

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, 7-305, and 23-406; State Government Article, §§10-122 and 10-201 et seq.; Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Appellant" means the individual or entity appealing a final decision of a local board.

(2) "Contested case" means a proceeding as defined in State Government Article, §10-202(d), Annotated Code of Maryland.

(3) "Days" means calendar days unless otherwise indicated.

(4) "Department" means the State Department of Education.

(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.

(7) "Local superintendent" means the superintendent of a local school system and includes the chief executive officers for the Baltimore City Public School System and for the Prince George's County Public School System.

(8) "Party" means either an appellant, respondent, or any person or entity allowed to intervene or participate as a party.

(9) "Respondent" means the local board or other individual or entity which issued the decision that is on appeal.

(10) "State Board" means the State Board of Education.

.02 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) Designate the decision or order 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 being 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 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 filed within 30 calendar days of the decision of the local board or other individual or entity which issued the decision on appeal.

(b) The 30 days shall run from the later of the date of the order or the opinion reflecting the decision.

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

(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.

(4) 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 which is not a Saturday, Sunday, or State legal holiday.

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

C. Acknowledgment. The State Board shall promptly acknowledge receipt of the appeal in writing and send a copy of an appeal involving a local school system to the local superintendent.

.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.

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 local board has not made a final decision;
- (b) The appeal has become moot;
- (c) The appellant lacks standing to bring the appeal;
- (d) The State Board has no jurisdiction over the appeal; or
- (e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.

(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 §B(1) of this regulation.

C. Memorandum in Response to the Appeal.

(1) The respondent may file a memorandum in response to the appeal.

(2) The memorandum shall contain the following:

- (a) A concise statement of the questions presented for review;
- (b) A statement of the facts material to those questions;
- (c) An argument on each question, including citations of authority, reference to relevant legal principles, and 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.

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

D. Record.

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

(2) Transcript.

(a) The stenographic record of an evidentiary hearing before the local board or its designee shall be transcribed, and the cost of transcription shall initially be paid by the appellant.

(b) An appellant who prevails in an appeal before the State Board shall be reimbursed the cost of the transcription by the local board.

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

(3) Parties may agree by written stipulation to omit from the record and transcript those parts unnecessary for the determination of the issues presented to the State Board.

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

(c) The State Superintendent 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 is satisfied that the appellant is unable by reason of indigence to pay the cost of transcription, the State Superintendent may waive the payment of cost, and the cost shall be paid by the local board.

(e) A waiver of transcription costs shall only be 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 the request of a party may order a party to make a more definite statement of the appeal.

(2) A party may amend an appeal or other pleading upon leave of the State Board or by written consent of the other party.

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 except in the case of fraud, lack of notice of the decision, or other extraordinary circumstances.

C. Additional Evidence. If an appellant asks to present additional evidence on the issues in an appeal, and it is shown to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board, the State Board may:

(1) Remand the appeal to the local board for the limited purpose of receiving the additional evidence upon conditions the State Board considers proper; or

(2) Receive the additional evidence.

D. Representation of Parties.

(1) A party may be accompanied, represented, and advised by counsel at all stages of an appeal.

(2) A party, or counsel if a party is represented by counsel, shall be responsible for the:

(a) Filing and receipt of motions, memoranda, and responses;

(b) Submission of evidence, examination, and cross-examination of witnesses;

(c) Filing and receipt of exceptions, if applicable; and

(d) Oral argument, if applicable.

(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 Responses.

(1) Motions, memoranda, and 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 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 of the date on which the response is filed.

(3) 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) 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. Counsel. The State Board may request the Office of the Attorney General to participate or provide legal advice in any appeal as counsel for the State Board.

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.

.06 Standard of Review.

A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.

B. A decision may be arbitrary or unreasonable if it is one or more of the following:

(1) It is contrary to sound educational policy; or

(2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

C. A decision may be illegal if it is one or more of the following:

(1) Unconstitutional;

(2) Exceeds the statutory authority or jurisdiction of the local board;

(3) Misconstrues the law;

- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

D. The appellant shall have the burden of proof by a preponderance of the evidence.

E. State School Laws and Regulations. The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

F. Certificated Employee Suspension or Dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland.

(1) The standard of review for certificated employee suspension and dismissal actions shall be de novo as defined in §F(2) of this regulation.

(2) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain the suspension or dismissal of a certificated employee.

(3) The local board has the burden of proof by a preponderance of the evidence.

(4) The State Board, in its discretion, may modify a penalty.

G. Student Suspension and Expulsion.

(1) The decision of a local board in a student suspension and expulsion matter shall be final pursuant to Education Article, §7-305(c), Annotated Code of Maryland.

(2) The State Board may not review the merits of a student suspension or expulsion, but shall accept an appeal if there are specific factual and legal allegations of one or more of the following:

(a) The local board has not followed State or local law, policies, or procedures;

(b) The local board has violated the due process rights of the student; or

(c) The local board has acted in an unconstitutional manner.

(3) The State Board may reverse or modify a student suspension and expulsion if the allegations set forth in §G(2) of this regulation are proven true or if the decision of a local board is otherwise illegal as defined in §C of this regulation.

(4) The appellant shall have the burden of proof by a preponderance of the evidence.

.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:

(a) An appeal of a school consolidation, school redistricting, or school closing pursuant to COMAR 13A.02.09;

(b) An appeal of a certificated employee suspension or dismissal pursuant to Education Article, §6-202, Annotated Code of Maryland; or

(c) An appeal upon review in which the State Board finds that there exists a genuine dispute of material fact.

(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. Transcripts.

(1) Except as provided in §B(2) of this regulation, in an appeal of a suspension or dismissal of a certificated employee, the entire record of the proceedings before the local board shall be prepared and transcribed at the expense of the local board and shall be made a part of the record of the proceedings.

(2) Both parties may agree by way of written stipulation to omit from the record and transcript portions not relevant for consideration by the State Board.

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) Notwithstanding §C(1) of this regulation, the administrative law judge may permit repetitious testimony if credibility is an issue.

D. Except as otherwise provided in this chapter, hearing procedures shall be in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.

E. 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 written proposed decision to the parties.

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 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, all parties shall have an opportunity for oral argument before the State Board before a final decision is rendered.

(5) Oral argument before the State Board shall be limited to 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. The administrative law judge shall prepare an official record which shall include:

(1) Motions and pleadings;

(2) Documentary evidence;

(3) Exhibits;

(4) Memoranda or materials filed in the proceedings; and

(5) Items required in a contested case as set forth in the Administrative Procedure Act.

B. The proceedings before the administrative law judge shall be transcribed at the expense of the parties.

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

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. The State Board shall make the final decision in all appeals.

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

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.

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

E. A copy of the decision shall be promptly delivered or mailed to each party or the party's attorney of record, local board presidents, local superintendents of schools, designated representatives of the State teachers associations, and the association of local boards of education.

F. Copies.

(1) Copies of the opinions of the State Board and an index to the opinions shall be kept electronically at the Department and shall be available for inspection at any reasonable time.

(2) The Department may charge any reasonable fee for making or supervising the making of a copy, printout, or other reproduction of an opinion or an index.

.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.

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

C. A response to a request for reconsideration may be filed within 15 days of the date 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:

(1) The decision resulted from a mistake or error of law; or

(2) New facts material to the issues have been discovered or have occurred subsequent to the decision.

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

F. The filing of a request for reconsideration does not stay the enforcement of the original decision.

G. The State Board may, in its discretion, abrogate, change, or modify the original decision.

.11 Appeal to Circuit Court.

A. Any party may appeal a decision to the circuit court of the jurisdiction 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 7-201—7-210 or 7-401—7-403, where appropriate.

C. The State Board shall prepare and transmit the record in accordance with the time line set forth in the Maryland Rules of Procedure.

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.

.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.