeal under Section 7-304(c), student suspension for more than 10 days or expulsion, shall be made by filing a notice of appeal with the Board within 10 days after written notice of the determination by the superintendent or the superintendent's designated representative to the student or the parent or guardian. Such notice shall advise the student or the parent or guardian of the right to appeal to the Board.

- d) With the notice of appeal or request for hearing, or in any event within 10 days after the notice of appeal or request for hearing has been filed, the person or persons filing the appeal or request for hearing must file with the Board, with a copy to the superintendent, the following:
 - (1) A concise statement of the issues presented by the appeal or the request for hearing for decision by the Board

- (2) A concise statement of the facts on which the person or persons taking the appeal or requesting the hearing relies to support their position
 - (3) A statement by the person or persons taking the appeal or requesting the hearing that they agree or disagree with the findings of fact set forth by the superintendent; and, if the person or persons taking the appeal or requesting the hearing disagree only in part with the findings of fact set forth by the superintendent, a statement of the facts with which such person or persons disagree
 - (4) A copy of all documents upon which the person or persons appealing or requesting a hearing relies or believes is relevant
- e) In appeals arising under Section 4-205(c), within 10 days after the submission of the information and documentation required by subsection (d), the superintendent may submit additional information or documentation in support of the decision which is the subject of the appeal and shall provide a copy to the appealing party. Within 5 days after the submission by the superintendent, the appealing party may submit additional documentation in response to that submitted by the superintendent and shall provide a copy to the superintendent. If either party believes that oral argument or an evidentiary hearing, or both, is necessary to a decision of the appeal, such party shall include in the submission made under subsection (d) a concise statement of the reasons therefore, specifically addressing the factors set forth in section 3.i) hereof.
- f) If an appeal or request for hearing is not filed within the period set forth in subparagraph (c), or if the statements required are not filed within the period set forth in subparagraph (d), such failure shall constitute sufficient grounds for the Board to dismiss an appeal or request for hearing.
- g) The Board reserves the right on its own motion to take any action it deems appropriate, in the manner and to the extent permitted by law, on recommendations of the superintendent under section 6-202(a), even if no formal request for hearing is before it as a matter of right.
- h) In those circumstances where a negotiated employee agreement precludes appeal to the Board (e.g., those disputes or claims committed to arbitration pursuant to the Grievance Procedure established under agreements between the Board and the Montgomery County Education Association and between the Board and the Montgomery County Council of Supporting Services Employees and between the

Board and the Montgomery County Association of Administrative and Supervisory Personnel), the Board shall not hear appeals involving such disputes or claims unless both parties to the employee agreement and the grievant all agree in advance and in writing or on the record that the Board may hear the dispute or claim.

- i) (1) Appeals filed under Section 4-205(c) will be considered by the Board based on documents and arguments submitted in writing by the parties. The Board may grant a request by either party or the Board may direct:
 - (a) That oral argument on the issues be presented, or
 - (b) That a hearing be conducted in accordance with Section 5 of these rules. In determining whether to grant a request for oral argument or formal hearing, the Board may consider:
 - (i) Whether the issue involved are of constitutional or significant public importance
 - (ii) Whether resolution of the issues raised is likely to have significant value as precedent in the administration of the school system
 - (iii) Whether the issue or issues raised require determination of some substantial employee right which cannot be satisfactorily adjudicated otherwise within existing appeal procedures
 - (iv) Other appropriate factors as determined by the Board
- (2) In addition, the Board may request of either party that additional information or documentation be submitted.

4. Referrals to Hearing Examiner

The hearing examiner shall be an attorney admitted to practice before the Maryland Court of Appeals (Section 6-203(c)).

- a) All requests for hearings under Section 6-202(a) (professional employee suspension or dismissal) will be referred to a hearing examiner, unless the Board in its sole discretion determines that it should hear a matter in the first instance.

Among the factors which the Board may consider in determining if it wishes to hear such a matter in the first instance are:

- (1) Whether there do not appear to be facts in dispute or whether it appears that the facts in dispute can be heard by the Board without a lengthy evidentiary hearing
- (2) Whether there is an overriding need for prompt resolution of the matter, and/or
- (3) Whether the matter is of such public importance, of such importance to proper administration of the school system, or of such sensitive nature that the Board concludes it should hear the evidence

b) All appeals under Section 4-205(c) shall be considered and decided by the Board on the basis of the information and documentation submitted pursuant to Section 4d) and 4e) hereof. In those instances in which the Board determines that an evidentiary hearing is necessary, the Board shall conduct such hearing, unless the Board determines in its sole discretion to refer the matter to a hearing examiner. Among the factors which the Board may consider in determining whether to refer such a matter to a hearing in the first instance are:

- (1) Whether it appears that there are facts in dispute which are likely to require a lengthy evidentiary hearing, and/or
- (2) Whether it appears there is an extensive record, substantial documentation, or additional information which the Board feels should be evaluated by a hearing examiner before the matter is submitted to the Board for its decision

c) Each appeal and request for hearing under Section 7-304(c) involving the expulsion of a student or the suspension of a student for more than 10 school days shall be heard by the Board or referred to a hearing examiner for hearing.

5. Hearings

a) Applicability

The provisions of this part apply to hearing before a hearings examiner and both evidentiary hearings and oral arguments before the Board unless otherwise

indicated.

b) Notice

- (1) Written notice of hearings shall be given by Board, or its designee, to all interested parties not less than twenty (20) days prior to the hearing.
- (2) Such notice shall also state the date, time, and place of the hearing. Any disagreement concerning the charges, issues, or facts shall be resolved as part of the disposition of the appeal.

c) Public and Private Hearings

- (1) Hearings pursuant to Section 6-202(a) will not be public unless both the party seeking the hearing and the superintendent agree in advance and in writing or on the record that the hearing be public.
- (2) Hearings pursuant to Section 7-304(c) will not be public unless a public hearing is requested by the person appealing or seeking the hearing.
- (3) All other hearings will be public unless for good cause shown by a party or on its own motion, the Board agrees not to hear a matter in public hearing when the matter is one as to which a public hearing is not required by law.

d) Representation

All parties appearing at hearings under these rules shall have the right to appear in person or with a representative of their choice. All parties shall have the right to be accompanied, represented, and advised by counsel.

e) Records – Transcript

- (1) The presiding officer shall prepare or cause to be prepared official records, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceedings.
- (2) An accurate record of all hearings, disputes, or controversies shall be kept by the superintendent in order that, if an appeal is taken, the record shall be submitted.

(3) Unless waived by all the parties, a stenographic record of that part of the proceedings which involves the presentation of evidence shall be made at the expense of the Board of Education. The record need not be transcribed, however, unless requested by a party to the controversy, the local superintendent, the local board, the state superintendent, or the state board, as the case may be. The cost of any typewritten transcript of any proceedings, or a part of any proceedings, shall be paid by the party requesting it.

f) Duties and Authority of Presiding Officer

The presiding officer 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 presiding officer shall cause an oath to be administered to all witnesses testifying in a proceeding. The superintendent may administer oaths to witnesses (Section 4-205(b)).

g) Quorum

Each hearing before the Board shall be held before not less than a quorum of the Board.

h) Order of Procedure

The order in which the parties shall present their case shall be determined by the presiding officer, except as follows:

(1) In a hearing on a student suspension or expulsion or the suspension or dismissal of a professional employee, the superintendent shall proceed first and carry the burden of persuasion

(2) In all other appeals, the appellant shall proceed first

i) Examination of Witnesses and Introduction of Evidence

(1) The strict judicial rules of evidence shall not be applicable to evidentiary hearings conducted hereunder, and, in each case, the test of admissibility shall be whether the evidence is reasonably relevant to a material issue and whether it has substantial probative value with respect to such a material issue. The presiding officer may limit or refuse to admit cumulative or

repetitive evidence and may curtail redundant questioning. The presiding officer shall encourage (but not demand) the parties, where possible, to make stipulations as to matters not reasonably in dispute and to make proffers and stipulations in place of cumulative evidence. All testimony shall be given under oath.

- (2) A party, or where a party is represented by counsel or other representative, such counsel or other representative may submit evidence, examine and cross-examine witnesses, make objections, and file exceptions and motions.
- (3) 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.
- (4) The presiding officer may examine all witnesses. The presiding officer may call as a witness any person whose testimony may be relevant and material. In hearings before the Board, any Board member may examine any witness.

j) Written Memoranda

Each party and the superintendent may submit written memoranda on the issues of fact and law involved in the hearing in such form as the presiding officer may designate. Such memoranda may be submitted at any time prior to the hearing of a matter. With the approval of presiding officer and on such schedule as the presiding officer may designate, written memoranda may be submitted after a hearing.

k) Counsel for the Board

The presiding officer of the Board may request the Board's attorney to participate in any hearings as counsel for the Board.

l) Findings of the Hearing Examiner

In all matters heard initially by a hearing examiner, the hearing examiner shall make findings of fact, conclusions of law, and recommendations. The hearing examiner shall submit a transcript of the proceedings, exhibits, findings of facts, conclusions

of law, and recommendations to the Board. The hearing examiner shall distribute or mail to all parties and the Board the findings of fact, conclusions of law, and recommendations not more than fifteen (15) days after completion of the hearing and receipt of the transcript. If the hearing examiner has provided for oral argument or for the submission of written memoranda after a hearing, the 15 day period shall not commence until after such oral argument or submission of written memoranda, whichever is later.

m) Oral Argument

- (1) Parties to proceedings before a hearing examiner may make oral arguments before the Board at the Board's hearing on the recommendations of the hearing examiner, but additional evidence shall not be introduced before the Board unless the Board in its sole discretion agrees to hear additional evidence for good cause shown.
- (2) Parties to appeals and hearings before the Board where no facts are in dispute may make oral arguments to the Board.
- (3) Parties to proceedings before a hearing examiner and to evidentiary hearings before the Board may make oral argument to the hearing examiner or the Board. The presiding officer may permit oral arguments at such times during or after an evidentiary hearing, after the submission of written memoranda, or after a transcript becomes available as the presiding officer considers appropriate in a particular case.
- (4) The presiding officer may limit, in advance, the time allowed for oral argument by each party. Oral argument by each party before the Board shall not exceed 30 minutes, unless the presiding officer shall allow additional time for good cause shown.
- (5) The Board's attorney shall be notified and requested to be present when oral arguments are heard by the Board.

n) Decision and Order

Each decision and order of the Board shall be delivered in writing, unless it shall immediately follow the hearing, in which case it shall be delivered orally and thereafter in writing, with copies to all parties. Each written decision and order shall be accompanied by written findings of fact, conclusions of law, and a specific

description of the disposition of the case. Final action of the Board shall be taken publicly at a Board meeting following the hearing.

o) Ex Parte Communications

While a matter is under consideration by a hearing examiner or by the Board after a hearing or by the Board in no hearing has been requested, neither the hearing examiner as to any matters pending before the Board shall receive communications from or communicate orally with any party outside the presence of all other parties or in writing without supplying copies to all other parties and providing an opportunity for response. No information concerning a pending matter may be released by the Board, a Board member, a hearing examiner, or a member of the Montgomery County Public Schools' administration unless it is a matter of public record or unless it is released to a party and copies supplied simultaneously to all other parties.

p) Rehearings

- (1) A party aggrieved by the decision and order rendered in the particular case may apply for rehearing within 30 days after the date of the decision and order. An application for rehearing shall state with specificity the reasons therefore, and action on any application shall lie in the sole discretion of the Board.
- (2) Unless otherwise ordered, neither the rehearing nor the application for a rehearing shall stay the enforcement of the order or excuse the persons affected by it for failure to comply with its terms.
- (3) The Board, on rehearing, may consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

q) Effect on Other Procedural Regulations

These rules of procedure supersede all other procedures which may have been adopted by the Board governing hearings by a hearing examiner and by the Board in contested matters appealed to the Board or as to which hearings by the Board have been requested on recommendations of the superintendent.

6. Time and Notice Requirements

a) Computation of Time

In computing any period of time prescribed by these rules or by any applicable statute, the day of the act or event after which the designated period of time begins to run is not to be included. Saturdays, Sundays, and legal holidays shall be counted. When the last day so computed would fall on a Saturday, Sunday, or legal holiday, the period shall extend to the first day thereafter not one of these days. For filing of documents with the Board, if the office of the Board is not open during its regular hours on the last day of the period, the documents shall be filed on the next day thereafter when the office of the Board is so open.

b) Extension 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 rules for filing any document or providing any notice except in those instances where the time is specified by state law.

C. REVIEW AND REPORTING

This policy will be reviewed every three years in accordance with the Board of Education policy review process.

Policy History: Adopted by Resolution No. 227-84, April 10, 1984; amended by Resolution No. 536-84, October 9, 1984; reformatted in accordance with Resolution No. 333-86, June 12, 1986 and Resolution No. 458-86, August 12, 1986, and accepted by Resolution No. 550-88, October 24, 1988; amended by Resolution No. 1050-91.