

**Maryland Association of Boards of Education**  
**Response to Questions from the Maryland State Board of Education**  
**Concerning the Timely Disposition of Long-Term Discipline Cases**  
**August 30, 2011**

**Introduction**

All school system personnel carry the burden of protecting the health, safety and welfare of all students in their care. Professional educators, counselors, administrators and others exercise this profound “*in loco parentis*” responsibility, constantly calibrating the needs of individual students with the needs of all students in classrooms, schools and school systems. The exercise of that responsibility requires professional judgment and the recognition that what is in the best interests of an individual student may adversely impact the interests of others in the school setting (and vice versa). In this equation, where judgment and common sense must be factored in, we believe there can be no perfect regulations based on a “zero flexibility” enforcement approach, especially one that precludes the exercise of professional judgment.

In that context, the Maryland Association of Boards of Education (MABE) appreciates the opportunity to comment on the State Board’s “Proposed Guidelines for the Timely Disposition of Long-Term Discipline Cases” and the larger issue of the provision of educational services to students in long-term discipline situations. One of our aims in this testimony is heighten the State Board’s awareness of the strong objections and consternation among local boards of education regarding what appears to be an implicit assumption of these proposed guidelines, that school administrators have something other than the best interests of students in mind in the enforcement of school discipline.

Every local board of education has established policies and regulations concerning student discipline, based on a framework established by the General Assembly and the State Board of Education. Current laws and regulations give needed flexibility to local boards to establish policies at the local level which best suit their settings, the nature of the particular disciplinary offense, and the particular circumstances of the individual student. For this reason, MABE consistently opposes initiatives, including legislative proposals by the General Assembly and regulations and policies advanced by the State Board and MSDE, which would reduce the ability of local boards and school administrators to properly handle student discipline situations on a case by case basis.

MABE’s comments respond to the questions regarding the proposed Guidelines posed in the July 20, 2011 letter from the State Board’s executive director, Mr. Anthony South. Much of the substance of these responses is drawn directly from MABE’s June 10, 2011 response to the Maryland State Department of Education (MSDE) initial request for comments on the proposed Guidelines, and our April 27, 2010 testimony before the State Board. These documents are attached.

MABE’s comments and responses to the State Board’s questions regarding the proposed Guidelines are provided below.

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**Question 1**

***When a principal in your school system suspends a student for 10 days and recommends to the superintendent a longer suspension period or expulsion, what practical problems do you encounter, if any, in getting a written decision from the superintendent within those 10 days? If you do not receive a written decision within 10 days, does the student return to school? If***

***not, please explain the authority on which you continue the suspension beyond 10 days. In what percentage of discipline cases would you say a delay occurs at this juncture?***

**Response to Question 1**

MABE recognizes that the intent of Section 7-305 of the Education Article is for the superintendent to hold student conferences and make final determinations concerning principal recommendations for long-term discipline in a timely manner. MABE agrees that all attempts should be made at the local level to hold these conferences within 10 school days so that the principal's initial suspension of up to 10 school days will not be exceeded without a decision by the superintendent. However, local boards strongly object to a regulatory requirement which would mandate that a student be readmitted to school before the superintendent has issued a written decision. While every effort should be made to ensure a timely decision in each case, unforeseen delays may occur, including requests for postponements by the student's parents and cancellations of conferences due to weather or other unforeseen circumstances. Holding such delays against the superintendent and school system, under a rigid compliance model, could in some instances result in the return to the school setting of a student whose presence may cause a disruption or a threat to others in the school community.

While MABE appreciates both the opportunity to weigh in on the proposed guidelines, and the State Board's interest in gathering perspectives and data regarding student discipline cases, MABE neither operates schools nor administers student discipline policies and procedures within schools.

MABE does however represent all 24 local boards of education which are responsible for adopting local student discipline policies in accordance with state law. Local boards delegate to their superintendents the responsibilities to develop and implement administrative regulations, procedures, and practices in accordance with State law and these policies. Local boards also exercise their quasi-judicial appellate responsibilities in hearing and deciding appeals by parents from the decisions of school administrators and superintendents. In these respects, the policy setting and judicial roles of local boards of education are quite similar to those of the State Board of Education.

For local boards, it is imperative that boards and individual board members remain continuously focused on advancing the interests of student learning and success through the adoption of system-wide policies, rather than delving into the superintendent's executive and administrative purview. For this reason, MABE crafted its response to the State Board's initial request for comments only after close consultation with school system staff responsible for the day-to-day operation of the student discipline-related appeals process. Likewise, our responses are closely aligned with those submitted by the Public School Superintendents Association of Maryland (PSSAM).

Finally, local boards recognize that school personnel carry one of the most important public duties: exercising their "*in loco parentis*" authority on behalf of nearly 850,000 students. Because they do, we believe that no superintendent or administrator should be forced to comply with arbitrary deadlines to readmit a student recommended for a long-term suspension or

expulsion when doing so would jeopardize the health and safety of other students in our custody and care.

### **Question 2**

*Do you believe the 10-day time frame is unrealistic? What would you propose?*

### **Response to Question 2**

MABE believes there is a critical distinction between a 10-day "time frame" and a rigid "deadline" after which the school system would be required to readmit a student to school regardless of the health and safety risks that such action would pose to students and staff. MABE therefore proposes that state law already provides the appropriate and necessary flexibility needed to avoid such unintended outcomes. This is not to say that the State Board and local boards should not pursue and hold administrators accountable for the timely administration of student discipline cases and the provision of appropriate educational services during the disciplinary period.

### **Question 3**

*Is there an expedited process available to a student who has been suspended for 10 days to get the suspension reversed or reduced?*

### **Response to Question 3**

MABE is not aware of any such expedited process, nor do we believe one is justified. We wonder, do the timelines proposed by the State Board infer that students are unfairly being kept out of school awaiting local board decisions that would allow them to return? If so, we believe this to be an incorrect and therefore misleading assumption. The vast majority of student appeals to local boards result in decisions upholding the discipline. The cases that do make their way to the local board have already been reviewed in great detail by school system staff, and it often takes time for the local board to conduct its own hearing and thoroughly review the case to ensure that both the student's and the school system's interests are protected. The soundness of this approach and the outcomes have normally been upheld by the State Board in its appellate capacity.

### **Question 4**

*After a long-term suspension is imposed and fully served, does your school system experience delays in returning the student to school? In what percentage of cases is there a delay? What causes the delay? What solution do you propose to cure the delay problem?*

### **Response to Question 4**

MABE agrees that a student who has received a long-term suspension or expulsion should return to school at the end of the discipline period, and that a re-admission conference should be held prior to the student's scheduled return to school. MABE is not aware of a pattern of delays in readmitting students following long-term discipline actions. However, MABE would note some distinction between cases involving students under age 16 and cases involving those who are 16 and older for whom different compulsory attendance laws and penalties apply. MABE also notes

its consistent support over several years for the passage of legislation to raise the compulsory attendance age to 17, legislation which we believe deserves the support of the State Board.

Importantly, students have both rights and responsibilities, and students in long-term discipline situations may have additional conditions placed on their readmission to school. All students sign a Student Rights and Responsibilities Agreement in accordance with State law and local policies, which includes their pledge to comply with the school system's code of conduct and recognition of the disciplinary sanctions for not doing so, including long-term suspension and expulsion. An array of laws apply to long-term discipline cases, ranging from the requirements to remove students from the school premises and bar their return pending a conference with the teacher and parents, to the requirement that schools provide a community resource list to suspended and expelled students and their parents. Clearly, the conference requirement could result in delays in returning students to school. When that happens it must be weighed against the longstanding statutory recognition of the importance of ensuring the safety and appropriate briefing of those most closely affected by a student's return to school.

For much the same reason, students may be required to comply with readmission agreements demonstrating their completion of programs ranging from anger management counseling to attendance in the school system's alternative education program, and their commitment to complying with the school code of conduct. School systems must be able to place conditions on re-enrollment to address the unacceptable behavior that led to the long-term disciplinary action in the first place. The school system is not in complete control of any of these processes, but must rely on the good faith participation and compliance of students, parents, and guardians. Absent such cooperation, readmitting a student may present an untenable risk to the safety of other students and staff, for whom the school system also bears responsibility and liability.

#### **Question 5**

*If a student appeals a long-term suspension to the local board, is the student kept out of school during the pendency of the appeal even if he/she has served the full suspension time period?*

#### **Response to Question 5**

No.

#### **Question 6**

*Should there be a minimum standard of educational services provided to students expelled or placed on long-term suspension? If you do not support a statewide minimum standard for such services, how do we as the Maryland State Board of Education know that as a state, we are fulfilling the requirement (Md. Educ., Art. §7-101) of providing all students between 5 and 21 with a free public education?*

#### **Response to Question 6**

This compelling question was raised by the State Board in the fall of 2009 and addressed in various forums since then, most notably in the report prepared by MSDE and presented to the State Board in June 2010. MABE's April 2010 testimony before the State Board is included in

Appendix IV of that report, and is attached. MABE now reiterates the position articulated at that time.

Neither the Maryland State Constitution nor the laws of this State require the *provision* of educational services to a student who is expelled from a Maryland school system as a result of the most extreme and egregious behavioral offenses. At the same time, we take exception to the common, yet erroneous, presumption that students expelled for the most egregious offences should, by definition, be incarcerated in Department of Juvenile Services (DJS) facilities with educational services provided by MSDE. This is certainly not the case, nor does MABE believe that either school or prison are the only options for students who may be subject to expulsion. MABE strongly agrees with the State Board's advocacy for policies and programs that minimize to the greatest extent possible instances of students "falling through the cracks". MABE looks forward to continued dialogue on the best practices being employed in Maryland and elsewhere toward this end.

Regarding the statutory provision under §7-101, Maryland's 24 local school systems do provide all students with the *access* to a free public education that this law requires. Within that legal framework, students who pose an imminent threat to the safety of other students and school employees can be expelled without the provision of educational services. Again, not all students who pose such threats and are expelled are transferred to the custody of DJS. Myriad other circumstances apply to expelled students, especially those who have reached the compulsory attendance age of 16.

MABE supports the provision of educational services to all students, including offering robust alternative education programs in the context of local resources. However, MABE cautions against the implications of adopting a "zero flexibility" approach to the readmission of students believed to present a danger to other students and staff. MABE is concerned with the unintended consequences of assuming that we can give 100% assurance that children are either in school, whether in a regular or alternative setting, or in a DJS facility. We believe that an unintended consequence of unreasonably limiting flexible administration of student discipline policies may, in fact, move us in the direction of criminalizing student behavior and separating more, not fewer, students from the school setting. Certainly, this is not an outcome desired by anyone.

MABE urges the State Board to exercise its considerable influence to raise public awareness, especially among parents and students, of the critical importance of daily school attendance, meeting graduation requirements, and respecting the rights and welfare of others and the rules established to protect and preserve a safe learning environment.

#### **Question 7**

*How do you see the answers you provided to the questions above reflecting on the commitment to prepare all students for college and career success in the 21<sup>st</sup> century?*

#### **Response to Question 7**

MABE, in these responses, seeks to underscore its opposition to adopting inflexible deadlines in the administration of student discipline policies. MABE supports preserving the authority of

school administrators to expel a student when circumstances warrant, rather than subjecting staff and other students to potential health and safety risks. We believe this authority is essential to protecting and preserving the school system's ability to prepare as many students as possible for success in their higher education and career experiences. In fact, MABE believes that holding individual students accountable for their actions and imposing serious sanctions for egregious, disruptive and violent behaviors in school seems entirely consistent with the objective to prepare students for productive futures.

In conclusion, MABE appreciates this opportunity to reiterate 1) the importance of offering continued educational services to long-term suspended and expelled students, and 2) its opposition to any inflexible mandates that may unintentionally jeopardize school safety. Neither the State Board nor local boards should impose inflexible mandates on staff. The overly rigid timelines and deadlines being proposed for the student discipline process are in direct conflict with allowing professional educators and administrators to exercise their judgment, commit decisions to writing, and engage students, parents, and staff in the disciplinary process, all in a very short timeframe. We believe the laws and regulations currently in place provide the appropriate guidance for school systems in striking the balance between individual and school-wide interests in the most challenging discipline cases.

On behalf of all 24 local boards of education, MABE pledges its continued support for the efforts of the State Board and local boards to identify and advocate for resources to support best practices in this important area.