

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: June 11, 2013

TO: **BOARD OF EDUCATION**

FROM: S. Dallas Dance, Superintendent

SUBJECT: **CONSIDERATION OF THE PROPOSED REVISIONS TO BOARD OF EDUCATION POLICY 8341, APPEAL BEFORE A HEARING EXAMINER**

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

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

RECOMMENDATION

That the Board of Education approves the proposed changes to Policy 8341.
This is the third reading.

Attachment I – Policy Analysis
Attachment II – Policy 8341

**POLICY ANALYSIS FOR
BOARD OF EDUCATION POLICY 8341
APPEAL BEFORE A HEARING EXAMINER**

Statement of Issues or Questions Addressed

Board of Education Policy 8341 outlines the rules of procedure for hearings referred to a Board hearing examiner. Policy 8341 is being revised to: (1) mirror the definition of “file” found in Policy 8340; (2) to substitute the words “requests for hearing” for the word “appeals” for 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) include the standard of proof to be followed in appeals filed pursuant to Sections 4-205 and 6-202 of the Education Article; (3) clarify when the recommendation will be issued by the Board’s hearing examiner; and (4) establish timelines for the prompt issuance of decisions by the Board. The attached amendments 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 8340, *Appeal Before the Board of Education*

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. 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 – April 23, 2013

Public comment – May 7, 2013

Third reading/vote – June 11, 2013

INTERNAL BOARD POLICIES: Operations

Appeal Before A Hearing Examiner

I. Purpose

- A. Prior to the Board of Education of Baltimore County (Board) rendering a final decision, the Board may refer appeals authorized under the Education Article of the *Annotated Code of Maryland* to the Board's hearing examiner. The following Rules of Procedure shall apply for all appeals referred to a Board hearing examiner.

II. 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 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 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 (BCPS).

IV. Procedures and Deadlines

- A. 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 REQUESTS FOR HEARING [Appeals] – REQUESTS FOR HEARINGS FILED [Appeals taken] by certificated personnel regarding a recommendation by the Superintendent that a certificated employee be dismissed or suspended.
 - a. A REQUEST FOR HEARING [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 OR REQUEST FOR HEARING 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 of 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 OR REQUEST FOR HEARING in writing and send a copy of the appeal and the acknowledgement to the Superintendent.
2. The Board will forward the appeal OR REQUEST FOR HEARING 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. Notice of Hearing

1. Written notice of the date, time, and location of a hearing regarding an appeal OR REQUEST FOR HEARING 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.

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

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 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.]

- E. 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. Order of Procedure
1. The order in which the parties shall present their case shall be determined by the hearing examiner, except that in cases arising under Section 6-202 of the Education Article, the Superintendent shall proceed first.
 2. IN APPEALS FILED UNDER SECTION 4-205 OF THE EDUCATION ARTICLE, THE APPELLANT SHALL HAVE THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE.
 3. IN REQUESTS FOR HEARINGS FILED UNDER SECTION 6-202 OF THE EDUCATION ARTICLE, THE SUPERINTENDENT SHALL HAVE THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE.
- G. 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. 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. Findings

- A. The hearing examiner shall issue *Findings of Fact, Conclusions of Law, and Recommendation* not more than thirty (30) days after RECEIPT OF THE TRANSCRIPT AND CLOSING MEMORANDA, IF APPLICABLE [the record is closed]. THE HEARING EXAMINER MAY EXTEND THAT TIME FOR GOOD CAUSE.
- B. The hearing examiner shall distributed 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 SUPERINTENDENT'S ATTORNEY AND 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. DECISION OF THE BOARD

- A. IN THE EVENT THAT EITHER PARTY REQUESTS ORAL ARGUMENT WITHIN THE APPLICABLE TIME PERIOD SET FORTH IN SECTION IX HEREIN, SUCH ORAL ARGUMENT SHALL BE SCHEDULED AS SOON AS PRACTICABLE.
- B. IF ORAL ARGUMENT HAS NOT BEEN REQUESTED, THE MATTER SHALL BE SCHEDULED BY THE BOARD FOR DETERMINATION AT A BOARD MEETING NOT LESS THAN SIXTEEN (16) DAYS, AND NOT MORE THAN THIRTY (30) DAYS, FROM THE DATE OF RECEIPT OF THE HEARING EXAMINER'S *FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION*.

IX. [VIII.] 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 the hearing examiner of his/her *Findings of Fact, Conclusions of Law, and Recommendation*.

POLICY 8341

- 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*.

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 Policy: Board of Education Policy 8340, *Appeal Before the Board of Education*

Policy

Board of Education of Baltimore County

Adopted: 07/11/91

Revised: 04/08/08

Revised: 09/06/11

REVISED: _____