



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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**TO:** Members of the State Board of Education  
**FROM:** Lillian M. Lowery, Ed.D. *Lillian M. Lowery*  
**DATE:** January 28, 2014  
**SUBJECT:** COMAR 13A.08.01 General Regulations (Adoption)

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**PURPOSE:**

The purpose of this action is to seek adoption of regulations that govern Student Discipline in Maryland Public Schools.

**HISTORICAL BACKGROUND:**

In August 2009, the Maryland State Board issued an opinion in an appeal of the almost year-long expulsion of a 9<sup>th</sup> grade student. The Maryland State Board of Education put local school systems on notice about its concerns related to the lack of educational services provided in 81,331 out of school suspensions and the time taken to process appeals.

In December 2009, the State Board approved the Maryland State Department of Education's plan to study the use of long-term suspension/expulsion and the meaningful access to educational services. The public was invited to offer testimony on the subject at future Board meetings.

At the April 2010 Board meeting, and with the Board's invitation, representatives of 8 stakeholder groups including, the Maryland Association of Boards of Education (MABE), the Public School Superintendents Association of Maryland (PSSAM), the Secondary School Principals, the Elementary School Principals, the Maryland State Education Association (MSEA), the Maryland Association of Student Councils (MASC), the American Civil Liberties Union (ACLU), and the Open Society Institute of Baltimore (OSI) provided comments on whether and how educational services should be continued when a student is suspended or expelled from school and what types of services, if any, should be provided.

During the August 2010 Board meeting, the members were briefed on and accepted the report entitled *Study of Student Long Term Suspensions and Expulsions* prepared by the Department. The report included results of: (1) a survey of local systems concerning what educational services were currently offered to long-term and expelled students; (2) response from the public to a web based survey; (3) input from stakeholder groups; and (4) an analysis of public comment at Board meetings. The report included recommendations for amending the discipline regulations and revisions to Student Records Manual to enhance data on long-term suspensions and expulsions.

At the February 2011 meeting, the Maryland State Board of Education, in response to a news article on the suicide of a suspended student in another state, directed the State Superintendent to discuss the tragedy with the 24 local superintendents to determine if Maryland's local school systems had similar zero-tolerance discipline policies with the goal to determine steps that could be taken to avoid such a tragedy in Maryland.

As a way to address these issues, the Maryland State Board of Education during the April 2011 meeting, approved the draft *Guidelines for the Timely Disposition of Long Term Discipline Cases* and posted that document for public comment.

Based on response to proposed *Guidelines for Timely Disposition*, the Board requested that panels of stakeholders be invited to address the Board on this topic. The panels were as follows:

- August 2011 Panel Presentation –Public Schools Superintendents Association of Maryland, Maryland Association of Boards of Education, Montgomery County Public Schools
- September 2011 – Maryland Disability Law Center, Legal Aid, Office of Public Defender, Maryland Chapter of NAACP
- October 2011 – Maryland Foster Parents, Maryland PTA, Students
- December 2011 – Maryland State Education Association, Baltimore Teachers Union, 2011 National Teacher of the Year (Michelle Shearer of Maryland), 2012 Maryland Teacher of the Year (Joshua Parker of Baltimore County)

In February 2012, the Board released a draft report entitled *A Safe School, Successful Students, and a Fair and Equitable Disciplinary Process Go Hand in Hand*. In that draft Report, the Board explained the negative effects of suspension and expulsions, reviewed the discipline data and found that over 63 percent of the out-of-school suspensions were for non-violent offenses. The draft report concluded that disproportionate impact of school discipline falls on students of color and students with disabilities. The Report also contained a draft of "Possible Regulatory Changes" and the Board once again asked for public comment on the Report and the possible regulatory changes.

In May and June of 2012, the Board reviewed and considered the comments on the draft Report and the proposed regulations. The President of the Board placed the discussion in context:

No student comes to school "perfect," academically or behaviorally. We do not throw away the imperfect or difficult students. Wise school discipline policies fit our education reform agenda because those policies show all students that we want them to receive a world class education. We want that for them because the desired sustainable result is a better economy and quality of life for everyone in Maryland. Every student who stays in school and graduates, college and career ready, adds to the health and wealth of the State of Maryland and improves the global competitiveness of this county. It is that simple. It is that important.

Thereafter, the Board considered changes they wished to make in the draft regulations based on the hundreds of comments received.

The Board agreed with the commenters to change the draft regulations to better reflect its general philosophy of school discipline, returned the concept of expulsion to the regulations, and addressed issues around the 10-day return to school policy. The Board also discussed the ways to revise the draft report.

At the July 2012 meeting, the Board issued its final report, entitled *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*; linking changes in school discipline philosophy to better academic performance and reduction in the achievement gap. The Board also granted permission to publish proposed school discipline regulations. During the public comment period on those proposed regulations, 803 commenters made 2,213 suggestions for changing the proposed regulations.

In January of 2013, the Board reviewed all of the comments and agreed to make substantive changes to the proposed regulations. The proposed regulations were withdrawn.

Based on suggestions from MABE, PSSAM, MSEA, and public commentary, the Maryland State Board of Education convened a workgroup to address specific issues. The workgroup began its work in April 2013. It was co-chaired by Dr. D'Ette W. Devine, Superintendent, Cecil County Public Schools and Diana Morris, JD, of the Open Society Institute of Baltimore. The workgroup convened four meetings between May and June of 2013. The workgroup presented its findings at the June 25, 2013, Maryland State Board Meeting. The Board accepted the workgroup's findings and voted to publish new proposed regulations.

At the October 2013 Maryland State Board of Education meeting, the proposed disciplinary regulations were withdrawn due to some inaccurate language and the revised disciplinary regulations were published in the Maryland Register, Vol.40, Issue 25, on Friday, December 13, 2013.

It is those regulations that are the subject of this memo.

### **Comments of Support**

In the public comment period a total of 3,278 comments were received from constituents or constituent groups. 1,814 comments were in support of the proposed disciplinary regulations. Proponents of the proposed regulations came from a variety of backgrounds including parents, teachers, the Public School Superintendents' Association of Maryland (PSSAM), the Montgomery County's Public Defender's Office, the American Civil Liberties Union (ACLU), a legislatively appointed committee, the National Association For The Advancement of Color People (NAACP) in Allegany and Montgomery Counties, the Maryland Disability Law Center (MDLC), the Open Society Institute of Baltimore (OSI-Baltimore), Advocates for Children and Youth (ACY), and other advocate organizations.

Several supporters stated:

"All Maryland children have a constitutional right to education, and they should not be deprived of the opportunity to learn for minor, non-violent offenses."



Some supporters were concerned about the long-term negative impact on students being suspended out of school stating:

“School safety must be a priority, but policies that do not recognize the unique circumstances of each child and event, or allow for discretion in determining appropriate disciplinary actions, push our children out of school and onto a path that could lead to prison.”

The Public School Superintendents’ Association of Maryland wrote:

“Given your clarification and explanation of intent, local school superintendents support the proposed regulatory changes to COMAR 13A.08.01-Subtitle-Students.”

The Maryland General Assembly’s Joint Committee on Access to Mental Health Services stated:

“We support the proposed regulatory changes. It does a disservice to all youth, families, and communities across the State for school discipline policies to rely on out-of-school suspensions and other exclusionary measures. Such policies too often limit the educational opportunities of youth and increase their chances of entering the juvenile and criminal justice systems.

The disproportionate effect with which current school discipline policies negatively impact youth with mental health needs is of particular concern to the Joint Committee on Access to Mental Health Services. While students with Individualized Education Plans (IEP) under the Individuals with Disabilities Act (IDEA) may be entitled to manifestation hearings for violations of school rules, such protections are not afforded for many other students with mental health disorders that do not have IEPs.”

Allegany County NAACP offered:

“Maryland’s proposed regulatory changes are reflective of the research. If passed, they will serve as a model for regulations and policies across the country. We are confident that, if implemented, they will result in a stronger, and more just, education system across the state”.

Montgomery County NAACP stated:

“We are pleased that the Maryland State Board of Education has taken proactive measures to directly address this issue in Maryland. In particular, by inviting a diverse group of leaders, interested parties and individuals to publicly participate in responding to the proposed amendments to the Disciplinary Regulations; which included adopting Regulation .21 under COMAR 13A.08.01 General Regulations.”

Advocates for Children and Youth conveyed:

“Disproportionality and Data. The inclusion of an accountability system to reduce the disproportionality of suspensions and expulsions for African Americans and students with disabilities is critical to success of these new regulations. The timelines and accountability plans are appropriate and achievable for districts...”

The ACLU of Maryland stated:

“The State Board engaged in a very thorough, deliberative, and inclusive process in developing the proposed regulations, including the appointment of a Regulations Workgroup established by the Superintendent to address concerns raised by local school systems and other stakeholder...”

“The ACLU applauds the Board’s commitment to solicit testimony and various points of view over the past several years.”

The Open Society Institute of Baltimore commented:

“Open Society Institute- Baltimore strongly supports the proposed amendments to COMAR 13A.08.01 that were published to the Maryland Register. OSI-Baltimore has provided funding for three state-wide conferences on creating safe schools, implementing effective alternatives to suspensions, and reducing disproportionality in discipline. We hope in 2014 to support professional development in restorative practices for teams of teachers from every school district in the state.”

“FreeState Legal, legal advocates for Maryland’s Lesbian, Gay, Bisexual, and Transgender youth community offered:

“We have observed that current discipline practices in Maryland Schools often fail to resolve the specific instances of bullying or to address the underlying causes. For this reason, FreeState applauds the regulatory changes that can promote more effective and thoughtful approaches to school discipline.”

The Maryland Disability Law Center highlighted:

“MDLC commends the Maryland State Board of Education and the Maryland State Department of Education for convening a wide-reaching work group so that school districts, teachers, administrators, parents, advocates, and associations such as the Maryland State Educational Association and the Maryland Association of Secondary School Principals, could come together over a significant period of time to discuss and make recommendations regarding the proposed regulations. MDLC appreciated the opportunity to participate in that process, which allowed the participants to address concerns and work on compromises.”

“The Board’s decision to ensure that services be provided to those students who have been excluded is critical to stemming the negative impact that school exclusion has on individual students and/or communities as a whole. We understand that there is some concern that this requirement will increase the workload for teachers or require additional staffing. However, under current Maryland law, suspension has always been an excused absence requiring the provision of make-up work....”

The Board’s specific goal to address the disparate impact on minority students and students with disabilities in exclusionary practice is of critical importance. As confirmed by MSDE’s study, exclusionary practices continue to be imposed disproportionately on students with disabilities and on minority students....”

## **IN SUMMARY**

Comments by supporters of the proposed regulations could be categorized into five distinct categories:

- 574 comments supported ending zero tolerance. These comments disagreed with the practice of zero tolerance which eliminates school principal discretion for managing student behavior;
- 448 comments supported the Maryland State Board of Education, believing that the regulations empower school principals to make disciplinary decisions;
- 411 comments believed that the Maryland State Board of Education should enact the disciplinary regulations. They believed that students make mistakes and should be held accountable at the school;
- 359 comments supported “The reduction of the use of school suspension.” These comments focused on the use of out-of-school suspension for non-violent behavior that disproportionately impacts students of color and students with disabilities ; and finally,
- 22 comments supported the regulations for many reasons such as the mental health needs of students, the need for structure when suspending students, and sexual orientation.

## **Opponents of the Regulations**

There were 1,442 comments in opposition to the proposed disciplinary regulations. Most opponents of the proposed disciplinary regulations cited local control of school disciplinary practice and enforcement.

**Comment-**“We believe our Superintendent and elected Local Boards of Education are the best fit to determine the needs of our school system....”

**MSDE Response** -While the tension between statewide policy making and local control of schools will always exist, it is our view that the regulations balance those two important interests. Specifically, we point out that the regulations contain provisions that recognize local control.

For example, within the proposed regulations 13A.08.01, Statement of Purpose states, “The purpose of this action is to have each local board of education adopt a set of discipline policies and regulations that....” Thus the proposed regulations recognize the local board of education’s role in disciplinary policy and practice.

Further within section .11 Disciplinary Action, Part A, the proposed regulations state, “Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning....”

**Comments-**Some other opponents raised concerns about the State Board using a “one size fits all” disciplinary model for Maryland public schools, articulating that the Maryland State Board of Education is attempting to mandate that local boards of education use specific disciplinary policy and practices thus making schools unsafe.

**MSDE Response-** In the State Board’s first school discipline report, *A Safe school, Successful Students and a Fair and Equitable Disciplinary Process*, issued in February, 2012, the Board



grappled with the question, “Does the use of out-of-school suspension create a safer school or better school students?” The Board explained that, although it is strongly intuitive assumption, the assumption is that the out-of-school suspension of disruptive students will result in safer school is not supported by the research and the data.

The regulations are focused on school safety in the context of school discipline philosophy. For example, within the proposed regulations 13A.08.01, Statement of Purpose states, “The purpose of this action is to have each local board of education adopt a set of discipline policies and regulations that: (1) Address school safety; (2) Reflect a discipline philosophy based on the goals of fostering teaching, and acknowledging positive behavior; (3) Are designed to keep students in school so that they may graduate college and career ready; (4) Provide for disciplinary policies based on the use of discretion; (5) Explain why and how long-term suspensions or expulsions are last resort options; and (6) Explain how the education and counseling needs of suspended students will be met.”

For example, further within section .11 Disciplinary Action, Part A, the proposed regulations state, “Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning.” Opponents’ concerns for school safety is real and should not be ignored but, research and Maryland Public School’s data indicate that most out of school suspensions in Maryland are used for non-violent events.

Comments were also received from the Maryland Association of Boards of Education (MABE) with several local boards of education agreeing with MABE. They were by Anne Arundel, Calvert, Frederick, Harford, Howard, and Washington County. Below are MABE’s comments and proposed amendments.

**Comment-**Regulations exceed State Board legal authority given §7-305’s discretion to principals and superintendents to impose discipline “as warranted.”

**MSDE Response-** It is our view that the authority to impose discipline “as warranted” does not mean that authority is unfettered. It means as warranted by law and sound education policy. The State Board has the authority to define in regulation that education policy for Maryland. We can debate whether it is correct or sound. That is a policy debate, however. It does not translate the Board’s exercise of its authority to define “as warranted” into an illegal exercise.

**Comment-** COMAR 13A.08.01.11B(2)(a) – MABE suggests amending the language in (2)(a) referring to student conduct that would “pose an imminent threat of serious harm to other students and staff.” MABE wanted to delete “imminent” and “serious” as overly restrictive because the terms would invite litigation. MABE believes superintendents should remain empowered, within their sound discretion, to protect students and staff from any threat of harm in our schools.

**MSDE Response-** We agree that superintendents should have discretion to protect students and staff. The Workgroup discussed this issue at great length. This comment is contrary to the recommendation of the Workgroup and the philosophy on which it was based. We do not recommend such change to the regulation.

**Comment-** COMAR13A.08.01.11B(2)(c) and (3)(c) – On December 13, 2013, the State Board added language to the definition of expulsion and extended suspension to require that students returning to school from such discipline should be returned to “the student’s” regular academic program instead of to “a” regular academic program. MABE supported removing the newly added language as they continue to believe it could create a new right for a disciplined student to attend a particular school – a right not possessed by any other student. They also believe this new language could result in the need to move the victim of assault or harassment, to another school because a perpetrator would have the right to return to the school from which he/she was suspended or expelled. They believe this language also could undermine the ability to place students in alternative schools should that be the most appropriate placement for the student returning from extended suspension or expulsion.

**MSDE Response-** At the December Board meeting, Board President Dukes explained the intent of this part of the regulation. She followed that up with a letter to MABE, and others. Stating:

“It is the belief of the State Board of Education that school discipline regulations are built, in part, on local control and encourage discretion and reasonableness in imposing discipline. Local control, discretion, and reasonableness apply to the decision about returning the student to his/her regular academic program.

To this Board, it would violate the rule of reason for these regulations to be interpreted to require any school system to return a student to a particular school or classroom if the superintendent or principal believes that the decision raises serious safety concerns or has serious impacts on school security.”

In our view, MABE’s continuing concerns have been addressed by the Board.

**Comment-**COMAR 13A.08.01.11B(3)(a)(ii) – MABE supports amending the language in (3)(a)(ii) (extended suspension) to remove the terms “chronic and extreme” and “exhausted”, and to substitute more “educationally appropriate” terms such as “frequent and significant” and “unsuccessful” to define the actionable behavior that disrupts learning for other students. They would also remove the term “across the school day” because they believe that the school would need to show that such disruption occurred in all classes to constitute an actionable disruption of learning for other students.

**MSDE Response-** The terms at issue were recommended by the Workgroup. The suggested replacement terms are not as descriptive or strong and dilute the Workgroup’s recommendation. We would point out that a superintendent can interpret “across the school day” on a case-by-case basis, based on the behavior of the student, to determine if it warrants, for school safety reasons, a suspension of 11-45 days, which is a very serious consequence.

**Comment-**COMAR 13A.08.01.11C(3)(d)(ii) – MABE would add language in (3)(d)(ii) (the 10-day return to school rule) to keep certain students from returning to school after 10 days if they caused frequent and significant disruptions and to define the actionable behavior that disrupts learning from other students. MABE suggests the following:



*(d) The process described in §C(3)(a)-(c) of this regulation shall be completed by the 10<sup>th</sup> school day of the initial suspension. If additional time is necessary to complete the process, either because of delays to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless:*

...

*(ii) The student has engaged in frequent or significant disruption of the educational process that has created a substantial barrier to learning for other students and other available and appropriate behavioral and disciplinary interventions have been unsuccessful.*

**MSDE Response-** Throughout this four year process the State Board has recognized and honed the discipline regulations based on the comments received. While staff sees merit in these comments, it is the view of staff that it is time to finalize these regulations and entertain amendments at a later date.

**Comment-COMAR 13A.08.01.11C(3)(g).** MABE supports an amendment to impose the same standards on both parties for disclosure of witness lists and other documents intended to be used in the hearing.

**MSDE Response-** Throughout this four year process the State Board has revised and honed the discipline regulations based on the comments received. While staff recognizes merit in these comments, it is staff's view that it is time to finalize these regulations in and entertain amendments at a later date.

**Comment-COMAR 13A.08.01.11F –** MABE supports amending the requirement for minimum education services to ensure that students are “provided access to assignments” which must be reviewed and corrected and “made available” to the student. These changes are intended to retain the intended outcomes of the proposed regulations, but would clarify that rather than mandating that assignments be “received by” students and corrected work be “returned to” students (students out of school by definition). The regulations should mandate student access to assignments and that any completed and corrected work be “returned to” students (students out of school by definition).

**MSDE Response-** At the very beginning, and at the very heart of the State Board's study of school discipline issues, was the concern that students suspended out of school receive, at the very least, received minimum educational services. This comment would weaken that regulatory requirement.

**Comment - COMAR 13A.08.01.21C –** MABE supports mandating that each local school system develop a “measurable multi-year plan” to immediately reduce and ultimately eliminate the disproportionate or disparate impact of the “school system's” discipline process on minority students, but not to mandate the elimination of such impacts within a prescribed time period. MABE agrees with the Advocates for Children and Youth (ACY) that disparate impact is a

better term than disproportionate because disparate impact examines different treatment of students who are similarly situated and who have common characteristics (i.e. different discipline for the same behavior).

**MSDE Response-** Before making any amendments to this section, MSDE should be given the opportunity to consider the meaning of the terms, to develop its methodology and test it.

**Comment-** To delete “long-term suspension” and put “extended suspensions” on the list.

**MSDE Response-** We would not recommend deleting long-term suspensions because a suspension of 4-10 days is still significant.

**Comment-**Add “as defined in COMAR 13A.08.01.11(F)” to make clear that the “comparable” education services to be provided to extended suspension or expelled students are those same minimum education services provided to any student suspended from school as set forth in 13A.08.01.11(F).

**MSDE Response-**It is MSDE staff’s view that the addition is not necessary because it would be unreasonable to conclude that the State Board intended to create two different types of educational services to be provided to students depending on the length of their suspensions. “Minimum educational services” is the minimum expectation. Of course, if school systems can find ways to deliver educational services that exceed the minimum that would be an excellent outcome.

**Comment-** MABE made two technical suggestions. First to rearrange the terms in .11B(8). Second, to change “officer” to examiner in .11C(3)(g).

**MSDE Response-** In our view, those technical changes can be made whenever the regulations are next amended. It is time to move forward.

The Maryland State Educational Association (MSEA) was also in opposition of the discipline regulations.

**Comment-**MSEA commended the State Board for its efforts but opposed the adoption of regulations at this time. MSEA cited the lack of “supports, resources, programs, staff, professional development/or time...” The organization suggests waiting until the Best Practices Workgroup and the Student Code of Conduct reports are completed, published, and discussed. MSEA stated:

“For these reasons, MSEA is opposed to the adoption of the proposed discipline regulations at this time. We have previously expressed our specific concerns relative to language, educator workload, and student safety. We appreciate the State Board’s comments at the December Board meeting relative to the intent of the language in the regulations regarding the return of a student to his/her regular academic program; however, the clarification alone is not legally enforceable. Regardless, we remain concerned about interpretation, unintended consequences, and student and educator safety. Indeed, we have heard from many educators already that the regulations are being interpreted as meaning no suspensions for any reason, which is an indication that administrators are addressing the numbers problem, but not the behavior problems. Finally the published regulations indicate that there is little fiscal impact;

however, the lack of staffing, alternative services, intervention programs, and community and parent support is required for change to be successful and are lacking in local school systems across the State, and therefore fiscal impact is significant. To begin to address this issue head on, it is essential to identify funding sources based on identified needs.”

MSEA, also believes there will be unintended consequences as a result of the regulations such as:

- More referrals to police and juvenile justice because administrators believe their ability to suspend is limited;
- More parents, students, and educators feeling compelled to press criminal charges because they are concerned for their safety and believe that administration lacks the power to address the perceived problem; and
- The rise of informal suspensions, which we have heard is already occurring, means that parents are asked to just keep their child home for a few days after an incident so exclusion from school does not have to be reported as a suspension.

Finally, MSEA cited a number of initiatives such as the War on Poverty and inclusion of special education students in the regular classroom, which after many decades have not fully realized their ideals. They conclude that these regulations “will be harmful to students, educators and the safety of public schools.

**MSDE Response-** There will always be reasons articulated to delay any change to educational landscape. Unintended and bad consequences are some of those reasons. In staff’s view, the current discipline regulations and policies also have unintended and bad consequences which the State Board’s Report chronicled in great detail. It is time to change that part of the education landscape.

It is MSDE’ s intent to monitor how these regulations are being implemented. If indeed referrals to juvenile justice increase, criminal charges increase, or informal suspension become a way for schools to manipulate the numbers, MSDE’s data and monitoring will uncover those problems. Staff plans to report data findings about discipline to the Board at least annually, but more frequently if necessary.

As to resources, funding, and training, we think it is important to review the local school systems suspension data to determine the extent of the funding issue by school system and by school. We plan to begin review in 2015. What we learn will be part of our report to the Board. Some initial questions come to mind to guide our thinking:

- Which of the 24 school systems actually need more resources to provide an alternative school setting for suspended/ expelled students? What resources are the local school systems asking for?
- For students suspended for less than ten days, do the local school systems plan to place them in alternative settings or do they plan to use the homework/liaison model? We note Dorchester County has a program established to deliver class work outside the school building for suspended students. (P.77 of Guide). It currently has an enrollment of 15. What resources does it require? What does it cost?
- For each school in each system, what is the data on the number of students suspended for 1-3days or 4-10 days that will show us the anticipated workload for teachers and the liaisons in those schools that use a homework/liaison model.



### **IN SUMMARY**

170 comments were not related to the proposed disciplinary regulations and thus were not included in the count. These comments were in opposition to the draft guidelines for a student Code of Conduct. Opposition to the proposed disciplinary regulations could be categorized into three categories:

- 1,417 comments were concerned about local control. Respondents felt that disciplinary decisions should be left to locally elected or school staff who know their students better than the Maryland State Board of Education;
- 24-comments were concerned about a “one size fits all” disciplinary policy. These commenters were concerned that the Maryland State Board of Education is attempting to mandate that local boards of education use specific disciplinary policy and practices; and
- 23 comments we classified as “other” because of the many and varied reasons for opposition.

### **CONCLUSION**

The State Board of Education has been carefully examining the negative effects of suspension and expulsion over the past several years. In its February 2012 report, *A Safe School, Successful Students, and A Fair and Equitable Disciplinary Process Go Hand in Hand*, the Board determined that 63 percent of the out-of-school suspensions were for non-violent offenses and the disproportionate impact of school discipline seemed to fall upon minority students and students with disabilities. The disproportionate impact upon the aforementioned student groups was reiterated in a separate report issued by the Board at the July 2012 meeting, entitled *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*.

In addition to the disproportionate impact, research indicates that there is a high correlation between middle school suspension and dropping out of school. According to Cornell et al. (2013) “The frequent use of suspension as a disciplinary practice is predictive of higher dropout rates for both White and Black students, and is not explained by other social demographics or by student attitudes that are associated with breaking school rules.”<sup>1</sup>

There is also a high correlation between students dropping out of school and participation in the criminal justice system (Balfanz, 2007)<sup>2</sup>. According a report prepared for the Maryland General Assembly by the Taskforce to Study High School Dropout Rates of Persons in the Criminal Justice System entitled *School Dropouts and Their Impact on the Criminal Justice System* (2012), Maryland tax payers spend over \$400 million per year in incarceration costs for Maryland dropouts.

In its examination of school discipline policies, the State Board is also concerned about so-called “zero tolerance” practices. According to research conducted by Russ Skiba (2000), “There is no credible evidence that zero tolerance reduces violence or drug abuse by students. Furthermore,

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<sup>1</sup> Dewey Cornell, Anne Gregory, Xiato Fan, Peter Sheras, “How are suspension rates related to dropout rates” The University of Virginia Curry School of Education, Issue 7 (2013).

<sup>2</sup> Robert Balfanz, Lisa Herzog, Douglas MacIver, “Preventing Disengagement and Keeping Students on Path in Urban Middle Grades Schools: Early Identification and Effective Interventions,” *The Educational Psychologist*, 42 (2007): 223-235

school suspension and expulsion result in a number of negative outcomes for both schools and students.<sup>3</sup>

Though a good part of the public comment on the proposed regulations was positive, opponents expressed concerns about local control and a belief that the Maryland State Board of Education is attempting to mandate a particular disciplinary practice. Funding issues, safety issues, unintended consequences as well as very specific suggestions for changes in the regulations were topics discussed by opponents. We have addressed those comments herein.

In contrast to the real concerns expressed by opponents of the proposed regulations, the Maryland State Board of Education has received positive feedback from supporters, the majority of whom want an end to zero tolerance policies because they are punitive and don't allow for school principal's discretion, want the State Board to enact the regulations because they believe minor misdeeds should be managed in school, and support the regulations because they do not eliminate "local control", and because they reduce school suspensions that unfairly impact minorities and students with disabilities disproportionately.

The fact is, in Maryland we are already in the process of reducing suspensions. Since 2009<sup>4</sup>, When the Maryland State Board of Education began examining disciplinary practices, student suspensions are down from 153,000 events to 92,000 events. The number of unduplicated suspensions has declined from 75,544 to 51,465<sup>5</sup>. Moreover, Maryland's local school systems use of out-of-school suspension is at an all-time low of 5.1%<sup>6</sup>.

The proposed regulations provide structure for long-term suspension, minimum educational services, school arrest, and offer a preview into some of our challenges such as disproportionate/disparate impact.

It is time to act.

**ACTION:**

I am recommending State Board adoption of proposed amendments to Regulations .11, .12, and .15 and new Regulation .21 under COMAR 13A.08.01 General Regulations.

Attachment

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<sup>3</sup> Russell J. Skiba Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice Policy Research Report #SRS2 August, 2000

<sup>4</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2008-2009, Maryland State Department of Education Report

<sup>5</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2012-2013, Maryland State Department of Education Report

<sup>6</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2012-2013, Maryland State Department of Education Report



**.32 Service Doors, Emergency Windows, Doors, and Exits.**

**A. Service Door.**

(1) (text unchanged)

(2) There may not be a door to the left of the driver on vehicles with a gross vehicle weight rating greater than 21,500 pounds.

(3) — (9) (text unchanged)

**B. — E. (text unchanged)**

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

**Title 13A  
STATE BOARD OF  
EDUCATION**

**Subtitle 08 STUDENTS**

**13A.08.01 General Regulations**

Authority: Education Article, §§2-205, 7-303—7-305, 7-307, 7-308, and 8-404, Annotated Code of Maryland

**Notice of Proposed Action  
[13-402-F]**

The Maryland State Board of Education proposes to amend Regulations .11, .12, and .15 and adopt new Regulation .21 under COMAR 13A.08.01 General Regulations. This action was considered at the Maryland State Board of Education on October 30, 2013.

**Statement of Purpose**

The purpose of this action is to have each local board of education adopt a set of discipline policies and regulations that: (1) Address school safety; (2) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior; (3) Are designed to keep students in school so that they may graduate college and career ready; (4) Provide for disciplinary policies based on the use of discretion; (5) Explain why and how long-term suspensions or expulsions are last resort options; and (6) Explain how the education and counseling needs of suspended students will be met.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed addition to COMAR 13A.08.01.11(F)(1)(b), Minimum Education Services, requires assigning a school staff person the responsibility of serving as a liaison between teachers and the suspended student or his/her parents. Recognizing the current fiscal situation at both the State and local levels, there are a variety of low-cost options to meet the liaison requirement, including assigning an additional planning period to a teacher, and/or designating this duty to a portion of a current administrator or counselor's job responsibilities if they have not already done so. The use of technology is another way to ensure that suspended students are able to continue their instructional program while out of school. Currently, most local school systems have instructional portals through Blackboard or Schoology, which allow class work and instructional materials to be posted and accessed by students and parents.

Since COMAR 13A.08.01.03 Lawful Absence was adopted, suspension from school has been deemed a lawful absence. COMAR 13A.08.01.05(B)(5), Student Attendance Policy, has required that

each local school system institute make-up work requirements including classroom teacher and student responsibilities, time limits, and grading policy for make-up work. The proposed addition to COMAR 13A.08.01.11(F)(1)(b), Minimum Education Services, strengthens that existing requirement by adding an explicit liaison component. The proposed regulation requires a liaison between teachers and suspended students or his/her parents. Some schools and districts already have an identified person who serves the liaison role during the suspension process. The Dropout Prevention/School Completion Intervention/Resources Guide (2011) contains a listing of alternative schools and programs reported by local school systems. Twenty-two school systems reported they provide either alternative programming and/or alternative school assignments to suspended students.

The proposed addition of data collection in COMAR 13A.08.01.12 and .15 requiring annual reporting of school arrests and referrals to law enforcement agencies or to the juvenile justice system will require changes to the Maryland Student Records System Manual and the collection of new data. The Department is able to absorb these costs through its current data collection systems.

Local school systems might experience economic impact by having to update their student data collection systems to record school arrests and referrals to law enforcement agencies or to the juvenile justice system. Estimated costs would vary depending on the local school systems' budget and technology systems.

The addition of COMAR 13A.08.01.21, Reducing and Eliminating Disproportionate/Disciplinary Impact, will require the Department to enter into a contract with experts to design a Disproportionate Impact Model and analyze local school system discipline data to determine whether there is a disproportionate impact on minority students. Current studies done by the Department are being expanded to include this new requirement.

**Revenue (R+/R-)**

**II. Types of Economic Impact.**

**Expenditure (E+/E-) Magnitude**

- A. On issuing agency: NONE
- B. On other State agencies: NONE
- C. On local governments:

Costs on local education agency

(E+)

Minimal

Benefit  
Cost (-)

(-)

Magnitude

D. On regulated industries or trade groups: NONE

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

**III. Assumptions. (Identified by Impact Letter and Number from Section II.)**

C. For the school systems that currently have alternative education programs in place, the expense of providing education services to suspended/expelled students is already included in their budgets. Twenty-two of the 24 local education agencies report that they have alternative programs and/or schools currently in place. These program staff could serve the role of liaison.



PROPOSED ACTION ON REGULATIONS

2092

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Robert A. Murphy, M.Ed., Specialist, Specialist School Completion, Discipline, and Alternative Programs, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0305 TTY: 410-333-6442, or email to [rmurphy@msde.state.md.us](mailto:rmurphy@msde.state.md.us), or fax to 410-333-8148. Comments will be accepted through January 13, 2014. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 28, 2014, at 200 West Baltimore Street, Baltimore, MD 21201.

**.11 Disciplinary Action.**

**A. Local [Regulations.** Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion.] *Board Authority.* Each local board of education has both the responsibility and authority to adopt policies designed to create safe schools. In the context of school discipline, by the beginning of school year 2014—2015, each local board shall review and revise its student discipline policies and regulations with the goal of maintaining an environment of order, safety, and discipline necessary for effective learning. The policies and regulations at minimum shall:

- (1) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;
- (2) Be designed to keep students connected to school so that they may graduate college and career ready;
- (3) Describe the conduct that may lead to in-school and out-of-school suspension or expulsion;
- (4) Allow for discretion in imposing discipline;
- (5) Address the ways the educational and counseling needs of suspended students will be met; and
- (6) Explain why and how long-term suspensions or expulsions are last-resort options.

**B. Terms Defined.** In this regulation, the following terms have the meanings indicated:

- (1) (text unchanged)
- (2) "Expulsion" means [at a minimum,] the [removal] exclusion of the student from the student's regular school program [and may be further defined by a local board of education.] for 45 school days or longer, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

(3) "Extended suspension" means the [temporary removal] exclusion of a student from [school for a specified period of time longer than 10 school days for disciplinary reasons by the local

superintendent or the local superintendent's designated representative.] a student's regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that:

(i) The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or

(ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

(4) (text unchanged)

(5) "Long-term suspension" means the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.

[(5)] (6) (text unchanged)

[(6)] (7) "Short-term suspension" means the removal of a student from school for up to but not more than [10] 3 school days for disciplinary reasons by the principal.

[(7)] (8) "Suspension" means the application of extended suspension, in-school suspension, [or] short-term suspension, or long-term suspension.

**C. Suspension and Expulsion.**

(1) In those instances when the behavior of a student is disruptive and detrimental to the operation of the school, the student may be suspended or expelled.]

[(2)] (1)—[(3)] (2) (text unchanged)

[(4)] (3) Suspension for More than 10 Days or Expulsion.

(a)—(b) (text unchanged)

(c) If after the investigation the local superintendent or designated representative finds that [a longer] an extended suspension or an expulsion is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) The process described in §C(3)(a)—(c) of this regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, either because of delays due to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the student's return to school would pose an imminent threat of serious harm to other students or staff.

(e) If the student is not allowed to return to school after the 10th day, the superintendent or designee shall notify the student and the parent or guardian within 24 hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools;

[(d)] (f) If after the conference the local superintendent or designated representative finds that [a] an extended suspension [of more than 10 school days] or an expulsion is warranted, the student or the student's parent or guardian may[.];

[(i)]Appeal] appeal to the local board within 10 days after the determination[.];

[(ii)] Be heard before the local board or its designated committee; and

[(iii)] Bring counsel and witnesses to the hearing.]

(g) If an appeal is filed, the local board or its designated committee or hearing officer shall have 45 days from the date the appeal was received to hear the appeal and issue a decision, as follows:

(i) This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and  
 (ii) This timeline shall also apply in the event that the local board elects to use a hearing examiner.

(h) If due to extraordinary circumstances or unusual complexity of a particular appeal, the local board determines that it will be unable to hear an appeal and issue a decision within 45 days, it may petition the State Superintendent for an extension of time.

(i) The student or the student's parent or guardian or representative:

(1) Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing; and

(2) May bring counsel and witnesses to the hearing.

[(e)] (j)—[(k)] (l) (text unchanged)

[(5)] (4) (text unchanged)

(3) A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.

(5)—(7) (text unchanged)

(8) A local superintendent may deny attendance to a student who is currently expelled or on extended suspension from another school system for a length of time equal to that expulsion or extended suspension. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion or extended suspension of the student, on receipt of the request for information.

D.—E. (text unchanged)

F. *Minimum Education Services.* In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at a minimum provide that:

(1) Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and

(2) Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.

G. *Education Services During Short-Term Suspensions.*

(1) For short-term suspensions, the local board of education shall inform all schools under their jurisdiction:

(a) To provide all students who receive short-term suspensions with the opportunity to complete the academic work they miss during the suspension period without penalty; and

(b) To provide all students who receive short-term suspensions, and their parents or guardians, with the contact information for a school employee who will be responsible for ensuring that the requirement described in §G(1)(a) is met.

(2) All other aspects of the process for suspended students receiving missed assignments, completing missed assignments, and making up tests shall be identical with each school's established policy and practice for makeup work in the event of any other excused absence.

**.12 Arrests on School Premises.**

A.—E. (text unchanged)

F. Beginning in the 2015—2016 school year, data on school arrests shall be reported in a manner and format developed by the Department, in consultation with local school systems, and approved by the State Board.

**.15 Reporting Delinquent Acts.**

A.—B. (text unchanged)

C. Beginning in the 2015—2016 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department, in consultation with local school systems, and approved by the State Board.

**.21 Reducing and Eliminating Disproportionate/Discrepant Impact.**

A. The Department shall develop a method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students.

B. The Department may use the discrepancy model to assess the impact of discipline on special education students.

C. If the Department identifies a school's discipline process as having a disproportionate impact on minority students or a discrepant impact on special education students, the local school system shall prepare and present to the State Board a plan to reduce the impact within 1 year and eliminate it within 3 years.

D. The local school system will report its progress annually to the State Board.

LILLIAN M. LOWERY, Ed.D.  
 State Superintendent of Schools

**Title 22  
 STATE RETIREMENT AND  
 PENSION SYSTEM**

**Subtitle 01 GENERAL REGULATIONS**

**22.01.14 Applications for Service Retirement**

Authority: State Personnel and Pensions Article, §21-110, Annotated Code of Maryland

Notice of Proposed Action  
 [13-403-P]

The Board of Trustees for the State Retirement and Pension System proposes to amend Regulation .03 under COMAR 22.01.14 Applications for Service Retirement. This action was considered by the Board of Trustees for the State Retirement and Pension System at an open meeting held on September 17, 2013, notice of which was given by publication on the website for the Maryland State Retirement and Pension System pursuant to State Government Article, §10-506(e), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to amend regulations controlling applications for service retirements. Specifically, these amendments deal with applications for service retirement for former members who are eligible to retire at the time of separation from employment. The language is clarifying in nature and eliminates redundant language.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.