

HOUSE BILL 1092

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By: **Delegate Ruth**

Introduced and read first time: February 10, 2022

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Public School Personnel – Disciplinary Hearing Procedures**
3 **(Accessible Appeals for Educators Act)**

4 FOR the purpose of altering the requirements for hearings and appeals relating to the
5 removal or dismissal of certain public school personnel by a county board of
6 education, including request timelines, methods of delivering and manner of writing
7 notices, authorized representatives, and a record of a hearing; and generally relating
8 to disciplinary hearing and appeal procedures for public school personnel.

9 BY repealing and reenacting, with amendments,
10 Article – Education
11 Section 6–202
12 Annotated Code of Maryland
13 (2018 Replacement Volume and 2021 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – Education**

17 6–202.

18 **(A) IN THIS SECTION, “PLAIN LANGUAGE” MEANS WRITING IN A WAY THAT**
19 **HELPS READERS UNDERSTAND THE CONTENT IN A DOCUMENT THE FIRST TIME THEY**
20 **READ IT.**

21 **[(a)] (B) (1)** On the recommendation of the county superintendent, a county
22 board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent,
23 or other professional assistant for:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(i) Immorality;

(ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5–704 of the Family Law Article;

(iii) Insubordination;

(iv) Incompetency; or

(v) Willful neglect of duty.

(2) (i) Before removing an individual, the county board shall, **BY CERTIFIED MAIL OR ANY OTHER METHOD THAT PROVIDES PROOF OF DELIVERY**, send the individual a **NOTICE THAT INCLUDES THE FOLLOWING INFORMATION WRITTEN IN PLAIN LANGUAGE**:

1. A copy of the charges against the individual [and give the];

2. **THE RIGHTS OF THE INDIVIDUAL, INCLUDING THE RIGHT TO BE REPRESENTED BY AN ATTORNEY OR A DESIGNATED REPRESENTATIVE;**

3. **A DESCRIPTION OF THE HEARING PROCESS UNDER THIS SUBSECTION, INCLUDING TIMELINES; AND**

4. **THE PROCEDURES FOR REQUESTING A HEARING, INCLUDING INFORMATION THAT MUST BE INCLUDED WITH THE REQUEST, EVIDENTIARY STANDARDS, AND DEADLINES.**

(II) **THE individual SHALL HAVE an opportunity, within [10] 30 days AFTER THE DATE THE INDIVIDUAL RECEIVES THE NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**, to request:

1. A hearing before the county board; or

2. A hearing before an arbitrator in accordance with paragraph [(5)] **(7)** of this subsection.

[(ii)] **(III)** If an individual's request does not specify that the hearing be before an arbitrator, the request shall be considered a request for a hearing before the county board.

(3) If the individual requests a hearing before the county board within the [10–day] **30–DAY** period:

(i) The county board promptly shall [hold]:

1. SEND THE INDIVIDUAL AND THE INDIVIDUAL'S COUNSEL OR DESIGNATED REPRESENTATIVE NOTICE OF THE HEARING DATE BY CERTIFIED MAIL OR ANY OTHER METHOD THAT PROVIDES PROOF OF DELIVERY; AND

2. HOLD a hearing, but a hearing may not be set within [10] 21 days after the county board sends the individual [a] THE notice of the hearing UNDER ITEM 1 OF THIS ITEM; [and]

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing; **AND**

(III) THE COUNTY BOARD SHALL ENSURE AN ELECTRONIC RECORD IS MADE OF ANY ORAL ARGUMENT.

(4) THE COUNTY BOARD SHALL SEND, BY CERTIFIED MAIL OR ANY OTHER METHOD THAT PROVIDES PROOF OF DELIVERY, THE INDIVIDUAL AND THE INDIVIDUAL'S COUNSEL OR DESIGNATED REPRESENTATIVE NOTICE OF THE DECISION OF THE COUNTY BOARD THAT INCLUDES THE FOLLOWING INFORMATION WRITTEN IN PLAIN LANGUAGE:

(I) THE INDIVIDUAL'S RIGHT TO APPEAL THE DECISION TO THE STATE BOARD;

(II) A DESCRIPTION OF THE APPEALS PROCESS UNDER THIS SUBSECTION, INCLUDING TIMELINES;

(III) THE PROCESS FOR FILING AN APPEAL, INCLUDING INFORMATION THAT MUST BE INCLUDED WITH THE FILING, EVIDENTIARY STANDARDS, AND DEADLINES; AND

(IV) HOW TO REQUEST A COPY OF THE ELECTRONIC RECORD OF THE HEARING BEFORE THE COUNTY BOARD, INCLUDING THE COSTS TO THE INDIVIDUAL.

(5) THE COUNTY BOARD MAY CHARGE A REASONABLE FEE FOR COPYING AN ELECTRONIC RECORD OF A HEARING.

[(4)] (6) The individual may appeal from the decision of the county board to the State Board WITHIN 60 DAYS AFTER THE DATE THE INDIVIDUAL RECEIVED THE NOTICE OF DECISION FROM THE COUNTY BOARD.

[(5)] (7) (i) If the individual or the individual's representative

requests a hearing before an arbitrator within the [10-day] **21-DAY** period, the hearing shall be conducted in accordance with this paragraph.

(ii) 1. An arbitrator shall be selected as provided in this subparagraph.

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 county 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.

(iii) The rules of labor arbitration shall apply.

(iv) A stenographic record shall be made of the proceedings before the arbitrator.

(v) 1. The arbitrator shall determine whether the county board has sufficient cause for suspension or dismissal of the individual.

2. 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.

(vi) In making a decision, the arbitration proceeding is governed by this subtitle and by the collective bargaining agreement applicable to the individual.

(vii) Except as provided in subparagraph (viii) of this paragraph, the county board shall pay the full cost and expenses of the arbitration, including:

1. The American Arbitration Association's administrative fees;

2. The full cost of the stenography and transcription services;

3. Reasonable expenses for required travel;

4. Reasonable fees and expenses incurred or charged by the arbitrator; and

1 5. Reasonable expenses associated with any witness or
2 evidence produced at the request of the arbitrator.

3 (viii) 1. The superintendent and the individual shall pay their own
4 respective costs and expenses associated with any witness or evidence produced by them.

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

9 (ix) 1. The decision and award by the arbitrator are final and
10 binding on the parties.

11 2. An individual may request judicial review by a circuit
12 court, which shall be governed by the Maryland Uniform Arbitration Act.

13 **[(6)] (8)** Notwithstanding any provision of local law, in Baltimore City the
14 suspension and removal of assistant superintendents and higher levels shall be as provided
15 by the personnel system established by the Baltimore City Board of School Commissioners
16 under § 4–311 of this article.

17 **[(b)] (C)** (1) Except as provided in paragraph (3) of this subsection, the
18 probationary period of employment of a certificated employee in a local school system shall
19 cover a period of 3 years from the date of employment and shall consist of a 1–year
20 employment contract that may be renewed by the county board.

21 (2) (i) A county board shall evaluate annually a nontenured certificated
22 employee based on established performance evaluation criteria.

23 (ii) Subject to subparagraph (iii) of this paragraph, if the nontenured
24 certificated employee is not on track to qualify for tenure at any formal evaluation point:

25 1. A mentor promptly shall be assigned to the employee to
26 provide the employee comprehensive guidance and instruction; and

27 2. Additional professional development shall be provided to
28 the employee, as appropriate.

29 (iii) Nothing in this paragraph shall be construed to prohibit a county
30 board from assigning a mentor at any time during a nontenured certificated employee's
31 employment.

32 (3) (i) Subject to subparagraph (ii) of this paragraph, if a certificated
33 employee has achieved tenure in a local school system in the State and moves to another
34 local school system in the State, that employee shall be tenured if the employee's contract
35 is renewed after 1 year of probationary employment in the local school system to which the

employee relocated if:

1. The employee's final evaluation in the local school system from which the employee departed is satisfactory or better; and

2. There has been no break in the employee's service between the two systems of longer than 1 year.

(ii) A local school system may extend the probationary period for a certificated employee subject to subparagraph (i) of this paragraph for a second year from the date of employment if:

1. The employee does not qualify for tenure at the end of the first year based on established performance evaluation criteria; and

2. The employee demonstrates a strong potential for improvement.

(4) (i) The State Board shall adopt regulations that implement the provisions of paragraphs (1) and (2) of this subsection and define the scope of a mentoring program and professional development that will be aligned with the 3-year probationary period.

(ii) The State Board shall adopt regulations to establish standards for effective mentoring, including provisions to ensure that mentors provide mentoring that:

1. Is focused;

2. Is systematic;

3. Is ongoing;

4. Is of high quality;

5. Is geared to the needs of each employee being mentored;

6. Includes observations; and

7. Includes feedback.

[(c)] (D) (1) In this subsection, "student growth" means student progress assessed by multiple measures and from a clearly articulated baseline to one or more points in time.

(2) (i) Subject to subparagraph (iii) of this paragraph, the State Board shall adopt regulations that establish general standards for performance evaluations for

1 certificated teachers and principals that include observations, clear standards, rigor, and
2 claims and evidence of observed instruction.

3 (ii) The regulations adopted under subparagraph (i) of this
4 paragraph shall include default model performance evaluation criteria.

5 (iii) Before the proposal of the regulations required under this
6 paragraph, the State Board shall solicit information and recommendations from each local
7 school system and convene a meeting wherein this information and these recommendations
8 are discussed and considered.

9 (3) Subject to paragraph (6) of this subsection:

10 (i) A county board shall establish performance evaluation criteria
11 for certificated teachers and principals in the local school system based on the general
12 standards adopted under paragraph (2) of this subsection that are mutually agreed on by
13 the local school system and the exclusive employee representative.

14 (ii) Nothing in this paragraph shall be construed to require mutual
15 agreement under subparagraph (i) of this paragraph to be governed by Subtitles 4 and 5 of
16 this title.

17 (4) Subject to paragraph (7) of this subsection, the performance evaluation
18 criteria developed under paragraph (3) of this subsection:

19 (i) Shall include data on student growth as a significant component
20 of the evaluation and as one of multiple measures; and

21 (ii) May not be based solely on an existing or newly created single
22 examination or assessment.

23 (5) (i) An existing or newly created single examination or assessment
24 may be used as one of the multiple measures.

25 (ii) No single criterion shall account for more than 35% of the total
26 performance evaluation criteria.

27 (6) If a local school system and the exclusive employee representative fail
28 to mutually agree under paragraph (3) of this subsection, the default model performance
29 evaluation criteria adopted by the State Board under paragraph (2)(ii) of this subsection
30 shall take effect in the local jurisdiction 6 months following the final adoption of the
31 regulations.

32 (7) Any performance evaluation criteria developed under this subsection
33 may not require student growth data based on State assessments to be used to make
34 personnel decisions before the 2016–2017 school year.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
2 1, 2022.