

Chapter 13

(Senate Bill 639)

AN ACT concerning

Education – Public School Personnel – Disciplinary Hearing Procedures

FOR the purpose of altering certain procedures for suspending or dismissing certain public school personnel; authorizing certain public school personnel to request arbitration under certain circumstances; specifying the procedures for arbitration; assigning responsibility for certain costs; providing that an arbitrator’s decision and award is final and binding on the parties, subject to review by a circuit court; making stylistic changes; and generally relating to procedures for suspending or dismissing certain public school personnel.

BY repealing and reenacting, with amendments,
Article – Education
Section 6–202
Annotated Code of Maryland
(2014 Replacement Volume and 2017 Supplement)

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

Article – Education

6–202.

(a) (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

- (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 send the individual a copy of the charges against [him] **THE INDIVIDUAL** and give [him] **THE**

INDIVIDUAL an opportunity within 10 days to request [a]:

1. A hearing BEFORE THE COUNTY BOARD; OR

2. A HEARING BEFORE AN ARBITRATOR IN ACCORDANCE WITH PARAGRAPH (5) OF THIS SUBSECTION.

(II) 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 period:

(i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; 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.

(4) The individual may appeal from the decision of the county board to the State Board.

(5) (I) IF THE INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE REQUESTS A HEARING BEFORE AN ARBITRATOR WITHIN THE 10-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

5. REASONABLE EXPENSES ASSOCIATED WITH ANY WITNESS OR EVIDENCE PRODUCED AT THE REQUEST OF THE ARBITRATOR.

(VIII) 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 COUNTY 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.

(IX) 1. THE DECISION AND AWARD BY THE ARBITRATOR ARE FINAL AND BINDING ON THE PARTIES.

2. AN INDIVIDUAL MAY REQUEST JUDICIAL REVIEW BY A CIRCUIT COURT, WHICH SHALL BE GOVERNED BY THE MARYLAND UNIFORM ARBITRATION ACT.

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

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

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

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

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

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

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

(3) (i) Subject to subparagraph (ii) of this paragraph, if a certificated employee has achieved tenure in a local school system in the State and moves to another local school system in the State, that employee shall be tenured if the employee's contract 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) (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 certificated teachers and principals that include observations, clear standards, rigor, and claims and evidence of observed instruction.

(ii) The regulations adopted under subparagraph (i) of this

paragraph shall include default model performance evaluation criteria.

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Gubernatorial Veto Override, April 5, 2018.