

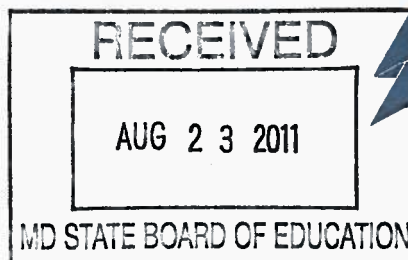


MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND

www.montgomeryschoolsmd.org

August 18, 2011

Mr. Anthony L. South
Executive Director
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595



Dear Mr. South:

Thank you for your letter, dated July 20, 2011, in which you extend an invitation to Mr. Wayne E. Whigham, director, Appeals/Transfer Team, Office of the Chief Operating Officer, Montgomery County Public Schools (MCPS), to participate in a panel discussion at the meeting of the Maryland State Board of Education, scheduled for August 30, 2011. On August 1, 2011, Mr. Larry A. Bowers, chief operating officer, confirmed, via e-mail to you, that Mr. Whigham will attend the meeting and represent MCPS in the panel discussion concerning the Timely Disposition of Long-term Discipline Cases. Enclosed are the responses that correspond to the questions addressed to Mr. Whigham in your letter.

I appreciate the opportunity for Mr. Whigham to contribute to this important discussion.

Sincerely,

Joshua P. Starr, Ed.D.
Superintendent of Schools

JPS:sn

Enclosure

Copy to:

Mr. Bowers
Dr. Lacey
Mr. Edwards
Dr. Stetson
Dr. Hollingshead
Ms. Confino
Dr. Munk
Mr. Whigham
Ms. Bresler
Mr. DeGraffenreidt
Dr. Mugge
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Office of the Superintendent of Schools

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**Maryland State Department of Education – Panel Presentation and Discussion
Response to Questions Concerning the Timely Disposition of Long-term Discipline Cases**

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

Any student whose behavior warrants a recommendation for discipline beyond 10 school days is recommended for expulsion. Only the most serious disciplinary infractions result in a recommendation for expulsion. Expulsions can be for the remainder of the current semester, for a school year (two semesters), or forever.¹ Of those students recommended for expulsion by the school principal, two-thirds are returned to school within 10 days at the first level of review.

State law requires a two-step process for discipline beyond 10 school days. The superintendent of schools or designated representative is to “make a thorough investigation of the matter” [Md. Educ. §7-305(c)(2)]. That is the first step. Then, “[i]f 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” (emphasis supplied) [Md. Educ. §7-305(c)(3)]. That is the second step and a student is expelled only after that second step, if the superintendent of schools or designated representative finds that the expulsion is warranted.

In Montgomery County, the first level of review serves a dual function. The supervisor conducts an investigatory conference that includes the student, his or her parent or guardian, the principal or school representative, and the Pupil Personnel Worker (PPW) who works with that school and may have had prior interactions with the student and/or the family. This occurs within the 10-day suspension period. This satisfies the first, investigatory step in the two-step expulsion process. It also functions as an appeal of the 10-day suspension decision. The result of the first level of review is: (1) affirmation, reversal, or modification of the 10-day suspension and the student’s return to school, or (2) affirmation of the 10-day suspension and a finding that the expulsion recommendation is warranted. Two-thirds of students are returned to school following this first level of review. One-third are referred to the superintendent level (second level) where the law requires us to arrange a conference with the student and his parent or guardian.

The one-third of those students whose behaviors are so serious that the expulsion recommendations have been found to be warranted are not returned to school and are referred to the superintendent’s level for a second-level investigative conference. For those students, the

¹ Such an expulsion is extremely rare, but can occur, for example, when a 19-year-old student with no credits has no purpose in attending school other than to sell illegal drugs.

results of the second conference with the parent(s)/guardian, the student, and school officials are prepared in a written report by a hearing officer so that the superintendent's designee in these matters (the chief operating officer) has complete information to render a written decision on behalf of the superintendent of schools. This conference is required by law.

Delays may occur in scheduling and conducting the superintendent-level conference for any number of the following reasons:

- Parents retain an attorney to represent them at this conference or they have retained an attorney to defend the student against the criminal charges that have been brought as a result of the same incident that triggered the school discipline, and the attorney insists that the conference not occur without his/her presence because what is said can affect the criminal case. The addition of another person complicates the scheduling and delays the process.
- The need for an interpreter.
- Holidays, particularly winter and spring holidays, when parents/guardians and/or staff are unavailable.
- Weather conditions causing school closures.
- During mandated testing when staff is unavailable to attend the conference.
- When the investigation was conducted by the police and the school system does not receive a copy of the investigative report in a timely fashion. In Montgomery County, the school system, the police, and the State's Attorney's Office have an agreement (Memorandum of Understanding), spurred in part by §7-424.2(j), that requires the school to defer to the police as the lead investigators of the more serious incidents. When the school system is required to defer to the police to conduct the investigation, and Montgomery County Public Schools (MCPS) does not receive the report of the investigation, it cannot complete the school disciplinary process fairly, with appropriate notice to the student of the evidence against him or her, until the report is received.
- The parent/guardian fails to show up for a scheduled conference and the conference has to be rescheduled, the parent/guardian is out-of-town, or the student is being held in juvenile detention.

In order to provide students and their families with the most complete and accurate information possible, MCPS works diligently to verify the facts of a case and follow up on discrepancies that may appear. We believe it is critically important to ensure that students and their families understand the evidence against the student before MCPS makes the decision to expel a student. When necessary, we are willing to sacrifice timeliness to do that. Although elevating timeliness will undoubtedly result in quicker decisions, the goal should be to make an informed decision based on a fair process. When the superintendent of schools or his or her designee expels a student, the decision does not simply say, "I find a sufficient basis for expelling you and, therefore, you are expelled." The written decision recites the factual evidence and the conclusions drawn from that factual evidence to support the expulsion decision, and it addresses

each point raised by the student/parent/guardian/family attorney as a reason the action should not be taken. This is a serious decision and sometimes doing it right takes more time.

When the written decision from the superintendent of schools and completion of all the preliminary steps leading to that written decision does not occur within 10 school days, students who have been accused of sexually assaulting a classmate, stabbing another student, assaulting and seriously injuring a staff member, setting a fire, bringing a loaded gun or a home-made bomb to school, selling illegal drugs to others, and other serious offenses are not returned to school within 10 school days. However, the student is provided with academic supports that are consistent with any student who is out of school for an extended excused absence.² These supports most commonly are provided by the student receiving work from his/her teachers, tutoring, community-based suspension support programs,³ and, in the case of students with special needs, a 45-day placement in an alternative program is provided. Although the student is not returned to school, he or she is receiving or has access to educational services. If the expulsion recommendation is not adopted by the superintendent of schools, the student is returned to school or sometimes placed in an alternative program and receives credit for work, just as any student who has been absent from school for an excused reason. It is not recorded as a suspension and is not treated as a suspension. MCPS has seen this as a reasonable, legal, and balanced way to meet the educational needs of the student being disciplined, to ensure the safety and security of the victim(s) as well as other students and staff, and to provide an environment where other students can access their education without harassment, intimidation, fear, or disruption.

Question 2

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

Response to Question 2

The 10-day time limit is very unrealistic. We suggest that all Local Education Agencies (LEAs) be surveyed to determine the approximate number of days they require to complete the expulsion process; then that data should be examined as part of a discussion to observe those differences. Analyzing the data as part of the process would provide an opportunity to come up with a timeframe that is fair to all LEAs and all students, including victims and those being disciplined. There are too many factors involved to have a "one size fits all" approach.

² A suspension is considered an excused absence, according to the student records manual, and, therefore, the student is entitled to make up missed work for credit.

³ Although such programs have been available, many have been eliminated for the upcoming year due to the virtual elimination of the local maintenance of effort and the resulting cuts in the school budget.

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

This question seems to presume that there is insufficient reason for the suspension. Principals have broad discretionary powers to suspend for one to ten school days. The presumption should be in favor of those who are legally authorized to make the judgment, as well as those closest to the situation who often know the students involved, their history, their families, and the school community. The student and parent can appeal directly to the principal to reconsider and reverse or reduce a 10-day suspension. Changes in the school's disciplinary action often occur as a result. If that does not occur, the parent may appeal to the supervisor at the first review level, which occurs within the 10-day time period. Appeals beyond that first level go to the superintendent level and then to the local board of education. There is no practical or realistic way to expedite the appeal of a 10-day suspension through the Board of Education-level within 10 school days.

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

No, this is not a problem for MCPS. When students complete their suspension (from one to ten school days), they are returned to school, often with an intake conference.

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. If a student appeals any suspension, short-term or long-term, he or she would not and should not be kept out of school if he or she has completed the term of suspension prior to a school board decision.

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

Expelled students with an Individualized Education Program (IEP) are provided with educational services, as required by federal and state law. In addition, MCPS provides educational services for high school seniors who are expelled if they require three credits or fewer to receive their high school diploma.

Section 7-101 does not mandate that Maryland provide a free public education to all resident students between 5 and 21, regardless of circumstances. Section 7-101 requires that all resident students who are 5 years old or older and under 21 "be admitted free of charge to the public schools of this State" (emphasis supplied). It is probably safe to say that every single Maryland public school student who has been expelled was admitted to public school free of charge, satisfying the statutory mandate. If the requirement were to provide a free public education regardless of circumstances, as your question presumes, there would not be a student suspension and expulsion statute. The Maryland General Assembly included a suspension and expulsion statute, as probably every state legislature has, because it recognized that there are students whose behavior warrants their removal from a school, and that there needs to be a balance between the State's obligation to attempt to educate each and every student and the State's obligation to maintain a safe and secure environment for each and every student so that education can occur. Should there be a minimum standard of educational services provided to students expelled or placed on long-term suspension? Not necessarily, and certainly not at the expense of interfering with the education of the student victim(s), student witnesses, and even staff witnesses who come forward to report serious behavioral infractions. It also should not come at the expense of others whose education is disrupted, and perhaps whose lives have been endangered, by the students who through their own behavior forfeited the opportunity to continue their free public education, either temporarily or permanently.

Currently, there does not exist a way for students who are removed from the school setting to access courses from home. Our obligations to the many and the innocent should outweigh the concern about continuing educational services. MCPS and probably most—if not all—school systems in Maryland would welcome and would join the Maryland State Board of Education in seeking a collaborative, constructive approach that improves upon the current status, without blame and with a full awareness of all of the interests involved in this important issue. We can envision, for example, joining with teachers, administrators, parent teacher associations, and other constituencies to seek funds to create a full panoply of online courses similar to those available in so many of our colleges, or to broadcast courses over the educational channels of cable television.

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 21st century?

Response to Question 7

Maryland has been on the cutting edge of school improvement in this country, and its commitment to prepare all students for college and career success in the 21st century has contributed to making Maryland's educational system the best in the country. Dictating absolute adherence to sometimes unrealistic timelines with "or else" mandates, and without regard to the consequences of such mandates, is not the way to further the state's commitment to its students. Quite candidly, if a school is not able to ensure a safe educational environment for all of its students by removing those who may be a danger to others, the education of far more students could be significantly disrupted. In reality, Maryland has committed, creative, and dedicated people who share the goal for all students to thrive and a solution can be found in this situation to meet the interests of all. A task force should be convened to examine and price approaches that take into account the needs of the student being disciplined and the needs of others. The proposed guidelines, while they may be well intentioned, do not do this.