

PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS
Board of Education
Upper Marlboro, Maryland

4200
Policy No.

BOARD OF EDUCATION POLICY

BYLAWS OF THE BOARD

Rules of Procedures in Hearings Requested under § 6-202 and Appeals and Hearings under § 4-205 of the Education Article

I. POLICY STATEMENT

The Prince George’s County Board of Education (Board) has both the responsibility and authority to adopt policies designed to support learning and work environments that demonstrate an inclusive, authentic and culturally responsive community. Guided by its commitment to excellence and educational equity, the Board has established this policy which governs appeals and hearings within its administrative and/or quasi-judicial responsibilities.

II. PURPOSE

- A. The purpose of this policy is to provide the rules of procedure for hearings and appeals pursuant to the following provisions of State law:
 - 1. The Chief Executive Officer’s (CEO) recommendations for suspension and/or dismissal of certificated employees pursuant to § 6-202 of the Education Article, Annotated Code of Maryland; and,
 - 2. The CEO/designee’s decisions involving all other controversies and/or disputes (including, but not limited to, employment action against non-certificated employees) pursuant to § 4-205 of the Education Article, Annotated Code of Maryland.

III. DEFINITIONS

- A. *Appeal on the record* – An appeal considered by the Presiding Officer based on documents and arguments submitted in writing by the parties.
- B. *Appellant* – An individual or entity appealing a final or recommended decision of the CEO/designee.
- C. *Board* – Means the Prince George’s County Board of Education.

- D. *CEO* – Refers to the Chief Executive Officer of the Prince George’s County Board of Education who is the executive officer.
- E. *Days* – Means calendar days unless otherwise indicated. In computing any period of time prescribed by these procedures or by any applicable statute, the day of the act or event after which the designated period of time begins to run is not included. Saturdays, Sundays, and legal holidays shall be counted. In calculating the number of days required to perform an act under these procedures (e.g., filing a request for a hearing), if the last day falls on a Saturday, Sunday, legal holiday, or other day when the Board’s central office is closed, then the last day for performance of the act under these procedures shall be extended to the next regular business day when the Board’s central office is open.
- F. *Evidentiary hearing* – A hearing held to present evidence and testimony in front of a Presiding Officer for the purpose of developing a recommendation on the matter to send to the Board for decision.
- G. *Filed or filing* – As used in these procedures means the actual receipt of a hearing request, memorandum, or other paper by the Board’s central office no later than 5:00 p.m. on the last day for filing in accordance with these procedures.
- H. *Oral argument* – A spoken presentation before the Board of a party’s position and the reasoning behind it.
- I. *Party or parties* – Includes each person, group, or entity named or admitted as a party, including a student, a parent, parent surrogate, or guardian of a student, employee, and shall include the CEO. 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.
- J. *Presiding Officer* – Means the Board’s Chair; or in the Chair’s absence, the Vice Chair; or in the absence of both, a member designated by the Chair, or, in the absence of such designation, a member designated by the Board. In the event that the Board refers the appeal to a Hearing Examiner pursuant to Code Section 6-203, the designated Hearing Examiner shall be the Presiding Officer for the evidentiary hearing.
- K. *State Board* – Means the Maryland State Board of Education.

IV. STANDARDS

- A. Applicability
 - 1. This policy governs appeals and hearings within the administrative and/or quasi-judicial functions of the Board. It is not applicable to proceedings involving the Board’s exercise of its legislative or policy-making functions.

2. Proceedings covered by this policy arise under the Maryland Annotated Code, Education Article, §§ 6-202 and 4-205(c) and local board proceedings permitted under the Education Article.
 - a. Hearings under § 6-202(a) are on recommendations of the CEO to suspend or dismiss certificated personnel.
 - b. Proceedings under § 4-205(c)(3) are on appeals from decisions of the CEO/designee on controversies and disputes involving the policies of the Board and administrative procedures of Prince George's County Public Schools (PGCPS), the true intent and meaning of Maryland's public-school law, the State Board's bylaws, and the proper administration of PGCPS.
 - c. Hearings under § 6-203 are those matters which are referred by the Board for an initial hearing or proceeding by a Hearing Examiner.

B. Designation of Hearing Examiners

1. Pursuant to § 6-203, the Board may, if it chooses to do so, refer the appeal to a Hearing Examiner for the purpose of conducting an evidentiary hearing, or to conduct an appeal on the record.
2. In selecting impartial Hearing Examiners to conduct appeals on the record or evidentiary hearings under these provisions, the Board shall interview and select individuals who:
 - a. Are in good standing of the Maryland Court of Appeals;
 - b. Shall have at least three (3) years' experience as a practicing attorney in the State of Maryland; and
 - c. Shall be required to participate in an orientation conducted by the designee(s) of the Board prior to serving as a Hearing Examiner.
3. A Hearing Examiner may not be a current PGCPS employee, nor have been a PGCPS employee within the last year. Persons selected as Hearing Examiners shall serve for one (1) year, subject to annual reappointment by the Board. Hearing Examiners will be required to sign annual contracts with the Board. There shall be no limit on the number of terms served; however, the Board reserves the right to remove an individual from the list of approved Hearing Examiners at any time by providing written notice to the Hearing Examiner.
4. Hearing Examiners shall be assigned to conduct hearings on a rotating basis, when practicable, and shall not conduct hearings of matters where (a) the Hearing Examiner has personal knowledge regarding the dispute or the parties or (b) the Hearing Examiner has any connection with the school or department, or the individual/company involved in the hearing, or (c) the hearing involves a member of the Hearing Examiner's immediate family or household. Any

Hearing Examiner who fails to disclose such information to the Board, or its designee and the parties shall automatically be barred from serving as a Hearing Examiner.

5. The Hearing Examiner shall submit:
 - a. A record of the proceedings and exhibits to the Board and make the same available to the parties upon written request; and
 - b. The Hearing Examiner's findings of fact, conclusions of law, and recommendations to the Board and parties.
 - c. All recommendations of hearing examiners must be based upon competent and substantial evidence. Hearing examiners may consider hearsay evidence during the hearing. If a hearing examiner's recommendations are based solely on hearsay evidence, the hearing examiner must make findings of fact and conclusions of law that the hearsay evidence relied upon demonstrates sufficient reliability and probative value to satisfy the requirements of procedural due process.
6. After the Board reviews the record and the recommendation of the Hearing Examiner, the Board shall render a decision.

C. Matters Pursuant to Section 6-202 of the Education Article

1. Initiation of Request for a Hearing

- a. All requests to the Board for a hearing under § 6-202(a) shall be from a recommendation of the CEO to the Board for suspension or dismissal of a teacher, principal, associate superintendent, or other certificated employee in accordance with §6-202(a)(1).
- b. Before removing an individual, the Board shall send the individual a copy of the charges against the individual and give the individual an opportunity within 10 days to request:
 - 1) A hearing before the county board; or
 - 2) A hearing before an arbitrator.
- c. Each request for a hearing under § 6-202(a) shall be initiated by the employee by filing with the Board a written request for a hearing within ten (10) days of the date the Board sends the individual a copy of the charges against him/her and has given the employee written notice of the CEO's recommendation.
 - 1) The notice shall advise the employee of the right to request a hearing before the Board or, alternatively, to request a hearing before an

arbitrator as authorized by § 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 CEO. If the employee's request does not specify that the hearing is before an arbitrator, the request shall be considered a request for a hearing before the Board.

- 2) The appellant shall have an opportunity to be heard before the Board, in person or by counsel, and to bring witnesses to the hearing.
- 3) In the event the employee requests a hearing before an arbitrator within the 10-day period, the Board shall refer the matter to the CEO, who shall designate appropriate staff to engage in the process to select an arbitrator according to the provisions of § 6-202(a). 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.

2. Standard of Review

Hearings under § 6-202 do not utilize a standard of review. The Board shall exercise its independent judgment based on the preponderance of the evidence in determining whether to accept, reject, or modify the recommendation(s) of the CEO. The CEO shall have the burden of persuasion in hearings under § 6-202.

3. Hearings

a. Public or Private Hearings

Hearings pursuant to § 6-202(a)(3) will not be public unless (i) both the party seeking the hearing and the CEO agree in advance and in writing or on the record that the hearing be public, and (ii) the Presiding Officer consents to a public hearing.

b. Potential Documentary Evidence

In the interest of expediting the hearing, counsel for or representatives of the employee and the CEO are encouraged to stipulate at least five (5) days prior to the date of the hearing to the admissibility of all then known demonstrative evidence the parties intend to introduce into evidence. In the interest of assisting the parties to so stipulate, the Board's attorney may conduct a conference call with counsel or representatives of the parties prior to the date of the hearing.

c. Hearings Before a Hearing Examiner

1) Pursuant to § 6-203, the Board may, in its sole discretion, refer the appeal to a Hearing Examiner for the purpose of conducting an evidentiary hearing. In those appeals where a Hearing Examiner is utilized, the Hearing Examiner shall serve as the Presiding Officer over that hearing and shall, subject to Board review, rule on all evidentiary issues, objections, and other issues that are raised during the hearing. After the production of the transcript and the filing of any post-hearing memoranda, the Hearing Examiner shall submit within 30 days to the Board, the Employee, and to the CEO the record of the Hearing Examiner which shall include:

- a) the transcript of the proceedings and exhibits, unless they have already been produced;
- b) the Hearing Examiner's findings of fact, conclusions of law, and recommendation(s); and
- c) all documents submitted to the Hearing Examiner.

2) Oral Argument

a) Within ten (10) days of the date of emailing and/or mailing of the record and the findings, conclusion and recommendation(s) of the Hearing Examiner, either party may request oral argument before the Board. The Board will grant a request for oral argument when it decides that:

- i. the appeal involves a constitutionally protected liberty or property interest;
- ii. the Appellant's appeal to the Board sets forth specific factual allegations of unlawful discrimination or arbitrariness; or
- iii. in its discretion, it determines that oral argument is appropriate.

b) If oral argument is granted, the Board will notify the parties of the date for argument and specify the time the parties will have for their presentations. Arguments will be limited strictly to the record before the Board.

3) After reviewing the record, the transcript, the Hearing Examiner's recommendations, and, if applicable, the oral arguments of the parties, the Board shall render a decision.

d. Representation

All parties appearing at a hearing under these procedures shall have the right to appear in person, through counsel, or through a representative of their choice. All

parties shall have the right to be accompanied, represented, and advised by counsel or a designated representative. Employees requesting a hearing under § 6-202(a)(3) shall advise the Board if they are represented by an attorney or other representative promptly after filing request for a hearing. Failure to give prompt notice of representation may result in the postponement of a scheduled hearing.

e. Records – Transcripts

- 1) The Presiding Officer shall prepare or cause to be prepared an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material files in the proceedings.
- 2) The Board Office shall maintain a complete copy of the appeal and all supporting documents.
- 3) A written, taped, or electronic record of that part of the proceedings which involves the presentation of evidence shall be made at the expense of the Board. The record need not be transcribed, however, unless the appeal is initially heard by a Hearing Examiner pursuant to § 6-203 or is requested by a party to the controversy, the CEO, the 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. In those appeals where a transcript is prepared pursuant to § 6-203, the Board will pay the cost of the transcript.

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.

4. Counsel for the Board

In all matters before the Board, the Board shall have the right to have an attorney present as its counsel and may request their attorney to participate in any matters as counsel for the Board.

5. Decisions and Order

- a. Whenever the Board is required to issue a decision and Order, it may either orally, or in writing, issue a summary Order stating its determination and follow that promptly with a written decision and Order. The Board's written

Order shall indicate its decision and reasons, setting forth the Board's findings of fact, conclusions of law, the specific disposition of the case, and rationale that constituted the basis for its determination; or, upon review and consideration of the case, the Board may rely upon the findings of fact, conclusions of law and recommendations made by the Hearing Examiner.

- b. In its written Order the Board shall advise the parties of the right to appeal the Board's decision to the State Board as may be provided under state law or regulation.

6. Ex-Parte Communications

While a matter is under consideration by the Board, no member shall receive communications from, or communicate orally with, any individual, other than Board members or legal counsel for the Board, concerning matters properly before the Board, outside the presence of all other parties. No information concerning a pending matter may be released by the Board, a Board member, or a member of the PGCPs administration or any party to the proceeding, their counsel, or representatives unless it is a matter of public record.

7. Effect on Other Procedural Regulations

These procedures supersede all other procedures which may have been adopted by the Board governing contested matters appealed to the Board pursuant to § 6-202(a)(3).

8. Extension of Time

For good cause, the Board, upon its own motion or at the request of either party or the Presiding Officer, may at any time extend the time provided under these procedures for filing any document or providing any notice except in those instances where the time is specified by law.

D. Matters Pursuant to Section 4-205 of the Education Article

1. Initiation of Appeals

a. Final Action Required

All appeals to the Board under 4-205(c)(3) shall be from a final action of the CEO/designee that adversely affects the person or persons who seek the appeal. The CEO/designee shall indicate when a decision is "final."

b. Appeal Must Be Filed Within 30 Days

Each appeal to the Board under § 4-205(c)(3) shall be initiated by filing a signed and dated written appeal with the Board within 30 days after written notice of the final action or decision of the CEO/designee. The appeal shall:

- 1) specify the party or parties taking the appeal, along with current regular mail and email addresses;
 - 2) identify the CEO/designee's decision for which review is requested;
 - 3) contain a statement of the facts necessary to an understanding of the appeal;
 - 4) contain the issues or charges for which the appeal is taken;
 - 5) contain reasons in support of the appeal;
 - 6) contain a statement of the relief sought;
 - 7) include any supporting documents, exhibits, and affidavits;
 - 8) include, if possible, a copy of the CEO/designee's decision from which the appeal is sought; and
 - 9) be no longer than 15 pages, excluding attachments.
- c. Upon receipt of a timely filed written appeal, the Board shall immediately transmit a copy to the CEO/designee.
- d. Failure to Timely File

If an appeal under 4-205(c)(3) is not filed within the time period set forth in these procedures, the Board shall dismiss the appeal.

- e. General Processing of Appeal.
1. Upon receipt of a timely written appeal, the Board shall assign a docket number
 2. Restriction on New Information

Information or arguments not submitted to the CEO/designee for consideration will not be considered by the Board unless the Appellant demonstrates to the Board's satisfaction that the new information did not exist, or, for good reason beyond the control of Appellant, could not be produced at the time that the matter was considered by the CEO/designee. In such cases the Board may, in its discretion:

- a. Refer the new information to the CEO/designee for consideration and comments before the Board accepts or rejects it;

- b. Remand the entire matter back to the CEO/designee for reconsideration, in which case the CEO/designee's decision will be treated as a new "final" decision necessitating a new appeal being filed pursuant to these procedures; or
- c. Reject the information or arguments so offered.

3. CEO/designee's Response

Within 20 days of receipt of the Appellant's appeal from the Board, the CEO/designee shall file a written response to the appeal, together with all materials in support of the response, with the Board. The CEO/designee shall transmit a copy of the response to the Appellant.

f. Failure to File Timely Appeal or Response

- 1) If the Appellant's appeal is not timely, or the CEO's response is not timely, the Board shall dismiss the appeal for lack of timeliness or will omit the response from consideration from the record, respectively, unless the Board makes one or more of the following determinations:
 - a. there is a claim of discrimination;
 - b. the appeal concerns a class of potentially impacted employees or students;
 - c. the claim(s) has systematic implications; or
 - d. there are extraordinary circumstances, such as fraud or lack of notice.

g. Appeals Based on Written Submission.

The Board shall consider the appeal based solely upon the documents and arguments submitted by the parties in writing, without holding an evidentiary hearing, unless a party demonstrates satisfactorily to the Board that:

- 1) the appeal involves a constitutionally protected liberty or property interest,
- 2) the Appellant's appeal sets forth specific factual allegations of unlawful discrimination or arbitrariness, or
- 3) the Board, in its discretion, determines that an evidentiary hearing is appropriate. When the Board exercises its discretion, it may consider:

- a. whether the issues involved are of constitutional or significant public importance;
- b. whether resolution of the issue or issues raised are likely to have significant value as precedent in the administration of the school district;
- c. whether the issue or issues raised require determination of some substantial employee right which cannot be satisfactorily adjudicated otherwise within existing appeal procedures; or
- d. other appropriate factors as determined by the Board.

2. Standard of Review and Burden of Persuasion

The standard of review of § 4-205(c)(3) appeals is whether the CEO/designee's decision was arbitrary, unreasonable, or illegal. The Appellant has the burden of persuasion.

3. Evidentiary Hearings

If granted, the following provisions apply to an evidentiary hearing before the Board or a Hearing Examiner designated by the Board.

a) Notice -

Written notice of hearings shall be given by the Board, or its designee, to all interested parties not less than ten (10) days prior to the hearing. The notice shall state the date, time, and place of the hearing.

b) Public and Private Hearings

All hearings held pursuant to § 4-205(c)(3) shall be private unless the Board in its exclusive discretion determines that the issue or issues involved should be subject to a public hearing.

c) Potential Documentary Evidence

In the interest of expediting the hearing, counsel for or representatives of the Appellant and the CEO/designee are encouraged to stipulate at least five (5) days prior to the date of the hearing to the admissibility of all then known demonstrative evidence the parties intend to introduce into evidence. In the interest of assisting the parties to so stipulate, the Board's attorney may conduct a conference call with counsel or representatives of the parties prior to the date of the hearing.

d) Hearings Before a Hearing Examiner

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2) Oral Argument

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 - i. the appeal involves a constitutionally protected liberty or property interest;
 - ii. the Appellant's appeal to the Board sets forth specific factual allegations of unlawful discrimination or arbitrariness; or
 - iii. in its discretion, it determines that oral argument is appropriate.
 - b) (b) If oral argument is granted, the Board will notify the parties of the date for argument and specify the time the parties will have for their presentations. Arguments will be limited strictly to the record before the Board.
- 3) After reviewing the record, the transcript, the recommendations, and the arguments (if applicable) of the parties, the Board shall render a decision.

e) Representation

All parties appearing at hearings under these procedures shall have the right to appear in person, through counsel, or through a representative of their choice. All parties shall have the right to be accompanied, represented, and advised by counsel or a designated representative. Appellants requesting a hearing under

§ 4-205(c)(3) shall advise the Board if they are represented by an attorney or other representative promptly after filing the notice of request for a hearing. Failure to give prompt notice of representation may result in the postponement of a scheduled hearing.

f) Records – Transcripts

- (1) The Presiding Officer shall prepare or cause to be prepared an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material files in the proceedings.
- (2) Accurate records of all hearings, disputes, or controversies shall be kept by the Board Office in order that, if an appeal is taken, the records are available for submission to the appropriate entity.
- (3) A written, taped, or electronic record of that part of the proceedings which involves the presentation of evidence shall be made at the expense of the Board. The record need not be transcribed however, unless the appeal is initially heard by a Hearing Examiner pursuant to § 6-203 or is requested by a party to the controversy, the CEO, the 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. In those appeals where a transcript is prepared pursuant to § 6-203, the Board will pay the cost of the transcript.

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.

h) Counsel for the Board.

In all matters before the Board, the Board shall have the right to have an attorney present as its counsel and may request their attorney to participate in any matters as counsel for the Board.

i) Decisions and Order

- (1) Whenever the Board is required to issue a decision and Order, it may either orally, or in writing, issue a summary Order stating its determination and follow that promptly with a written decision and Order. The Board's

written Order shall indicate its decision and reasons, setting forth the Board's findings of fact, conclusions of law, the specific disposition of the case, and rationale that constituted the basis for its determination; or, upon review and consideration of the case, the Board may rely upon the findings of fact, conclusions of law and recommendations made by a Hearing Examiner.

- (2) In its written Order the Board shall advise the parties of the right to appeal the Board's decision to the State Board as may be provided under state law or regulation.

j) Ex-Parte Communications

While a matter is under consideration by the Board, no member shall receive communications from, or communicate orally with, any individual, other than Board members or legal counsel for the Board, concerning matters properly before the Board, outside the presence of all other parties. No information concerning a pending matter may be released by the Board, a Board member, or a member of the PGCPS administration or any party to the proceeding, their counsel, or representatives unless it is a matter of public record.

k) Effect on Other Procedural Regulations.

These procedures supersede all other procedures which may have been adopted by the Board governing contested matters appealed to the Board pursuant to § 4-205(c)(3).

l) Extension of Time.

For good cause, the Board, upon its own motion or at the request of either party or the Presiding Officer, may at any time extend the time provided under these procedures for filing any document or providing any notice except in those instances where the time is specified by law.

V. IMPLEMENTATION RESPONSIBILITIES

- A. The Board Office shall provide an annual report to the Board setting forth, in the most recent completed school year, the total number of Educ. Art. § 6-202 hearings requested and the subset number of hearings requested for suspensions or terminations; the number of hearings requested by bargaining units; the average length of time between when the hearing was requested and when the hearing was held and concluded and when the Board rendered a final decision; the number of appeals taken to the State Board; and the number of the Board's decisions upheld, overturned or remanded by the State Board.

B. The Board Office shall provide an annual report to the Board setting forth, in the most recent completed school year, the number of Educ. Art. § 4-205 appeals filed; the number of appeals filed by bargaining units; a summary of the major categories or issues involved in the appeals; the number of oral arguments and/or evidentiary hearings conducted; the average length of time between when the appeal was filed and when the Board rendered a final decision; the number of appeals taken to the State Board; and the number of the Board's decisions upheld, overturned or remanded by the State Board.

VI. VI. REFERENCES

§ 4-108(4), MD. CODE ANN., EDUC.

§ 4-205(c)(3), MD. CODE ANN., EDUC.

§ 6-202 (a) and §6- 203(f), MD. CODE ANN., EDUC

§3-1006, MD CODE ANN., EDUC

Related policies and administrative procedures

BP 5115 -

AP 5115 - [Student Appeals of Extended Suspensions and Expulsions](#)

VII. VII. HISTORY

Policy Adopted

6/17/10

Policy Amended

03/23/2023