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Interim State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., Interim State Superintendent of Schools 

DATE: December 5, 2023

SUBJECT: COMAR 13A.01.05
Appeals to the State Board
ADOPTION

Purpose

This is to request adoption of proposed amendments to Regulations .01—.04, .08, .10, and .12 under COMAR 13A.01.05 *Appeals to the State Board*.

Standard Regulation Promulgation Process

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may be recommended to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

Background

Based on discussions of the State Board during the course of deciding appeal cases and issues that have arisen with appeal and removal filings, counsel to the State Board revised various regulations set forth in COMAR 13A.01.05, *Appeals to the State Board*. The revisions reflect State Board views and update the regulation for more efficient processing of appeals and board member removal requests.

Executive Summary

The proposed regulations set forth the following proposed amendments to provide further direction to those submitting appeals to the State Board of Education and efficiency to the appeal process.

The proposed amendments are:

- **.01B(5)(a)(iii) and .02B** - allowing electronic filing of an appeal and deleting prohibition of electronic filings;
- **.02A(1)** - adding the requirement that the appeal be signed by each party and include the printed name, address and email of each party;
- **.02B(3)(c)** – permitting electronic filing of appeals to the State Board;
- **.03A** - clarifying that, for cases transferred to OAH pursuant to .07, the local board need not file a response to the appeal unless the response is a motion to dismiss. Under the amendment the appeal will not be transferred to OAH until the 20 day response time has passed thereby allowing a local board to request dismissal from the State Board, before the appeal is sent to OAH pursuant to .07A(2);
- **.03D(2)** - requiring that the record filed by the local board contain a table of contents and that each page be consecutively numbered;
- **.03D(5)** - requiring the waiver of transcription costs for inability to pay to be filed with the State Board President instead of the State Superintendent for a determination;
- **.04B(2)** - clarifying that the State Board will not extend the time frame for filing an appeal without the appellant first filing the appeal. This allows the State Board to receive the extension request and the appeal at the same time so that the Board is not considering an extension of a matter that is not yet on its docket;
- **.04I** - requiring time stamp of relevant portions of video evidence submitted and requiring a transcript of video evidence;
- **.08B and .08C** - requiring the party filing exceptions to the ALJ's proposed decision to bear the transcription cost for the OAH proceedings and be responsible for filing the transcript with the State Board;
- **.08D** - allowing an appellant to file for a waiver of the transcription cost for the OAH proceedings from the State Board President because of indigency;
- **.10A** – clarifying how a request for reconsideration is filed; and
- **.12B(1)(b)** - specifying language to be used in the affidavit accompanying a request to remove a local board member.

The regulation was brought before the State Board on July 25, 2023, requesting permission to publish. The State Board voted unanimously to approve publication and the regulation was published in the Maryland Register from September 22 to October 23, 2023. No comments were received.

Action

Request that the State Board adopt amendments to Regulations .01—.04, .08, .10, and .12 under COMAR 13A.01.05 *Appeals to the State Board*.

Attachments

COMAR 13A.01.05.01 *Definitions*

COMAR 13A.01.05.02 *Appeals*

COMAR 13A.01.05.03 *Response to Appeals*

COMAR 13A.01.05.04 *General Procedures*

COMAR 13A.01.05.08 *Hearing Record and Transcript*

COMAR 13A.01.05.10 *Reconsideration*

COMAR 13A.01.05.12 *Procedures Applicable to Requests to Remove a Local Board Member*

Title 13A STATE BOARD OF EDUCATION

Subtitle 01 STATE SCHOOL ADMINISTRATION

Chapter 05 Appeals to the State Board of Education

Authority: Education Article, §§2-205, 4-205, 6-202, and 7-305[, and 23-406]; State Government Article, §§10-122 and 10-201 et seq.; Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(4) (text unchanged)

(5) "File" means:

(a) In regard to an initial appeal, petition for declaratory ruling, or request for removal of a local board member:

(i) Delivery of the papers to the State Board in hard copy on or before the date the papers are due; [or]

(ii) Depositing the papers in the United States 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[.]; *or*

(iii) *Submitting the papers electronically to the State Board on or before the date the papers are due.*

(b) In regard to all other motions, memoranda, and responses:

(i)—(ii) (text unchanged)

(iii) Submitting the papers electronically to the State Board *on or before the date the papers are due.*

(6)—(10) (text unchanged)

.02 Appeals.

A. Contents. The request for an appeal shall:

(1) [Specify the] *Be signed by each party [or parties] taking the appeal[.], and include the printed name, [along with current] regular mail and email [addresses] address of each party;*

(2)—(9) (text unchanged)

B. Deadlines.

(1)—(2) (text unchanged)

(3) An appeal shall be deemed to have been filed within the 30-day period of time permitted under §B(1) of this regulation if, before the expiration of the time, it has been:

(a) Delivered to the State Board; [or]

(b) Deposited in the United States 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[.]; *or*

(c) *Submitted electronically to the State Board.*

(4) (text unchanged)

[(5) Appeals will not be accepted in electronic format.]

C. (text unchanged)

.03 Response to Appeals.

A. Time for Response. [Within 20 days after the State Board sends a copy of the appeal to the local superintendent, the respondent shall file a memorandum in response to the appeal or a motion to dismiss, whichever is appropriate.]

(1) *Within 20 days after the State Board sends a copy of the appeal to the local superintendent, the respondent shall file a memorandum in response to the appeal or a motion to dismiss, whichever is appropriate.*

(2) *For appeals to be transferred to the Office of Administrative Hearings pursuant to Regulation .07 of this chapter, §A(1) of the regulation does not apply unless the respondent files a motion to dismiss.*

B.—C. (text unchanged)

D. Record.

(1) (text unchanged)

(2) *The record shall include a table of contents and each page of the record shall be consecutively numbered.*

[(2)](3)—[(3)](4) (text unchanged)

[(4)](5) Waiver of Transcription Costs.

(a) An individual appellant who by reason of indigence is unable to pay the cost of transcription may file a request for waiver of the costs, with the State [Superintendent] *Board President.*

(b) (text unchanged)

(c) The State [Superintendent] *Board President* shall review the request for waiver of costs and the accompanying affidavit and may require the appellant to supplement or explain any of the matters set forth in the papers.

(d) If the State [Superintendent] *Board President* is satisfied that the appellant is unable by reason of indigence to pay the cost of transcription, the State [Superintendent] *Board President* may waive the payment of cost, and the cost shall be paid by the local board.

(e) (text unchanged)

.04 General Procedures.

A. (text unchanged)

B. Requests to Shorten or Extend Time Requirements.

(1) (text unchanged)

(2) *The State Board shall not extend the time limitations set forth in this chapter before an appeal is filed.*

[(2)](3) (text unchanged)

C.—D. (text unchanged)

E. Filing Motions, Memoranda, and Responses.

(1)—(6) (text unchanged)

(7) [Motions, memoranda, and responses may be submitted in electronic format if the party also provides the State Board with a hard copy.] *The State Board may strike any motion, memoranda, response, or other submission that is outside of the briefing process or otherwise fails to comply with the requirements of this regulation.*

F.—G. (text unchanged)

H. *At the rest of the State Board, a party shall submit hard copies of any documents that were filed in electronic format.*

I. *A party submitted video evidence shall provide a transcribed copy of the video and, for video that contains portions that are not relevant to the appeal, the party shall identify the time stamp location of the relevant portions of the video.*

.08 Hearing Record and Transcript.

A. (text unchanged)

B. The proceedings before the administrative law judge shall be transcribed at the expense of the [parties] *party filing exceptions to the administrative law judge's proposed decision.*

[C. Costs of an expedited transcript shall be paid by the party requesting the expedited transcript.]

[D.] C. The [parties] *party filing exceptions to the administrative law judge's proposed decision* shall file a copy of the transcript with the State Board and the transcript shall be made a part of the record.

D. *Waiver of Transcription Costs.*

(1) *An individual appellant who by reason of indigence is unable to pay the cost of transcription may file a request for waiver of the costs with the State Board President.*

(2) *The request for waiver of costs shall be accompanied by an affidavit verifying the facts set forth in the request and the appellant's inability to pay.*

(3) *The State Board President shall review the request for waiver of costs and the accompanying affidavit and may require the appellant to supplement or explain any of the matters set forth in the papers.*

(4) *If the State Board President is satisfied that the appellant is unable by reason of indigence to pay the cost of transcription, the State Board President may waive the payment of cost, and the cost shall be paid by the State Board.*

(5) *A waiver of transcription costs shall only be available to an individual appellant and not to a group or other entity.*

(6) *The waiver process does not extend the deadline for filing exceptions to the administrative law judge's proposed decision, but an appellant may amend the exceptions once the transcript is issued in order to provide copies of the pages of the transcript that support the argument as required by regulation .07 of this chapter.*

.10 Reconsideration.

A. A party may file a request for reconsideration of a State Board decision within 30 days of the date of the decision *using the method of filing prescribed by regulation .01B(5)(a) of this chapter for initial appeals.*

B.—G. (text unchanged)

.12 Procedures Applicable to Requests to Remove a Local Board Member.

A. (text unchanged)

B. Content of the Request.

(1) The request to issue charges shall:

(a) [set] *Set forth in a detailed affidavit, with all supporting documentation, the factual basis to support a statutory ground for removal[.]; and*

(b) *Be signed with a statement submitting the affidavit under penalties of perjury by including the following language: "I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief".*

(2) (text unchanged)

C. Method of Submission.

(1) The request shall be filed with the State Board *in the manner prescribed in Regulation .01B(5)(a) of this chapter.*

[Requests submitted by email will not be accepted.]

(2)—(3) (text unchanged)

D.—K. (text unchanged)

MOHAMMED CHOUDHURY
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