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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D., State Superintendent of Schools *KBS*

**DATE:** July 18, 2017

**SUBJECT:** Revisions to the Procedures for Removal of Professional Assistants and Special Appointments

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**PURPOSE:**

This item is a policy revision request to the State Board of Education (SBOE) policy on the Procedures for Removal of Professional Assistants. This policy was adopted on January 25, 1995, and it has had only minor revisions since that time. The SBOE, which has the ability to establish personnel rules for MSDE employees, granted these protections to professional assistants many years ago.

**BACKGROUND:**

MSDE is unique as compared to other State agencies regarding the employment status for its professional level employees. Presently, the Education Article introduces the statutory concept of “professional assistants” to be nominated by the State Superintendent and approved by the State Board to assist with operations. More specifically, § 2-104(3)(b) specifies that all of MSDE’s professional assistants shall be in the executive service, management service, or special appointments, and it authorizes the SBOE to set the qualifications for each professional assistant position.

The designation of professional assistants has aided MSDE in setting specific qualifications needed for its unique positions, expediting recruitment and hiring activities, greater salary flexibility when hiring, and streamlining employee relations activities.

**EXECUTIVE SUMMARY:**

This policy in its current form is onerous for management in terms of the self-imposed time frames involved, and in some areas it actually conflicts with State law. The proposed revisions are presented to effectively address these issues and improve operations, while preserving the overall intent of this policy in terms of fairness and due process for MSDE employees facing termination.

Under State law, we have only 30 calendar days after the lowest level of management acquires knowledge of an alleged infraction to impose a disciplinary action. This is a very challenging timeframe as it includes the required activities related to conducting the investigation, meeting with the employee(s), considering mitigating circumstances, determining the appropriate disciplinary action and providing notice to the employee. In summary, these changes strike the right balance by providing more time to conduct a fair and thorough investigation in cases involving misconduct or performance deficiencies, while also preserving the added due process we provide to our professional assistants.

The following summarizes the most significant changes we are proposing:

- Deleted all references to two weeks prior notice of termination as this is extremely onerous on management by reducing the 30 days we have to conduct an investigation to only 14 days, and this is often not enough time since the clock starts ticking with the lowest level supervisor learning of an issue. It should also be noted that this two weeks prior notice of termination is not required for termination of employees in merit positions.
- Added reference to Political Special Appointees along with Executive Service in Category I due to the “at will” status and that they may even be terminated for political affiliation.
- Replaced several references to State Board of Education with State Superintendent to reflect what has been delegated operationally to this role, and updated language for Director, Office of Human Resources to reflect name change to this office.
- Increased the specified pay grade from 18 to 19 for Category II, which decreases the number on non-management service positions among this group. This change is also in line with SBOE policy on approving appointments, i.e., we submit grade 19 and above on the Personnel Agenda for SBOE approval prior to start date.
- Changed the agency appeal time frames from 10 to 15 days from receipt of notice as consistent with state law. The ten day deadline for requesting a Hearing by the Office of Administrative Hearings (OAH) is an added level of appeal not referenced in statute so this remained the same.
- Reworded that the agency appeal to the State Superintendent is a Conference, not a Hearing.
- Added reference to Burden of Proof because this remains with the employee, unlike for merit positions, and this serves as a reminder to the employee and OAH.

**ACTION:**

This item requires a vote by the SBOE members to approve the proposed revisions to this policy.

**ATTACHMENTS:**

Current policy with deletions (strikethrough) and additions (in bold).

## MARYLAND STATE DEPARTMENT OF EDUCATION

### PROCEDURES FOR REMOVAL OF PROFESSIONAL ASSISTANTS AND SPECIAL APPOINTMENTS

#### Category I

All professional assistants, ES4 and above, and all designated Political Special Appointees, serve at the pleasure of the State Board and the State Superintendent. Written notice of termination shall be given at least two weeks (fourteen calendar days) before the effective date of termination by the State Superintendent.

#### Category II

All professional assistants from Grade 18 19 through Grade 26 and administrators and supervisors under the Institutional Educator Pay Plan shall receive written notice of termination at least two weeks (fourteen calendar days) before the effective date of the termination from the State Superintendent. The notice shall state the effective date of the termination and shall inform the employee of the following appeal route:

- (1) The appeal must be in writing and filed with the State Board Superintendent within ten fifteen calendar days after the employee receives of the date of the written notice of termination.
- (2) The appeal may only be based on the grounds that the termination is limited to the illegal or and unconstitutional basis for the termination.
- (3) The employee has the burden of proof in the appeal.
- (34) An appeal hearing conference shall may be conducted by the MSDE Office of Administration Hearings Human Resources, or designee, with a recommended decision forwarded to the State Board of Education Superintendent.
- (4) ~~Written objections may be filed by either party (employee or MSDE Chief of Human Resource Management Branch) with the State Board of Education in response to the administrative law judge's recommended decision within ten calendar days of receipt of the recommended decision.~~
- (5) ~~A written response may be filed to the objections within ten calendar days of receipt of the objections.~~
- (6) ~~The written objections and responses shall be submitted to the State Board with copies sent to the employee and the MSDE Chief of Human Resource Management Branch.~~
- (75) The State Board Superintendent shall make the final decision on the termination and issue its the final written decision in writing within fifteen days of receipt of the appeal. The decision is the final administrative decision of the agency.

- (86) If the termination is reversed, the employee shall be reinstated to the same grade but not necessarily to the same classification and/or function.
- (7) Pursuant to Maryland State Personnel and Pensions Article § 11-113(d)(3), the decision of the State Superintendent is the final agency decision. In accordance with Maryland Rule 7-201 et seq., an employee may appeal this decision to the Circuit Court authorized to provide the review within thirty (30) days of the date the final decision is issued to the employee.

### Category III

All other professional assistants including teachers under the Institutional Educator Pay Plan and Special Appointments may be dismissed for immorality, misconduct in office, insubordination, incompetence, neglect of duty, or any other act of misfeasance, malfeasance, or nonfeasance in office. Those employees shall receive written notice of termination from the State Superintendent. ~~The termination shall occur in accordance with the following~~ notice shall state the effective date of the termination and shall inform the employee of the following appeal route:

- ~~(1) The employee shall receive written notice of the intention to terminate at least two weeks (fourteen calendar days) before the effective date of termination from the State Superintendent. The notice shall list the cause(s) and include the date, time, and place of the predetermination conference.~~
- (1) The appeal must be in writing and filed with the State Superintendent within fifteen calendar days after the employee receives the written notice of the termination.
- ~~(2) The employee may be immediately suspended with pay.~~
- ~~(3) Prior to the effective date of termination and within five calendar days of the written notice of termination, the employee shall be afforded an opportunity for a predetermination conference with the Superintendent's designee to discuss the charges and to present his or her version of the circumstances.~~
- ~~(4) The Superintendent's designee shall determine whether there are reasonable grounds to believe that the charges against the employee are true and shall issue a written decision within three calendar days of the conference. If the charges are upheld, the employee shall be terminated as of the date given in the notice of termination letter.~~
- (2) The appeal may only be based on the grounds that the termination is limited to the illegal or ~~and unconstitutional~~ basis for the termination.
- (3) The employee has the burden of proof in the appeal.

**(34) The employee has Two Options in proceeding with an appeal.**

**Option A: Appeal to the State Superintendent.**

An appeal hearing conference shall may be conducted by the MSDE Office of ~~Administration Hearings~~ Human Resources, or designee, with a recommended decision forwarded to the State ~~Board of Education~~ Superintendent.

The State ~~Board~~ Superintendent shall make the final decision on the termination and issue its the final written decision in-writing within fifteen days of receipt of the appeal. The decision is the final administrative decision of the agency.

**Option B: Appeal to the State Superintendent with a referral to the Office of Administrative Hearings.**

The employee waives the specific timeframes referenced in Maryland State Personnel and Pensions Article § 11-113 in order to accommodate the procedures set forth below under this option.

An employee may submit a specific request for an appeal hearing on a termination by filing a written request with the State Superintendent within fifteen ~~ten~~ calendar days after the employee receives notice of the termination.

The appeal hearing shall be conducted by the Office of Administrative Hearings with a recommended decision forwarded to the State ~~Board of Education~~ Superintendent.

Written objections may be filed by either party (employee or MSDE ~~Chief of the Human Resources Management Branch~~ Director, Office of Human Resources) in response to the administrative law judge's recommended decision within fifteen ~~ten~~ calendar days of receipt of the recommended decision.

Either party may respond in writing to the objections within fifteen ~~ten~~ calendar days of receipt of the objections.

The written objections and responses shall be submitted to the State ~~Board~~ Superintendent with copies sent to the employee and the MSDE ~~Chief of the Human Resources Management Branch~~ Director, Office of Human Resources.

The State ~~Board~~ Superintendent shall make the final decision on the termination and issue its the final written decision in-writing within fifteen days of the date by which all objections and responses to the recommended decision must be received. The decision is the final administrative decision of the agency.

- (115) If the termination is reversed, the employee shall be reinstated to the same grade but not necessarily to the same classification and/or function.
- (6) Pursuant to Maryland State Personnel and Pensions Article § 11-113(d)(3), the decision of the State Superintendent is the final agency decision. In accordance with Maryland Rule 7-201 et seq., an employee may appeal this decision to the Circuit Court authorized to provide the review within thirty (30) days of the date the final decision is issued to the employee.

#### SPECIAL CIRCUMSTANCES

**The following special circumstances do not pertain to these Procedures: (1) Removal of a professional assistant or a special appointment due to abolishment of the position or for budgetary or other financial reasons shall be administered in accordance with the provisions of § 11-302 and § 11-305 of the State Personnel and Pensions Article (SPPA), Annotated Code of Maryland; and (2) Removal of an employee for medical reasons in accordance with SPPA § 2-303 and Code of Maryland Regulations 17.04.05.03B(2).**

Adopted by the Maryland State Board of Education

January 25, 1995

Revised December 9, 1997

Revised September 23, 2003

Revised July 18, 2017

HRMB/Correspondence & Miscellaneous