

APPEALS AND HEARINGS POLICY

Rules of Procedure in Appeals and Hearings 4-205(c)(4)

I. Purpose

To provide Rules of Procedure, adopted pursuant to the authority of Section 4-108 of the Education Article to the Annotated Code of Maryland (hereinafter "Code"), for all appeals to the Board of Education of Talbot County (hereinafter the "Board") under Code Section 4-205(c)(4), unless other procedures are specifically required by statute, State Board of Education bylaws, or contrary policies adopted by the Board.

II. Process and Content

A. Applicability

1. These Rules govern appeals and hearings within the Board's executive and/or quasi-judicial function. They are not applicable to proceedings involving the Board's exercise of its legislative or policy-making functions.
2. Proceedings covered by these Rules arise under Code Section 4-205(c), on appeals from decisions of the Superintendent, or his designee, on controversies and disputes involving the rules and regulations of the Board, the true intent and meaning of Maryland's public school laws and of the State Board of Education's bylaws, and the proper administration of the county public school system.

B. Definitions

1. Filed or filing as used in these Rules means the actual receipt of a notice of appeal, memorandum, or other paper by the Board's central office no later than 4:30 p.m. on the last day for filing in accordance with these Rules.
2. Written notice as it applies to an action by the Superintendent or the Board shall be effective upon the sooner of the date said notice is postmarked and deposited in the United States mail for first-class delivery

APPEALS AND HEARINGS POLICY

postage pre-paid to the party's last known address or the date of actual delivery.

3. 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.
4. Presiding Officer means the Board's 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. 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.
5. Board means the Board of Education of Talbot County.
6. State Board means the Maryland State Board of Education.
7. Days means calendar days unless otherwise indicated. 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 included. Saturdays, Sundays, and legal holidays shall be counted. In calculating the number of days required to perform an act under these Rules (e.g., filing a notice of appeal), 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 Rules shall be extended to the next regular business day when the Board's central office is open.
8. Code refers to the Education Article of the Annotated Code of Maryland as supplemented.

III. Initiation of Appeals or Requests for Hearings

- A All appeals to the Board under Code Sections 4-205(c)(4) 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 seek the appeal.
- B Each appeal to the Board under Code 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 final action or decision of the Superintendent or his designee.

APPEALS AND HEARINGS POLICY

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1. Upon receipt of a notice of appeal for a matter falling under Code Section 4-205(c)(4), the Board shall send the appellant(s) a copy of the Board's Appeal Information Form. Within 10 days after the Appeal Information Form has been sent to the appellant(s), the appellant(s) shall file the completed Appeal Information Form with the Board, and shall also send a copy to the Superintendent. Failure to file the Appeal Information Form in a timely manner may result in the Board deciding the appeal without a hearing.
 2. Within 10 days after the appellant(s) files the Appeal Information Form required by subsection (c)(1) of these Rules, the Superintendent may submit to the Board additional information or documentation in support of the decision which is the subject of the appeal. Copies of any information submitted by the Superintendent to the Board shall also be furnished to the appellant(s). Within 5 business days after the Superintendent's submission is sent, the appellant(s) may submit additional documentation in support of the appeal and in response to that submitted by the Superintendent and shall provide a copy to the Superintendent.
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- If a notice of appeal under Code Section 4-205(c)(4) is not filed within the time period set forth in subparagraph (b)(1) of these Rules, the appeal may be dismissed. If the appellant(s) on an appeal filed under Code Section 4-205(c)(4) fails to file an Appeal Information Form within the time period set forth in subparagraph (c)(1) of these Rules, the Board may decide the appeal without a hearing.
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- The Board reserves the right, at any time in its discretion, to conduct an evidentiary hearing, to refer the appeal to a hearing examiner for the purpose of conducting an evidentiary hearing and preparing a recommended decision under Code Section 6-203, or to hear oral argument even if an evidentiary hearing or oral argument are not requested by the parties. The Board also reserves the right to request that the parties submit additional documentation or information.
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- On appeals that are subject to Code Section 4-205(c)(4), the Board may consider the appeal based solely upon the documents and arguments submitted by the parties in writing, without the holding of an evidentiary hearing or oral argument, unless:
1. the appeal involves a constitutionally protected liberty or property interest,
 2. the appellant's written submission to the Board sets forth specific

APPEALS AND HEARINGS POLICY

factual allegations of unlawful discrimination or arbitrariness, or

3. in such other cases where the Board, in its discretion, determines that an evidentiary hearing or oral argument is appropriate.

IV. Hearings

A Applicability

The provisions herein apply to both evidentiary hearings and oral arguments before the Board unless otherwise indicated.

B Notice

1. Written notice of hearings shall be given by the Board, or its designee, to all interested parties not less than 5 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

Hearings pursuant to Code Section 4-205(c)(4) 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, and the Board consents to a public hearing.

D Hearings Before a Hearing Examiner

1. Pursuant to Code Section 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. At all times, however, the Board retains the right to conduct an evidentiary hearing on its own, without a hearing examiner. 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. The hearing will be stenographically transcribed. Within thirty days after the production of the transcript and the filing of any post-hearing memoranda, the hearing examiner shall submit to the Board, the appellant, and to the Superintendent (a) a transcript of the proceedings and exhibits, unless they have already been produced,

APPEALS AND HEARINGS POLICY

and (b) the hearing examiner's findings of fact, conclusions of law, and recommendation.

2. After the Board receives the record, the transcript, and the recommendations of the hearing examiner, the appellant and the Superintendent may make a brief oral argument before the Board. The oral argument will not include the presentation of evidence. The Board will decide how much time it will allow for the presentation of argument.
3. After reviewing the record, the transcript, the recommendations and the arguments of the parties, the Board shall render a decision.

E Representation

All parties appearing at hearings under these Rules shall have the right to appear in person or through counsel or a representative of their choice. All parties shall have the right to be accompanied by, represented, and advised by counsel or a designated representative. Appellants under Code Section 4-205(c)(4) shall advise the Board if they are represented by an attorney or other representative promptly after filing the notice of appeal or request for a hearing. Failure to give prompt notice of representation may result in a 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 Superintendent in order that, if an appeal is taken, the records shall be submitted.
3. A stenographic 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 Code Section 6-203 or is requested by a party to the controversy, the Superintendent, 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 Code Section 6-203, the cost of the transcript will be paid by the Board.

APPEALS AND HEARINGS POLICY

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 may administer oaths to witnesses unless he is a party to the proceeding.

H. Quorum

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

I. Order of Proceedings

The order in which the parties shall present their case shall be as follows:

1. The appellant shall proceed first and shall carry the burden of persuasion.

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 to stipulations in place of cumulative evidence. All testimony shall be given under oath.
2. In evidentiary hearings provided for in these Rules, a party, individually or by or through counsel or other representative, may submit evidence, examine and cross-examine witnesses, make objection, 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.

APPEALS AND HEARINGS POLICY

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 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

In evidentiary hearings and oral arguments conducted by the Board, the presiding officer of the Board may request an attorney to participate in any hearings as counsel for the Board.

M. 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 disposition of the case.

N. Ex Parte Communications

While a matter is under consideration by the Board after a hearing, no member 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, or a member of the Talbot 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.

O. Effect on Other Procedural Regulations

These Rules of procedure supersede all other procedures which may have been adopted by the Board governing hearings 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.

APPEALS AND HEARINGS POLICY

V. 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.

(APPEAL FORM FOLLOWS)

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APPEALS AND HEARINGS POLICY

APPEAL INFORMATION FORM

[For Appeals taken pursuant to Md. Code Ann. Educ §4-205(c)(4)]

1. Name, address, and telephone number of all

Appellants: _____

2. Date of Superintendent's decision from which appeal is taken:

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3. Describe briefly the nature of the appeal (e.g., employee discipline, teacher transfer, student discipline, student placement, etc.):

4. Explain fully the legal and factual basis for your appeal (attach additional pages if necessary): _____

5. Set forth the relief or remedy you seek from the Board of Education of Talbot County on this appeal: _____

6. If you believe that an evidentiary hearing (i.e., the testimony of witnesses under oath and introduction of exhibits) is necessary, explain why an evidentiary hearing would aid the Board of Education of Talbot County to decide this appeal and, in so doing, indicate the approximate number of the witnesses and exhibits you desire to present and an estimation of the time needed to present your case. (Attach additional pages if necessary):

7. Will you be represented by counsel in this appeal? ()Yes ()No. If yes, provide each attorney's name, address, and telephone number: _____

If this is a joint statement by multiple appellants, each appellant must sign. (Attach additional pages if necessary.)

APPEALS AND HEARINGS POLICY

Appellant

Date

Appellant

Date

Appellant

Date

The Board of Education of Talbot County does not discriminate on the basis of disability in employment or provision of services, programs, or activities. Information concerning the Americans With Disabilities Act is available from the Assistant Superintendent-Support Services (410) 822-7557. Persons needing auxiliary aids and services for communication should contact the Assistant Superintendent - Support Services (410) 822-7557, or write to Talbot County Public Schools, P.O. Box 1029, Easton, Maryland 21601 at least one (1) week in advance of the date the special accommodation is needed.