

POLICY	BOARD OF EDUCATION OF FREDERICK COUNTY, MARYLAND
APPEAL AND HEARING PROCEDURES	POLICY 105
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Purpose: The Board of Education (Board) values the importance of notifying individuals of their appeal rights and provides these provisions which outline the process as it relates to challenging decisions made relating to student and employee discipline and overall administration of the school system.

105.1 Right to Appeal a Decision of the Superintendent or Request a Hearing Concerning Suspension or Expulsion of a Student or Suspension and Termination of Certificated Employees

Parents, students, employees, and interested parties have a right to ask the Board to review certain decisions or recommendations by the Superintendent which may include, for example, the extended suspension or expulsion of a student, decisions by the Superintendent on a controversy or dispute, or the Superintendent's recommendation that a certificated employee be suspended without pay or terminated.

105.2 What can be appealed?

This policy lets interested parties know how to file appeals or requests for a hearing with the Board, what obligations they have as a party to the proceeding, and how the matter will be processed by the Board.

The Board supports the concept that controversies and disputes are best resolved at the lowest level possible, for example:

- Issues that a student or parent has at a school are best addressed first to the teacher involved, and then to the principal.

- If the matter cannot be resolved at that level, the appropriate director may be able to resolve the matter.
- However, when matters cannot be resolved at a lower level, interested parties may appeal to the Superintendent or designee and ultimately to the local Board under the guidelines provided below.

The Board, therefore, has authority to hear three different types of appeals or hearings as follows:

1. Appeals under section 4-205(c) of the Education Article of the *Annotated Code of Maryland* of a decision by the Superintendent on a controversy and dispute rendered under section 4-205(c) which may include appeals from noncertificated employees,
2. Appeals under section 7-305(c) of the Education Article of a finding by the Superintendent or designee that suspension of a student for more than 10 days or expulsion is warranted, and *
3. Hearings under section 6-202(a) of the Education Article on a Superintendent's recommendation to suspend or dismiss a certificated employee.

* Note: A student discipline appeal for suspension of 10 days or less will be processed in accordance with section 4-205(c) of the Education Article of the *Annotated Code of Maryland*. (See appeal form attached to this policy.)

105.3 Procedures and Deadlines

The procedures for each type of appeal are listed below. It is the responsibility of the party appealing to follow the procedures and to file all documents by the specified deadlines. If an appeal or request for hearing is not filed within the stipulated time period, or if the required documentation to be provided by the party is incomplete, such failure may constitute sufficient grounds for the board to dismiss an appeal or a request for a hearing.

105.4 Procedures to File an Appeal under 4-205(c) of a General Decision by the Superintendent

A written notice of appeal must be received by the Board within 30 calendar days of the Superintendent's decision. The form is available on the FCPS web site: <http://www.fcps.org/boe/appeals>. The party requesting the appeal must submit the following information:

1. With the notice of appeal, or in any event within 10 calendar days after the notice of appeal or request for hearing has been filed, the person filing the appeal must file with the Board, with a copy to the Superintendent, the following:
 - a. A concise statement of the issues presented by the appeal.

- b. A citation of all laws, policies, regulations, etc. which the person taking the appeal believes have been violated and in what manner.
 - c. A concise statement of the facts on which the person taking the appeal relies to support their position.
 - d. A statement by the person taking the appeal that they agree or disagree with the findings of the Superintendent; and, if the person taking the appeal disagrees only in part with the findings of the Superintendent, a statement of the facts with which such person disagrees.
 - e. A copy of all documents upon which the person appealing relies or believes is relevant.
 - f. A statement of the relief sought.
2. Individuals interested in filing an appeal shall be promptly notified by the Board or the Superintendent that they are required to submit information in accordance with paragraph 1 of this subsection.

105.5 Procedures to File an Appeal under 7-305(c) of a Decision for Extended Suspension/Expulsion

For appeals under section 7-305(c), a written notice of appeal must be received by the Board within 10 calendar days of the Superintendent's decision. The form is attached to this policy and also available on the FCPS web site:

<http://www.fcps.org/boe/appeals>

Note: A student discipline appeal for suspension of 10 days or less will be processed in accordance with section 4-205(c) of the Education Article of the *Annotated Code of Maryland*. The form is attached to this policy and also available on the FCPS web site: <http://www.fcps.org/boe/appeals>

105.6 Procedures to Request a Hearing to the Board of a Recommendation to Suspend or Terminate a Certificated Employee under 6-202(a)

The Board may, on the recommendation of the Superintendent, suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for immorality, misconduct in office (including knowingly failing to report suspected child abuse), insubordination, incompetency, or willful neglect of duty.

The employee shall receive a copy of the charges and may within 10 calendar days request a hearing or arbitration as outlined below. The hearing shall be scheduled with at least 10 calendar days' notice. The employee shall have the opportunity to be heard before the Board or arbitrator, in person or by counsel, and to bring witnesses. The Board will follow the procedures unless mutually agreed upon by the parties.

Failure to respond to the Superintendent's recommendation under section 6-202 with this time frame automatically forfeits the right to request a hearing.

The Board reserves the right on its own motion to take any action it deems appropriate, in the manner and to the extent permitted by law, on recommendations of the Superintendent under section 6-202(a), even if no formal request for hearing is before it as a matter of right.

105.7 Suspension with Pay

The Superintendent may suspend professional certificated personnel with pay, for cause, pending investigations which could lead to the recommendation for suspension without pay, or to dismissal. The person suspended must be notified in writing concerning the cause.

105.8 Suspension without Pay

The Superintendent may suspend professional certificated personnel without pay, for cause, but should only do so pending consideration by the Board of dismissal or some longer suspension.

Suspensions without pay should only be placed in effect by the Superintendent when there is good and sufficient reason for doing so prior to the time when the matter can be considered by the Board.

Suspensions placed in effect by the Superintendent should be preceded by some notice to the employee and some informal opportunity to be heard by the Superintendent, except where immediate action is required because the employee's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process.

105.9 Procedures to Request an Arbitration of a Recommendation to Suspend or Terminate a Certificated Employee under 6-202(a)

If the individual, or the individual's representative, requests a hearing before an arbitrator within the 10-day period, the hearing shall be conducted as follows:

1. An arbitrator shall be selected.
2. If the Superintendent and the individual or the individual's representative agree on an arbitrator, the arbitrator shall be chosen by mutual agreement of the parties.
3. If the Superintendent and the individual or the individual's representative cannot agree on an arbitrator:
 - a. The Board shall request from the American Arbitration Association a list of the arbitrators that are available to hear this type of dispute and make a decision in a timely manner, and
 - b. The parties shall alternately strike arbitrators from the list.
4. The rules of labor arbitration shall apply.
5. A stenographic record shall be made of the proceedings before the arbitrator.
6. The arbitrator shall determine whether the Board has sufficient cause for suspension or dismissal of the individual.
7. A lesser penalty than dismissal may be imposed by the arbitrator only to the extent that either party proposes the lesser penalty in the proceeding.

8. Except as provided below, the Board shall pay the full cost and expenses of the arbitration, including:

- a. The American Arbitration Association's administrative fees,
- b. The full cost of the stenography and transcription services,
- c. Reasonable expenses for required travel,
- d. Reasonable fees and expenses incurred or charged by the arbitrator, and
- e. Reasonable expenses associated with any witness or evidence produced at the request of the arbitrator.

Exceptions:

1. The Superintendent and the individual shall pay their own respective costs and expenses associated with any witness or evidence produced by them.

2. If the arbitrator determines that the Board had sufficient cause to suspend or dismiss the individual, then the individual shall pay 50% of the fees and expenses incurred or charged by the arbitrator and the administrative fees, if any, of the American Arbitration Association.

Decision/Judicial Review

The decision and award by the arbitrator are final and binding on the parties.

Either party may request judicial review by a Circuit Court, which shall be governed by the Maryland Uniform Arbitration Act.

105.10 General Procedures for Appeals and Hearings

The Board will use the following procedures for appeals and hearings:

1. Unless otherwise stipulated by law, appeals and hearings will be considered by the Board in one of the following manners:
 - a. Based on the documents and written arguments submitted by the parties,
 - b. Based on the documents and written arguments of the parties as supplemented by oral arguments, or
 - c. Based on the documents and written arguments of the parties as supplemented by evidence submitted at a hearing.
2. The full Board will determine the type of proceeding to be used and will notify all parties.
3. The Board may use a panel of three Board members in appeals and hearings.
 - a. On a rotating basis if possible, the Board president will select the panel members and designate a panel chair.
 - b. The panel will consider the appeal or request for a hearing and present a recommendation to the full Board.
4. Rules of procedure in appeals and hearings.

When the Board or a Board panel schedules a hearing to receive oral argument or evidence, the proceeding will be conducted as follows:

- a. The strict judicial rules of evidence shall not apply in appeals and hearings. The test of admissibility shall be whether the evidence is relevant to a party's position and has probative value.
- b. The parties are encouraged to make stipulations as to matters not reasonably in dispute. The presiding officer ¹ may limit or refuse to admit cumulative or repetitive evidence and may curtail redundant questioning.
- c. All testimony shall be given under oath.
- d. Each party may submit evidence, examine, and cross-examine witnesses, make objections, and file exceptions and motions. When a party appears through legal counsel or designated representative, such individual shall conduct the party's case.
- e. Members of the Board panel may question witnesses. The presiding officer may call as a witness any person whose testimony may be relevant and material.

105.11 Hearing Formats

1. In proceedings under section 4-205(c), evidentiary hearings shall be conducted as follows:
 - a. Appellant's opening statement
 - b. Superintendent's opening statement
 - c. Presentation of appellant's case
 - d. Presentation of Superintendent's case
 - e. Appellant's closing statement
 - f. Superintendent's closing statement
2. In proceedings under section 7-305(c), evidentiary hearings shall be conducted as follows:
 - a. Superintendent's opening statement
 - b. Appellant's opening statement
 - c. Presentation of Superintendent's case
 - d. Presentation of appellant's case
 - e. Superintendent's closing statement
 - f. Appellant's closing statement
3. In Board proceedings under section 6-202(a), evidentiary hearings shall be conducted as follows:
 - a. Superintendent's opening statement
 - b. Employee's opening statement
 - c. Presentation of Superintendent's case
 - d. Presentation of employee's case
 - e. Superintendent's closing statement
 - f. Employee's closing statement
4. The presiding officer may alter procedures in extenuating circumstances.

¹ The presiding officer guides the Board and/or Board panel during the proceeding.

105.12 Standard of Review and Burden of Persuasion

1. The Board considers appeals under section 4-205(c) and 7-305(c) based upon a standard of review. The standard of review in appeals is whether the Superintendent's decision is arbitrary, unreasonable, or illegal. The appellant has the burden of persuasion.
2. Hearings under section 6-202 do not utilize a standard of review. The Board will exercise its independent judgment in determining whether to accept, reject, or modify the Superintendent's recommendation. The Superintendent has the burden of persuasion in hearings under section 6-202.

105.13 Issuance of Board's Decision and Recordkeeping

1. 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.
2. 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 filed in the proceedings.
3. Transcripts
 - a. In an appeal of a decision on a controversy or dispute regarding a policy or regulation or proper administration of the local public school system, the stenographic record of the proceedings before the Board shall be transcribed, and the cost of the transcription shall initially be paid by the appellant. An appellant who prevails in an appeal before the state board shall be reimbursed the cost of the transcription by the Board.
 - b. In an appeal of a decision on a teacher dismissal and suspension, the stenographic record of the proceedings before the Board shall be prepared and transcribed at the expense of the Board and shall be made a part of the record of the proceedings except when both parties agree by way of written stipulation to omit from the record and transcript those portions not relevant for consideration by the state board.

105.14 Appeal of Board's Decision to State Board

1. Decisions by the Board may be appealed to the Maryland State Board of Education in accordance with that agency's procedures and time lines.
2. The transcript of the appeal shall be filed at the time the record is filed with the state board. Parties may agree by way of written stipulation to omit from the record and transcript those parts unnecessary for the determination of the issues presented to the state board.

Legal Reference	§4-205(c), Education Article, <i>Annotated Code of Maryland</i>		
	§7-305(c), Education Article, <i>Annotated Code of Maryland</i>		
	§6-202(a), Education Article, <i>Annotated Code of Maryland</i>		
	COMAR 13A.01.05.03 "Response to Appeals"		
	COMAR 13A.01.05.05 "Standard of Review"		
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