



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Karen B. Salmon, Ph.D.

DATE: January 22, 2019

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

PURPOSE:

This is a request to adopt as a final regulation, COMAR 13A.01.05 *Appeals to the State Board*.

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 Committee (AELR) 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, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, the MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; (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 the process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend 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 appeals, counsel to the State Board revised COMAR 13A.01.05 *Appeals to the State Board* to reflect State Board views and to update the regulation to include, among other things, procedures for removal of local board members. In doing so, counsel shared the proposed revisions with all local board attorneys and received and incorporated their comments and input. The regulation was published for comment in the Maryland Register on November 9, 2018. One comment was received.

EXECUTIVE SUMMARY:

The comment was received from the Maryland Association of Boards of Education (MABE) and the Public School Superintendents Association of Maryland (PSSAM) on the proposed regulation. The comments concerns Regulation .03(C) which was amended in the following way:

C. [D. Motion for Summary Affirmance.] *Memorandum in Response to Appeal.*

- (1) [A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law]. *The respondent may file a memorandum in response to the appeal.*
- (2) [A] *The memorandum* [in support of or in opposition to a motion for summary affirmance] shall contain the following:
 - (a) A *concise* statement of the [issues is] *questions* presented for review;
 - (b) A statement of facts *material to those questions*;
 - (c) An argument *on each question* [which] including[es] *citations of authority*, reference to relevant legal principals and [State Board decisions] *reference to pages of the record and exhibits relied on*, if any;
 - (d) A short conclusion stating the relief sought; and
 - (e) Any supporting documents, exhibits, and affidavits.
- (3) *The Appellant may file a response to the memorandum and the local board may file a reply to the response.*

MABE and PSSAM ask that .03(C) of the regulation be changed to revert to its original language retaining the original term “Motion for Summary Affirmance” rather than “Memorandum in Response to Appeal.” The organizations believe that the deletion of the term “Motion for Summary Affirmance is likely to cause uncertainty and confusion among stakeholders.” We do not agree.

The change of terminology better reflects the appellate process that the State Board uses to decide the great majority of the cases before it. Specifically, in the usual and familiar appellate process one party files an appeal. The opposing party files a brief in response to an appeal. (*See, e.g., Md. Rule 8-501; 8-504*). A court then decides the merits of the appeal based on the parties’ filings. The term “Motion for Summary Affirmance”, however, introduces a type of response commonly used in trial courts, not appellate courts. We believe the term was a source of confusion for some parties, introducing certain procedural expectations based on how trial courts resolve Motions for Summary Affirmance. The State Board does not follow a trial court model in resolving appeals. Continuing to use the terminology would only continue the confusion.

For this reason, we do not recommend a change.

ACTION:

Request that the State Board adopt as final the regulation, COMAR 13A.01.05 *Appeals to the State Board*.

being granted additional paid parental leave to attain a total of up to 60 days of paid leave.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Christian Skipper, Regulations and Records Manager, Maryland Department of Transportation, 7201 Corporate Center Drive, Hanover, MD 21076, or call 410-865-1154, or email to cskipper1@mdot.state.md.us. Comments will be accepted through December 10, 2018. A public hearing has not been scheduled.

.10 Other Forms of Leave with Pay

A. When an employee has obtained appropriate supervisory approval and provided such documentation as may be required, leave with pay shall be authorized for the situations set forth in §§B [and C] — D of this regulation.

B. — C. (text unchanged)

D. *Parental Leave. An employee who is the primary caregiver responsible for the care and nurturing of the employee’s child may, upon request, be granted up to 60 days of paid parental leave within 6 months following the birth of a child or adoption of a child younger than 6 years old. The employee shall exhaust all annual and personal leave before the employee may request parental leave to attain a total of 60 days of paid leave after the birth or adoption of a child.*

PETE K. RAHN
Secretary of Transportation

**Title 13A
STATE BOARD OF
EDUCATION**

**Subtitle 01 STATE SCHOOL
ADMINISTRATION**

**13A.01.05 Appeals to the State Board of
Education**

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

Notice of Proposed Action

[18-289-P]

The Maryland State Board of Education proposes to amend Regulations .01—.04 and .07—.11, adopt new Regulations .05 and .12, amend and recodify existing Regulation .05 to be Regulation .06, and repeal existing Regulation .06 under **COMAR 13A.01.05 Appeals to the State Board of Education**. This action was considered by the State Board during their August 28, 2018, meeting.

Statement of Purpose

The purpose of this action is to amend the procedures to file appeals with the State Board; to remove library employee appeals to the State Board due to the creation of an independent State Library Board; to add procedures to govern the removal from office of local board members; to make changes in nomenclature and page limits on filings; and to rearrange certain sections of the regulations.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mary L. Gable, Asst. State Superintendent, Division of Student Support, Academic Enrichment, and Educational Policy, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0472 (TTY 410-333-6442), or email to mary.gable@maryland.gov, or fax to 410-333-0880. Comments will be accepted through December 10, 2018. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on January 22, 2019, at 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(4) (text unchanged)

[(5) “File” means the delivery of papers to the administrative office of the State Board on or before the papers are due, or depositing the papers in the United States mail before the date the papers are due.]

(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 before the date the papers are due.*

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

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

(ii) *Depositing the papers in the United States mail or with a delivery service on or before the date the papers are due; or*

(iii) *Submitting the papers electronically to the State Board.*

(6) “Local board” means the board of education of a county including the Baltimore City Board of School Commissioners[, and where applicable, a board of trustees of a public library system].

(7)—(10) (text unchanged)

.02 [Appeal Contents] Appeals.

A. Contents. The request for an appeal shall:

(1) Specify the party or parties taking the appeal, *along with current regular mail and email addresses*;

(2)—(6) (text unchanged)

(7) Include any supporting documents, exhibits, and affidavits; [and]

(8) Include, if possible, a copy of the order and opinion from which the appeal is sought[.]; and

(9) *Be no longer than 15 pages, excluding attachments.*

B. Deadlines.

(1) Appeals.

(a) An appeal shall be [taken] *filed* within 30 calendar days of the decision of the local board or other individual or entity which issued the decision on appeal.

(b) (text unchanged)

(2) The day of the decision [of the local board] may not be included in computing any period of time prescribed by these regulations.

(3) [For appeals taken on or after April 1, 2011, an] *An* appeal shall be deemed to have been [transmitted] *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)—(b) (text unchanged)

(4) (text unchanged)

[5] Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, 3 days shall be added to the prescribed period.]

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

C. (text unchanged)

[D. Petition for Declaratory Ruling.

(1) A party may file a petition for declaratory ruling by the State Board on the interpretation of a public school law or regulation of the State Board that is material to an existing case or controversy.

(2) The procedures in this chapter apply to the review of a petition for declaratory ruling.]

.03 Response to Appeals.

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

[B. Answer.

(1) An answer shall be in short and plain terms and shall contain responses to the statements in the request for appeal.

(2) Unless a basis exists for filing a motion to dismiss, an answer shall be filed for an appeal from a certificated employee suspension or dismissal, and from a school consolidation, school redistricting, or school closing appeal.]

[C.] B. Motion to Dismiss.

(1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:

(a) The [county] *local board* has not made a final decision;

(b)—(e) (text unchanged)

(2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in [§C(1)] §B(1) of this regulation.

[D.] C. [Motion for Summary Affirmance.] *Memorandum in Response to the Appeal.*

(1) [A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law.] *The respondent may file a memorandum in response to the appeal.*

(2) [A] *The memorandum* [in support of or in opposition to a motion for summary affirmance] shall contain the following:

(a) A *concise* statement of the [issues] *questions* presented for review;

(b) A statement of the facts *material to those questions*;

(c) [An argument which includes] *An argument on each question, including citations of authority*, reference to relevant legal principles, and [State Board decisions.] *reference to pages of the record and exhibits relied on*, if any;

(d)—(e) (text unchanged)

(3) *The appellant may file a response to the memorandum, and the local board may file a reply to the response.*

(4) *The State Board may decide the appeal on the merits based on the filings.*

[E.] D. Record.

(1) The local board shall [transmit] *file* the record of the local proceedings with the local board's response.

(2) Transcript.

(a)—(b) (text unchanged)

(c) The transcript shall be filed promptly *with the State Board.*

(3) (text unchanged)

(4) 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.*

(b)—(d) (text unchanged)

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

.04 General Procedures.

A. Amendment of Appeal or Other Pleading.

(1) The State Board upon its own initiative or upon [application] *the request* of a party may order a party to make a more definite statement of the appeal.

(2) (text unchanged)

B. Requests to Shorten or Extend Time Requirements.

(1) Upon the written request of a party *or on its own initiative*, the State Board for good cause shown may shorten or extend the time limitations set forth in this chapter.

(2) *The State Board may not extend the time period for filing an appeal from the decision of the local board or for filing an application for reconsideration of a State Board decision [may not be extended] except in the case of fraud, lack of notice of the decision, or other extraordinary circumstances.*

C. (text unchanged)

D. Representation of Parties.

(1) (text unchanged)

(2) [An individual] *A party*, or counsel if a party is represented by counsel, shall be responsible for the:

(a) Filing *and receipt* of [pleadings,] motions, [or other papers] *memoranda, and responses*;

(b) (text unchanged)

(c) Filing *and receipt* of [objections,] exceptions, [and other motions] *if applicable*; and

(d) (text unchanged)

(3) *In cases with multiple parties, the State Board may request the parties to select one or more lead appellants to file responses and documents on behalf of all appellants and to receive responses and documents on behalf of all appellants.*

E. Filing Motions, Memoranda, and [Other Pleadings] Responses.

(1) Motions, memoranda, and [other pleadings] *responses* shall be filed with the State Board with a written certification that copies were furnished to all other parties.

(2) Except as provided in §E(3), (4), and (5) of this regulation, responses to any motion or [other pleading, other than the request for appeal.] *memorandum* shall be filed within 15 days of the filing of the motion or memorandum, and any reply to the response shall be filed within 10 days [after] of the date on which the response is filed.

(3) [The State Board or its designee may modify the time schedule for the filing of motions and other pleadings upon timely notice to all parties.] *If the motion, memorandum, or response is provided to the opposing party by mail, 3 days shall be added to the prescribed period for filing a response or reply to the response.*

(4) [A motion to dismiss or a motion for summary affirmance may be decided by the State Board upon consideration of the memoranda and documents filed in the record without oral argument.] *The last day of the period of time prescribed by this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day that is not a Saturday, Sunday, or a State legal holiday.*

(5) *The State Board or its designee may modify the time schedule for the filing of motions, memoranda, and responses upon timely notice to all parties.*

(6) *Motions, memoranda, and responses shall be no longer than 15 pages, excluding attachments.*

(7) *Motions, memoranda, and responses may be submitted in electronic format if the party also provides the State Board with a hard copy.*

F. (text unchanged)

[G. Library Employee Dismissals. An appeal from dismissal of a library employee under Education Article, §23-406, Annotated Code of Maryland, shall be reviewed in accordance with applicable procedures set forth in this chapter.]

G. Lack of Notice.

(1) *A party who alleges lack of timely notice in a local board or State Board proceeding must file an affidavit with the State Board affirming under oath that the notice at issue was not timely received, the facts that support that affirmation, and that the party was prejudiced as a result.*

(2) *Failure to submit an affidavit shall result in the State Board declining to consider the claim of lack of notice.*

(3) *If a party submits an affidavit under §G(1) of this regulation, the opposing party shall bear the burden of demonstrating by a preponderance of the evidence, in the form of affidavits and documents, that the correspondence was timely sent to the correct recipient at the correct address.*

(4) *If the State Board concludes that there is a dispute of fact concerning whether a party received timely notice, it may refer the case to the Office of Administrative Hearings for proposed findings of fact, conclusions of law, and a proposed decision on the question.*

.05 Petition for Declaratory Ruling.

A. *A party may file a petition for declaratory ruling by the State Board on the interpretation of a public school law or regulation of the State Board that is material to an existing case or controversy.*

B. *The rules set forth in this chapter apply to a petition for declaratory ruling, as appropriate.*

[.05] .06 Standard of Review.

A.—G. (text unchanged)

[H. Library Personnel Dismissal. An employment dismissal decision of a board of library trustees shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the board of library trustees unless the decision is arbitrary, unreasonable, or illegal.]

.07 Hearing Procedures.

A. *Transfer to the Office of Administrative Hearings.*

(1) The State Board shall transfer an appeal to the Office of Administrative Hearings for review by an administrative law judge under the following circumstances:

[(1)] (a) — [(3)] (c) (text unchanged)

(2) *If a motion to dismiss is filed, the State Board may rule on the motion without first transferring the appeal to the Office of Administrative Hearings.*

B. (text unchanged)

C. *Additional Testimony or Documentary Evidence.*

(1) Additional testimony or documentary evidence may be introduced by either party *if the administrative law judge finds that the evidence is relevant and material and there were good reasons for the failure to offer the evidence in the proceedings before the local board*, but evidence that is unduly repetitious of that already contained in the record may be excluded by an administrative law judge.

(2) (text unchanged)

D.—E. (text unchanged)

F. *Exceptions.*

(1) A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 15 days of [receipt of the findings] *the date of the proposed decision.*

(2) A party may respond [to the exceptions] within 15 days of [receipt of] *the date the exceptions were filed.*

(3) As appropriate, each party shall append to the party's exceptions or response to exceptions [filings] copies of the pages of the transcript that support the argument set forth in the party's exceptions or response to exceptions.

(4) (text unchanged)

(5) Oral argument before the State Board shall be limited to [15] 10 minutes per side. *The State Board at its sole discretion may shorten or lengthen the time period for oral argument.*

(6) *The rules set forth in Regulation .04D of this chapter apply to oral arguments on exceptions.*

.08 Hearing Record and Transcript.

A.—C. (text unchanged)

D. *The parties shall file a copy of the transcript with the State Board and the transcript shall be made a part of the record.*

.09 Final Decision.

A. (text unchanged)

B. *Except as otherwise provided in this chapter, the State Board shall decide an appeal on the record without a hearing or oral argument.*

[B.] C. A decision may not be rendered without the concurrence of a majority of the voting members then serving on the State Board. *If the Board cannot reach such concurrence, the local board's decision shall stand.*

[C.] D. The final decision shall be in writing and contain a factual background, legal analysis, and [legal] conclusion.

[D.] E.—[E.] F. (text unchanged)

.10 Reconsideration.

A. A party [aggrieved by the decision rendered in an appeal] may file a request for reconsideration of a *State Board decision* within 30 days [after] of the date of the decision [has been rendered].

B. The party requesting the reconsideration shall [serve] send copies of the request [on] to all other parties.

C. A response to a request for reconsideration may be filed within 15 days of the date [of service] *the request for reconsideration was filed.*

D. A decision on the request shall be made in the discretion of the State Board except that a decision may not be disturbed unless [there is sufficient indication in the request that]:

(1)—(2) (text unchanged)

E. The State Board may refuse to consider [facts] *any evidence* that the party could have [produced] *introduced* while the appeal was pending.

F.—G. (text unchanged)

.11 Appeal to Circuit Court.

A. Any party may appeal a decision to the circuit court of the jurisdiction [where the appellant resides] *in which the local board is located* within 30 days of the date of the decision of the State Board.

B. The appeal is governed by Maryland Rules [of Procedure 7-201 et seq. and 7-301] *7-201—7-210 or 7-401—7-403, where appropriate.*

C. (text unchanged)

D. Because the State Board has reviewed and rendered a decision made in the first instance by a local school system official or a local board, the State Board may not participate as a party in an appeal [taken to the circuit court].

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

A. *Request to Issue Charges.* A request to issue charges against a local board member may be filed with the State Board by the local board or by a resident of the county in which the school system is located, if removal by the State Board is permitted by the statute governing removal of members of that local board.

B. *Content of the Request.*

(1) *The request to issue charges shall set forth in a detailed affidavit, with all supporting documentation, the factual basis to support a statutory ground for removal.*

(2) *Grounds for removal are those set forth by the statute governing removal of members of that local board and may include:*

(a) *Misconduct in office;*

(b) *Immorality;*

(c) *Incompetency;*

(d) *Willful neglect of duty; or*

(e) *Failure to attend a required number of scheduled board meetings.*

C. *Method of Submission.*

(1) *The request shall be filed with the State Board. Requests submitted by email will not be accepted.*

(2) *Repetitive, redundant, or duplicative submissions will not be accepted.*

(3) *The State Board may consolidate multiple requests for removal.*

D. *Time of Submission.* From the date the first request to issue charges was filed, the record shall remain open to file additional requests for 30 calendar days. The record shall close at the end of the 30-day period, unless the State Board extends that time period.

E. *Factual and Legal Sufficiency of the Request.*

(1) *The State Board shall assess the factual and legal sufficiency of the request to issue charges.*

(2) *In doing so, it shall notify the local board member of the request and may provide the local board member an opportunity to respond to the request to issue charges.*

(3) *A factually sufficient request shall:*

(a) *Be made by a person who has personal knowledge of the facts supporting the request and reason to believe in its truth; and*

(b) *State the act or acts complained of in concise language, with a detailed description of the date, location, and nature of each act.*

(4) *A legally sufficient request shall create a reasonable belief that the actions committed could constitute a ground for removal from office.*

(5) *The State Board shall dismiss a request that is not factually or legally sufficient, or otherwise fails to meet the requirements of this regulation.*

F. *Issuance of Charges.* If the State Board determines that the request to issue charges is factually and legally sufficient, it shall send a notice of the charges to the local board member who may file a request for a hearing within 10 days of the date the notice of charges was issued.

G. *Hearing.* If a hearing is requested, the State Board shall transfer the case to the Office of Administrative Hearings to schedule and conduct the hearing and issue a proposed decision on whether or not the local board member should be removed from office.

H. *Parties at the Hearing.*

(1) *If a local board has requested removal, it shall present the case for removal at the hearing through counsel.*

(2) *If a resident has requested removal, the resident shall present the case for removal through counsel or pro se.*

(3) *The local board member shall present the case against removal through counsel or pro se.*

I. *Proposed Decision.* The administrative law judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed decision to the parties.

J. *Hearing Record and Transcript.* The administrative law judge and the parties shall prepare a record and transcript as provided in Regulation .08 of this chapter.

K. *Exceptions and Oral Argument.*

(1) *A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 15 days of the date of the proposed decision.*

(2) *A party may respond within 15 days of the date the exceptions were filed.*

(3) *As appropriate, each party shall append to the party's exceptions or response to exceptions copies of the pages of the transcript that support the argument set forth in the party's exceptions or response to exceptions.*

(4) *If exceptions are filed, each side shall have the opportunity for oral argument before the State Board before the State Board issues a final decision.*

(5) *Oral argument before the State Board shall be limited to 10 minutes per side. The State Board, upon request or at its sole discretion, may shorten or lengthen the time period for oral argument.*

KAREN B. SALMON, Ph.D.
State Superintendent of Schools



November 2, 2018

Dr. Justin M. Hartings, President
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201

re: Proposed Amendments to
COMAR 13A.01.05, *Appeals to the State Board*

Dear Dr. Hartings:

The Maryland Association of Boards of Education (MABE), representing the 24 local boards of education, and the Public School Superintendents Association of Maryland (PSSAM), representing the 24 local superintendents of schools, jointly offer these comments on the amendments proposed by the Maryland State Board of Education to COMAR 13A.01.05, *Appeals to the State Board*. MABE and PSSAM appreciate the State Board's interests in streamlining and adding clarity to the appeal process for both appellants and local boards of education. However, the proposal recommends the deletion of a valuable and regularly used procedural vehicle, specifically the **Motion for Summary Affirmance** currently found in COMAR 13A.01.05.03D. This deletion is likely to cause uncertainty and confusion among stakeholders in the appeal process. The current provision concerning the filing of a **Motion for Summary Affirmance** should be retained.

As the State Board is aware, the majority of appeals are adjudicated through the filing of a **Motion for Summary Affirmance** by the local board in response to cases in which there are no genuine issues of material fact and the local board is entitled to affirmance as a matter of law. It is an effective and efficient process for resolving appeals, and there are no known complaints about the current process.

In deleting the **Motion for Summary Affirmance** provision, the proposed regulations substitute a broader process, termed a **Memorandum in Response to the Appeal**. In many cases the local board's response will argue that there are no genuine issues of material fact and that the local board is entitled to affirmance. However, the deletion of the provision expressly allowing for that answer to appeals will only lead to confusion. It is better to retain that process expressly.

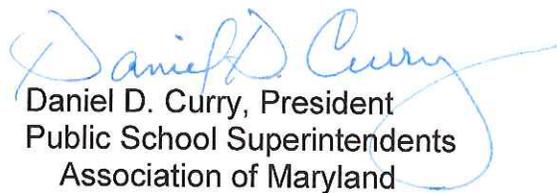
The summary affirmance process has existed for many years and has served the important interests of efficiency and effectiveness. Additionally, retaining the summary affirmance provision puts all parties on clear notice as to its legitimate use as a means of disposition. This transparency is especially important for parents and other unrepresented parties to an appeal. If the current section allowing a motion for summary affirmance is repealed and replaced with the more nondescript **Memorandum in Response to the Appeal**, but yet appeals continue to be decided

on the criteria for the current **Motion for Summary Affirmance**, the public is likely not to understand the State Board's appeal processes. They will be parties to appeals decided by a process not expressly provided for in the regulations. This confusion may cause distrust in the fairness and objectivity of the State Board of Education and may lead to further appeals of State Board decisions to the courts.

While overall the proposed amendments to the regulations importantly clarify the appeal process, both MABE and PSSAM urge that the express provision for a **Motion for Summary Affirmance** should be retained.

Sincerely,


C. Tolbert Rowe, President
Maryland Association of
Boards of Education


Daniel D. Curry, President
Public School Superintendents
Association of Maryland

CTR:DDC:kwb

Copy to:

Dr. Karen B. Salmon, State Superintendent of Schools
Ms. Frances Hughes Glendening, MABE Executive Director
Ms. Renee McGuirk Spence, PSSAM Executive Director