

REPORT OF THE MARYLAND PUBLIC SCHOOL LABOR RELATIONS BOARD ON COMPLIANCE WITH ADMINISTRATIVE PROCEDURES PROVISIONS AND OPEN MEETINGS PROVISIONS

LEGISLATIVE OVERVIEW

The Maryland Public School Labor Relations Board (Board) was created by the Fairness in Negotiations Act (the “Act”), Chapter 325 of the 2010 Laws of Maryland. The Act became effective July 1, 2010. Pursuant to Chapter 325, Section 6, the Act “shall remain effective for a period of 5 years and, at the end of June 30, 2015, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.”

On May 5, 2014, the Governor approved Chapter 369 of the 2014 Laws of Maryland, an Act concerning “Fairness in Negotiations Act and the Public School Labor Relations Board – Sunset Repeal and Reporting Requirements.” By operation of Chapter 369, the five-year sunset provision of the Act was repealed. Chapter 369, Section 3 states:

SECTION 3, AND BE IT FURTHER ENACTED, That, on or before December 1, 2014, the Public School Labor Relations Board, in accordance with § 2-1246 of the State Government Article, shall report to the Senate Finance Committee and the House Ways and Means Committee on the Board’s compliance with administrative procedures provisions and open meetings provisions in Title 10 of the State Government Article.

Chapter 369 became effective October 1, 2014.

This Report of the Board on Compliance with Administrative Procedures Provisions and Open Meetings Provisions is submitted in accordance with the 2014 Laws of Maryland, Chapter 369, Section 3.

BOARD OVERVIEW

The Board is currently composed of five (5) members, in accordance with Education Article § 6-803. There are four (4) staff assigned to the Board: a full-time Executive Director, a full-time Special Assistant, a contractual Executive Assistant, and a full-time Assistant Attorney General. The Board shares the staff with the State Labor Relations Board and the State Higher Education Labor Relations Board.

Pursuant to Education Article § 2-205(e)(4)(i), the Board “shall decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this article.” The statutory provisions under Subtitle 4 apply to certificated employees, and the statutory provisions under Subtitle 5 apply to non-certificated employees; with respect to procedures applied by the Board, the statutory provisions under the respective Subtitles are the same. Section 6-806(a) requires the Board “to administer and enforce the provisions of Subtitles 4 and 5 of this title.” Section 6-806(b) provides in part: “The Board may: (1) Adopt regulations, guidelines, and policies to carry out the rights and responsibilities of the Board under this title;....”

There are three main categories of “controversy or dispute” frequently decided by the Board: 1) disputes as to the negotiability (mandatory, permissive, or illegal) of a proposed bargaining topic; 2) disputes as to whether an impasse has been reached in negotiations; and 3) and allegations that a public school employer or an employee organization has violated a provision of Subtitle 4 or 5 (i.e., “charges of statutory violations”).¹

Procedures governing the first two categories of cases, negotiability disputes and impasse determinations, are set forth in § 6-408 (certificated employees) and § 6-510 (non-certificated employees). Thus, with respect to negotiability disputes, statutorily mandated procedures include the following: a party submits a request in writing to the Board to resolve a negotiability dispute; within seven (7) days² of receipt of such request, the Board issues a letter to the public school employer and employee organization requesting briefs in support of the parties’ respective positions; the parties have seven (7) days from receipt of the Board’s request for briefs to file said briefs; within fourteen (14) days after receiving the parties’ briefs, the Board must issue a written decision determining whether the topic is mandatory, permissive, or illegal. Education Article § 6-408(c)(5), § 6-510(c)(5).

With respect to impasse determinations, the Board is required by statute to determine whether impasse has been reached, and if impasse has been reached, the Board is required, within ten (10) calendar days, to take specific actions under the statute, which include requesting the last and best offers from the parties and ordering the parties to commence mediation (as prescribed by statute) within fourteen (14) days of the Board’s

¹ The Board also has jurisdiction over the designation of exclusive representatives for employees. Education Article §§ 6-406 and 6-506. The Board’s regulations pertaining to such designation matters are set forth at COMAR 14.34.01.01-.03. There have not been any designation cases since the Board’s inception.

² Where not otherwise specified by statute, when a designated period of time is seven days or less, the Board does not count intermediate Saturdays, Sunday, and State holidays, consistent with Maryland Rule 1-203(a).

determination that impasse has been reached. Education Article § 6-408(e)(1) and (2), § 6-510(e)(1) and (2). There also are detailed procedures governing the manner in which the Board is to conduct an impasse arbitration hearing. Education Article § 6-408(e)(9)-(12), § 6-510(e)(9)-(12). To date, the Board has not been called upon to conduct an impasse arbitration hearing.

With respect to charges of statutory violations, the third category of cases frequently decided by the Board, the procedures are not statutorily defined as they are with respect to negotiability disputes and impasse determinations. Section 6-807(a) provides that in deciding matters covered under Subtitles 4 and 5, the Board “may” take various actions, including conducting investigations and hearings, subpoenaing witnesses and documents, administering oaths, and taking testimony.

ADMINISTRATIVE PROCEDURES PROVISIONS

The statutory procedures governing negotiability disputes and impasse determinations described above are distinct from other administrative procedures provisions in Title 10 of the State Government Article. The Board complies with the statutory procedures governing negotiability disputes and impasse determinations in discharging its duties with respect to such matters.

The Board has recognized that formal adoption of additional procedures related to charges of statutory violations is warranted. Thus, during 2014, the Board committed a significant amount of time to developing proposed regulations to govern its handling of charges of statutory violations. The proposed regulations have been developed to be consistent with State Government Article §§ 10-201 *et. seq.* and the regulations based thereon, COMAR 28.02.01.01-.27 (Office of Administrative Hearing, Rules of Procedure).

After holding open meetings for the purpose of discussing proposed regulations (see below), the Board voted unanimously on November 7, 2014, to propose seventeen (17) regulations related to administrative procedures in charges of statutory violations. These proposed regulations are expected to be published in the Maryland Register on December 12, 2014, to allow for the requisite forty-five (45) day comment period. Following the comment period, the Board anticipates that it will be in a position to vote on final adoption of these proposed regulations at another open meeting.

The proposed regulations have been submitted for publication in the Maryland Register as COMAR 14.34.04.01-.17. The full proposed regulations are provided in the Appendix to this Report. (See Appendix, Proposed Regulations, pages 1-7). The proposed regulations deal with the following matters:

.01. Scope

- .02 Definitions
- .03. Charge and Answer; Request for Hearing
- .04. Motions
- .05. Amendments; Additional Filings; Consolidation
- .06. Service; Computation of Time
- .07 Delegation
- .08 Presiding Officer
- .09 Notice of Hearing; Postponements
- .10 Representation
- .11 Prehearing Procedures; Discovery
- .12 Subpoenas
- .13 Evidence; Conduct of Hearings
- .14 Dismissal for Lack of Prosecution or Failure to Attend Scheduled Proceeding
- .15 Final Decision
- .16 Revision
- .17 Review.

As this list indicates, the Board has complied with the administrative procedures provisions in Title 10 of the State Government Article by developing proposed regulations modeled after pertinent provisions of State Government Article §§ 10-201 *et. seq* and COMAR 28.02.01.01-.27. Pending final adoption of these proposed regulations, the Board will continue to ensure that each case is handled in compliance with the due process safeguards embodied in the administrative procedures provisions in Title 10 of the State Government Article.

To date, there have been forty-three (43) charges of statutory violations brought before the Board.³ The charges of statutory violations have been resolved primarily by way of decisions granting motions to dismiss, or by withdrawal, and without the need for a hearing on the merits of the charge, consistent with State Government Article § 10-210 (“Unless otherwise precluded by law, an agency or the Office may dispose of a contested case by:...(5) withdrawal; (6) summary disposition; or (7) dismissal.”)

The cases that have been resolved by way of motions to dismiss typically involve the failure of the charging party to file a charge within the 60-day statute of limitations currently set forth at COMAR 14.34.02.01B, or for failure to state a claim for which relief can be granted, i.e., failure to allege a violation of a statutory provision under Subtitle 4 or 5. Parties are provided with the opportunity to file responses to dispositive motions, replies to responses, and, in some cases, sur-replies. While there currently is not

³ The Board’s decisions with respect to negotiability disputes, impasse determinations, and charges of statutory violations are available on its website at: <http://laborboards.maryland.gov/category/public-school-labor-board/pslrb-case-log-and-board-opinions/>.

a regulation in effect governing the filing of such documents (this matter is covered in the proposed regulations), the practice of the Board has been to advise parties in writing of their opportunity to file responses, replies, etc., and to state the time for filing such.

In anticipation that future cases will present the need for a hearing on the merits of a charge of statutory violation, the proposed regulations include procedures applicable when the hearing is conducted by the Board as well as procedures allowing for delegation to the Office of Administrative Hearings.

OPEN MEETINGS PROVISIONS

The Board has held three open meetings in 2014: on July 25, 2014, September 5, 2014, and November 7, 2014. The open meetings were held for the purpose of discussing proposed regulations for rules of procedures governing charges of statutory violations (see above) as well as proposed regulations governing open meetings under the Open Meetings Act and proposed regulations governing requests for public records under the Maryland Public Information Act. The proposed regulations governing open meetings are expected to be published in the Maryland Register on December 12, 2014, to allow for the requisite forty-five (45) day comment period, with the Board voting on final adoption of these proposed regulations at another open meeting. (See Appendix, page 7).

Notice regarding each of the three open meetings referred to above was made in accordance with General Provisions Article § 3-302 (formerly State Government Article § 10-506).⁴ For each meeting, notice was posted on the Board's website and was sent via e-mail to representatives who have previously appeared before the Board.

The meetings on July 25 and November 7 were attended by approximately 25 members of the public, including representatives of public school employers and employee organizations. At the meetings on July 25 and November 7, the public was provided with copies of the three sets of draft regulations to be discussed by the Board. Also, at each of these two meetings, the public was invited to comment on the draft regulations. At the meeting on September 5, in accordance with the notice sent pursuant to General Provisions Article § 3-302, the Board went into closed session for the purpose of receiving legal advice from counsel regarding the draft regulations; the meeting was closed in accordance with General Provisions Article § 3-305 (formerly State Government Article § 10-508).

The open meeting on July 25 was recorded by stenographer. Written minutes of all three aforementioned meetings will be prepared and presented for adoption by the Board on or before its next meeting, which is currently scheduled for December 12, 2014.

⁴ The Open Meetings Act is codified under General Provisions Article §§ 3-101 to 3-501, effective October 1, 2014.

Finally, the Board's Executive Director has been designated to receive training on the requirements of the open meetings law and has completed the required training pursuant to General Provisions Article § 3-213 (formerly State Government Article § 10-502.7).

Appendix

Title 14 INDEPENDENT AGENCIES

Subtitle 34 PUBLIC SCHOOL LABOR RELATIONS BOARD

Chapter 02 [General Procedures] *Negotiability Dispute*

Authority: Education Article, Title 6, Annotated Code of Maryland, §§2-205(e), [6-403, 6-407, 6-408(a)(1), 6-408(c)(5), 6-408(e)(1), 6-409, 6-504(a), 6-509, 6-510(a)(1), 6-510(c)(5), 6-510(e)(1), 6-512,] 6-408(e), 6-510(e), 6-806

.01 [Charge of violation of Title 6, Subtitle 4 or Subtitle 5, of Education Article.

A. A party alleging a violation of Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland, may request relief from the Public School Labor Relations Board by completing Form PSLRB-05 and filing it with the Executive Director of the Board.

B. In order to be timely, Form PSLRB-05 must be filed with the Executive Director of the PSLRB within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged.

[Click here to view form](#)

.02] Requests to Resolve a Dispute as to Negotiability.

A. A party requesting a resolution of a dispute as to negotiability may request relief from the Public School Labor Relations Board by completing Form PSLRB-04 and filing it with the Executive Director of the Board.

[Click here to view form](#)

[.03 Requests for Determination That An Impasse In Negotiations Has Been Reached.

A. A party requesting a determination that an impasse in negotiations has been reached, may request relief from the Public School Labor Relations Board by completing Form PSLRB-01 and filing it with the Executive Director of the Board. This document appears at the end of the proposed action on regulations section of this issue of the Maryland Register.

B. In response to a filing of Form PSLRB-01, the Public School Labor Relations Board may, after internal deliberations and investigation, as appropriate, issue Form PSLRB-02 (Notice of Determination That An Impasse in Negotiations Has Been Reached) or Form PSLRB-03 (Notice of Determination That An Impasse in Negotiations Has Not Been Reached). These documents appear at the end of the proposed action on regulations section of this issue of the Maryland Register.]

Title 14 INDEPENDENT AGENCIES

Subtitle 34 PUBLIC SCHOOL LABOR RELATIONS BOARD

Chapter 03 Impasse Determination

Authority: Education Article, Title 6, Annotated Code of Maryland, §§2-205(e), 6-408(e), 6-510(e), 6-806

.01 Requests for Determination that an Impasse in Negotiations Has Been Reached.

A. A party requesting a determination that an impasse in negotiations has been reached may request relief from the Public School Labor Relations Board by completing Form PSLRB-01 and filing it with the Executive Director of the Board.

B. In response to a filing of Form PSLRB-01, the Public School Labor Relations Board may, after internal deliberations and investigation, as appropriate, issue Form PSLRB-02 (Notice of Determination that an Impasse in Negotiations Has Been Reached) or Form PSLRB-03 (Notice of Determination that an Impasse in Negotiations Has Not Been Reached).

[Click here to view form](#)

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Title 14 INDEPENDENT AGENCIES

Subtitle 34 PUBLIC SCHOOL LABOR RELATIONS BOARD

Chapter 04 Charge of Statutory Violation

Authority: Education Article, Title 6, Annotated Code of Maryland, §§2-205(e), 6-401 to 6-411, 6-501 to 6-514, 6-806, 6-807

.01. Scope.

A. The scope of this Chapter applies to a charge alleging a violation of Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland.

B. Except as otherwise required by statute, the regulations set forth in this Chapter may be modified or waived by the Board upon the consent of the parties or for good cause shown.

.02 Definitions.

In this Chapter, the following terms have the meanings indicated.

A. "Administrative law judge" has the meaning stated in COMAR 28.02.01.02.

B. "Board" means the Public School Labor Relations Board ("PLSRB").

C. "Chairman" means the individual designated under Education Article, § 6-803(c), Annotated Code of Maryland.

D. "Charge" means an allegation of a violation of Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland, filed in accordance with COMAR 14.34.04.03A.

E. "Charged party" means the party named in a charge and alleged to have violated Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland. As used in this Chapter, "respondent" refers to charged party.

F. "Charging party" means the party filing a charge.

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

H. "Executive Director" means the Executive Director who serves at the direction of the Board, or the Executive Director's designee.

I. "Presiding officer" means the Chairman or Board member designated by the Chairman to preside for purposes of administering a hearing pursuant to this Chapter.

.03. Charge and Answer; Request for Hearing

A. Charge

(1) A party alleging a violation of Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland, may request relief from the Public School Labor Relations Board by completing Form PSLRB-05 and filing it with the Executive Director of the Board.

(2) In order to be timely, Form PSLRB-05 must be filed with the Executive Director of the Board within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged.

[Click here to view form](#)

(3) The original charge shall be filed with the Executive Director in person, by electronic mail, or by U.S. mail return receipt requested. A copy of the charge shall be simultaneously served on the respondent, in person or by U.S. mail return receipt requested.

B. Answer to Charge.

(1) Within 20 days of service of a charge, a respondent shall file with the Executive Director a written answer to the charge, signed by the respondent or respondent's representative, and serve a copy on the charging party.

(2) The answer shall include a specific admission or denial of each allegation of the charge or, if the respondent is without knowledge of the allegation, the respondent shall so state and the statement shall be considered a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly address the allegations.

(3) An answer to a charge and a motion filed in accordance with COMAR 14.34.04.04 may be joined in a single pleading, provided that matters pertaining to each type of pleading are clearly delineated.

(4) If, upon proper service of the charge, the respondent fails to file a timely answer, the failure may be considered by the Board to be an admission of the material facts alleged in the charge and/or a waiver by the respondent of a hearing.

C. Request for Hearing

(1) A party desiring a hearing for purposes of determining whether an alleged violation exists as charged shall file a written request with the Executive Director.

(2) The Board may schedule a hearing to determine whether an alleged violation exists as charged after ruling on a dispositive motion filed in accordance with COMAR 14.34.04.04.

.04. Motions.

A. Motion to Dismiss.

(1) Upon written motion to dismiss, or on its own initiative, the Board may issue a final decision dismissing a charge:

(a) which fails to state a claim for which relief may be granted;

(b) over which the Board lacks jurisdiction; or

(c) upon any other basis which may be established without consideration of materials outside the charge and answer to charge.

(2) A motion to dismiss shall be filed within 20 days of service of a charge.

(3) A response to a motion to dismiss shall be filed within 10 days of service of a motion to dismiss.

B. Motion for Summary Decision.

(1) Any party may file a motion for summary decision on all or part of a charge on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion for summary decision shall be supported by affidavit.

(2) A motion for summary decision shall be filed by the respondent within 20 days of service of a charge and shall be filed by the charging party within 10 days of service of an answer to a charge. In the event that a motion to dismiss has been previously filed, a motion for summary decision shall be filed within 20 days of issuance of the Board's decision disposing of the motion to dismiss.

(3) A response to a motion for summary decision shall be filed within 10 days of service of a motion for summary decision.

(4) A response to a motion for summary decision shall identify the material facts that are disputed. A response asserting the existence of a material fact or controverting any material fact contained in the record shall be supported by an affidavit.

(5) An affidavit supporting or opposing a motion for summary decision shall set forth the facts that would be admissible in evidence pursuant to State Government Article, §10-213, Annotated Code of Maryland. An affidavit shall be in one of the forms set forth in Maryland Rule 1-304, as appropriate.

(6) The Board may issue a final decision in favor of or against the moving party if the motion for summary decision and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

C. The Board may order refiling of a motion that does not comply with the requirements of this regulation. The motion shall be refiled within 10 days of service of said order.

D. Hearing.

(1) A party desiring a hearing on a written motion to dismiss or motion for summary decision shall file a written request with the Executive Director contemporaneously with the filing of the written motion.

(2) On its own initiative, the Board may schedule a hearing to consider a written motion to dismiss or written motion for summary decision.

E. Motion for Judgment.

(1) A party may move for judgment on any or all of the issues in a charge at the close of the evidence offered by an opposing party. The moving party shall state all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of any opposing party's case.

(2) When a party moves for judgment at the close of the evidence offered by an opposing party, the Board may:

- (a) Proceed to determine the facts and to render judgment against an opposing party; or
- (b) Decline to render judgment until the close of all evidence.

(3) A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence if the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

(4) When the Board renders judgment against an opposing party in accordance with subsection E(2)(a), it shall issue a final decision in accordance with COMAR 14.34.04.15D.

.05. Amendments; Additional Filings; Consolidation.

A. A charge, answer, motion, or response may be amended for good cause shown, upon motion. Allowance of amendments shall be within the discretion of the Board.

B. Motions to amend before hearing shall be in writing filed with the Executive Director, and the moving party shall serve a copy upon all parties.

C. In its discretion, the Board may allow filings to be supplemented and may accept a reply to a response and a sur-reply, with additional time limits to be determined by the Board.

D. When amendment of, or supplement to a charge, answer, motion, or response is allowed, all relevant time periods that begin with the filing of the original pleading or motion shall be deemed to begin from the filing of the amended or supplemented pleading or motion.

E. Upon application of a party or upon its own initiative, the Board may consolidate cases which involve common questions of law or fact.

.06. Service; Computation of Time.

A. A party filing an answer to a charge, motion, response or other document with the Executive Director shall serve a copy of such document on all parties of record and indicate in the document filed with the Executive Director the name and address of each party served and the date on which each party was served.

B. Service may be made by regular mail, facsimile or electronic mail, or personal delivery, except that service of a charge shall be made in accordance with COMAR 14.34.04.03A(3).

C. All filed documents shall clearly designate the docket number, if any, and title of the proceeding.

D. Computation of Time - Service.

(1) Regular Mail Service. Whenever a period of time is measured from the service of a form, document, pleading, or paper, and service is by mail, 3 days shall be added to the prescribed period.

(2) *Facsimile or Electronic Mail Service.* Whenever a period of time is measured from the service of a form, document, pleading, or paper, and service is by fax or electronic mail, service shall be deemed made on the date of the fax or electronic mailing unless the individual or party receiving the service presents proof that actual service was received at a later time but not later than 3 days from the date of the fax or electronic mailing.

E. Computation of Time Generally.

(1) Time periods in this regulation refer to calendar days unless otherwise indicated.

(2) A time period is computed beginning with the day after the act or event which initiates the period and concludes with the last day of the period. A time period which would otherwise end on a weekend or State holiday instead ends on the following business day.

(3) In computing any time period involving the issuance of a Board decision or order, the date of the issuance of such decision or order is the date it is transmitted by the Board to the parties as that date is evidenced by postmark, electronic mailing, or other reliable indicia of transmission, whichever date is earliest. Documents are filed with the Executive Director as of the date that they are transmitted to the Executive Director as that date is evidenced by postmark, electronic mailing, or other reliable indicia of transmission, whichever date is earliest.

(4) The Board may extend any time period set forth in this Chapter for good cause shown.

.07 Delegation.

A. The Board may delegate authority to conduct a hearing to the Office of Administrative Hearings pursuant to State Government Article, §10-205, Annotated Code of Maryland.

B. A hearing delegated to the Office of Administrative Hearings shall be conducted in accordance with the rules of procedure in COMAR 28.02.01, and this Chapter. To the extent that this Chapter conflicts with COMAR 28.02.01, this Chapter prevails.

C. The Board may revoke all or part of a delegation to the Office of Administrative Hearings if the case:

(1) Involves novel or unanticipated factual or legal issues;

(2) Has significant social or fiscal consequences;

(3) Involves policy issues of general applicability;

(4) Is likely to have precedential value; or

(5) Requires especially expeditious decision.

D. Procedures for Revocation.

(1) The Board shall provide written notice of a revocation of hearing authority to all parties and the Office of Administrative Hearings.

(2) Delegation of authority to hear a contested case may be revoked at any time before the earlier occurrence of the following:

(a) The issuance of a ruling by the administrative law judge on a substantive issue; or

(b) The taking of oral testimony from the first witness.

(3) If only part of the delegation has been revoked, the notice of revocation shall specify the portions of the contested case for which delegation is revoked.

(4) A decision issued by the Board shall reflect the fact that the matter was delegated to the Office of Administrative Hearings and was revoked, and a copy of the revocation notice shall be included as part of the record.

(5) If the Board revokes the delegation to hear a contested case, the hearing shall be conducted by the Board in accordance with this Chapter.

.08 Presiding Officer.

A. In hearings conducted by the Board, the Chairman shall preside for purposes of administering the hearing pursuant to this Chapter. The Chairman may designate a Board member to preside in the Chairman's stead.

.09 Notice of Hearing; Postponements.

A. The Board shall give written notice of any hearing in a contested case to the parties in accordance with State Government Article, §10-208, Annotated Code of Maryland.

B. Postponements.

(1) The Board may postpone or continue a hearing:

(a) Upon motion by a party;

(b) Upon a joint request of the parties; or

(c) For good cause shown.

(2) Upon postponement, the hearing shall be rescheduled for a date certain.

.10 Representation.

A. Unless prohibited by law, an individual who is a party in a contested case may represent himself or herself.

B. A party in a contested case may be represented by an attorney authorized to practice law in Maryland or, when authorized by law, appear through a representative who is not an attorney.

.11 Prehearing Procedures; Discovery

A. Prehearing Conference

(1) The Board may schedule a prehearing conference for any purpose considered necessary for the appropriate and orderly conduct of a pending matter.

(2) At the discretion of the Board, all or part of a prehearing conference may be recorded.

(3) Prehearing conferences may be conducted by telephone or videoconference.

B. Prehearing Orders.

(1) The Board may issue a prehearing order that sets forth the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(2) If a prehearing conference is not held, the Board may issue a prehearing order to regulate the conduct of the proceedings.

(3) The prehearing order shall be a part of the case record.

C. Discovery.

(1) There shall be no formal discovery.

(2) If the Board determines that some form of limited discovery of non-privileged information is required in order to protect a party's due process right to a fair hearing, it shall issue an order providing for such limited discovery.

.12 Subpoenas

A. Issuance of Subpoenas. On request of a party, the Board may issue subpoenas. Subpoenas are for the purpose of securing the attendance and testimony of witnesses and the production at the hearing of any tangible items in the possession or under the control of the witness.

B. Requests.

(1) In a hearing before the Board, a request for a subpoena form shall be made in writing to the Executive Director.

(2) To the extent practicable, subpoena form requests shall be filed at least 10 days before the hearing.

(3) A request for a subpoena form shall specify the:

(a) Name and full address of the individual to be subpoenaed; and

(b) Name, full address, and telephone number of the party requesting the subpoena.

(4) A subpoena form that requests the production of tangible items, books, papers, or other documents shall describe those items with particularity.

(5) Unless the subpoena form request specifies otherwise, the Executive Director shall mail the subpoena form by regular mail to the party requesting the subpoena form. The party shall serve the subpoena in accordance with §C(1) of this regulation.

C. Service of Subpoenas.

(1) Subpoenas may be served by:

(a) Personal delivery by an individual 18 years old or older who is not a party to the proceeding or related by blood or marriage to a party to the proceeding; or

(b) Certified mail, return receipt requested, to the individual at the address specified in the subpoena request.

(2) The subpoena may not be enforced pursuant to Education Article § 6-807(b), Annotated Code of Maryland, absent proof of service by certified mail or personal delivery.

(3) Costs of certified mailing or personal delivery of the subpoena are the responsibility of the person requesting the service.

(4) Proof of service of the subpoena by certified mail or personal delivery is the responsibility of the person requesting the subpoena.

D. Return of Service. Return of service shall be made as follows:

(1) When service is by certified mail, by the filing of the original return receipt with the Executive Director; or

(2) When service is by personal delivery, by the filing of an affidavit with the Executive Director, signed by the individual who made service, containing:

(a) The name of the individual served;

(b) The date on which the individual was served;

(c) The particular place of service; and

(d) A statement that the server is 18 years old or older and not a party to the proceeding or related by blood or marriage to a party to the proceeding.

E. Objections to Subpoenas. An individual may object to a subpoena by filing with the Executive Director a motion to quash or for other relief.

F. Enforcement of Subpoenas. If an individual fails to comply with a properly served subpoena, the Board may apply to the appropriate circuit court for an order to show cause why an individual should not be sanctioned for refusal to comply with a subpoena.

.13 Evidence; Conduct of Hearings.

A. Evidence shall be admitted in accordance with State Government Article, §10-213, Annotated Code of Maryland.

B. Conduct of hearings.

(1) Exclusion and sequestration of witnesses.

(a) Upon request by a party, the presiding hearing officer may exclude witnesses other than parties from the hearing room.

(b) The presiding hearing officer may order the witnesses, parties, attorneys, and all others present in the hearing room not to disclose to any witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence.

(2) The Board may conduct all or part of the hearing by telephone, video conferencing, or other electronic means in accordance with State Government Article, §10-213.

(3) Oral arguments may be presented by the parties with time limits determined by the Board. Briefs may be filed in the order and within the time limits set by the Board.

(4) A quorum of the Board shall be present for Board hearings.

(5) All testimony at a hearing shall be under oath and subject to the penalties of perjury.

.14 Dismissal for Lack of Prosecution or Failure to Attend Scheduled Proceeding.

A. The Board may issue a default order dismissing a case for want of prosecution or for failure by a party to attend a prehearing conference, hearing, or other scheduled proceeding, after receiving notice.

B. Within 7 days after service of a default order, the party may file a written motion:

(1) Requesting that the default order be vacated or modified; and

(2) Stating the grounds for the request.

C. If the Board finds that there is good cause to excuse the default, the Board may vacate the default order.

D. A final default order is:

(1) A final decision; and

(2) Reviewable in court as a final decision.

.15 Final Decision.

A. In any matter that has been delegated to the Office of Administrative Hearings, the Board, after considering the record and any exceptions, by majority vote, shall:

(1) Adopt the proposed decision as the final decision of the Board;

(2) Modify the proposed findings of fact, proposed conclusions of law, or proposed disposition, in whole or in part, and then adopt the modified proposed decision as the final decision of the Board;

(3) Reverse the proposed decision and issue its own findings of fact, conclusions of law, or order; or

(4) Remand the matter for further proceedings.

(5) A party objecting to a proposed decision of the Office of Administrative Hearings may file exceptions with the Board within 15 days of receipt of the proposed decision. A party may respond to the exceptions within 15 days of receipt of the exceptions.

B. In any matter that has not been delegated to the Office of Administrative Hearings, the Board, as soon as practicable, shall issue a written decision.

C. The decision of the Board is the final decision of the agency for purposes of judicial review. Unless the matter is remanded for further proceedings, or the decision is revised pursuant to COMAR 14.34.04.16, the date of the written decision of the Board is the date of the final decision of the agency for purposes of judicial review.

D. A final decision shall:

(1) Be in writing;

(2) Be served on all parties; and

(3) Contain, among other items:

(a) Findings of fact and conclusions of law, separately stated;

(b) An order; and

(c) A statement of the available procedures and time limitations for review.

E. If, upon consideration of the entire record, the Board finds by a preponderance of the evidence that a party has engaged in or is engaging in a violation of Title 6, Subtitle 4 or Subtitle 5, the Board shall issue a final decision and shall take such action as it may deem necessary and appropriate to remedy the violation, including:

(1) Issuing a cease-and-desist order;

(2) Requiring a party to make reports from time to time showing the extent of compliance with the Board's order or ruling;

(3) Reinstatement;

(4) Communicating directly with employees about their rights; and

(5) Such further action as the Board may require.

F. If it has not been shown by a preponderance of the evidence that a party has engaged in or is engaging in a violation of Education Article, Title 6, Subtitle 4 or Subtitle 5, Annotated Code of Maryland, then the Board, in accordance with subsection D, shall issue a final decision dismissing the charge.

.16 Revision.

A. On motion of any party filed at any time, or on the initiative of the Board, the Board may exercise revisory power and control over a final decision in the event of fraud, mistake, or irregularity.

B. Clerical mistakes in final decisions or other parts of the record may be corrected by the Board at any time on the Board's own initiative, or on motion of any party.

C. A request for revision does not automatically stay the action or toll the time for filing an appeal.

.17 Review.

A. A party who is aggrieved by a final decision is entitled to judicial review in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. The Board may request to intervene as a party to the proceeding.

Title 14 INDEPENDENT AGENCIES

Subtitle 34 PUBLIC SCHOOL LABOR RELATIONS BOARD

Chapter 06 Attendance, Recording, Photographing, and Broadcasting of Open Sessions

Authority: Education Article, Title 6, Annotated Code of Maryland, §6-806, General Provisions Article, Title 3, Annotated Code of Maryland §3-303

01. Public Attendance.

A. At any open session of the Maryland Public School Labor Relations Board (hereinafter "Board"), the general public is invited to attend and observe.

B. Except in instances when the Board expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise required by law, no member of the public attending an open session may participate in the session.

02. Disruptive Conduct.

A. A person attending an open session of the Board may not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes with the right of members of the public to attend and observe the session.

B. The presiding officer may order any person who engages in conduct prohibited by subsection A of this section, or any other regulation concerning the conduct of the open session, to be removed from the session and may request police assistance to restore order.

C. The presiding officer may recess the open session while order is restored.

03. Recording, photographing, and broadcasting of Open Session.

A. A member of the public, including any representative of the news media, may record proceedings of the Board at an open session by means of a tape recorder or any other recording device, provided the device does not create an excessive noise that disturbs members of the Board or other persons attending the session.

B. A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera:

(1) Is operated without excessively bright artificial light that disturbs members of the Board or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.

C. A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used:

(1) Is operated without excessively bright artificial light that disturbs members of the Board or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.

D. The presiding officer may restrict the movement of a person who is using a recording device, a camera, or broadcasting or television equipment if such restriction is necessary to maintain the orderly conduct of the open session.

04. Recording Not Part of Record.

A. A recording, photograph, videotape, or broadcast of an open session made by a member of the public, or any transcript derived therefrom, may not be deemed a part of the record of any proceeding of the Board.