Employee and 4-205 Appeals Before the Board of Education

I. Purpose

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 Superintendent’s recommendations for suspension and/or dismissal of certificated employees pursuant to Section 6-202 of the Education Article; and,

2. the Superintendent’s decisions involving all other controversies and/or disputes (including, but not limited to, employment action against non-certificated employees) pursuant to Section 4-205 of the Education Article.

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

A. Upon the recommendation of the Superintendent, the Board of Education (the Board) may suspend or dismiss an employee for immorality, misconduct, insubordination, incompetency, or willful neglect of duty.

Upon a finding of just cause, the Superintendent shall communicate in writing to the employee:

1. A short and plain statement of the charges made by the Superintendent against the employee;

2. A concise statement of the Superintendent’s recommendation(s) to the BOE affecting the employee’s employment status;

3. A statement of the legal authority for the Superintendent’s actions and recommendations; and,

4. A statement of the time limit for requesting a hearing before the Board.
B. All employees recommended for suspension without pay and/or dismissal shall have the right to request a hearing provided such a request is made in writing to the BOE within 10 business days of receipt of the written notice described in II.,(A) above.

C. Any employee who receives written notice of a recommendation for suspension without pay and/or dismissal and who fails to request a hearing within 10 business days, shall have waived the right to request a hearing on such matters, and the allegations and charges as contained in the notice shall be deemed by the Board to be valid and the Superintendent’s recommendation accepted as final action on the employee’s employment status.

D. In the event a request for a hearing is timely made and received by the Board, the procedure for conducting a hearing, unless otherwise determined by the Board, is as follows:

1. Counsel for the Board shall refer the matter to a designated Hearing Examiner to conduct the hearing;

2. The Hearing Examiner will designate the time and place for the hearing. Whenever possible, the hearing shall be held in the place most convenient to all parties as determined by the Hearing Examiner. The hearing shall be conducted within sixty (60) calendar days from the date the matter is assigned to the Hearing Examiner, unless the time for the hearing should be extended for good cause shown as determined by the Hearing Examiner;

3. The hearing shall be conducted in accordance with MD. Ann. Code., Educ. Article Section 6-203;

4. The employee shall have an opportunity to be heard in person or by a representative, and present witnesses at the hearing;

5. All hearings involving employee matters shall be recorded electronically and transcribed at the expense of the Board. However, if the employee or his/her representative requests a copy of the transcription, the employee or his/her representative shall pay the costs for such copy. It shall be the responsibility of the Superintendent to ensure that all exhibits accepted by the Hearing Examiner at the hearing are preserved for the record;

6. Within forty-five (45) calendar days after the hearing or receipt of the hearing transcript, whichever is later, the Hearing Examiner shall provide a recommended order to the Board and employee, including a caption, time and place of hearing, statement of the proceedings and issues,
findings of fact and conclusions of law, and recommendations for final Board action;

7. The Board, within sixty (60) calendar days of receipt of the Hearing Examiner’s recommended order, shall schedule oral arguments prior to a regularly scheduled Board meeting for the parties to address the recommendations of the Hearing Examiner; and,

8. After receiving oral argument, the Board shall consider the matter in executive session. The Board may adopt the Hearing Examiner’s recommended order as its Final Order. The Board in its Final Order may reject or modify the recommendations contained in a recommended order after review of the record with Board Counsel.

E. A majority vote of the membership of the Board shall be required to sustain the Superintendent’s recommendation. A final written order shall be entered within thirty (30) calendar days after the vote taken by the Board and shall be provided to the Superintendent’s counsel and the employee and/or his or her counsel.

F. The employee may appeal from the decision of the Board to the State Board of Education within thirty (30) calendar days from the date of the Order of the Board.

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

A. In accordance with MD. Ann. Code, Educ. Article Section 4-205, the Superintendent shall decide all controversies and disputes that involve the rules and regulations of the Board and the proper administration of the PGCPS.

B. A decision of the Superintendent may be appealed to the Board if provided in writing within thirty (30) calendar days after the decision of the Superintendent.

C. Upon receipt of the appeal, the Board may dismiss the appeal if it is determined that the matter was untimely filed, or that the appeal was not from a final decision of the Superintendent.

D. If the appeal is timely and from a final decision of the Superintendent, the Board may provide the appealing party with the opportunity to submit documents, sworn affidavits and arguments in support of the appeal to the BOE within thirty (30) calendar days from the date the Board acknowledges receipt of the appeal. It shall be the sole discretion of the Board to determine whether it will be necessary to receive documents and sworn affidavits in order to hear the appeal. Should the Board decide to receive written documentation from the appealing party, the Superintendent shall be given thirty (30) calendar days after the appealing party’s submission to submit any documents in response.
E. If the Board determines that written submissions are not necessary, the Board may schedule oral arguments on the appeal within thirty (30) calendar days after the appeal notice is received. Alternatively, within thirty (30) calendar days after all written submissions have been filed with the Board, the Board may determine whether oral arguments are necessary to reach a final decision.

F. Pending a decision by the Board, the Superintendent’s decision shall stand, unless he/she determines, in writing, to hold the decision in abeyance.

G. In the event the Board decides that oral argument is not necessary, the Board may reach a final decision on the appeal by majority vote. An action to overturn or modify the Superintendent’s decision shall require a majority vote; otherwise, the decision of the Superintendent will stand.

H. If the Board decides that oral argument is necessary, the parties to the appeal will be notified of the date, time, and location of the argument. The Board will take action on the appeal after oral arguments are conducted.

I. After reaching a final decision, the Board shall issue a final written order to all parties within thirty (30) calendar days after deliberations.

IV. Designation of Hearing Examiners

A. The Board shall establish a pool of qualified attorneys to serve as Hearing Examiners to hear appeals. A Hearing Examiner shall be an attorney in good standing of the Maryland Bar and participate in training required by the Board, at his or her expense.

B. Any individual desiring to become qualified to conduct administrative hearings shall provide an application to the Board for consideration. All Hearing Examiners currently approved by the Board as of the date of the enactment of this policy are deemed qualified and may continue to serve as Hearing Examiners. All individuals approved as Hearing Examiners must complete at least 2 hours of training to include, at a minimum:

1. Instruction on the proper interpretation of Maryland law and State Board of Education rules and Board policies and procedures relating to employee and student disciplinary actions and other matters subject to appeal;

2. Observation of a hearing conducted by a Hearing Examiner; and,

3. Instruction on form of recommended order.
C. Hearing Examiners must issue recommended orders within the time lines provided in the subsections above. Failure to adhere to timelines and/or to seek from the Board additional time to conduct a hearing or issue a recommended order may result in termination of the appointment.

D. Hearing Examiners shall be appointed pursuant to a contract. The hourly rate for such services shall be established by the Board. Hearing Examiners must comply with the billing/invoice requirements established by the Board.

Legal References:
Statutory Authority: 4-205(c), Education Article; 6-202, Education Article; 6-203, Education Article
Laws Implemented: 4-205(c), Education Article; 6-202, Education Article; 6-203 Education Article

Related Board Policies (BP) and Administrative Procedures (AP): BP 5116, AP 5115

Policy Adopted
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