

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 639

(Senator Guzzone, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Education - Public School Personnel - Disciplinary Hearing Procedures

This bill alters the procedures for suspending or dismissing a teacher, principal, supervisor, assistant superintendent, or other professional assistant by authorizing such an individual to request a hearing before an arbitrator instead of the local board of education. The bill specifies the procedures and terms for such an arbitration.

Fiscal Summary

State Effect: The number of cases that the State Board of Education refers to the Office of Administrative Hearings (OAH) may decrease slightly; however, the bill is not expected to materially affect the operations or finances of OAH or the State board.

Local Effect: Local school system expenditures for arbitrators increase, potentially significantly. Any fiscal or operational impact on the circuit courts is anticipated to be minimal. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The local board of education must pay the full cost and expenses of the arbitration including specified costs, except that the local superintendent and the individual pay their own respective costs and expenses associated with any witness or evidence produced by them. However, if the arbitrator determines that the county board had sufficient cause to suspend or dismiss the individual, then the individual must pay 50% of the fees and expenses incurred. An arbitrator must be selected as specified. The decision and award by the arbitrator is final and binding; however, an individual may request

judicial review by a circuit court, which must be governed by the Maryland Uniform Arbitration Act.

Current Law/Background: On the recommendation of the local superintendent of schools, a local board of education may 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.

Before removing an individual, the local board must send the individual a copy of the charges and give the individual an opportunity to request a hearing. If the individual requests a hearing, the individual must have an opportunity to be heard before the local board, in person or by counsel, and to bring witnesses to the hearing. The individual may appeal the decision of the local board to the State Board of Education.

In Baltimore City, the suspension and removal of an assistant superintendent and higher-level employees must be as provided by the personnel system established by the Baltimore City Board of School Commissioners.

For all proceedings before a local board of education, the local board may have the proceedings heard first by a hearing examiner. The hearing examiner must submit to the local board and the appellant a record of the proceeding and exhibits and the hearing examiner's findings of fact, conclusions of law, and recommendations. Parties to the proceeding before the hearing examiner may make arguments before the local board. After it reviews the record and the recommendation of the hearing examiner, the local board must make a decision. The decision may be appealed to the State Board of Education. Each local board must adopt reasonable rules and regulations to regulate the proceedings before the hearing examiner.

According to the Code of Maryland Regulations (COMAR), if a local board of education's decision to suspend or dismiss a teacher or administrator is appealed to the State Board of Education, then the State board must exercise its independent judgment on the record before determining whether to sustain the suspension or dismissal of a certificated employee. The standard of review must be *de novo*. The local board has the burden of proof by a preponderance of the evidence. The State board, in its discretion, may modify a penalty.

Under COMAR, a State board decision may be appealed to the circuit court in which the appellant resides within 30 days of the decision.

However, COMAR also requires that the State Board of Education transfer an appeal of a suspension or dismissal of a certificated employee (*e.g.*, classroom teachers, principals) to

OAH for review by an administrative law judge. The State board must also transfer an appeal in which the State board finds that there exists a genuine dispute of material fact to OAH for review by an administrative law judge.

Local Expenditures: Local school system expenditures for arbitration increase, potentially significantly. Actual costs will be determined by the number of specified education professionals who request arbitration during the suspension or dismissal processes. Under the bill, the local board of education may be responsible for the full costs and expenses of arbitration, unless an arbitration decision favorable to the board is issued, and except for the costs associated with any witness or evidence produced by them. Montgomery County advises that the cost of arbitration and stenography is up to \$1,500 per case, and that it currently has an average of eight disciplinary cases go to arbitration each year.

The bill does not affect the suspension or dismissal process for assistant superintendents or higher in Baltimore City as they are governed by the school system's personnel system.

Additional Information

Prior Introductions: SB 760 of 2017, a similar bill, passed the Senate and was referred to the House Rules and Executive Nominations Committee, but no further action was taken on the bill. Its cross file, HB 497, received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: HB 1758 (Delegate Ebersole) - Rules and Executive Nominations.

Information Source(s): Carroll, Harford, and Montgomery counties; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Budget and Management; Department of Legislative Services

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