

**IN THE
COURT OF APPEALS OF MARYLAND**

Petition No. 18
September Term 2021
(COA-REG-0018-2021)

On Appeal from the Circuit Court for Howard County
(Richard S. Bernhardt, Judge)
Pursuant to a Writ of Certiorari while before the Court of Special Appeals of Maryland

**TRACI SPIEGEL, ON BEHALF OF HERSELF AND HER MINOR CHILDREN,
S.L.S. AND S.F.S., AND KIMBERLY FORD, ON BEHALF OF HERSELF AND
HER MINOR CHILDREN, A.M.F. AND E.L.F.,**

Appellants,

v.

BOARD OF EDUCATION OF HOWARD COUNTY,

Appellee.

BRIEF OF APPELLANTS

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BRIEF OF APPELLANT

Maryland's practice of allowing minors to serve in a binding voting capacity on school boards is largely unique and unprecedented. *See* Memorandum of Amici before Circuit Court at 4. While only a minority of Maryland counties permit the student members of their respective boards to cast a binding vote on any issues, Howard County permits a binding vote by the student member on most issues coming before the Board. The student member is elected to this position of general governmental power by middle and high school students enrolled in Howard County public schools of the ages eleven

and older. No Maryland appellate court has ruled on the constitutionality of minors holding an office of general governmental power, nor has any Maryland appellate court ever decided whether minor children can validly elect or appoint a member to a governmental board possessing general governmental powers. The issue is of heightened importance during the current pandemic during which the student member has been entitled to vote on preventing the return of children in Howard County to full in-person instruction.

STATEMENT OF THE CASE

Appellants are Traci Spiegel, on behalf of herself and her minor children, S.L.S. and S.F.S., and Kimberly Ford, on behalf of herself and her minor children, A.M.F. and E.L.F. (“Spiegel and Ford”). Spiegel and Ford are parents of Howard County schoolchildren who have sued the Appellee Board of Education of Howard County (“Board”). (E8). This matter originated in the Circuit Court for Howard County as an action seeking declaratory and injunctive relief. (E8). Spiegel and Ford challenged the constitutionality of a statutory scheme that created a binding voting position on Howard County’s Board of Education that was held by a minor enrolled in a Howard County public high school. (E22-23). Spiegel and Ford also challenged the constitutionality of the provision in this same statutory scheme that created an election process for the student member position that was voted on by middle and high school students ages eleven and older. (E22-23).

Promptly after filing their Verified Complaint, Spiegel and Ford filed a motion for summary judgment and a request for a speedy hearing, which was followed by the Board's own motion to dismiss or in the alternative for summary judgment. (E26; E36). The Board was joined by *amici curiae*, consisting of former student members who served on various Maryland county boards of education, arguing the statutory scheme should be upheld. (E3). On March 16, 2021, Judge Richard S. Bernhardt held a hearing on the parties' motions. (E4; T1). On March 25, 2021, Judge Bernhardt entered summary judgment and final declaratory relief in favor of the Board. (E57).

Judge Bernhardt's ruling was appealed by Spiegel and Ford to the Court of Special Appeals of Maryland, and before the parties submitted any briefs, Spiegel and Ford filed a petition for certiorari, which this Court granted. (E58). Spiegel and Ford petitioned this Court for a ruling on issues that will have a substantial and immediate impact on whether and when approximately 56,000 students enrolled in Howard County's public school system will return to full in-person school instruction. The Court's decision will guide the State and its various agencies and institutions in understanding the role minor children can or cannot play in our State's government and democracy, absent constitutional amendments.

QUESTIONS PRESENTED

Does the Maryland Constitution prohibit minors eleven years of age and older from selecting a member who will hold a binding voting position on the Howard County Board of Education, whether by election, appointment or any other means?

Does the Maryland Constitution prohibit minors from holding the office of a binding voting position on the Board of Education of Howard County, a board which possesses general governmental power?

STATEMENT OF FACTS

Despite its local jurisdiction, the Board of Education of Howard County is a State agency that holds general governmental powers. (E10; E29); *Chesapeake Charter v. Anne Arundel County Bd. of Ed.*, 358 Md. 129, 136 (2000). The Board consists of seven members elected by registered voters who are adult residents of Howard County and one student member of the Board elected by local public school students in grades six through eleven. (E10; E29); MD. CODE ANN., Educ. §3-701(f)(3)(iii) (2021). The student member of the Board must be a *bona fide* resident of Howard County and a junior or senior enrolled in a Howard County public high school. *See id.* at §3-701(f)(1).

To be chosen as a student member of the Board, students must first be nominated by their principals and attend the Howard County Association of Student Councils Convention. (E17; E30). The student delegates who attend the convention select two students who then run as candidates for the student member position. *See id.* The two student candidates then engage in an election campaign, culminating in an election held throughout the Howard County public school system. *See id.* During the election, all middle and high school students in grades six through eleven are permitted to cast an individual vote for their preferred student candidate. MD. CODE ANN., Educ. §3-701(f)(3)(iii) (2021). The winner of the student election is determined by popular vote

and then joins the Howard County Board of Education for one year, starting on the first day of July following the election. (E17; E30).

With a few exceptions, the student member elected to the Board has the same rights and privileges as the adult members elected to the Board. *See* MD. CODE ANN., Educ. §3-701(f)(5) (2021). The student member is contemplated to be a minor who has not yet reached the age of majority. *See id. at* §3-701(f)(1). The student member is voted into a specially-elected position by middle and high school students aged eleven and older, only a small percentage of whom would be the legal age to vote for an adult candidate in a regular Board election. §3-701(f)(3)(iii). The student member is the only elected member of the Board who is exempt from the State's election laws. *See* Elec. Law § 8-801; *compare* MD. CODE ANN., Educ. §3-701(b)-(d) *with* MD. CODE ANN., Educ. §3-701(f). The student member is entitled to an equally weighted vote on significant and substantial matters affecting school students, including whether and when Howard County students will return to receiving appropriate and necessary full time in person instruction. *See id. at* §3-701(f)(5)&(7).

In the three Board votes leading up to the filing of this case that related to returning Howard County's children to in-person instruction, the student member cast a vote against the measure and the overall Board vote resulted in a four to four tie vote, preventing the majority needed for passage of the vote.¹ Specifically, on November 16,

¹ Howard County's school board has seven adult members and one student member. When the student member is eligible to vote, in order for a measure to pass, the minimum number of members required to vote in favor of the measure is five. *See* MD. CODE ANN., Educ. §3-701(g)(1). When the student member is excluded from voting, such as in matters involving

2020, a Board motion on a decision relating to considering returning students through a hybrid model in the second semester failed by a four to four vote. (E18; E31). On November 16, 2020, a Board motion to direct the Superintendent to look at other options for the hybrid model failed by a four to four vote. (E18-19; E32). Finally, on December 7, 2020, a Board motion to direct the superintendent to make a reopening decision based on metrics and operational capacity failed by a four to four vote. (E19; E 32). The student member cast a vote against each of these motions. (E18-19; E32).

STANDARD OF REVIEW

This case involves the review of a trial court's interpretation of provisions in Maryland's Constitution. In interpreting the meaning and application of language in Maryland's Constitution, this Court conducts its own independent review of the provisions. *See Hornbeck v. Somerset County Bd. of Ed.*, 295 Md. 597, 619 (1983). When interpreting Constitutional provisions, this Court applies "the same rules of interpretation that relate to the interpretation of a statute, and gives the language of the provision its ordinary, plain meaning." *Lamone v. Capozzi*, 396 Md. 53, 83 (2006). If the constitutional provision under review is clear and unambiguous, then "the Court will not infer the meaning from sources outside of the Constitution itself." *State Bd. of Elections v. Snyder*, 435 Md. 30, 53 (2013); *see Brown v. Brown*, 287 Md. 273, 277-78 (1980)

personnel or discipline, the number of Board members required to pass a measure is four. *See id.* at (g)(2). As a result, the inclusion of a student member in matters creates the requirement of a super-majority of the Board to pass a measure. The potential for inaction caused by this requirement of a super majority is compounded when Board members abstain or are absent from voting.

(“[E]ach word being given its ordinary and popularly understood meaning . . . and, if the words are not ambiguous, the inquiry is terminated . . .”).

ARGUMENT

There are several fundamental flaws in the lower Court’s reasoning that rejected the challenge of the student member election and position on the Board. First, the lower Court repeatedly disregarded the plain meaning of the Constitution’s requirement of being 18 years of age to vote in an election. The lower Court compounded the error by ignoring the plain statutory language creating the student member position through a direct, popular election by students, and which unmistakably and repeatedly refers to this process as an “election.” The lower Court’s leap to divine an intent of the General Assembly to establish a third category of “selection” power ignored the Constitution’s exclusive references to “elections” and “appointments.” (T17). The lower Court’s creative conclusion failed to address that this newfound “selection” authority of our State’s government is now vested in minor children.

The lower Court’s decision requires review because it has effectively granted suffrage to minors eleven years of age and older without an amendment to the Constitution. The decision has also created a third constitutional method of placing a person in a position of general governmental power that is not referenced in Maryland’s Constitution. The lower Court’s ruling has improperly diluted the voting rights of Howard County registered voters by creating an elected position on an elected board, while precluding most of the otherwise eligible adult voters in that jurisdiction from

voting on the position. The lower Court ignored Maryland's constitutional requirement that an individual must be an adult registered voter to hold a position of general governmental power. Finally, the lower Court left unanswered why a group of minors who would indisputably be precluded by Maryland's Constitution from voting on a school board candidate can nonetheless validly appoint or otherwise select the same candidate to hold the same position.

**I. THE UNAMBIGUOUS REQUIREMENT OF ARTICLE I, SECTION 1:
YOU MUST BE 18 TO VOTE**

Article I, Section 1 of the Maryland Constitution provides that “every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State.” Md. Const., Art. I §1 (emphasis added). This constitutional age requirement for voting has been recognized by this Court. *See Maryland Green Party v. Maryland Bd. of Elections*, 377 Md. 127, 141 (2003) (“The right to vote is conferred upon any United States citizen, age eighteen or older, who is a Maryland resident, and who is not disqualified by a criminal conviction or mental disability.”). This Court has previously observed that “the General Assembly may neither expand nor curtail the qualifications necessary to vote.” *State Administrative Bd. of Election Laws v. Board of Sup’rs of Elections of Baltimore City*, 342 Md. 586, 599 (1996).

In its holdings, this Court has acknowledged that the right to vote is “one of, if not, the most important and fundamental rights granted to Maryland citizens as members of a

free society.” *Nader for President 2004 v. Maryland State Board of Elections*, 399 Md. 681, 686 (2007) (internal quotation marks omitted); *see* Md. Constitution, Declaration of Rights, Art. 7. In passing laws, the General Assembly does not have “*carte blanche*” authority to enact laws and implement voting procedures that are in derogation of the Constitution.” *Lamone v. Capozzi*, 396 Md. 53, 76 (2006). Instead, the Maryland Constitution requires that the General Assembly pass legislation “necessary for the preservation of the purity of elections.” Md. Constitution, Art. I §7.

A. The Offensive Statute

The General Assembly enacted §3-701 of the *Education Article*, which established the Board of Education of Howard County (“Board”). Howard County’s Board of Education is an elected board that originally consisted of seven adult members elected by eligible adult registered voters who reside in Howard County. The General Assembly amended Section 3-701 of the *Education Article* to create a student member position on the Board. *See* Acts 2007, ch. 611, § 1 (July 1, 2007). The student member was granted broad voting powers similar to the voting rights of the adult members of the Board. *See* Educ. § 3-701(f)(5). In addition to those voting powers, the student member is also permitted to attend closed sessions of the Board, if approved by an affirmative vote from a majority of the adult members. *See* Educ. § 3-701(f)(5). As a default rule, the statute allows the student member to “vote on all matters” except those matters expressly enumerated as excluded categories in the statute.² Educ. § 3-701(f)(7). The effect of

² The student member may not vote on matters relating to:

Section 3-701 was to create a student member position that possesses a binding vote on a board that exercises general governmental power.

In order to qualify for the student member position, the statute requires that the candidate be a resident of Howard County and a “regularly enrolled junior or senior year student from a Howard County public high school.” Educ. § 3-701(f)(1). In direct contravention of Article I, Section 1’s mandate that residents of Maryland “of the age of 18 years or upwards shall be entitled to vote,” Educ. § 3-701(f)(7) explicitly permits the student member to be elected directly by minors in grades six through eleven who are enrolled in Howard County public schools. *See* Educ. § 3-701(f)(3)(iii). Most of the children who fall within this grade range are under the age of 18. Indeed, by allowing sixth graders to vote for a member of public office, Section 3-701(f) permits minors as

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- (i) Geographical attendance areas under § 4-109 of this article;
 - (ii) Acquisition and disposition of real property and matters pertaining to school construction under § 4-115 of this article;
 - (iii) Employment of architects under § 4-117 of this article;
 - (iv) Donations under § 4-118 of this article;
 - (v) Condemnation under § 4-119 of this article;
 - (vi) Consolidation of schools and transportation of students under § 4-120 of this article;
 - (vii) Appointment and salary of a county superintendent under §§ 4-201 and 4-202 of this article;
 - (viii) Employee discipline and other appeals under § 4-205(c) of this article;
 - (ix) Budgetary matters under Title 5 of this article;
 - (x) Appointment and promotion of staff under § 6-201 of this article;
 - (xi) Discipline of certificated staff under § 6-202 of this article;
 - (xii) Collective bargaining for certificated employees under Title 6, Subtitle 4 of this article;
 - (xiii) Collective bargaining for noncertificated employees under Title 6, Subtitle 5 of this article; and
 - (xiv) Student suspension and expulsion under § 7-305 of this article.

Educ. § 3-701(f)(7).

young as eleven years of age to vote for a member of the governing body of Howard County's public schools.

To avoid running afoul of Article I, Section 12 of Maryland's Constitution and the State's elections laws, the General Assembly carved out an exception for the student member that makes *only* the student member on the Board exempt from the rules, regulations, and requirements of Maryland's elections laws. By exempting the student member position from state elections laws, the General Assembly enabled students who are otherwise ineligible to vote in State elections³ under Article I, Section 1 the ability to vote on the student member. *See* Md. Code Ann., Election Law § 3-102(a). While creative, Section 3-701(f) violates the Article I, Section 1 of the Maryland Constitution because it violates the core tenet of our democracy by permitting minors who have not reached 18 years of age to vote for an elected position of general governmental power.

The Maryland Constitution guarantees free and frequent elections and the right to vote for "every citizen having *the qualification* prescribed by the Constitution" Md. Const., Declaration of Rights, art. 7 (emphasis added). The qualifications to vote as prescribed in the Maryland Constitution, including the age requirement, are exclusive. *State Administrative Bd. of Election Laws*, 342 Md. at 598-99. As such, "the General Assembly may neither expand nor curtail the qualifications necessary to vote." *Id.* at 599;

³ *Election Law Article* § 3-102(a) provides that a person may become registered to vote if the person "(1) is a citizen of the United States; (2) is at least 18 years old or will be 18 years old on or before the day of the next succeeding general or special election; (3) is a resident of the State as of the day the individual seeks to register; and (4) registers pursuant to this title."

see also Southerland v. Norris, 74 Md. 326, 328 (1891) (“These qualifications, fixed by the organic law, **can neither be enlarged** nor curtailed by the General Assembly.”) (emphasis added). It is well settled that the State’s legislature may not enact laws that are in derogation of the State’s Constitution. *See Bienkowski v. Brooks*, 386 Md. 516, 546–547 (2005) (“[T]he constitutional authority to implement a constitutional provision, . . . does not authorize the General Assembly by statute or this Court by rule to contradict or amend the Constitution”).

Article I, Section 1 has been held by this Court to apply to elections for boards of education. *See State Bd. of Elections v. Snyder*, 435 Md. 30, 51-52 (2013). Article I, Section 1’s requirement that a resident must be eighteen years or older to vote in a general election was expounded upon in *State Board of Elections v. Snyder*, 435 Md. 30 (2013). The narrow issue before the Court in *Snyder* was whether seventeen-year-olds who will turn eighteen by the close of registration for the general election could vote in non-partisan primary elections for a county school board. *See Snyder*, 435 Md. at 32-33. Ultimately, this Court held that a seventeen-year-old could vote in a primary election for a county board of education candidate if the minor will turn eighteen by the close of voter registration before the next general election. *See id.* at 62. The *Snyder* Court concluded that Article I, Section 1 of the Maryland Constitution applies to primary elections for school board members because a primary can result, albeit indirectly, in the choice of candidate who may ultimately become a public official.

The *Snyder* Court observed that primaries were not actual elections but instead were historically unofficial “nominating procedures by which the candidates in the

general election are selected.” *Id.* at 58. The lower court in *Snyder* determined that the age and residency requirements in Article I, Section 1 did not apply to party primaries because they were not mandated by the Constitution or even in existence at the time the Constitution was drafted. *See id.* at 41 and 58. To highlight the offensive consequence of a holding that Article I, Section 1 does not apply to primary elections, regardless of how unofficial they are, the Court reasoned:

If Article I, § 1 were read to exclude primary elections, “such a reading could lead to an absurd result, as it would eliminate all Constitutional qualifications for primary elections. **Thus, a 12 year-old, non-U.S. citizen, residing in Virginia, would not be barred by the Maryland Constitution from voting in the Maryland primary election.**” Such a reading simply cannot be correct.

435 Md. at 35 (quoting *Capozzi*, 396 Md. at 89) (emphasis added). The *Snyder* Court concluded that any interpretation of Article I, Section 1 that did not impose such an age requirement “would impute an anti-democratic meaning upon that provision, and would thus contradict the democratic imperatives underlying Article I, § 1 of the Constitution.” *Id.* at 60.

In the instant case, an even stronger claim can be made for applying the voting requirements of Article I, Section 1 to the student Board member election. Unlike a primary that does not result in any official actually being placed into a position of governmental authority and power, the student member vote to the Board directly propels the candidate to a position of elected office and general governmental power. *Snyder* stands for principle that Article I, Section 1 applies to *all* elections that can have the result and effect of placing someone into a democratically-elected position with binding

voting power, such as a school board. Indeed, Article I, Section 1 is clear and unambiguous in its requirement that all Maryland voters *must* be eighteen years of age by the close of registration preceding an election in order to vote. *See Snyder*, 435 Md. at 55. Following that principle, Article I, Section 1 must apply to the election of a student member to the Board because the student member has the power to make a binding vote on most Board matters.

Section 3-701(f) circumvents the voting requirements set forth in Article I, Section 1. By enacting subsection (f), the General Assembly has “curtail[ed] the qualifications necessary to vote.” *State Administrative Bd. of Election Laws*, 342 Md. at 599. The statute has “enlarged” the legal voting population to include minors who are constitutionally prohibited from voting. As a result, legislation violates the Maryland constitutional voter age requirement and is prohibited. *See Bienkowski*, 386 Md. at 547.

B. The Student Member is “Elected” by Minors not “Appointed”

The Board conceded and the lower Court agreed that if the student member position was an elected position, it would violate Article I, Section 1. (E46; T48). As a result, both the lower Court and the Board went to great lengths to ignore the plain and unambiguous language that the General Assembly employed in establishing how counties choose the members of their respective local school boards. In order to discern the clear import of this statutory scheme, this Court does not need to look any further than the title

of Section 3-114 of the Maryland *Education Article*, “County board elections and appointment of members.”

Section 3-114(a) reads: “In the following counties, the members of the county board shall be elected,” and then lists nineteen counties, including Howard County. *Id.* The same statute also unambiguously denotes counties that use a mixture of an election and appointment of board members. *See* Md. Code Educ. § 3-114(b)-(f). Five counties are specifically referenced (Baltimore City, Baltimore County, Caroline County, Harford County, and Prince George’s County), and for each of these specifically delineated counties, the statute requires that the members of these county boards “shall be a combination of members who are elected and appointed.” *Id.*

As is clearly demonstrated by the specific language chosen in drafting the statute governing the selection process of members of each of the local boards of education, the General Assembly understood the difference between board members being selected through an election as opposed to those being appointed. The General Assembly did designate Howard County as being an “appointed” board or hybrid appointed and elected board, but instead chose to designate it as a purely “elected” board. The plain meaning of the statute must control the Court’s analysis and decision and it is clear that the student member of Howard County’s Board is an elected office, not appointed. *Id.*

Furthermore, the statute regarding the composition of members of the Board of Education of Howard County, including the section of the statute dedicated to the student member, exclusively refers to the normal processes and procedures for adding members to the Board as “elections.” Md. Code, Educ. § 3-701. Specifically, subsection (f)

provides that the student member serves a 1-year term “after the member’s *election*, subject to confirmation of the *election results* by the county board.” Ed. § 3-701(f)(2) (emphasis added). Further, the statute describes the “nomination and *election* process for the student member,” and provides a mechanism for replacing a student member in such an election if he or she is “unable, ineligible, or disqualified to proceed in the *election*[.]” Ed. § 3-701(f)(3) (emphasis added).

Section 3-701 uses the term “election” four times in describing the student member position. Section 3-701 never employs the term “appointed” or any variation of this word in reference to the student member position. The only time the word “appoint” is used in this statute is when a vacancy on the board occurs, and only under these limited temporary circumstances does the statute create a power of temporary appointment of a qualified individual by the County Executive. *See* Md. Code Educ. § 3-701 (d)(3)-(4). This also serves to demonstrate that the General Assembly is keenly familiar with the language and methods used to indicate an appointment when it intends to do so.

Starting with the plain meaning of the statute at issue, the General Assembly unambiguously characterized Howard County’s Board of Education as an all-elected board and not a hybrid elected/appointed board or an all-appointed board. Members of the Board of Education of Howard County can only be elected, not appointed. *See* Ed. § 3-114(a)(10); *see also* Md. Op. Atty. Gen. No. 101-23, 2016WL4267992 at *1 (2016) (acknowledging the distinction between boards of education with members appointed under Ed. § 3-108 and those with members elected under Ed. § 3-114). Although neither the *Elections Article* nor the *Education Article* define “appointment,” Section 3-114

demonstrates that an “appointment” has the traditional meaning and the examples provided are gubernatorial appointments.

The Howard County Board of Education consists of eight members in total—seven “elected” regular members and one student member. *See* Ed. § 3-701(a). In the lower Court, the Board placed emphasis on the fact that Section 3-701 refers to the seven “elected” members, and does not refer to the student member as an “elected student member.” *See* Defendant’s Memorandum in Support of Motion to Dismiss at 9; (T49). However, this designation is purely one of semantics to distinguish the two. Of note, the regular members are elected through general elections governed by the Board of Elections, while the student member is elected through special election procedures that are exempt from the formal election procedures established by the Board of Elections. There are other reasons to distinguish these positions that have nothing to do with whether they are appointed or elected offices, such as the fact that the seven regular adult members are elected every two years, whereas the student member is elected to a one-year term.⁴ *See* Ed. § 3-701(d), (f).

If the Court considers the language of the *Education Article*, the *Election Article*, and the Maryland Constitution, it is clear the student member position is “elected” and not appointed. Article I of the Maryland Constitution, which addresses the elective franchise, does not define “election,” however, the *Elections Article* does. Section 1-101

⁴ Section 3-701 treats both student and adult Board members the same for purposes of removal by the State Board of Education. *See* Ed. § 3-701(h) (authorizing the State Board of Education to remove “a member of the county board” for the reasons enumerated in that subsection).

of the *Elections Article* defines “election” as “the process by which voters cast votes on one or more contests under the laws of this State or the United States[,]” and includes “all general elections, primary elections, and special elections[,]” including county elections. Elec. § 1-101(v); see *Reeder v. Board of Sup’rs of Elections of Queen Anne’s County*, 269 Md. 261, 263-64 (1973) (noting that county elections for public office are considered “elections” under Section 1-101(v)). Municipal elections, except those in Baltimore City, are expressly excluded from that definition. See Elec. § 1-101(v). In fact, the election of a student member of the Board is consistent with the statutory definition of a general election because the election results in the placement in office of an actual elected official. See Elec. Law § 1-101(v)(1)-(2); Elec. Law § 1-101(uu) (“‘Vote’ means to cast a ballot that is counted.”).⁵

The Board argued below that the fact that other counties in Maryland use a combination of elections and appointments to fill their board seats supported its argument that the student member position in Howard County is an appointment. (T51); See Defendant’s Memorandum in Support of Motion to Dismiss at 7-8. However, the counties the Board referenced and their respective statutes *explicitly* provide for appointed board members and use the word “appoint” or “appointment.” For example, in Baltimore City, a panel is convened to “select nominees to be recommended to the Mayor

⁵ Notably, Section 3-701(f) of the *Education Article* also conflicts with the requirements of the *Election Law Article*. Section 5-202 of the *Election Law Article* requires that “[a] candidate for public or party office **must be a registered voter** at an address that satisfies any residence requirement for the office that is imposed by law and, in the case of a party office, by party rules.” (emphasis added).

as qualified candidates for appointment to the board.” Md. Code, Educ. § 3-108.1(b)(2) (emphasis added). This precise language regarding a group convened specifically to nominate an appointee stands in stark contrast to the statute regarding the Howard County student member, which refers repeatedly to the procedure as an “election,” and never as an “appointment.” Md. Code Educ. §3-701(f).

The Board based its argument that an appointment by minors was permissible on the erroneous premise that Maryland’s local boards of education are merely creatures of statute that can be modified or even abolished at the whim of the General Assembly. *See* (E35); Defendant’s Memorandum in Support of Motion to Dismiss at 7. The Board argued that when an office has been created by the legislature, it can be “modif[ied], control[led] or abolish[ed]” by the legislature.” *Id.* (citing *State v. Falcon*, 451 Md. 138, 171 (2017)). The Board’s reasoning was that since it owes its existence to the legislature, the General Assembly has *carte blanche* to form it, create any method for choosing its members, establish any qualifications for its members as it sees fit, or even abolish it. In its zealous advocacy, the Board mistakes itself for a discretionary, legislatively-created office.

Local boards of education in Maryland are required by the State’s Constitution and are part of the express constitutional mandate to provide free education to all state residents. Md. Const. Art. VIII § 1 (“The General Assembly, at its First Session after the adoption of this Constitution, shall by law establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation, or otherwise, for their maintenance.”). Md. Const. Art. XVII § 7 (governing “Elective local boards of

education.”). The Maryland Constitution guarantees each resident student a free, public education. Md. Const. Art. 8, § 1. It also mandates that the General Assembly create a system of governance for this free, public education. *See id.* Unlike other legislative offices, however, the local boards of education are not dependent upon the wishes and desires of the legislature for their power or existence.

Unlike the statutory creatures referred to in the cases cited by the Board when this matter was before the lower Court, the legislature cannot choose to “abolish” local boards of education or the system of free, public education because they are mandated by the Maryland Constitution. Local boards of education are expressly recognized in the Maryland Constitution and have also been recognized as independent State agencies by this Court, even when serving an exclusive, local county jurisdiction. Indeed, this Court has previously recognized that although they take on a local character, the county boards of education are an “integral part” of carrying out the State’s mandate under Article VIII § 1. *Chesapeake Charter v. Anne Arundel County Bd. of Ed.*, 359 Md. 129, 136-7 (2000).

For its contention that the student member position was a “nominated” position, the Board primarily relied on a forty-year-old opinion by the Attorney General discussing the constitutionality of the student member position of the Prince George’s County Board of Education. *See* Md. Op. Att. Gen. No. 80-030, 1980WL127893 (1980). The opinion concludes that because that student member position is appointed, it does not violate the “one person, one vote” principle of the Fourteenth Amendment to the U.S. Constitution. The conclusion in Opinion No. 80-030 that a student member position on a board of education is an appointed position, as opposed to an elected one, is based entirely on a

quote from *Sailors v. Board of Education*, that characterized the election of a county school board as “basically appointive rather than elective.” See Ag. Op. No. 80-030 at *1 (citing *Sailors v. Board of Education*, 387 U.S. 105 at 109 (1967)).

In *Sailors*, members of the county school board were selected by delegates at a biennial meeting. See *Sailors*, 387 U.S. at 109 n.6. These delegates were members of the local school boards, who were popularly elected by the residents of the county. *Id.* The Supreme Court reasoned that this system was “basically appointive rather than elective” because the county school board members were “not determined, directly or indirectly, through an election in which residents of the county participate.” *Id.* From the Court’s reasoning, an Assistant Attorney General, Richard E. Israel, in responding to a question posed by the legislative delegation from Prince George’s County, concluded that the student member on the Prince George’s County Board of Education is appointed, rather than elected. See Ag. Op. No. 80-030, Attachment 1, at *4. Subsequently, the Attorney General, without explaining how or why, accepted the Assistant Attorney General’s conclusion. *Id.* at *1.

The Board of Education of Prince George’s County is an inapposite comparison to the Board of Education of Howard County. As noted above, members of the Board of Education of Prince George’s County are by statute selected through an election *and* appointment system. Ed. § 3-114(f). In contrast, the members of the Howard County Board of Education are all elected. See Ed. § 3-114(a)(10). Moreover, the student member in Prince George’s County was not elected by the student bodies at large, but was instead selected by a contingent of regional student government representatives,

much like the delegates of the school boards at issue in *Sailors*. See Md Code Ann Educ. §3-1002(g)(2). Thus, the fact that the student member position in Prince George's County was considered appointed finds direct support in the legislation creating the position but has no bearing on the student member's status in Howard County. In contrast, all members of the Howard County Board *must* be elected pursuant to Section 3-114 and tens of thousands of members of the Howard County middle school and high school student population cast a direct vote for the student member.

Significantly, Attorney General Opinion No. 80-030, and the opinion it was based on, concluded that if the student member position was an elected position, its existence would violate the one person, one vote principle of the Fourteenth Amendment and Article I, Section 1 of the Maryland Constitution. Assistant Attorney General Israel noted that, any election to a local board of education is "subject to the one-person, one-vote principle" because a county board of education exercises "general governmental powers." Ag. Op. No. 80-030, attachment 1, at *3. Assistant Attorney General Israel went on to explain that:

Assuming that the General Assembly could, without violating Article I, Sec. 1 of the State Constitution, enfranchise students who were not yet eighteen years old, the Legislature could not restrict the franchise for election of a member of a school board exercising general governmental powers to students or any other class of persons, whatever their special interest. **Such an election would be subject to the one-person, one-vote principle.**

Id. at *4 (emphasis added). The Attorney General's Opinion No. 80-030 acknowledged this possibility as well. See Ag. Op. No. 80-030 at *1.

C. The Student Member Obtains a Position of General Governmental Power through an Election

Remarkably, the lower Court disagreed with both litigants and concluded that the student member position on the Board was neither elected nor appointed. (E51; T39). The lower Court rejected the Spiegel and Ford's contention that the student member was an elected position, yet cited the "oft-quoted definition" of an election as "'the 'combined actions of voters and officials meant to make a final selection of an office holder.''" (E47)(quoting *Capozzi*, 396 Md. at 78 (quoting *Foster v. Love*, 522 U.S. 67, 71 (1997))). Later in the decision, the lower Court curiously observed that "the Court believes the General Assembly used the words 'election' and 'vote' in a non-technical manner as a way to efficiently describe the process whereby the student stakeholders express their opinion and select their representative." (E49). The lower Court acknowledged that this process of selection by the stakeholders was supervised by the Board, which was responsible for the "confirmation of election results." (E43) (citing Md. Code Ann., Education, 3-701(f)(2)). There is simply no way to reconcile these findings and conclude that the student Board position was not created through an election.

The lower Court expressly ruled that it was "not finding that the student member position meets the statutory definition of an 'appointment' as it relates to boards of education" (E51). Ultimately, the lower Court decided that it must have been the General Assembly's intent to "create a third method of selection, specific to student members, whereby students hold the position and are selected in some fashion by other students." (E51). The lower Court's creative solution to justify the student election

statute was compelled by its belief that it could not “conclude that the legislature intended to create a student member position that was elected and yet wholly incapable of complying with constitutional law.” (E48).

In the lower Court, the Board did not dispute that it exercises general governmental powers, and therefore it follows that Section 3-701(f) violates Article I, Sections 1 and 12 of the Maryland Constitution by permitting minors to vote in a general election as well as for violating the one person, one vote principle. (T56-57). To the extent that this Court believes that there is some ambiguity in both the applicable Maryland constitutional provisions as well as the statute creating the student member position in Howard County, the Supreme Court and lower courts have provided instructive guidance on how to assess whether a position should be subjected to constitutional voter rights provisions.

In *Hadley* the Supreme Court developed a framework for assessing whether to extend federal constitutional voting requirements to a governmental position. *See Hadley v. Junior College Dist. of Metro. Kansas City*, 397 U.S. 50 (1970). The *Hadley* Court essentially developed a two-part framework, which inquires whether: (1) the position exercise general governmental power; and (2) the position is elected. *See Hadley*, at 53-54. As to the first prong, the *Hadley* Court observed that education “has traditionally been a vital governmental function.” *Id.* at 56. The *Hadley* Court concluded that the board of trustees at issue exercised general governmental powers based on their responsibilities in connection with managing the overall operations of the junior college system. *See id.* at 53-54.

The Board of Education of Howard County exercises power in managing a school system with over 50,000 students and a nearly billion-dollars budget. The Board is a “body politic and corporate” exercising broad and expansive powers. *See* Md. Code Ann., Educ. §3-104. The Board certainly can be said to manage the overall operations of the Howard County school system in much the same way as the trustees of the junior college in *Hadley*. As a result, although a precise test does not appear to have been created by the *Hadley* Court, the precedent certainly supports the conclusion that positions such as those on the Board of Education of Howard County are positions of general governmental power. Although this conclusion appears to be generally undisputed, the importance of this conclusion within the framework of *Hadley* is that it establishes a triggering of the application of constitutional voting protections.

The second component of the *Hadley* Court’s analysis assessed whether the officials were elected by popular vote. *See id.* at 54. The trustees were divided based on each district’s population and apportioned to different districts. *See id.* at 51. However, it was uncontested that the districts voted on their apportioned trustees through a direct general election. *See id.* at 54. As a result, the second prong of *Hadley* was a relatively straightforward analysis and conclusion that the trustees were elected. *See id.*

The Board argued below that the instant case is not as straightforward, and the lower Court agreed in finding that the process of electing the student member to the Board was not an “election.” One federal district court has interpreted the prongs of *Hadley* in a nearly identical context to the issue before this Court. Although non-binding on this Court’s analysis, given this is an issue of first impression in Maryland, this Court

should consider the United States District Court for the Eastern District of California's decision in *Arc Students for Liberty Campaign v. Los Rios Community College District*, 732 F.Supp.2d 1051 (2010).

Arc Students involved a challenge relating to the election of a student trustee who was elected to serve in a *non-voting* capacity on a community college system's board of trustees. *See id.* at 1053. The election process was provided for by state statute and permitted all students enrolled in the various community colleges within the board of trustee's district to vote on the student member position. *See id.* When voting irregularities were raised, the board of trustees decided to invalidate the election results and allow certain student representatives at each community college to select the student trustee. *See id.* The plaintiffs were students claiming they were deprived of their voting rights in violation of the due process protections afforded by the U.S. Constitution. *See id.* at 1056.

The *Arc Students* Court analyzed whether the student trustee served a general governmental function under *Hadley*. *See id.* at 1059-60. Even though the student trustee position was a non-voting position, the *Arc Students* Court determined that the student's involvement in board meetings was enough to conclude that the student could "influence policy decisions that concern the general population." *Id.* at 1060. In the instant case, the power held by the student member on the Howard County Board is far more expansive, allowing the student member to propose motions and vote generally on all matters, with the exception of a limited and delineated category of topics. The student member position on the Howard County Board has actually cast votes on matters that

have affected the entire student population, including votes that have resulted in over 50,000 students losing in excess of a year of in-person instruction.

More significantly, the *Arc Students* Court addressed whether the student election constitutes an “election” for constitutional purposes. *See id.* at 1060. Just like the instant case, in *Arc Students*, the California legislature created an election process that established a system for the students enrolled in the district’s community colleges to vote on the student trustee position. *See id.* at 1057. The *Arc Students* Court determined that the student body vote was a popular election, triggering the application of constitutional voting protections and limitations, explaining:

[T]here is no question that the Student Trustee is popularly elected. Specifically, the state legislature decided to have Student Trustees selected by popular election by a class of voters determined by their enrollment in a community college. Defendant argues that because this class is not the same class from which the other trustees are elected, a so-called “general public election,” the Student Trustee is not publicly elected. This argument simply fails under *Hadley*. The Court specifically held that an election is popular when a legislature defines a class of voters. An election does not lose its status as popular depending on how the legislature chooses a class. Rather, even if “a State ... limit[s] the right to vote to a particular group or class of people,” such an election does not cease being popular. *Id.* at 59–60, 90 S.Ct. 791.

Id. at 1060.

Arc Students provides a direct answer to the question before this Court. The case illustrates that the framework established by the Supreme Court does not require courts to engage in mental gymnastics to reconcile an offensive statute with unambiguous constitutional provisions. The General Assembly created a position of broad

governmental power in the student Board position and established an election by students to decide which student would hold the position. The General Assembly did so by expressly contravening the Maryland Constitution. If the residents of Maryland want children voting on governmental office holders or holding those positions, Maryland's Constitution needs to be amended to accomplish this change.

D. The Student Election Dilutes the Rights of Howard County Voters

The student Board position was created through an unconstitutional, undemocratic⁶ process because it has the effect of diluting the votes of legal, registered voters in Howard County. This violates the well-established principle that each person is entitled to one vote. *See Baker v. Carr*, 369 U.S. 186, 208 (1962) (“A citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution”); *Gill v. Whitford*, 138 S. Ct. 1916, 1935 (2018) (noting that vote dilution “arises when an election practice . . . devalues one citizen’s vote as compared to others.”); *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019) (“[V]ote dilution in the on-person, one-vote cases

⁶ In 2012, then-Senator now Attorney General Brian Frosh made a similar argument against legislation for adding a student member to the Board of Education for Montgomery County. Specifically, Senator Frosh indicated: “It is simply undemocratic to have one member elected from a population of 70,000 people and five members elected from a population of 1,000,000 people.” David Moon, Sen. Brian Frosh Responds to Critics After Unilaterally Killing Young Voting Rights on Montgomery County School Board, MARYLAND JUICE (April 20, 2012, 2:45 p.m.), <http://www.marylandjuice.com/2012/04/sen-brian-frosh-responds-to-critics.html>.

refers to the idea that each vote must carry equal weight.”). This Court has recognized that the one-person, one-vote principle applies to local elections as well as state and federal elections. *See McMillan v. Love*, 379 Md. 551, 560-61 (2004) (holding that the “one-person/one-vote requirement of the Fourteenth Amendment extends to local government and imposes the same standard of proportionality to local government officials.”).

In *Rucho*, the United States Supreme Court concluded that, in order to withstand a vote dilution claim, “each representative must be accountable to (approximately) the same number of constituents.”). Section 3-701(f) authorizes a voting member of the Board to be elected by a population less than 80,000⁷ minors, while the seven remaining members of the Board are elected by a population of 335,000. *See* Howard County demographics, <https://www.census.gov/quickfacts/howardcountymaryland> (last accessed December 17, 2020). Although the student member is elected *only* by minors enrolled in grades six through eleven of Howard County’s public schools, the student representative is expected to represent interests of other groups who cannot vote for the student member, including “students, staff, parents, and others in the community[.]” *See* Howard County Public School System (“HCPSS”) Policy 2010—Student Representation, IV.B.7, available at <https://policy.hcpss.org/2000/2010/>.

⁷ Howard County’s school system population is estimated to have between 56,000 to 58,000 enrolled students, but only middle and high school students are empowered to vote for the student member position.

In interpreting Article I, Section 1, this Court is required to read it in the context of other relevant provisions in the Maryland Constitution and harmonize its meaning with the other provisions. *See Snyder*, 435 Md. at 54. Article I, Section 5 prohibits a person from “vot[ing] in more than one election district, or precinct” Md. Const., Art. I, § 5. That Constitutional provision did not intend to permit an expansion of Article I, Section 1 to allow the General Assembly to create exempt, special elections. Pursuant to Section 3-701(f), the student member is elected directly by students of Howard County public schools in grades six through eleven. *See* Educ. § 3-701(f)(3)(iii). Section 3-701 does not, however, delineate any age requirement for the Howard County public school students who are voting, such as a maximum age. As a consequence, some students enrolled in Howard County public schools that are of the age of seventeen and older could vote for the student member *as well as* an elected member of the Board in their precinct, if the student is over the age of 18 and otherwise registered to vote at the time of the general election.

For example, a student may be enrolled in grade eleven at a Howard County public school who is over the age of eighteen by the time of the general election. By virtue of the student’s status as an eleventh grader, the student is permitted to vote for the student member. If registered to vote, the student is also permitted to vote for an adult elected member of the Board in his or her precinct in the general election. Thus, Section 3-701 enables a person to vote *twice* for a voting member of the Board. This is

inconsistent with Article I, Section 5's prohibition that a person may not "vote in more than one election district, or precinct."⁸

Further, the Maryland Constitution expressly provides that the General Assembly is charged with the duty to pass laws "necessary for the preservation of the purity of Elections," and, in passing a law permitting the addition of a student member, the General Assembly violated this mandate. *See* Md. Const., Art. I, § 7; *see also Anderson v. Baker*, 23 Md. 531, 597 (1865) ("That the right of suffrage is a very important privilege, and cannot be too highly estimated . . . and that it should be distinctly defined, and strictly guarded, is as readily conceded. The free exercise of the right by those entrusted with it, and the *purity of elections*, are fundamental principles of free Government."(emphasis added)); *Smith v. Higinbotham*, 187 Md. 115, 128 (1946) (It is "absolutely essential" that the General Assembly enact legislation and regulations "to preserve the purity of elections . . ."). Section 3-701(f) violates the constitutional mandate of "purity of elections" because it has the double effect of denying most of the adult registered voters in Howard County the right to vote for a member of the Board and diluting the voting power of those same legal voters. Thus, Section 3-701(f) is a "material impairment of an elector's right to vote," rather than a law "necessary to ensure the secrecy and purity of elections." *See Jackson v. Norris*, 173 Md. 579, 596 (1937).

⁸ For that reason, Section 3-701(f) is inconsistent with Elec. Law § 16-201(a), which prohibits a person from "willfully and knowingly" "vot[ing] or attempt[ing] to vote more than once in the same election, or vot[ing] more than one election district or precinct; . . ."

A number of election cases have made clear that one group is not permitted to dilute the voting power of another group. *See Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964) (The Constitution requires that “as nearly as is practicable one man’s vote . . . is to be worth as much as another’s.”); *Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 397 U.S. 50, 54 (1970) (“[I]n situations involving elections, the States are required to insure that each person’s vote counts as much . . . as any other person’s.”). By allowing minors to vote for a binding Board seat, however, Section 3-701(f) violates this principle.

Section 3-701(f) blocks legal voters over the age of 18 who are not enrolled in Howard County public schools from voting for the student member position. As a result, those voters are permitted to vote for only three Board members (one in their district, and two at-large members). At the same time, 3-701(f) permits those enrolled in Howard County public schools who are age 18 and over at the time of an election to vote for four (4) Board members: one in their jurisdiction, two at-large members, and the student member. As a result, the student voter has more voting power than a non-student citizen of Howard County because the student can select an additional voting seat to the Board to exclusion of all other legal voters. This situation—the ability of one person to have more voting power over the others in the same jurisdiction—is strictly prohibited by the Maryland Constitution. *See* Art. I § 1. Indeed, this is the “built-in discrimination” warned against by the Supreme Court. *See Hadley*, 397 U.S. at 58.

In the lower Court, the Board argued that that claim of voter dilution fails under *Hadley*. While the claim in this case places its focus on the limitations and requirements under Maryland’s Constitution, the voter dilution cases under the Fourteenth Amendment

are helpful in the analysis. While the Board relied on the *Hadley* decision to assert no voter dilution claim exists in this case, a careful reading of *Hadley* demonstrates the opposite.

In *Hadley*, the United States Supreme Court invalidated a system of apportionment for electing trustees of a junior college under the “one man, one vote” principle of the Fourteenth Amendment. 397 U.S. at 69-70. The Supreme Court concluded that because the junior college trustees exercised general governmental powers and were elected by popular vote, the apportionment of votes must be equal for all elected members. *Id.* 54-55. The Court noted that:

But once a State has decided to use the process of popular election and ‘once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.’”

Id. at 59 (quoting *Gray v. Sanders*, 372 U.S. 368, 381 (1963)).

The Board does not dispute that it exercises general governmental powers, and this fact is acknowledged in Attorney General Opinion 80-030. *See* Md. Op. Att. Gen. No. 80-030, Attachment 1, at *4, 1980WL127893 (1980) (concluding that the election of a student member to the Prince George’s County Board of Education would violate the one-person, one-vote principle because the board exercises governmental powers). Appellants have established that the student member of the Board is an elected position. *See supra Arc Students for Liberty Campaign v. Los Rios Community College District*, 732 F.Supp.2d 1051 (2010) (holding a nearly identical student voting process was an election and relying on the framework established by the *Hadley* Court); *cf. Vander Linden v. Hodges*, 193 F.3d 268, 273 (4th Cir. 1999) (holding that a legislative delegation

having power over local and county matters was popularly elected); *Board of Estimate v. Morris*, 489 U.S. 688 (1989) (holding that New York City Board of Estimates violated one person, one vote principle because members of the Board were elected).

To the extent that this Court agrees that the student member was an elected position, all parties would appear to concede that the election violates the one person, one vote principle. *See McMillan v. Love*, 379 Md. 551, 561 (2004) (“[T]he touchstone for determining whether local government officials are subject to the one-person/one-vote requirement turns on two distinct factors: 1) that the governmental official was popularly elected; and 2) that the government official performed ‘governmental functions.’”). The importance of reviewing the voter dilution precedent is twofold. These cases establish and reinforce the conclusion that the student position on Howard County’s Board was a popularly elected position. More importantly, by establishing within this legal framework that the person attaining student Board position attains that position through the process of an election, the cases establish a violation of the democratic principles of Maryland’s Constitution as well as a direct violation of Article I, Section 1’s age limitation imposed on voters in all Maryland elections.

II. THERE ARE GOOD REASONS TO PROHIBIT MINORS FROM VOTING AND HOLDING OFFICE—THEY HAVE LIMITED CAPACITY

Finally, it is widely accepted that minors cannot and should not be treated as adults because their minds are not fully developed and as a result, they lack the same capacity as an adult. The same basic concept is what supports the prohibitions and

limitations on minors entering into contracts, consenting to sex, purchasing tobacco, alcohol or other regulated substances, making medical decisions, withdrawing from mandatory education and, of course, voting in elections. The Board has taken issue with the cited examples of how our laws in Maryland treat minors differently and exerted strenuous efforts, including enlisting an *amici* brief, to illustrate how minors are sometimes treated as adults. Their arguments miss the point. It is not disputed that minors are, at times, treated as adults in narrow, limited circumstances. However, Section 3-701(f) gives franchise to minors in violation of the Maryland Constitution.⁹

The Board does not cite to any authority, in Maryland or any other jurisdiction, where minors were provided the right to vote in a non-municipal election for an office holder who exercises general governmental power. The only way to grant franchise to a new class is through a constitutional amendment. *See, e.g.*, U.S. Const., Amendment XV (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”); Amendment XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”). To date, there is no amendment to the U.S. or Maryland Constitution that would grant

⁹ Indeed, the Board’s example that minors may vote in Takoma Park is inapposite. Minors in Takoma Park may vote in mayoral and ward elections, which are municipal elections excluded under the *Elections Article*. *See* Elec. § 1-101 (excluding “municipal elections” from the definition of “election.”). Municipal elections are also not governed by Maryland’s constitutional voting limitations. *See State Bd. of Elec. v. Snyder*, 435 Md. 30, 48-49 (2013).

minors the right to vote, and the General Assembly cannot circumvent the constitutional amendment process through Section 3-701.

A. Minors Cannot Hold Elective Office

The Maryland Constitution forbids a person from holding any elected office “if the person was not a registered voter in this State on the date of the person’s election or appointment.” Md. Const., Art I, § 12. In order to be a qualified registered voter, Article I, Section 1 of Maryland’s Constitution requires an individual to be 18 years of age. Reading these two sections together, Maryland’s Constitution is unambiguous in its requirement that an individual must be 18 years of age to hold an elected office. The intent behind these constitutional provisions prevents underage persons from voting and protects the purity and sanctity of elections. *See Broadwater v. State*, 306 Md. 597 (1986).

Article I, Section 1 originally required a resident to be 21 years of age to vote, until it was amended in 1978 and lowered to 18. *See Acts of 1977*, ch. 681 (ratified November 7, 1978). There are strong public policy considerations that factor into legal age requirements, not the least of which are the biological differences between the mental development and capacity of a child when compared with an adult. These distinctions are carefully considered by our citizens and governing bodies when determining the appropriate applicable age requirements. These requirements find their place in our common law, statutes, and constitutions. Even the Board has recognized this fact and has

incorporated it into its policies concerning the student member. Specifically, the Board has stated:

Board service may create scheduling conflicts with the responsibilities of the Student Member of the Board of Education as a student in the HCPSS. **Recognizing that the Student Member of the Board of Education is a minor, the student's parent(s) are responsible for balancing these obligations and determining which Board activities the Student Member of the Board of Education should attend.**

HCPSS Policy 2010, IV.B.12. (emphasis added). Further recognizing that student members, as minors, cannot take on the full responsibilities as adults, the Board has stated:

The role and obligation of the Board regarding attendance of the Student Member of the Board of Education at Board meetings or events does not include providing transportation or supervision of the Student Member of the Board of Education at the event. **Parent(s) of the Student Member of the Board of Education assume these responsibilities.**

HCPSS Policy 2010, IV.B.13. Thus, as the Board itself has formally acknowledged, despite having responsibilities and duties similar to those of the other Board members (including voting on Board matters), the student member must be chaperoned by the child's parents.

Additionally, a minor who is subjected to the duties and responsibilities associated with holding a binding voting position on a board that presides over the education of over 50,000 students and a near billion-dollar annual budget does not have the ability or capacity to escape undue influence. This is precisely why in almost every other field, a minor is entitled to a presumption of incapacity. This is why otherwise legally binding acts taken by a minor are cast aside or treated appropriately as juvenile matters. Instead

of recognizing this widely acknowledged infirmity, the legislature has empowered a minor to make decisions that should be beyond the minor's reach, including carrying out the executive, legislative, and quasi-judicial functions of the Board.¹⁰ See HCPSS Policy 2000–School Board Governance, IV.B.1, available at <https://policy.hcpss.org/2000/2000/> (recognizing that the Board has executive, legislative, and quasi-judicial functions.).

The lower Court avoided the inescapable conclusion that the student member seat violated Article I, Section 12 by concluding it was not an “elected” position. In interpreting Article I, Section 12, the lower Court reasoned that even though this Section requires a person who holds “elective office” to be 18 years of age and registered to vote, this requirement does not apply to appointments. The lower Court further reasoned that since the provision does not apply to appointments, it also does not apply to the third method of “selecting” a person to a position of general governmental power that the

¹⁰ In 2012, arguing that a student member position should not be established for the Board of Education for Montgomery County, now Attorney General Brian Frosh argued: “SMOBs will be pressured by teachers, unions, parents, school administrators, county officials and lobbyists...I do not think it is reasonable to expect 17 year olds to find their way through the maze of pressure, policy and politics, however smart they may be.” Louis Peck, Controversial Bill Increasing Student Power On School Board Returns To Legislative Agenda, BETHESDA MAGAZINE (Dec. 3, 2014, 10:01 a.m.), <https://bethesdamagazine.com/bethesda-beat/politics/controversial-bill-increasing-student-power-on-school-board-returns-to-legislative-agenda/>.

Current Attorney General Frosh also reasoned that: “These disputes are the most highly charged, complex and controversial of the issues handled by the School Board. SMOBs will be pressured by teachers, unions, parents, school administrators, county officials and lobbyists. Each SMOB serves for one year only. No SMOB will even have the benefit of one year's prior experience. I do not think it is reasonable to expect 17 year olds to find their way through the maze of pressure, policy and politics, however smart they may be.” David Moon, Sen. Brian Frosh Responds to Critics After Unilaterally Killing Young Voting Rights on Montgomery County School Board, MARYLAND JUICE (April 20, 2012, 2:45 p.m.), <http://www.marylandjuice.com/2012/04/sen-brian-frosh-responds-to-critics.html>.

Court believed was envisioned by the General Assembly when the student Board position was created.

The lower Court's reasoning is flawed based on a misreading of Article I, Section 12, which provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, and elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in his State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

Md. Const., Art I, § 12.

The lower Court placed significant emphasis on the words "elective office" and viewed this section as only applying to elected officials, not appointed officials or officials obtaining their governmental office through other means. The lower Court viewed the reference to "appointment" as merely referring to positions that were held by elected officials who were appointed after an elected official could not fulfill their elected term, requiring a temporary appointment to that term. An equally logical reading of this provision would be that it applies to all positions and offices, whether elected or appointed.

The phrase "or if any time thereafter, and prior to completion of the term, the person ceases to be a registered voter" suggests that the section was intended to create a continuous requirement for all public officeholders to be registered to vote. This alternate reading would be more consistent with this Court's prior acknowledgement in *Broadwater v. State*, of a lower Court's interpretation that:

Registration manifests the fact of residency; it is indicative of the candidate's seriousness and his willingness to accept the new community as his home and involve himself meaningfully in its affairs. These are legitimate state interests. Registration also protects against fraudulent voters and candidates, **ensuring that the underage and convicted felons are disqualified from seeking office.**

Id. 306 Md. at 607 (emphasis added) (internal quotation marks and citations omitted). Permitting minors under the age of 18 to hold a voting position on the Board would appear to circumvent and is certainly inconsistent with of Article I, Section 12.

The lower Court recognized that no Maryland decision has squarely addressed whether a minor can hold a position of general governmental power. The lower Court felt constrained to give deference to the General Assembly's intent to allow minors to hold office, recognizing the need for the appellate courts to provide guidance on this issue. The lower Court explained that "[a]bsent specific guidance imposing an age requirement to exercise general governmental power, the Court will not read one into existence." The drafters of the Maryland Constitution made clear that they never contemplated or intended on permitting minors to vote or hold office. In the context of Article I, Sections 1 and 12, the proposition that the framers of Maryland determined that a child of any age should be able to hold a position of general governmental power on a State board that votes directly on decisions that impact tens of thousands of students, but that same child could not participate in an election for a member on that same Board requires a contorted view of the Constitution, rather than a plain, common-sense reading of the document.

B. An Appointment Requires a Valid Appointing Authority

Even if this Court were to entertain the concept that the Howard County student member was appointed or otherwise “selected,” there is no sound reason why the student member position would be unconstitutional if elected by eleven-year-old children, but constitutionally permissible if appointed by the same children. The lower Court failed to address this principal contention raised by Spiegel and Ford that regardless of the label placed on the selecting or appointing authority, they are minors ineligible to place individuals into a position of general governmental power.

With respect to the children’s selection or appointment of the student member to the Board, the only responsibility or involvement the Board has is with merely approving the “nomination and election process for the student member.” Md. Code, Edu. § 3-701(f)(3)(emphasis added). The Board cannot approve or disapprove the member chosen by these children. *Id.* The children who elect the student member are hardly a constituency that any rational person could hold accountable. Certainly, they have no direct accountability to the voters and residents in the County who pay the property taxes that fund the Board and Howard County’s school system.

This lack of accountability distinguishes the cases relied on by Attorney General Sachs in his 1980 opinion on a related issue that the Board and lower Court relied heavily upon. Attorney General Sachs quoted *McCurdy v. Jessup*, relying on its holding that private associations may make appointments. *See id.* at 126 Md. 318, 322-23. However, even in these instances, the private associations making the appointments did not consist

of minors who were ineligible to vote and who were not recognized by any state laws as having the capacity to participate in elections or the political process. As recognized by the Fourth Circuit in *Vander Linden v. Hodges*, 193 F.3d 268 (1999), “the concept of an appointment presumes the existence of an appointing authority; nothing in the record even suggest that any official or body exercises the power to appoint members . . .”. *Id.* at 273.

CONCLUSION AND RELIEF SOUGHT

Appellants Spiegel and Ford seek a decision and order from this Court determining and declaring that the student member position and election process for the student member position contained in Maryland *Education Article* Section 3-701 is inconsistent with and in derogation of certain provisions of the Maryland Declaration of Rights, Articles 7 and 24, as well as certain provisions of Maryland’s Constitution, in particular Articles I, Sections 1, 5, 7 and 12; Article VIII, Section 1 and Article XVII, Section 7. The Appellants request that this Court issue a decision and order determining and declaring Maryland *Education Article* Sections 3-701(a)(1)(ii); 3-701(f) and 3-701(g)(1) are unconstitutional and void.




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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 11,661 words and 42 pages, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, page limit and type size requirements stated in Rule 8-112. The Font used is Times New Roman 13 point font.



Anthony M. Conti

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July 2021, a copy of the foregoing Brief of Appellants and Extract was filed with the Clerk of the Court via MDEC, with copies being sent via electronic mail as well as two copies being served on counsel for the Appellants and Amici at the addresses below, and in addition, 20 copies will be delivered on August 2, 2021 to the Clerk of the Court of Appeals:

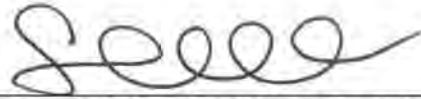
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**THE CITATION AND VERBATIM TEXT OF ALL PERTINENT CONSTITUTIONAL;
PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS**

Annotated Code of Maryland, Election Law Article (2021)

§ 5-202. Residency requirement

A candidate for public or party office must be a registered voter at an address that satisfies any residence requirement for the office that is imposed by law and, in the case of a party office, by party rules.

§ 3-102. Qualifications for voter registration

(a) *In General* – (1) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:

- (i) is a citizen of the United States;
- (ii) is at least 16 years old;
- (iii) is a resident of the State as of the day the individual seeks to register; and
- (iv) registers pursuant to this title.

(2) Notwithstanding paragraph (1)(ii) of this subsection, an individual under the age of 18 years:

- (i) may vote in a primary election in which candidates are nominated for a general or special election that will occur when the individual is at least 18 years old; and
- (ii) may not vote in any other election.

Disqualified individuals

(b) An individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;

(2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process; or

(3) has been convicted of buying or selling votes.

§ 8-801. Application of article to nomination and election of county board of education

Except as otherwise provided in this subtitle and in Title 3 of the Education Article, the provisions of this article relating to the nomination and election of candidates to public office shall govern the nomination and election of members to an elected county board of education.

§ 16-201. Offenses relating to voting

In general

- (a) A person may not willfully and knowingly:
 - (1)(i) impersonate another person in order to vote or attempt to vote; or
 - (ii) vote or attempt to vote under a false name;
 - (2) vote more than once for a candidate for the same office or for the same ballot question;
 - (3) vote or attempt to vote more than once in the same election, or vote in more than one election district or precinct;
 - (4) vote in an election district or precinct without the legal authority to vote in that election district or precinct;
 - (5) influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward;
 - (6) influence or attempt to influence a voter's decision whether to go to the polls to cast a vote through the use of force, fraud, threat, menace, intimidation, bribery, reward, or offer of reward; or
 - (7) engage in conduct that results or has the intent to result in the denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or disability.

Fines or imprisonment

- (b) Except as provided in § 16-1002 of this title, a person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$5,000 or imprisonment for not more than 5 years or both.

Limitations

- (c) A person who violates this section is subject to § 5-106(b) of the Courts Article.

Annotated Code of Maryland, Education (2021)

§ 3-104. County boards as corporate bodies

In general

- (a) Each county board is a body politic and corporate by the name of the Board of Education of County.

Nature of board

- (b) A county board:
 - (1) Has perpetual existence;
 - (2) May sue and be sued; and

(3) May have, use, alter, or abandon a common seal.

§ 3-108. Appointment and removal of county board members

Governor appointment of members

(a)(1) Except as provided in paragraph (2) of this subsection, the Governor shall appoint the members of each county board from the residents of that county.

(2) The members of the following county boards of education shall be selected as follows:

(i) The Baltimore City Board of School Commissioners in accordance with § 3-108.1 of this subtitle;

(ii) The Harford County Board of Education in accordance with § 3-6A-01 of this title;

(iii) The Caroline County Board of Education in accordance with § 3-3A-02 of this title; and

(iv) The county boards of education in the counties listed in § 3-114 of this subtitle in accordance with the provisions of that section.

Appointments based on character and fitness of member

(b)(1) Each member shall be appointed solely because of character and fitness and without regard to political affiliation.

(2) An individual who is subject to the authority of the county board may not be appointed to or serve on the county board.

Terms and vacancies

(c)(1) Each member serves for a term of 5 years beginning July 1 after the member's appointment and until a successor is appointed and qualifies.

(2) The Governor shall appoint a new member to fill any vacancy on an appointed board for the remainder of that term and until a successor is appointed and qualifies.

(3) Unless otherwise disqualified under this section, a member of a board is eligible for reappointment. However, an individual may not serve for more than 2 consecutive terms.

Grounds for removal of members

(d)(1) With the approval of the Governor, the State Superintendent may remove any member of a county board appointed under this section for:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) Incompetency;
- (iv) Willful neglect of duty; or
- (v) Failure to attend, without good cause, at least half of the scheduled meetings of the board in any 1 calendar year.

(2) Before removing a member, the State Superintendent shall send the member a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the member requests a hearing within the 10-day period:

- (i) The State Superintendent promptly shall hold a hearing, but a hearing may not be set within 10 days after the State Superintendent sends the member a notice of the hearing; and

- (ii) The member shall have an opportunity to be heard publicly before the State Superintendent in his own defense, in person or by counsel.

(4) If a member who is removed so requests, the State Superintendent shall file with the clerk of the circuit court for the county from which the member was appointed:

- (i) A complete statement of all charges made against the member;
- (ii) The findings of the State Superintendent; and
- (iii) A complete record of the proceedings.

§ 3-114. County board elections and appointment of members

Counties requiring election of board members

(a) In the following counties, the members of the county board shall be elected:

- (1) Allegany;
- (2) Anne Arundel;
- (3) Calvert;
- (4) Carroll;
- (5) Cecil;
- (6) Charles;
- (7) Dorchester;
- (8) Frederick;
- (9) Garrett;
- (10) Howard;
- (11) Kent;
- (12) Montgomery;
- (13) Queen Anne's;
- (14) St. Mary's;
- (15) Somerset;
- (16) Talbot;
- (17) Washington;

- (18) Wicomico; and
- (19) Worcester.

Baltimore City

(b) In Baltimore City, in accordance with § 3-108.1 of this subtitle, the members of the Baltimore City Board of School Commissioners shall be a combination of members who are elected and appointed.

Baltimore County

(c) In Baltimore County, in accordance with Subtitle 2A of this title, the members of the county board shall be a combination of members who are elected and appointed.

Caroline County

(d) In Caroline County, in accordance with Subtitle 3A of this title, the members of the county board shall be a combination of members who are elected and appointed.

Harford County

(e) In Harford County, in accordance with Subtitle 6A of this title, the members of the county board shall be a combination of members who are elected and appointed.

Prince George's County

(f) In Prince George's County, in accordance with Subtitle 10 of this title, the members of the county board shall be a combination of members who are elected and appointed.

Individuals subject to authority of board ineligible as board members

(g) An individual subject to the authority of the county board may not serve as a member of the county board. At the time of filing a certificate of candidacy for election to a county board, a person shall certify to the local board of supervisors of elections whether or not the person is subject to the authority of the county board. The Governor may not issue a commission of election to a person who has certified affirmatively and who is elected to a county board until the member-elect offers proof that the member-elect is no longer subject to the authority of the county board.

Election of county boards

(h) The election of the county boards shall be held as provided in Subtitles 2 through 14 of this title and the Election Law Article.

§ 3-701. Composition, election, and removal of members

Composition

- (a)(1) The Howard County Board consists of:
 - (i) Seven elected members; and
 - (ii) One student member.

(2) The seven elected members shall be elected as follows:

(i) One member from each of the five councilmanic districts in the county, elected by the voters of that district; and

(ii) Two members at large, elected by the voters of the county.

Residency requirements

(b)(1) A candidate who becomes an elected member of the county board shall be a resident and registered voter of Howard County.

(2)(i) Any elected member who no longer resides in Howard County may not continue as a member of the board.

(ii) Any member elected from a councilmanic district who no longer resides in that district may not continue as a member of the board.

(3) If the boundary line of a Howard County Council District is changed, the term of an incumbent member of the county board who no longer resides in that councilmanic district because of the change is not affected during this term. Election of members

(c) The seven elected members of the Howard County Board shall be elected:

(1) Beginning in 2020, at the general election every 2 years as required by subsection (d) of this section; and

(2) As specified in subsection (a) of this section.

Terms of elected members and vacancies

(d)(1)(i) The terms of the elected members are staggered as provided in this subsection.

(ii) Each term of office begins on the first Monday in December after the election of a member and until a successor is elected and qualifies.

(2)(i) 1. The term of office of each member elected from a councilmanic district, beginning at the 2020 election, is 4 years.

2. The term of office of each member elected at large, beginning at the 2022 election, is 4 years.

(ii) The successors to the offices elected at the 2020 and 2022 elections, respectively, shall serve for a term of 4 years.

(3) Except as provided in paragraph (4) of this subsection and subject to the confirmation of the County Council, the County Executive of Howard County shall appoint a qualified individual to fill any vacancy for an elected member on the county board for the remainder of that term and until a successor is appointed and qualifies.

(4) If a vacancy for an elected member occurs before the date that is 1 year following the date of the member's election, the individual appointed under paragraph (3) of this subsection shall serve only until a successor is elected by the voters at the next general election.

(5) Candidates for the vacated office may be nominated at a primary election in the same manner as for any other position on the county board.

(6) The candidate receiving the vacated position shall take office on the first Monday in December after the election and shall continue to serve for the remainder of the vacated term and until a successor is elected and qualifies.

(7) Except as provided in this subsection, an election to fill a vacancy on the Howard County Board of Education shall be governed by §§ 8-801 through 8-806 of the Election Law Article.

Diversity of county board

(e) When making an appointment to the county board, the County Executive of Howard County shall endeavor to ensure that the county board reflects the race, gender, and ethnic diversity of the population of Howard County.

Student members

(f)(1) The student member shall be a bona fide resident of Howard County and a regularly enrolled junior or senior year student from a Howard County public high school.

(2) The student member shall serve for a term of 1 year beginning on July 1 after the member's election, subject to confirmation of the election results by the county board.

(3) The nomination and election process for the student member:

(i) Shall be approved by the Howard County Board of Education;

(ii) Shall include a provision that provides for the replacement of one or both of the final candidates if one or both of them are unable, ineligible, or disqualified to proceed in the election; and

(iii) Shall allow for any student in grades 6 through 11 enrolled in a Howard County public school to vote directly for one of the two student member candidates.

(4) The student member candidate who receives the second highest number of votes in the direct election:

(i) Shall become the alternate student member; and

(ii) Shall serve if the student member who is elected is unable, ineligible, or disqualified to complete the student member's term of office.

(5) Except as provided in paragraphs (6) and (7) of this subsection, the student member has the same rights and privileges as an elected member.

(6) Unless invited to attend by the affirmative vote of a majority of the county board, the student member may not attend a closed session addressing a matter on which a student member is prohibited from voting under paragraph (7) of this subsection.

(7) The student member shall vote on all matters except those relating to:

(i) Geographical attendance areas under § 4-109 of this article;

(ii) Acquisition and disposition of real property and matters pertaining to school construction under § 4-115 of this article;

(iii) Employment of architects under § 4-117 of this article;

(iv) Donations under § 4-118 of this article;

(v) Condemnation under § 4-119 of this article;

(vi) Consolidation of schools and transportation of students under § 4-120 of this article;

(vii) Appointment and salary of a county superintendent under §§ 4-201 and 4-202 of this article;

(viii) Employee discipline and other appeals under § 4-205(c) of this article;

- (ix) Budgetary matters under Title 5 of this article;
 - (x) Appointment and promotion of staff under § 6-201 of this article;
 - (xi) Discipline of certificated staff under § 6-202 of this article;
 - (xii) Collective bargaining for certificated employees under Title 6, Subtitle 4 of this article;
 - (xiii) Collective bargaining for noncertificated employees under Title 6, Subtitle 5 of this article; and
 - (xiv) Student suspension and expulsion under § 7-305 of this article.
- (8) The student member may not receive compensation but, after submitting expense vouchers, shall be reimbursed for out-of-pocket expenses incurred in connection with official duties, in accordance with the procedures and regulations established by the county board.

Passage of motions by board

- (g) Passage of a motion by the county board requires the affirmative vote of:
 - (1) Five members if the student member is authorized to vote; or
 - (2) Four members if the student member is not authorized to vote.

Grounds for removal

- (h)(1) The State Board may remove a member of the county board for:
 - (i) Immorality;
 - (ii) Misconduct in office;
 - (iii) Incompetency; or
 - (iv) Willful neglect of duty.
- (2) Before removing a member, the State Board shall send the member a copy of the charges against the member and give the member an opportunity within 10 days to request a hearing.
- (3) If the member requests a hearing within the 10-day period:
 - (i) The State Board promptly shall hold a hearing, but a hearing may not be set within 10 days after the State Board sends the member a notice of the hearing; and
 - (ii) The member shall have an opportunity to be heard publicly before the State Board in the member's own defense, in person or by counsel.
- (4) A member removed under this subsection has the right to a de novo review of the removal by the Circuit Court for Howard County.

§ 3-1002. Composition, election, and removal of members

Definitions

- (a)(1) In this subtitle the following words have the meanings indicated.
- (2) "Appointed member" means a member of the Prince George's County Board appointed under subsection (f) of this section.
- (3) "Elected member" means a member of the Prince George's County Board elected from one of the nine school board districts described in § 3-1001 of this subtitle.

Composition

(b) The Prince George's County Board consists of 14 members as follows:

- (1) Nine elected members, each of whom resides in a different school board district;
- (2) Four appointed members; and
- (3) One student member selected under subsection (g)(2) of this section.

Election of members

(c)(1) One member of the county board shall be elected from each of the nine school board districts described in § 3-1001 of this subtitle.

(2) From the time of filing as a candidate for election, each candidate shall be a registered voter of the county and a resident of the school board district the candidate seeks to represent.

(3) An elected county board member shall forfeit the office if the member:

- (i) Fails to reside in the school board district from which the member was elected, unless this change is caused by a change in the boundaries of the district; or
- (ii) Fails to be a registered voter of the county.

(4) A county board member may not hold another office of profit in county government during the member's term.

(5) Each elected member of the county board shall be nominated by the registered voters of the member's school board district.

Time of elections

(d) The elected members of the county board shall be elected:

- (1) At the general election every 4 years as required by subsection (h) of this section; and
- (2) By the voters of the school board district that each member represents.

Withdrawal of candidacy for board

(e)(1) If a candidate for the county board dies or withdraws the candidacy during the period beginning with the date of the primary and ending 70 days before the date of the general election, the Board of Elections shall:

(i) Replace the name of the deceased or withdrawn candidate on the ballot for the general election with the name of the candidate who received the next highest number of votes in the primary election; or

(ii) If a contested primary was not held, reopen the filing process to allow other persons to file as candidates.

(2)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, the Board of Elections shall add to the ballot for the general election the name of any person who files as a candidate in accordance with paragraph (1)(ii) of this subsection.

(ii) The Board of Elections may not add additional candidates to the ballot for the general election within 70 days before the date of the election.

Composition of appointed members

(f)(1) The appointed members of the county board shall be appointed as follows:

(i) Three members shall be appointed by the County Executive of Prince George's County as follows:

1. One member shall possess a high level of knowledge and expertise concerning education;

2. One member shall possess a high level of business, finance, or higher education experience; and

3. One member shall possess a high level of knowledge and expertise concerning the successful administration of a large business, nonprofit, or governmental entity; and

(ii) The Prince George's County Council shall appoint one member who is a parent of a student enrolled in the Prince George's County public school system as of the date of the appointment of the member.

(2) Each appointed member of the county board shall be a resident of Prince George's County.

Student members

(g)(1) The student member shall be an eleventh or twelfth grade student in the Prince George's County public school system during the student's term in office.

(2) An eligible student shall file a nomination form at least 2 weeks before a special election meeting of the Prince George's Regional Association of Student Governments. Nomination forms shall be made available in the administrative offices of all public senior high schools in the county, the office of student concerns, and the office of the president of the regional association. The delegates to the regional association annually shall elect the student member to the board at a special election meeting to be held each school year.

(3) The student member may vote on all matters before the board except those relating to:

(i) Capital and operating budgets;

(ii) School closings, reopenings, and boundaries;

(iii) Collective bargaining decisions;

(iv) Student disciplinary matters;

(v) Teacher and administrator disciplinary matters as provided under § 6-202(a) of this article; and

(vi) Other personnel matters.

(4) On an affirmative vote of a majority of the elected and appointed members of the county board, the board may determine if a matter before the board relates to a subject that the student member may not vote on under paragraph (3) of this subsection.

(5) Unless invited to attend by an affirmative vote of a majority of the elected and appointed members of the county board, the student member may not attend an executive session that relates to hearings on appeals of special education placements, hearings held under § 6-202(a) of this article, or collective bargaining.

(6) The Prince George's Regional Association of Student Governments may establish procedures for the election of the student member of the county board.

(7) The election procedures established by the Prince George's Regional Association of Student Governments are subject to the approval of the elected and appointed members of the county board.

Terms and vacancies

(h)(1) Except as provided in paragraph (2) of this subsection, an elected member serves for a term of 4 years beginning on the first Monday in December after the member's election and until the member's successor is elected and qualifies.

(2) The terms of the elected members are staggered as follows:

(i) The five elected members who received the lowest percentage of votes, as determined by the final vote count of the 2010 General Election as certified by the Board of Elections, shall serve for a term of 2 years; and

(ii) The other four members elected in the 2010 General Election shall serve for a term of 4 years.

(3) Except as provided in paragraph (4) of this subsection, an appointed member:

(i) Serves for a term of 4 years beginning on the date of appointment;

(ii) May be reappointed; and

(iii) Serves until a successor is appointed and qualifies.

(4) The terms of the appointed members are staggered as follows:

(i) The members appointed under subsection (f)(1)(i)1 and 2 of this section on or before June 1, 2013, shall serve for an initial term of 4 years; and

(ii) The member appointed under subsection (f)(1)(i)3 and (ii) of this section on or before June 1, 2013, shall serve for an initial term of 2 years.

(5) The student member serves for a term of 1 year beginning at the end of a school year.

(6)(i) Subject to subparagraph (ii) of this paragraph, if a seat held by an elected member of the county board becomes vacant, the County Executive shall:

1. Appoint a qualified individual to fill the seat for the remainder of the term; and

2. Transmit the name of the appointee to the clerk of the County Council.

(ii) If the County Council does not disapprove an appointment under subparagraph (i) of this paragraph by a two-thirds vote of all members of the County Council within 45 days after the transmittal of the name of the appointee, the appointment shall be considered approved.

Grounds for removal

(i)(1) With the approval of the Governor, the State Board may remove a member of the county board for any of the following reasons:

(i) Immorality;

(ii) Misconduct in office;

(iii) Incompetency; or

(iv) Willful neglect of duty.

(2) Before removing a member, the State Board shall send the member a copy of the charges pending and give the member an opportunity within 10 days to request a hearing.

(3) If the member requests a hearing within the 10-day period:

(i) The State Board promptly shall hold a hearing, but a hearing may not be set within 10 days after the State Board sends the member a notice of the hearing; and

(ii) The member shall have an opportunity to be heard publicly before the State Board in the member's own defense, in person or by counsel.

(4) A member removed under this subsection has the right to judicial review of the removal by the Circuit Court for Prince George's County based on an administrative record and such additional evidence as would be authorized by § 10-222(f) and (g) of the State Government Article.

Public office candidate restrictions

(j) While serving on the county board, a member may not be a candidate for a public office other than a position on the county board.

§ 4-109. Public schools and attendance areas

Establishment of public school

(a) Subject to approval by the State Superintendent and in accordance with the applicable bylaws, rules, and regulations of the State Board, a county board may establish a public school if, in its judgment, it is advisable.

School as part of State program of public education

(b) On approval by the State Superintendent, any school established under this section becomes a part of the State program of public education.

Determination of geographical attendance area

(c) With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

§ 4-115. Land, school sites, or buildings used for school purposes

County council defined

(a) In this subtitle, "county council" means, in Baltimore City, the Mayor and City Council of Baltimore.

Acquisition or rental of land, school sites, or buildings

(b) With the approval of the State Superintendent, each county board may:

(1) Buy or otherwise acquire land, school sites, or buildings; and

(2) Rent, repair, improve, and build school buildings or approve contracts for doing so, if the plans conform to the bylaws, rules, and regulations of the State Board.

Sale, lease, or disposal of land, school sites, or buildings

(c)(1)(i) Except as provided in this subsection, if, with the approval of the State Superintendent, a county board finds that any land, school site, or building no longer is needed for school purposes, it shall inform the county commissioners or county council of the county board's determination under this subparagraph.

(ii) When the county commissioners or county council receive notice under subparagraph (i) of this paragraph, the county commissioners or county council shall notify the county board within 30 days after receiving the notice from the county board:

1. Of the need to transfer the land, school site, or building to the county commissioners or county council if the land, school site, or building is an integral component of an existing economic development plan that will, in the judgment of the county commissioners or county council, significantly benefit the county; or

2. That the county commissioners or county council have no existing plans for the use of the land, school site, or building.

(iii)1. If the county commissioners or county council provide the required notice to the county board under subparagraph

(ii)1 of this paragraph or a public charter school does not need the school site or building under § 9-111 of this article, the land, school site, or building shall be transferred by the county board to the county commissioners or county council and may be used, sold, leased, or otherwise disposed of, except by gift, by the county commissioners or county council.

2. If the county commissioners or county council provide the required notice to the county board under subparagraph

(ii)2 of this paragraph, the county board shall comply with the provisions of § 9-111 of this article.

(2) In Harford County, if, with the approval of the State Superintendent, the county board finds that any land, school site, or building is no longer needed for school purposes, it shall be transferred by the county board to Harford County, Maryland, and disposed of in accordance with this section.

(3) With the approval of the State Superintendent, the Cecil County Board may transfer, with or without charge, any of its property to the board of trustees of a public community college.

Baltimore County

(d) In Baltimore County, the Baltimore County Board of Education must notify the Baltimore County Office of Planning and Zoning of any schools it is considering for closure and request from that Office a written recommendation on the proposed action. If the Office of Planning and Zoning wishes to make a recommendation, it must be submitted to the board no later than November 1 of the calendar year preceding the proposed closure. The board of education shall consider these recommendations at least 3 months before taking final action. These provisions may be waived by mutual agreement.

Notice of any school buildings considered for closure

(e)(1) In Baltimore City, the Board of School Commissioners shall notify the Baltimore City Department of Planning of any school buildings the board is considering for closure simultaneously as the board releases its school building closure list in accordance with COMAR 13a.02.09, and request from that department a written recommendation on the proposed action and the relative merit for Baltimore City.

(2) A recommendation by the Baltimore City Department of Planning shall be submitted to the board no later than 30 days after notification by the board.

(3) The board shall consider these recommendations before taking final action.

(4) The requirements of this subsection may be waived by mutual agreement between the board and the Baltimore City Department of Planning.

§ 4-117. Construction or remodeling of buildings

Architects to assist in preparing plans and specifications

(a) On the recommendation of the county superintendent, a county board may employ architects to assist in preparing plans and specifications for constructing or remodeling a building.

Buildings to conform to State and county regulations and codes

(b)(1) The construction or remodeling of a building shall conform to all applicable State and county building, electrical, fire, and plumbing regulations and codes.

(2) A fee may not be charged for any permit required pursuant to the required regulations or codes for construction or remodeling, but a fee may be charged for water or sewer permits, or for connection and service charges for water and sewerage.

Installation of carbon monoxide detectors

(c)(1)(i) A building to be constructed or substantially remodeled under this section shall be required to install approved carbon monoxide detectors in areas of new and existing educational occupancies where fuel fired equipment is present.

(ii) A signal from a carbon monoxide detector installed under this subsection shall be automatically transmitted to an approved supervising station or to a constantly attended on-site location.

(2) The carbon monoxide detectors required under this subsection shall be installed in accordance with the National Fire Protection Association 720: Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2009 Edition or as referenced in the State Fire Prevention Code.

§ 4-118. Donations of school lands, sites, or houses adapted to school purposes

In general

(a) Each county board may receive a donation of any:

(1) School land;

- (2) School site; or
- (3) Suitably located house adapted to school purposes.

Title or leasehold interest in property

(b) A county board may not improve any site or occupy any house donated under this section until it has acquired either a valid title to the property or a leasehold interest in it for a term longer than the probable useful life of the proposed improvement to the site or of the house donated.

§ 4-119. Condemnation of land for school purposes

In general

(a) A county board may bring condemnation proceedings to acquire land under Title 12 of the Real Property Article if:

- (1) Land is required for any school purpose; and
- (2) The county board is unable to contract with the owner of the land for what the board considers to be a fair valuation.

Assistance of county commissioners or council

(b) The county board may ask the county commissioners or county council to assist it in bringing condemnation proceedings.

§ 4-120. Consolidation of schools, transportation

Consolidation of schools

(a) Except as provided in subsection (c) of this section, if a county board considers it practicable, it shall consolidate schools.

Transportation of students

(b) Except as provided in subsection (c) of this section, each county board shall arrange for the transportation of students to and from consolidated schools.

Prince George's County

(c) In Prince George's County, the Chief Executive Officer shall have the authority to:

- (1) Consolidate schools if considered practicable; and
- (2) Arrange for the transportation of students to and from consolidated schools.

§ 4-201. Qualifications and discipline of county superintendents

Section not applicable to Baltimore City

(a)(1) This section does not apply to Baltimore City.

(2) Subsections (b), (c), (d), and (f) of this section do not apply in Prince George's County.

Term of county superintendent

(b)(1) The term of a county superintendent is 4 years beginning on July 1. A county superintendent continues to serve until a successor is appointed and qualifies.

(2) By February 1 of the year in which a term ends, the county superintendent shall notify the county board whether the superintendent is a candidate for reappointment.

(3) In the year in which a term begins, the county board shall appoint a county superintendent between February 1 and June 30. However, if the county board decides to reappoint the incumbent superintendent, the county board shall take final action at a public meeting no later than March 1 of that year.

(4) If a county board is unable to appoint a county superintendent by July 1 of a year in which a term begins, the provisions of subsection (d) of this section apply.

Qualifications for county superintendent

(c)(1) An individual may not be appointed as county superintendent unless the individual:

- (i) Is eligible to be issued a certificate for the office by the State Superintendent;
- (ii) Has graduated from an accredited college or university; and
- (iii) Has completed 2 years of graduate work at an accredited college or university, including public school administration, supervision, and methods of teaching.

(2) The appointment of a county superintendent is not valid unless approved in writing by the State Superintendent.

(3) If the State Superintendent disapproves an appointment, the State Superintendent shall give the reasons for disapproval in writing to the county board.

Vacancy in office

(d) If a vacancy occurs in the office of county superintendent, the county board shall appoint an interim county superintendent who serves until July 1 after the interim county superintendent's appointment.

Grounds for removal

(e)(1) Subject to the provisions of this subsection, the State Superintendent or a county board may remove a county superintendent for:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) Insubordination;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

(2)(i) The State Superintendent may remove a county superintendent under this subsection if the State Superintendent provides the county superintendent with:

1. The reason for removal, chosen from one or more of the items in paragraph (1) of this subsection;

2. Documentation supporting the case for removal; and

3. The opportunity to request a hearing within 10 days before the State Superintendent in accordance with this subsection.

(ii) The county superintendent may appeal the decision of the State Superintendent to the State Board.

(3) If the county superintendent requests a hearing before the State Superintendent within the 10-day period:

(i) The State Superintendent promptly shall hold a hearing, but a hearing may not be set within 10 days after the State Superintendent sends the county superintendent a notice of the hearing; and

(ii) The county superintendent shall have an opportunity to be heard publicly before the State Superintendent in the county superintendent's own defense, in person or by counsel.

(4)(i) A county board may remove a county superintendent under this subsection if the county board provides the county superintendent with:

1. The reason for removal, chosen from one or more of the items in paragraph (1) of this subsection;

2. Documentation supporting the case for removal; and

3. The opportunity to request a hearing within 10 days before the county board in accordance with this subsection.

(ii) The county superintendent may appeal the decision of the county board to the State Board.

Suspension of superintendent pending criminal charges

(f) On notification of pending criminal charges against a county superintendent as provided under § 4-206 of this subtitle, the county board may suspend the county superintendent with pay until the final disposition of the criminal charges.

§ 4-202. Compensation

Compensation set by county board

(a)(1) Except as provided in paragraph (2) of this subsection, each county superintendent is entitled to the compensation set by the county board.

(2) In Prince George's County, the Chief Executive Officer is entitled to the compensation set by the contract with the county board.

Full time devotion to public school business

(b)(1) The salary of a county superintendent may not be decreased during the superintendent's term of office.

(2) Each county superintendent shall devote full time to public school business.
Anne Arundel County

(c) In Anne Arundel County, the county board may not pay monetary compensation to the county superintendent for sick leave benefits earned while employed by any other board of education or public school system but may allow the county superintendent to use the sick leave in the same manner as sick leave accrued while employed by the county.

§ 4-205. Powers and duties of county superintendent

In general

(a) In addition to the other powers granted and duties imposed under this article, the county superintendent has the powers and duties set forth in this section.

Administration of oaths

(b) The county superintendent may administer oaths to witnesses in all appeals or cases that come before the county board.

Intent and meaning of school laws and applicable bylaws of State Board

(c)(1) Subject to the authority of the State Board under § 2-205(e) of this article, each county superintendent shall explain the true intent and meaning of:

- (i) The school law; and
- (ii) The applicable bylaws of the State Board.

(2) Subject to the provisions of § 6-203 and Title 6, Subtitle 4 of this article and without charge to the parties concerned, each county superintendent shall decide all controversies and disputes that involve:

- (i) The rules and regulations of the county board; and
- (ii) The proper administration of the county public school system.

(3) A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

Approval of contracts made by county boards

(d) A contract made by a county board is not valid without the written approval of the county superintendent.

Correspondence and reports

(e)(1) Acting as the executive officer of the county board, the county superintendent shall:

- (i) Conduct all correspondence;
- (ii) Receive all reports from principals and teachers; and
- (iii) See that all reports are made and submitted properly.

(2) The county superintendent shall prepare and submit to the county board for adoption:

- (i) All reports required of the county board by the State Board or the State Superintendent; and
- (ii) The annual report to the people of the county required by § 5-111(b) of this article.

Advice to teachers relating to professional improvement and in-service training

- (f) The county superintendent:
 - (1) Shall advise teachers as to their further study and professional improvement;
 - (2) Shall develop a program of in-service training for all public school personnel;
- and
- (3) May require attendance at an institution of higher education for future certification and professional improvement instead of in-service training.

School visits

- (g) The county superintendent and the superintendent's professional assistants shall:
 - (1) Visit the schools;
 - (2) Observe their management and instruction;
 - (3) Give suggestions for their improvement;
 - (4) Consult with and advise principals and teachers; and
 - (5) Try in every way to awaken public interest and improve educational conditions in the county.

Evaluation and reports relating to programs of instruction

- (h) In accordance with the applicable rules and regulations of the State Board, the county superintendent periodically shall:
 - (1) Evaluate the program of instruction in the public schools of the county; and
 - (2) Report the superintendent's findings and recommendations to the county board.

Preparation and recommendation of curriculum guides, courses of study, and resource materials

- (i) The county superintendent shall prepare and recommend for adoption by the county board:
 - (1) Curriculum guides;
 - (2) Courses of study;
 - (3) Resource material; and
 - (4) Other teaching aids.

Preparation of lists of items needed by schools

- (j)(1) The county superintendent shall prepare lists of the following items needed by the schools:
 - (i) Textbooks;
 - (ii) Supplementary readers;
 - (iii) Materials of instruction;

- (iv) Visual and auditory aids;
 - (v) Stationery and school supplies; and
 - (vi) School furniture, equipment, and apparatus.
- (2) The county superintendent shall recommend the purchase and distribution of these items by the county board.

Preparation and presentation of annual school budget

- (k) The county superintendent shall:
- (1) Take the initiative in the preparation and presentation of the annual school budget; and
 - (2) Seek in every way to secure adequate funds from local authorities for the support and development of the public schools in the county.

Recommendations relating to condemnation, repairs, or remodeling of school buildings

- (l)(1) The county superintendent shall recommend to the county board:
- (i) Condemnation of any school building that is unsanitary and unfit for use; and
 - (ii) Any repairs of or the purchase and sale of land, school sites, or buildings.
- (2) Subject to the provisions of § 2-303(f) of this article that relate to approval by the State Superintendent, the county superintendent shall prepare all plans and specifications for remodeling an old building or constructing a new building.
- (3) The county superintendent shall recommend to traffic safety officials of the State Highway Administration or of the county appropriate locations for posting flashing caution signs at or near the site of:
- (i) A school;
 - (ii) School construction; or
 - (iii) School condemnation.

Clerical help needed to issue work permits

- (m) The county superintendent shall provide the clerical help that is needed to issue work permits in accordance with § 3-206 of the Labor and Employment Article.

§ 6-201. Appointment of employees by county board

Employment of individuals necessary for operation of schools

- (a)(1) Subject to paragraph (2) of this subsection, the county board shall employ individuals in the positions that the county board considers necessary for the operation of the public schools in the county.
- (2) In Prince George's County, the Chief Executive Officer of the Prince George's County public school system shall hire and set the salaries of a chief operating officer, a chief financial officer, a chief academic officer, a chief of staff, a board liaison, and any other necessary executive staff in the office of the Chief Executive Officer.

Professional assistants, principals, teachers, and other certificated personnel

(b)(1) Except as provided in subsection (a) of this section and Subtitle 10 of this title, the county superintendent shall nominate for appointment by the county board:

- (i) All professional assistants of the office of county superintendent; and
- (ii) All principals, teachers, and other certificated personnel.

(2) As to these personnel, the county superintendent shall:

- (i) Assign them to their positions in the schools;
- (ii) Transfer them as the needs of the schools require;
- (iii) Recommend them for promotion; and
- (iv) Suspend them for cause and recommend them for dismissal in accordance with

§ 6-202 of this subtitle.

Clerical and other nonprofessional personnel

(c)(1) Except in Worcester County and Baltimore City, the county superintendent shall appoint clerical and other nonprofessional personnel.

(2) In Worcester County, the County Superintendent shall appoint clerical and other nonprofessional personnel with the advice and consent of the county board.

(3) Notwithstanding any provision of local law, in Baltimore City, the appointment, tenure, and compensation of clerical and other nonprofessional personnel shall be determined in accordance with the personnel system established by the Baltimore City Board of School Commissioners under § 4-311 of this article.

Supervisory and administrative personnel

(d)(1) Supervisory and administrative personnel shall be appointed in each county in accordance with ratios established by the rules and regulations of the State Board and within the ratio established under § 2-205(m) of this article.

(2) These personnel shall include:

- (i) Supervising or helping teachers;
- (ii) Supervisors of pupil personnel I;
- (iii) Supervisors of pupil personnel II; and
- (iv) Visiting teachers.

Certification requirements

(e) An individual may not be appointed as a professional assistant or to any position listed in subsection (d) of this section unless he holds the appropriate certificate from the State Superintendent issued in accordance with the rules and regulations of the State Board.

Qualifications, tenure, and compensation of appointees

(f) Subject to the provisions of this article, the qualifications, tenure, and compensation of each appointee shall be determined by the county board.

Devotion to duties by appointees

(g) The county superintendent shall see that each regular appointee of the county board devotes his entire time to his duties.

§ 6-202. Suspension or dismissal of teachers, principals, supervisors, assistant superintendents or other professional assistants

Grounds for discipline

(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 the individual and give the individual an opportunity within 10 days to request:

- 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.

(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.

Probationary period of employment

(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.

Regulations relating to general standards for performance evaluations

(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.

§ 7-305. Suspension and expulsion procedures

<Section effective until occurrence of contingency specified in Acts 1995, c. 347, § 2, as amended by Acts 1996, c. 323, § 2.>

Student suspensions

(a)(1) Except as provided in subsection (b) of this section and § 7-305.1 of this subtitle, in accordance with the rules and regulations of the county board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal.

(2) The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(3) The student or the student's parent or guardian promptly shall be given a community resources list provided by the county board in accordance with § 7-310 of this subtitle.

Suspension or expulsion solely for attendance-related offenses prohibited

(b)(1) Except as provided in paragraph (2) of this subsection, a student may not be suspended or expelled from school solely for attendance-related offenses.

(2) Paragraph (1) of this subsection does not apply to in-school suspensions for attendance-related offenses.

Suspensions for more than ten days or expulsions

(c) Except as provided in § 7-305.1 of this subtitle, at the request of a principal, a county superintendent may suspend a student for more than 10 school days or expel the student.

Report of suspended or expelled student to superintendent

(d)(1) If a principal finds that a suspension of more than 10 school days or expulsion is warranted, the principal immediately shall report the matter in writing to the county superintendent.

(2) The county superintendent or the county superintendent's designated representative promptly shall make a thorough investigation of the matter.

(3) If after the investigation the county superintendent finds that a longer suspension or expulsion is warranted, the county superintendent or the county superintendent's designated representative promptly shall arrange a conference with the student and his parent or guardian.

(4) The student or the student's parent or guardian promptly shall be given a community resources list provided by the county board in accordance with § 7-310 of this subtitle.

(5) If after the conference the county superintendent or the county superintendent's designated representative finds that a suspension of more than 10 school days or expulsion is warranted, the student or the student's parent or guardian may:

(i) Appeal to the county board within 10 days after the determination;

(ii) Be heard before the county board, its designated committee, or a hearing examiner, in accordance with the procedures established under § 6-203 of this article; and

(iii) Bring counsel and witnesses to the hearing.

(6) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the board.

(7) The appeal to the county board does not stay the decision of the county superintendent.

(8) The decision of the county board is final.

Students prohibited from school premises and activities while suspended or expelled

(e)(1) Any student expelled or suspended from school:

(i) Shall remain away from the school premises during those hours each school day when the school the student attends is in session; and

(ii) May not participate in school sponsored activities.

(2) The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by his parent or guardian.

(3) Any person who violates paragraph (1) or (2) of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 for each violation.

(4)(i) If a student has been suspended or expelled, the principal or a designee of the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student's parent or guardian.

(ii) If the disruptive behavior results in action less than suspension, the principal or a designee of the principal shall confer with the teacher who referred the student to the principal prior to returning the student to that teacher's classroom.

(5) A county superintendent may deny attendance to any student who is currently expelled from another school system for a length of time equal to that expulsion.

(6) A school system shall forward information to another school system relating to the discipline of a student, including information on an expulsion of the student, on receipt of the request for information.

Evaluations to identify disabilities

(f)(1) In this subsection, "firearm" means a firearm as defined in 18 U.S.C. § 921.

(2) Except as provided in paragraph (3) of this subsection, if the county superintendent or the superintendent's designated representative finds that a student has brought a firearm onto school property, the student shall be expelled for a minimum of 1 year.

(3) The county superintendent may specify, on a case by case basis, a shorter period of expulsion or an alternative educational setting, if alternative educational settings have been approved by the county board, for a student who has brought a firearm onto school property.

(4) The State Board shall adopt regulations to implement this subsection.

Discipline of children with disabilities

(g)(1) The discipline of a child with a disability, including the suspension, expulsion, or interim alternative placement of the child for disciplinary reasons, shall be conducted in conformance with the requirements of the Individuals with Disabilities Education Act of the United States Code.¹

(2) If a child with a disability is being considered for suspension or expulsion, the child or the child's parent or guardian shall be given a community resources list attached to the procedural safeguards notice required by regulation of the State Board.

Restitution to school

(h)(1) This subsection does not apply if the student is referred to the Department of Juvenile Services.

(2) If a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian and any other appropriate person, the principal shall require the student or the student's parent to make restitution.

(3) The restitution may be in the form of monetary restitution not to exceed the lesser of the fair market value of the property or \$2,500, or the student's assignment to a schoolwork project, or both.

Maryland Constitution Article (2021)

Article 1 § 1. Elections by ballot; qualifications to vote

All elections shall be by ballot. Except as provided in Section 2A or Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State.

Article 1 § 5. Illegal voting practices

It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person, who shall remove into any election district, or precinct of any ward of the City of Baltimore, not for the purpose of acquiring a bona fide residence therein, but for the purpose of voting at an approaching election, or, who shall vote in any election district, or ward, in which he does not reside, (except in the case provided for in this Article,) or shall, at the same election, vote in more than one election district, or precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside.

Article 1 § 7. Preservation of purity of elections

The General Assembly shall pass Laws necessary for the preservation of the purity of Elections.

Article 1 § 12. Unregistered voters ineligible for elective office

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the

date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

Article 7 § 1. Election of County Commissioners

The County Commissioners of each county not governed by Article XI-A of this Constitution may be elected by the voters of commissioner districts established therein, or by the voters of the entire county, or by a combination of these methods of election, as provided by the General Assembly by law.

Article 8 § 1. System of free public schools

The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Article 17 § 7. Elective local boards of education

Sections 1, 2, 3, and 5 of this Article do not apply or refer to:

- (1) members of any elective local board of education; or
- (2) the Board of County Commissioners for Cecil County.

Maryland Constitution, Declaration of Rights

Article 7. Free and frequent elections; right of suffrage

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Article 24. Due process

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.