

POLICY BOARD OF EDUCATION OF MONTGOMERY COUNTY

Related Entries: BLB-EA, BLC, GJC-RA, GJD-RB, JGA-RB
Responsible Office: Board of Education

Rules of Procedure in Appeals and Hearings

A. PURPOSE

To provide Rules of Procedure adopted pursuant to the authority of the *Annotated Code of Maryland*, Education Article, Sections 4-205, 6-202, 6-203, and 7-305, which govern all appeals to the Montgomery County Board of Education (Board) and all hearings before the Board requested on a recommendation by the superintendent of schools to the Board or a final decision of the superintendent of schools that is contested by persons who are adversely affected, unless other procedures are specifically required by statute or bylaws of the State Board of Education; Montgomery County Board of Education policies; or Montgomery County Public Schools (MCPS) regulations, such as those applicable to special education and student transfer appeals

B. PROCESS AND CONTENT

1. Definitions

- a) *Board* means the Montgomery County Board of Education.
- b) *Computation of Time, days* shall be calculated consistent with Maryland Rule 1-203:
 - (1) *Starting Point* – When 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. And, if the day immediately following the day of the act or event is a Saturday, Sunday, or holiday, it shall be counted.
 - (2) *End Point* – When computing the final date for any period of time prescribed by these rules or by any applicable statute, 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 open.

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) *Filed or filing* as used in these rules means received by the Board. Appeals may be filed by a student or the student’s parent or guardian. If an appeal is filed by a student, the student’s parent or guardian will be provided with notice of the appeal and will be given an opportunity to comment on the appeal.
- d) *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, on satisfactory demonstration of the nature and extent of its interest.
- e) *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.
- f) *Superintendent* means the superintendent of schools or the superintendent of schools’ designee.
- g) *Written notice* under these rules shall be complete—
 - (1) upon actual delivery if a party hand delivers,
 - (2) depositing the papers in the United States Postal Service mail as registered or certified mail or Express Mail, or deposited with a delivery service, such as Fed Ex, UPS, or DHL, that provides verifiable tracking of the item from the point of origin, *on or before* the date the papers are due, to the addressee at the mailing address provided or appearing on the records of MCPS, or

- (3) on the date an email is sent if an email notification is requested by the party(ies).

2. 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 these rules arise under the Education Article, Sections 4-205(c), 7-305, 6-202, and 6-203 and local Board proceedings permitted under the Education Article.
 - (1) Proceedings under Section 4-205(c) are on appeals from decisions of the superintendent of schools on controversies and disputes involving the rules and regulations of the Board or the proper administration of the county public school system. Under Maryland law, such decisions of the superintendent of schools must be appealed to the Board within 30 calendar days.
 - (2) Hearings under Section 6-202(a) are on recommendations of the superintendent of schools to suspend or dismiss certificated personnel. (Section 6-201(b)(iv)).
 - (3) Hearings under Section 6-203 are those matters that are referred by the Board for an initial hearing by a hearing examiner.
 - (4) Appeal hearings under Section 7-305(c) are from a finding by the superintendent of schools that suspension of a student for more than 10 school days or expulsion of a student is warranted. Under Maryland law, such suspensions must be appealed within 10 calendar days.

3. Appeals or Requests for Hearings-Section 4-205(c)

- a) All appeals to the Board shall be from a final action or decision of the superintendent of schools that adversely affects the appellant(s). For purposes of this paragraph, the failure of the superintendent of schools to act on an appeal within 45 calendar days may, at the option of the appellant, be deemed a denial by the superintendent of schools for purposes of appeal to the Board.

- b) 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 calendar days of the date of the superintendent of schools' or designee's final action or decision adversely affecting the appellant(s). Each appeal shall be signed by each party taking the appeal, and include the printed name, regular mail, and email address[es] of each party.
- c) With the notice of appeal, or within 10 calendar days after the notice of appeal has been filed, the person or persons filing the appeal must file with the Board, with a copy to the superintendent of schools, the following:
 - (1) A concise statement of the issues presented by the appeal for decision by the Board
 - (2) A concise statement of the facts that the appellant(s) believes support the appeal
 - (3) A statement in which findings of fact, if any, set forth by the superintendent of schools are disputed by the appellant(s)
 - (4) A copy of all documents that are believed to be relevant or that are relied on by and are in the possession or control of the appellant(s)
- d) After the submission of the information and documentation required by Section 3c), the superintendent of schools may submit additional information or documentation in support of the decision that is the subject of the appeal and shall provide a copy to the appealing party.
 - (1) For appeals of decisions related to Board Policy JEE, *Student Transfers*, the superintendent of schools may respond to the Board office within 10 school days.
 - (2) For all other appeals under Section 4-205(c), the superintendent of schools may respond to the Board office within 15 calendar days.
 - (3) If the superintendent of schools' response requires participation of a school office, days when schools are closed are not counted in time allowed under B.3.d(1-2) above.
- e) Within five work days after the submission by the superintendent of schools, the appealing party may submit additional documentation in response to that submitted by the superintendent of schools and shall provide a copy to the

superintendent of schools.

- f) Except in those instances where the time is specified by state law, the Board or the Board's designee may exercise discretion to extend the time limits stated for either party's response on a case-by-case basis, provided that the parties are given prompt written notice of the extended timeline and rationale. Compelling reasons include, but are not limited to, an extensive record, substantial documentation, or numerous sources to be consulted.
- g) In addition, the Board may request of either party that additional information or documentation be submitted.
- h) 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 Section 3c) a concise statement of the reasons therefore, specifically addressing the factors set forth in Section 3i) or Section 3j), or both, herein.
- i) If an appeal is not filed within the period set forth in Section 3c), or if the statements required are not filed within the period set forth in Section 3d), such failure shall constitute sufficient grounds for the Board or the Board's designee to dismiss an appeal.
- j) 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—
 - (1) that oral argument on the issues be presented, or
 - (2) 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—
 - (a) whether the issues involved are of constitutional or significant public importance,
 - (b) whether resolution of the issues raised is likely to have significant value as precedent in the administration of the school system,
 - (c) whether the issue or issues raised require determination of some substantial employee right, which cannot be

satisfactorily adjudicated otherwise within existing appeal procedures, and/or

- (d) other appropriate factors as determined by the Board.
- k) In those instances when 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 that the Board may consider in determining whether to refer such a matter to a hearing examiner in the first instance are—
- (1) whether it appears that there are facts in dispute that are likely to require a lengthy evidentiary hearing, and/or
 - (2) whether it appears that there is an extensive record, substantial documentation, or additional information that the Board feels should be evaluated by a hearing examiner before the matter is submitted to the Board for its decision.
4. Initiation of Appeals or Requests for Hearings – Sections 6-202(a) and 7-305(c)
- a) Section 6-202(a)
 - (1) All requests to the Board for hearing under Section 6-202(a) shall be from a recommendation of the superintendent of schools to the Board for suspension or dismissal of a teacher, principal, associate superintendent, or other certificated employee who requests the hearing.
 - (2) Each request for a hearing under Section 6-202(a) (as to recommendation for certificated employee suspension or dismissal) shall be initiated by filing with the Board a written request for a hearing within 10 calendar days of the date the Board sends the individual a copy of the charges against them and has given the individual written notice of the superintendent of schools' recommendation and the meeting (which shall be more than 10 calendar days after the written notice) at which the recommendation will be considered by the Board if no hearing is requested.
 - (a) Such notice shall advise the individual of the right to request a hearing before the Board or, alternatively, to request a hearing before an arbitrator as authorized by Section 6-

- 202(a). If a request for a hearing before the Board or an arbitrator is not received within the time specified in the notice, the right to request either type of hearing shall be deemed waived and the Board will act on the recommendation of the superintendent of schools. If the individual does not specify that the hearing is before an arbitrator, the request shall be considered a request for a hearing before the Board.
- (b) In the event that the individual requests a hearing before an arbitrator, the Board shall refer the matter to the superintendent of schools, who shall designate appropriate staff to engage in the process to select an arbitrator according to the provisions of Section 6-202(a), and the decision of the arbitrator shall be final and binding on the individual and the Board, subject to judicial review governed by the Maryland Uniform Arbitration Act.
 - (c) In the event that the individual requests an evidentiary hearing before the Board, the Board may conduct such hearing, or it may refer the matter to a hearing examiner. In either situation, the hearing shall be conducted in accordance with the procedures set forth in Section 5 of this Policy.
- (3) 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 of schools under Section 6-202(a), even if no formal request for hearing is before it.
 - (4) In those circumstances when 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 (MCEA), between the Board and the Service Employees International Union (SEIU), Local 500, and between the Board and the Montgomery County Association of Administrators and Principals (MCAAP)], 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.

b) Section 7-305(c)

- (1) Each appeal under Section 7-305(c) (student suspension for more than 10 school days or expulsion), shall be made by filing a notice of appeal or a request for a hearing with the Board within 10 calendar days of the date of the written notice of the determination made by the superintendent of schools to the student or the parent or guardian. The superintendent's notice shall advise the student, parent, or guardian of the right to appeal to the Board and to request a hearing.
- (2) All requests for hearings under Section 7-305(c) (student suspension for more than 10 school days or expulsion) will be referred to a hearing examiner, unless the Board in its sole discretion determines that the Board, or a committee of the Board, should hear the matter in the first instance. Among the factors that the Board may consider in determining if it wishes to hear such a matter in the first instance are the following:
 - (a) Whether there does not appear to be any material facts in dispute or whether it appears that the material facts in dispute can be heard by the Board without a lengthy evidentiary hearing.
 - (b) Whether there is an overriding need for prompt resolution of the matter.
 - (c) Whether the matter is of such public importance, of such importance to proper administration of the school system, or of such a sensitive nature that the Board concludes it should hear the evidence.
- (3) If the parent/student/legal guardian desires to waive the right to a hearing (for Section 7-305(c), such right applies only for a student suspension for more than 10 school days or expulsion), they may (1) request to have the matter decided on the written record following the procedures outlined below; and/or (2) request to have only oral argument before the Board.
 - (a) The person or persons requesting that the matter be considered on the written record must file with the Board, with a copy to the superintendent of schools, the following:

- (i) A concise statement of the issues presented by the appeal
 - (ii) A concise statement of the facts that the appellant(s) believes support the appeal
 - (iii) A statement of which findings of fact, if any, set forth by the superintendent of schools are disputed by the appellant(s)
 - (iv) A copy of all documents that are believed to be relevant or that are relied on by and are in the possession or control of the appellant(s)
 - (b) Within 10 school days after the submission of this information and documentation, the superintendent of schools may submit additional information or documentation in support of the decision that is the subject of the appeal and shall provide a copy to the appealing party.
 - (c) Within five work days after the submission by the superintendent of schools, the appealing party may submit additional documentation in response to that submitted by the superintendent and shall provide a copy to the superintendent.
 - (d) If either party believes that oral argument is necessary to a decision of the appeal, such party shall include a concise statement of the reasons therefore.
 - (e) In addition, the Board may request of either party that additional information or documentation be submitted.
- (4) All cases involving a student suspension for more than 10 school days or expulsion under Section 7-305(c) must be heard and decided on within the timeframe determined by state regulations.
- c) If an appeal or request for hearing is not filed within the period set forth in Section 4b(1), such failure shall constitute sufficient grounds for the Board or the Board's designee to dismiss an appeal or request for hearing.

5. Hearings

a) Applicability

The provisions of this part apply to hearings before a hearing examiner as well as evidentiary hearings and oral arguments before the Board, or a committee of the Board, unless otherwise indicated.

b) Hearing Examiner

The hearing examiner shall be an attorney admitted to practice before the Maryland Court of Appeals.

c) Notice

(1) Except for cases arising under Section 7-305(c), written notice of hearings shall be given by the Board or the Board's designee to all interested parties not less than 20 calendar 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.

(3) Each party shall provide a witness list and a copy of all documents to be used in the hearing at least five work days before the hearing.

d) 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 of schools agree in advance and in writing or on the record that the hearing be public.

(2) Hearings pursuant to Section 7-305(c) will not be public unless a public hearing is requested by the person appealing or seeking the hearing.

(3) All other hearings will not be public unless good cause is shown by a party, the Board agrees on its own motion to have a public hearing, or a public hearing is required by law.

e) Representation

All parties appearing at hearings under these rules shall have the right to appear in person with an attorney who is admitted to practice before the Supreme Court of Maryland.

f) 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 of schools in order that, if an appeal is taken, the record shall be submitted.
- (3) Unless waived by all the parties, a stenographic record of the part of the proceedings that involves the presentation of evidence shall be made at the expense of the Board. The record need not be transcribed, however, unless requested by a party to the controversy, the local superintendent of schools, 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.

g) 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 of schools may administer oaths to witnesses (Section 4-205(b)).

h) Quorum

Each hearing before the Board shall be held before not less than a quorum of the Board, or a quorum of the designated committee of the Board, in appeals arising under Section 7-305(c).

i) 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 of schools shall proceed first and carry the burden of persuasion.
- (2) In all other appeals, the appellant shall proceed first.

j) 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 of schools 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.

k) Written Memoranda

Each party and the superintendent of schools 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 the presiding officer and on such schedule as the presiding officer may designate, written memoranda may be submitted after a hearing.

l) 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.

m) 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 15 calendar days after completion of the hearing. Except for matters arising under Section 7-305(c), 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.

n) 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.

o) 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.

p) Ex Parte Communications

While a matter is on appeal to the Board or is under consideration by a hearing examiner, the following rules of procedure should take place:

- (1) The hearing examiner shall not receive communications from, or communicate orally with, any party outside the presence of all other parties, nor communicate in writing without providing copies to all other parties and, when appropriate, providing an opportunity for response.
- (2) Outside of the official appeal process a Board member may not (a) discuss appeal matters with any party, or (b) receive or review any oral or written communications from any party regarding appeal matters.
- (3) No information concerning a pending matter may be released by the Board, a Board member, a hearing examiner, or a member of the MCPS 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.

q) Rehearings

- (1) A party aggrieved by the decision and order rendered in the particular case may apply for rehearing within 30 calendar 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.

r) Effect on Other Procedural Regulations

These rules of procedure supersede all other procedures that 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 of schools.

C. REVIEW AND REPORTING

This policy will be reviewed in accordance with the Board policy review process.

Related Sources: Md. Code Ann., Education Sections 4-205, 6-202, 6-203, and 7-305; Maryland Rules, Rule 1-203.

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, December 10, 1991, amended by Resolution No. 18-13, January 8, 2013; amended by Resolution No. 315-14, June 30, 2014; technical amendments by Resolution No. 415-18, September 11, 2018; amended by Resolution No. 447-23, October 26, 2023.