



Office of Purchasing  
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March 14, 2016

TO: All Prospective Bidders

RE: Hearing Examiner Services  
RFP #031.16.B1

ADDENDUM NO. 2

The following amends the above referenced solicitation. Receipt of this addendum must be acknowledged in your proposal submission. Vendors are encouraged to visit the web page at <http://purchasing.hcpss.org/bids> for updates and addenda.

The solicitation makes reference to Attachment A: Rules and Procedures for Appeals and Hearings. This document was inadvertently left out. Please see attached.

Please note that the intent of this bid is to establish a “short-list” of qualified firms to be selected as needed to best fit the needs of the Board of Education given a particular hearing case or schedule.

There are no other changes.

Sincerely,

A handwritten signature in black ink that reads "D Pindell". The signature is written in a cursive, flowing style.

Douglas Pindell  
Director of Purchasing

**RULES OF PROCEDURE FOR APPEALS AND HEARINGS  
BEFORE THE BOARD OF EDUCATION OF HOWARD COUNTY**

I. Purpose

These rules of procedure are adopted pursuant to the authority of the Education Article, Annotated Code of Maryland, Section 4-107(4)<sup>1</sup>. They govern formal hearings before the Board of Education of Howard County in matters arising under Sections 6-202 and 7-304 and appeals to the Board of Education by persons who are directly and adversely affected by decisions made pursuant to Section 4-205(c). These rules shall not apply to: (1) conferences or other informal investigations or proceedings at or upon which no formal ruling or decision is made; (2) hearings governed by other procedures specifically required by State or Federal law, the Bylaws of the State Board of Education, or policies of the Howard County Board; or (3) proceedings governed solely by provisions of the negotiated agreements between the Board and its employee organizations.

II. Applicability

(a) These rules govern appeals and hearings within the quasi-judicial responsibility of the Board of Education. They do not apply to proceedings involving the Board's exercise of its legislative or executive functions.

(b) Proceedings covered by these rules of procedure arise under the Education Article, Sections 6-202 (suspensions and dismissals of professional personnel), 7-305 (suspension and expulsion of students), and 4-205(c) (appeals from decisions of the superintendent on controversies and disputes involving the rules and regulations of the Board or the proper administration of the county public school system).

III. Definitions

A. "Board" means the Board of Education of Howard County.

B. "Filed" or "filing" as used in these rules means received by the Board of Education.

C. "Party" includes any person or agency named or admitted as a party. Any person or agency may be admitted as a party for limited purposes upon the satisfactory demonstration of the nature and extent of its interest to the Board of Education.

D. "Written notice" under these rules shall be complete upon actual delivery by 4:30 p.m. or upon deposit of said notice in the United States Mail, stamped and

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<sup>1</sup> All statutory references are to the Education Article unless otherwise indicated.

addressed to the addressee at the mailing address provided to or appearing on the records of the Howard County Public Schools.

E. "Hearing" means an evidentiary hearing before the Board, a committee of the Board, or the Board's Hearing Examiner.

F. "Counsel" means an attorney who is admitted to practice before the Court of Appeals of Maryland.

G. "Presiding officer" means the chairman of the Board, the vice-chairman or other designated Board member who may preside in the absence of the chairman, or a hearing examiner, appointed by the Board, pursuant to Section 6-203.

H. "Majority of the Board" means the number needed to adopt a motion or resolution as defined by the Maryland State Board of Education: three members when the board consists of five, four members when the board consists of six or seven, and five members when the board consists of eight or nine.

I. "Day" means a calendar day.

#### IV. Use of Hearing Examiners

A. In those instances in which the Board determines or the law requires that an evidentiary hearing is to be held, the Board shall conduct such hearing, unless it determines in its sole discretion to refer the matter to a Hearing Examiner selected by the Board. Among the factors which the Board may consider in determining whether to refer such a matter to a Hearing Examiner in the first instance are:

1. Whether it appears that there are facts in dispute which are likely to require a lengthy evidentiary hearing; and/or
2. Whether it appears there is an extensive record, substantial documentation, or additional information which the Board feels should be evaluated by a Hearing Examiner before the matter is submitted to the Board for its decision.

B. The Hearing Examiner shall be an attorney admitted to practice before the Court of Appeals of Maryland.

C. In all matters heard initially by a Hearing Examiner, the Hearing Examiner shall make findings of fact, conclusions of law, and recommendations. The Hearing Examiner shall submit a transcript of the proceeding, exhibits, findings of fact and conclusions of law, and recommendations to the Board which may be affirmed, denied, or modified by the Board. The Hearing Examiner shall distribute or mail to all parties and the Board the findings of fact, conclusions of law, and recommendations not more than thirty (30) days after completion of the hearing and receipt of the transcript. If the Hearing Examiner has provided for

oral argument or for the submission of written memoranda after a hearing, the 30 day period shall not commence until after such oral argument or submission of written memoranda, whichever is later.

V. Conduct of Evidentiary Hearings

A. Duties and Authority of Presiding Officer

The presiding officer shall have charge of the hearing, with authority to permit or limit the examination of witnesses, 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 the proceedings. Upon good cause shown and after consultation with other board members, the presiding officer may reschedule, postpone or continue a hearing beyond the scheduled date.

B. Quorum

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

C. Order of Procedure

In a hearing on a recommendation for dismissal or suspension of professional staff (under Section 6-202), or in an appeal of a student suspension or expulsion (under Section 7-305), the Superintendent shall proceed first. In an administrative appeal under Section 4-205(c), the Appellant shall proceed first, except that the Board or its hearing officer may vary the order of the presentation at the request of a party or on its own initiative.

D. Examination of Witnesses and Introduction of Evidence

1. The strict judicial rules of evidence are not applicable to evidentiary hearings conducted by the Board or its hearing officer. 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 a material issue. The presiding officer may limit or decline to admit cumulative or repetitive evidence, and may restrict redundant or duplicative questioning. The presiding officer may encourage, but shall in no event coerce, the parties where possible to make stipulations as to matters not reasonably in dispute and to make proffers in place of cumulative evidence. All testimony shall be given under oath.

2. A party or the party's counsel may submit evidence, examine and cross-examine witnesses who testify, and make objections 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, and make objections and motions.

4. The presiding officer and Board member in a hearing conducted by the Board may examine all witnesses called by a party. Ordinarily, this examination will occur after direct and cross-examination, unless it is necessary to interrupt the witness to address an issue requiring immediate clarification. The presiding officer may call as a witness any person whose testimony may be relevant and material. Neither the Board nor its Hearing Examiner possess subpoena power to compel a person to appear and/or testify.

E. Argument

The Presiding Officer may permit the parties to make oral or written arguments at the conclusion of an evidentiary hearing.

F. Briefs

The presiding officer may request that the parties submit briefs of the issues of fact and law involved in the hearing.

G. Counsel for the Board

The Board attorney shall be present to participate in any hearing as counsel for the Board.

VI. Record of Proceedings

A. The Presiding Officer shall cause to be prepared an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceedings.

B. An accurate record of all hearings, disputes, or controversies shall be kept by the county superintendent in order that, if an appeal is taken, the record shall be submitted.

C. A stenographic record of that part of the proceedings which involves the presentation of testimony and evidence shall be made at the expense of the Board. The record need not be transcribed, however, unless requested by the Board or a party to the proceedings. Any typewritten transcript of any proceedings, or part of proceedings, shall be paid by the party requesting it and each party requesting a transcript is responsible for paying the cost.

VII. Oral Argument Before the Board

- A. If requested, parties to an evidentiary hearing before the Board or before a Hearing Examiner are permitted by the presiding officer to make oral arguments before the Board.
- B. Parties to proceedings before a Hearing Examiner are permitted to make oral arguments before the Board on the report or recommendations of the Hearing Examiner. Additional evidence shall not be introduced before the Board unless the Board in its sole discretion agrees to hear additional evidence for good cause shown.
- C. If no evidentiary hearing has been conducted, the parties to an appeal may be permitted, at the sole discretion of the Board, to present oral or written arguments to the Board.
- D. The presiding officer may limit the time allowed for oral argument by each party. Oral argument by each party before the Board shall not exceed thirty (30) minutes, unless the presiding officer shall allow additional time for good cause shown.
- E. The Board's attorney shall be notified and requested to be present when oral arguments are heard by the Board.

VIII. Decision and Order

- A. The Board may adopt, reject or modify the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner or make its own findings of fact, conclusions, and decision.
- B. The Decision shall be based as follows:
  - 1. In a hearing on a recommended dismissal or suspension of a certificated professional under Section 6-202, the Superintendent's case shall be proven by a preponderance of the evidence. Unless a majority of the Board members vote to uphold the Superintendent, the Appellant shall prevail.
  - 2. In a hearing on an appeal of a student suspension or expulsion under Section 7-305, the Appellant's case shall be proven by a preponderance of the evidence. Unless a majority of the Board members votes to overturn the suspension or expulsion, the Superintendent's decision shall prevail.
  - 3. In an administrative appeal under Section 4-205(c), the Appellant's case shall be proven by a preponderance of the evidence. Unless a majority of the Board votes to overturn the Superintendent's action, the

Superintendent's decision shall prevail.

C. The decision and order of the Board shall be issued in written form, unless the decision is announced orally after the hearing. In such an instance, the decision and order shall be issued thereafter in writing, with copies provided to all parties.

D. The decision and order, or a cover letter accompanying the decision and order, shall inform the parties of any right they may have to appeal the decision to the Maryland State Board of Education.

IX. Administrative Appeals Under § 4-205(c)

A. Initiation of Appeal

1. All appeals to the Board under Section 4-205(c) shall be from a final action or decision of the superintendent or the superintendent's designated representative or designee, which directly and adversely affects the person or persons who are appealing. References in these rules to decisions of the Superintendent are also intended to include the decisions of the Superintendent's designee.

2. An appeal to the Board under Section 4-205(c) shall be initiated by filing a written notice of appeal with the Board within 30 days after the date of the superintendent's final action or decision. The written notice of appeal shall also contain a statement of the issue or issues to be decided by the Board, and whether the party agrees or disagrees, in whole or in part, with any findings of fact or legal conclusions contained in the decision of the Superintendent. A copy of the appeal shall be sent to the Superintendent on the same date the appeal is filed with the Board. The party filing the appeal shall also file with the Board copies of all relevant documents upon which the party relies and a statement of the relief requested.

3. Upon receipt of the notice of appeal and the appeal information form, the Board, or its designee, will notify the party filing the appeal whether or not the Board will accept the appeal, and, if the appeal is to be considered, the procedures to be followed by the parties. Appeals may be dismissed, for example, if they are not timely filed, not within the jurisdiction of the Board or otherwise not properly before the Board.

4. Within 15 days after the Appellant's submission to the Board of the information and documentation required by subsection (2), the Superintendent may submit additional information or documentation in support of the decision which is the subject of the appeal, and shall provide a copy to the appealing party. If either party believes that oral

argument or an evidentiary hearing, or both, is necessary to a decision of the appeal, the party shall include a concise statement of the reasons therefore.

5. If an appeal is not filed within the period set forth in subparagraph 2, the Board may dismiss the appeal or request for a hearing.

6. (a) Appeals will be considered by the Board based on documents and arguments submitted in writing by the parties. At the request of a party or on its own initiative, the Board may direct: (1) that oral argument on the issues be presented, or (2) that a hearing be conducted. In determining whether to grant a request for oral argument or formal hearing, the Board may consider:

(1) Whether the issues involved are of constitutional or significant public importance;

(2) Whether resolution of the issues raised is likely to have significant value as precedent in the administration of the school system;

(3) Whether the issue or issues raised require determination of some substantial employee right which cannot be satisfactorily adjudicated otherwise within existing appeal procedures; and

(4) Other appropriate factors as determined by the Board.

(b) In addition, the Board may request that either party submit additional information or documentation on an issue in the appeal.

B. Notice of Hearing or Argument

Written notice of the date, time and place of the hearing or oral argument shall be provided to the parties.

X. Student Suspension and Expulsion Appeals

A. Initiation of Request for a Hearing

1. Requests for an appeal hearing under Section 7-305 shall be in writing addressed to the chairman of the Board and shall be submitted within 10 days of the suspension or expulsion decision.

2. The request for an appeal hearing shall contain the following: (a) a concise statement of the issues presented by the appeal; (b) a concise statement of the facts supporting the appeal; (c) a copy of all relevant



documents relied upon by the person appealing.

B. Notice of Hearing

Written notice of the date, time, and place of the hearing shall be provided to the parties.

C. Effect of Appeal

1. An Appeal to the Board does not stay the suspension or expulsion decision.
2. The decision of the County Board is final.

XI. Teacher Suspension And Dismissal Proceedings

A. Initiation of Request for a Hearing

A hearing must be requested within 10 days of the notice sent by the board to the individual advising him/her of the charges brought under Section 6-202 of the Education Article or the Board will act on the Superintendent's recommendation without a hearing.

B. Notice of Hearing

Written notice of date, time and place of the hearing shall be sent by the chairman of the Board of Education, or his designee not less than ten (10) days prior to the scheduled hearing.

XII. Miscellaneous

A. A party filing an appeal or requesting a hearing shall be sent a written notice that acknowledges receipt of the appeal/hearing request. If a hearing is scheduled, the parties shall be notified in writing of the date, time and place of the hearing. A copy of these Rules of Procedure shall be provided to a party filing an appeal or hearing request.

B. Parties are strongly encouraged to enter into stipulations of facts and matters that are not in dispute. The Presiding Officer may direct the parties to exchange written documents in advance of the hearing if they have not already done so.

C. Hearings ordinarily will be limited to no more than two hours, and each of the parties will be allotted up to one hour to present that party's side of the case. The Presiding Officer may extend the time for the hearing, upon request of a party, if the interests of fairness and justice so require.

D. All parties appearing at formal hearings shall have the right to appear in proper person or with counsel. In a student suspension or expulsion hearing, the student may be represented by the student's parent or legal guardian.

E. Hearings, arguments and other proceedings before the Board or its Hearing Examiner shall be held in closed session except as provided by law or otherwise approved by the Board. Confidentiality of the subject matter may be deemed waived if information becomes public as a result of the actions or statements of the employee, student, or Appellant, or an agent or representative of any of them. In such an event, the Board may make a public statement concerning the appeal.

F. While a matter is under consideration by a Hearing Examiner or by the Board, neither the Hearing Examiner nor any Board member may discuss the merits of the matter with any outside party, or consider communications in writing without supplying copies to all other parties and providing an opportunity for a response. Confidential information concerning appeals may not be released publicly by the Board, a Board member, a Hearing Examiner, or a staff member unless (1) it is a matter of public record; (2) a public statement is issued in accordance with paragraph E of this section; or (3) the appellant and Board mutually agree to release of information.

Approved: February 10, 2005