Maryland State Board of Education

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TO: Members of the State Board of Education

FROM: James H. DeGraffenreidt, Jr. JHD/aes

DATE: June 20, 2012

RE: Making Decisions About Proposed Disciplinary Regulations

We have all reviewed the numerous, and often conflicting, comments on the School Discipline Report and the draft regulations. (It may be helpful to re-read the Public Comment Compilation that Liz prepared. It is attached.) It is time to consider and decide whether we wish to make changes to the draft regulations and, if so, what those changes should be. I present here a "strawman" decision-making document that I think will provide a structured framework for our discussion and decision.

First, to guide our decision-making process, we will need to keep the "big picture" in mind. We have established that, in order for our students to be college and career ready, they need to be in school. Thus, our school discipline philosophy focuses on keeping students in school. We have also established that if suspension or expulsion is necessary, as a last resort, the school must keep suspended or expelled students connected to the school by providing education services that will allow the student to return to school with a chance to become college and career ready.

I believe we can summarize our discussions on that point this way:

> The State's goal is to create a world class education system that prepares all students for college and career success in the 21st Century. Throughout all our education reform efforts and in all the discussions we have had about school discipline, we emphasized the imperative to address the needs of *all* students, not just *some* students. We say it again, a world class education cannot be just for some of our children. We must strive to provide it to all our children.
>
> 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 country.* It is that simple. It is that important.

With the big picture in mind, we need to review the draft regulations to determine which are ready for publication (with or without amendment) and which, if any, require more discussion.

I. Discussion: School Discipline Policy (Read Compilation pp. 7-9)

The draft regulation currently states:

> 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 suspensions, or **when appropriate,** expulsions, **pursuant to COMAR 13A.08.01.12-1.**

Several commenters asked the Board to amend this regulation to reflect the Board's philosophy on school discipline. One commenter said:

> "The goals for the reforms to the school discipline regulations include increasing positive student behavior, increasing learning time, and decreasing the disproportionality of suspensions and expulsions. The introduction to disciplinary actions (Section .11) should clearly state these goals along with language which recommends that time out of the classroom as a result of disciplinary actions is kept at a minimum. The section should also state that discipline resulting from a non-violent offense should not impede a student's ability to earn credits and graduate."

Decision Point:

- Does the Board endorse an amendment that better reflects its general philosophy of school discipline? If so, the amended regulation could read:
  - A. Each local board of education shall adopt a set of school discipline policies and regulations that eliminate any zero tolerance policies and reflect the rehabilitative goal of school discipline designed to keep students in school so that they may graduate college and career ready.
  - B. The disciplinary policy shall be based on the goals of fostering and teaching positive behavior.
  - C. The disciplinary policy should explain why and how long-term suspensions or expulsions are last-resort options.

II. Discussion Re: Expulsion and Extended Suspension (Read Compilation, pp. 30-38; 51-53)

The draft regulation deleted the definition of expulsion but included the concept of expulsion in the definition of "extended suspension."

The draft regulation states:

> B (2) "Extended suspension" means the [temporary] removal 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. **Extended suspensions can include total exclusion from school only when that is the only means by which to ensure a safe school.**

Eliminating the term expulsion caused great concern among the commenters. One commenter explains that concern best.

> "We are concerned that expulsion would be removed except for violation of the federal firearm regulation. There are circumstances in which a School Superintendent may need to exercise the decision to expel a student, either due to the significance of the offense, or the repeated nature of the offense. In the first instance, an example would be that a student who has made threats of school violence and is found to have a "hit list" which names of students and/or staff that they intend to harm. The second instance would include a student who has repeatedly been found to be selling drugs at school. Our school system, as other Maryland public schools, provides an hierarchy of responses and consequences for discipline to intervene and correct behavior is a manifestation of their disability, and their Individual Educational Plan (IEP) addresses the necessary modification needed to address their disability, as opposed to suspension and/or expulsions. **(20)"**

Some commenters asked that you continue to allow LEAs to define when expulsions are appropriate. Some commenters urged that extended suspensions or expulsions be used only for violent behaviors or when student conduct presents a danger of serious physical harm to others. Other commenters suggested that extended suspensions and expulsions be prohibited at the Pre-K – 3 level.

Some felt that the allowing extended suspensions to include total exclusion from a school was not appropriate. Others asked that the word temporary be put back into the regulation to emphasize that the student would be returning to the school. Some commenters asked that the Board define when extended suspensions could be imposed - - only for violent conduct or when conduct presents a serious danger of physical harm. (Compilation 51-53).

Decision Point:

- Do you want to add back to the regulations the option for expulsion?
- If yes, do you want to define what expulsion means and place limits on when it can be used? The proposed regulation could state:

> B (2) "Expulsion" means the total exclusion of a student from the student's regular school program for 45 days or longer for conduct that the superintendent determines, on a case by case basis, is violent or poses a serious danger of physical harm to others in the school community.

Decision Points:

- Do you want to change the definition of Extended Suspension to make clear that it is "temporary" and time limited? If you do, it could read:

> "Extended suspension" means the temporary removal of a student from the students' regular school program for a time period between 11-45 days for conduct that the superintendent determines, on a case by case basis, poses a danger of harm to others in the school community.

III. Discussion Re: Short Term/Long Term/ Suspensions (Read Compilation pp. 30-38)

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

. . .

(6) "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.

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, if appropriate, expelled pursuant to COMAR 13A.08.01.12-1.

Some commenters advocated a return to the regulatory status quo (anything up to 10 days is a short-term suspension). Other said short-term suspensions should be up to 5 days (not 1-3 as the draft regulation states). Some commenters felt that Section C of the draft regulation (cited above) was too broad in allowing suspensions and expulsions for conduct "disruptive and detrimental to the operation of the school."

Decision Points:

- I do not recommend changing the time-frames of short-term or long-term suspensions unless you believe there is a good reason to do so the.
- I do recommend deleting Section C of the regulation as redundant, too broadly stated and not in line with our more specific recommendations.

IV. Discussion Re: Student's Return to School If Superintendent Fails to Make Timely Decision (Read Compilation pp. 39-48)

The draft regulation states that:

> **(d) The process described in (a)-(c) of this section of the regulation shall be completed by the 10th day of the initial suspension. If additional time is necessary to complete the process, the student shall be allowed to return to school, unless the local superintendent or designated representative considers the conduct at issue as violent, dangerous, or a threat to the safety of the school community.**

Some commenters stated that sometimes delay in the decision-making process is caused by difficulty in scheduling with parents or students and asked that you insert "unless the delay is beyond the scope or by no fault of the school system." Others said that the "threat to school safety" language was too vague and suggested "presents a danger of serious physical harm to others" as the only reason to continue to exclude the student.

Decision Points:

- Do you want to change the draft regulation to allow schools to deny a student's return after the 10 day period has ended if the delay is not the fault of the school system?
- Do you want to change the reason to deny the return when the 10 day period ends without a decision of the superintendent to "only if the student presents a danger of serious physical harm to others?"

V. Discussion – Return After All Terms and Conditions Are Met.

The draft regulation states:

> (6) A student suspended from school shall be allowed to return to school on the day that the terms and conditions of the suspension are met whether or not the student, parent, or guardian has filed an appeal of the suspension.

There was only one comment on this regulation.

Comment:

When there is a need for a superintendent's designee hearing for a student, and the hearing is rescheduled due to a parent's or an attorney's request, the student should not be able to return to school. If the delay is on part of school system, the student should be returned to school. School systems should consider if an alternative program can be assigned until the superintendent's designee hearing is held. **(18)**

Decision Point:

- I do not think that presents a compelling reason to change to the draft regulation. If the student has served the terms and conditions of his suspension, a delay in the hearing process is no reason to continue excluding him from school.

VI. Discussion Re: Timely Open Process (Read Compilation pp. 43-45)

The draft regulation states:

> (4) Suspension for more than 10 days or Expulsion
> (e) If after the conference the local superintendent or designated representative finds that a suspension of more than 10 school days or **an** expulsion **under COMAR 13A.08.01.12-1** is warranted, the

student or the student's parent or guardian may appeal to the local board within 10 days after the **date of the written** determination.

(f) **If an appeal is filed, it shall be heard before the local board or its designated committee, or hearing officer and completed within 30 days of the date of appeal was received by the local board.**

(g) The student or the student's parent of guardian:

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

(b) may bring counsel and witnesses to the hearing

(h) The local board shall issue its decision within 10 days after the close of the hearing.

Some school systems stated that the 30 day time period for hearing the case and the 10 day time period to issue a decision were too short to allow for thoughtful decision making. One commenter said:

> "Many times, evidentiary hearing require an exchange of written memorandums of law or written closing arguments between the parties. These cannot occur until a copy of the transcript of the evidentiary hearing is received which frequently takes between 10-14 days. Requiring that a decision be made within 10 days would infringe on both parties ability to adequately represent their case and prevent the Hearing Officer from conducting a thorough analysis of the evidence presented by both parties. **(8)"**

Decision Point:

- Do you want to extend the 30 day or 10 day the time periods?
- If you do not, do you want to allow for extensions of time for good cause shown?

VII. Discussion: Minimum Education Services (Read Compilation pp. 12-22)

The draft regulation states:

F. Minimum Education Services

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

(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 and to communicate weekly about homework assignments and school-related issues by phone or e-mail with those out-of-school suspended students.

This draft regulation generated the most comments. Many commenters emphasized the cost and burden on school systems. Some commenters noted that students expelled from school, not just students suspended, should be provided minimum education services.

This regulation is at the heart of our "big picture" - - keeping students connected to school. I ask that you re-read the comments on pp. 12-22 of the Compilation and come prepared to discuss your views.

Decision Point:

- Do you want to amend the draft regulation in any way?
- I am reluctant to recommend amending the regulation at this point unless there is a strong Board consensus to do so. We may need to study more fully at a later date Alternative Education options or the idea that every suspension/expulsion requires a plan for returning the student to school prepared to succeed.

VIII. Discussion: Disproportionate Impact (Read Compilation pp. 23-29; 57-58)

The draft regulation states:

.21 Reducing and Eliminating Disproportionate 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 or special education students, the local school system shall prepare and present to the State Board a plan to reduce the disproportionate impact within 1 year and eliminate it within 3 years.

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

Some commenters challenged the efficacy of the draft regulation finding it difficult to apply or conform to. Some questioned the use of the "discrepancy model" for testing the impact of school discipline on special education students. (Compilation pp. 23-29). Some commenters advocated requiring school systems with higher suspension rates than the State average to present a corrective action plan to the Board. (Compilation pp. 57-58).

Decision Point:

- I do not recommend changing the draft regulation to further define the analytical methods. The Department will need to take the time to do that.
- Do you want to include schools with "high numbers" in the regulation? If so, the regulation could state:

A. The Department shall develop a method to analyze local school discipline data to determine whether there is (1) a disproportionate impact on minority students, (2) an overall high number of suspensions or expulsions compared to the state average, or (3) a high number of referrals to the juvenile and criminal justice systems.
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 or special education students, an overall high number of suspension or a high number of referrals to the juvenile and/or criminal justice system, the local school system shall prepare and present to the State Board a plan to reduce the disproportionate or high penetration impact within 1 year to eliminate it within 3 years.
D. The local school system will report annually its progress to the State Board. (4)

IX. Discussion: Delinquent Act and Arrest Data (Read Compilation pp. 49-50)

The draft regulations state:

.12 Arrests on School Premises
F. Data on school arrests shall be reported in a manner and format developed by the Department.

.15 Reporting Delinquent Acts
C. Beginning in the 2013-2014 school year, the local school systems shall report data to the Department on school arrests and referrals to the juvenile justice system in a form and manner developed by the Department.

One commenter summarized the concern about the data collection:

"COMAR 13A.08.01.12(F) requires that "data on school arrests shall be reported in a manner and format developed by the Department." Reporting only school arrests, however, is insufficient to track and understand the connection between school discipline, school arrests, and involvement with the juvenile and criminal justice systems. Instead, the regulation should require that "comprehensive data school arrest, school-based citations and tickets, referrals to the juvenile justice system, referrals to the criminal justice system and disposition of those referrals shall be reported, and educational services received by referred and detained students in a manner and format developed by the Department."

Decision Point:

- Do you want to make the regulation more specific or continue to allow the Department discretion to develop the data parameters?

X. Revision of the School Discipline Report

After the discussion at the June meeting, the Report will be revised and finalized to reflect our philosophy, deliberations, and guidance to the school community. We expect to have a draft for the July meeting. Here is a preliminary outline.

I. Background

A. We Published Draft Report which:
(1) Was based on what we learned from the Maryland education community.
(a) Process we used.
(2) Was based on Data MSDE Collects.
(a) Data Told Us xxx; and
(3) Was based on what we learned from national research.

B. Considered implications of data and national research for our policy objectives that have been expressed in our strategic plans, RTTT grant application and education reform agenda.
C. We Proposed changes to Regulations

II. We received Public Comment which told us we need to be very clear about why we are proposing changes to school discipline regulations.

A. We are proposing changes because:
(1) All Students are Important.
- Fact #1 – In order to learn, all students need to be in school;
- Fact #2 – Some students will be disruptive or difficult;
- Fact #3 – It is part of the mission of public schools to teach all students how to behave/act responsibly.
- Fact #4 – Lots of schools in Maryland are already doing just that.
PBIS
Character Counts
Other Best Practices that Work
Walla Walla article

B. We are proposing changes because integration of disciplinary interventions with our strategic plan is elemental to achieving sustainable success in our transformation toward world class education. We need to link our proposed changes to the RTTT areas of focus like measuring the effectiveness of teachers and administrators based on student achievement; developing great teachers and leaders; student achievement itself; etc.
C. Our Goals:
(1) All schools in Maryland will recognize that their mission is, in part, to have a disciplined and consistent way to identify

what constitutes behavior that warrants disciplinary intervention and to develop effective approaches that maximize the opportunities to keep students on the path toward educational success

(2) All school systems will reduce the number of students who drop-out of school because, through multiple or long-term suspensions, they have gotten the message – "You don't want me around." We should have a new message: "We can only succeed if we have everybody with us."

III. Discipline Imposed Well and Appropriately Is One of the Tools Schools Can Use to Teach Students How to Succeed

A. Purpose of Discipline

(1) Rehabilitate not punish

(2) Imperfect students are not throw aways

(3) Send signals to all, we care about all students. There are no "perfect" students. We accept the students as they are and prepare them for college and career success.

B. Using Suspension and Expulsions

(1) Effect on Students? Does it generally work to teach students how to behave? (Research says probably not)

(a) It puts students on the road to dropping out.

(b) It puts students on the road to prison.

C. If you must suspend or expel, provide minimum education services or Alternative Education.

1. LEA must articulate what will be better for the student and the school environment after completion of the suspension. If we consider disciplinary action, especially the extreme and rare action of suspending a student, as tools used to help us prepare students for college and career success, we must have some explicit discussion in each case that is customized to the student and the school environment.

2. Alternative Education Best Practices
   Resources Available
   Ideas from Principals

D. If you must suspend or expel, watch for disproportionate impact on minority and Special Education students.

1. If disparate impact, schools must submit corrective action plans.
2. Best Practices
   a. Cultural competency
   b. Courageous Conversations about Race (Calvert County)
   c. Skillful teaching (Montgomery County)
   d. Efforts of Black and Hispanic Conference of Boards of Education
   e. Others

E. If you must suspend or expel, make sure your process is open, fair and timely.

IV. Future Plans

A. Deal with Code of Conduct
B. Follow-up Annually
    1. Data Review
    2. Corrective Action Plans
    3. Other

School Discipline Report
Public Comment Compilation

The State Board received many hundreds of individual comments from over 100 commenters. About a third of the commenters reflected a belief that the State Board was favoring "bad kids" over "good kids." The following comments reflect the views of this group.

Comment:
With regard to the majority of students that are in school to learn, I have to wonder, who, at the state level, is looking out for them. As a high school and middle school teacher, I can confirm that students who want to learn are regularly subjected to disruptive, disrespectful, and in subordinate behavior. When teachers have to deal with these behaviors during class, valuable instruction time is lost – for ALL STUDENTS. Since writing office referrals and sending students to the office are typically measures of last resort for teachers, there is, without a doubt, time lost to negative behaviors. As a teacher, it is my job to protect and nurture learning and the learning environment. If chronically disruptive and insubordinate students are given even more leeway than they currently have with regard to consequences for their actions, I cannot protect students who want to learn and provide the safe, nurturing environment that we all know is best for students for be successful. **(48-1)**

Comment:
The Report attempts to consider various aspects of the effect of suspensions in Maryland based solely upon the consequence for disruptive student and used various studies created by advocates for such disruptive students to draw the conclusion that suspensions generally are ineffective.

On the contrary, available Maryland data shows that nearly two-thirds of the students who are suspended for disruptive behavior are not suspended again, indicating that student suspensions are in most cases effective deterrents that help ensure a safe educational environment for the vast majority of students.

Maryland's first in the nation educational status is further demonstration of the success of the efforts of local school systems to protect the educational environment so that all students who want to learn can. The Report gives no consideration to the very real negative effects for the students who come to school prepared to learn from serious disruptions of the educational environment. This unintended consequence is a clear effect of the Report's consistent failure to consider the educational rights of any student but the disruptive one. **(77-1)**

Another group of 20 or so commenters strongly supported the tenor and purpose of the Report. This commenter reflected that view:

Comment:
As a parent and an educator, I feel suspensions are detrimental to the students' academic progress. I believe students should have consequences for their behavior, but failure in their classes for the days they are suspended should not be option . . .nor should putting the students

behind and making them try to catch up. Many of the students with behaviors which cause them to become suspended are often acting out because of personal issues in their lives. Those issues may very well be their struggles in school academically, socially, athletically, etc... So, putting them farther behind in their schoolwork, giving them failing grades that adversely affect their term grades, and sending them away as if they are not deserving to be in school are not the ways to improve student behaviors.

I think community service should be considered as a consequence. In this way, students are receiving consequences while also learning to give back to their community. Perhaps, being a part of something where they can make a difference in the world and/or lives of others will help them become better decision makers and/or individuals in our society. Regardless of whether you think community service is worthwhile avenue to pursue, suspension is NOT the answer! **(88-2)**

Finally, the remaining commenters, while they generally supported the Report, had numerous suggestions on how to improve or change the direction of the Report. They offered amendments to the draft regulations appended to the Report. Because they suggested changes, this Public Comment Compilation, for the most part, addresses specifically the remarks of that third set of commenters and separates their many comments into the following categories.

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This Report does not contain every comment received. All comments are available, however, at http://www.marylandpublicschools.org/NR/rdonlyres/42ED8EDA-AF34-4058-B275-03189163882D/32224/AllPublicCommentsReceived1.pdf

I. Convene Statewide Task Forces

Four commenters asked the Board to place the Report and the draft regulations on hold pending the study of separate task forces.

Comment:
PSSAM respectfully recommends that you place the proposed COMAR changes on hold pending a report of a task force created to further investigate and advise the State Board of Education on these matters. In addition, different aspects of the proposed changes could be piloted in local school systems throughout the State to determine if the change is reasonable and results in the desired outcome the change is designed to address. **(27)**

Comment:
MCPS strongly urges the State Board to consider convening a Statewide task force of stakeholders that can devise a workable, meaningful solution to this issue. **(5)**

Comment:
MCAAP supports the recommendation of MCPS to convene a statewide task force of stakeholders that can devise a practical, all-encompassing solution to the issues presented. School administrators are critical stakeholders and we hope our thoughts will seriously considered by you in this review process. **(24)**

Comment:
MABE requests that the State Board reject this Report and enter into an sustained dialogue with local boards and superintendents to consider ways that the student discipline process can be improved without jeopardizing the education and safety of the vast majority of students and the dedicated professionals who serve them. **(77-1)**

II. Additional Work To Be Done

One commenter focused on an early drop-out indicator and urged us to explore this issue.

Comment:
One critical factor not explored, and perhaps beyond the scope of this report is the need to study third grade reading levels of all students because there is a correlation between students who are not reading on grade level by third grade and future incidents of discipline, and ultimately incarceration. Providing effective learning interventions early in elementary school is a critical component to closing the achievement gaps and an important prevention measure in terms closing the discipline gap. In their article Literacy, Criminal Activity, and Recidivism, Cindy and James Hendricks, and Susie Kauffman state: "But what happens to those students who do not learn to read? For many students, reading problems lead to poor academic achievement, which in turn, may lead to dropping out of school. According to recent statistics 15 percent of the US population dropped out of school before graduation because they fell so far behind in school that they had lost hope of ever catching up." There are numerous reports regarding prison and juvenile justice populations, recidivism and the correlation to third grade reading levels and reading levels in general. It is a factor that cannot be ignored. **(14)**

III. Approach Discipline Differently

The State Board received comments suggesting that the State Board and the LEAs should approach school discipline from a specific philosophical standpoint. Among those comments were:

Comment:
As a general matter, we urge the Board to revise the regulations so that they reflect the Board's stated goal of discipline being used as rehabilitation, rather than solely as punishment, and that removal from school be a last resort. We support the Board's emphasis on employing effective prevention and intervention measures that focus on teaching appropriate behavior. We therefore recommend that the Board modify COMAR 13.A.08.01.11(A) to state the Boards' goals of creating a positive learning environment, encouraging a rehabilitative_ system, using positive behavior interventions_and using exclusion from school as a last resort. **(9)**

Comment:
School discipline is still focused on punishment, instead of accountability.

Punishment tells us what NOT to do; it does not teach us how to do things differently and better in the future; nor does it help repair the harm that was caused.

Include guideline for positive, restorative discipline approaches

Maryland is missing a vital opportunity here to shift the school discipline paradigm to one that relies heavily on the ***proven practices*** associated with Restorative Practices/ Restorative Justice

This movement has grown tremendously nationwide and internationally over the past 10 years Several state departments of education have an entire department devoted to Restorative Practices (e.g. Minnesota:
http://education.state.mn.us/MDE/StuSuc/Safesch/RestorMeas/index.html)
Maryland is lagging behind in systematically incorporating school discipline policies and procedures around Restorative Practices.

Include specific language and policies around best practices in Restorative Practices **(16)**

Comment:
We recommend a specific articulation that *before consideration* of any suspension, Principals and Administrators *shall* consider and eliminate any and all alternatives to removal, especially the various restorative practice options. In addition, we recommend that the following core characteristic be added:

All stakeholders should have input into the fairness and utility of any alternatives to removal, with the final decision left to the school designee. "Stakeholders" include the student, the referring staff member, others affected by his/her behavior, parent/guardians of all involved, and school administrators. On occasion, school officials may choose to involve the student body, the student government, and the Parent Teacher Association.

There shall be broad involvement of representative of the school community in the review of the document. We recommend that "school community" be specifically defined as: students, teachers, administrators, parents, community leaders, support personnel, and other affected, directly or indirectly, as appropriate. **(10)**

. . .

Comment:
MSDE should set the expectation that all Maryland school districts will revise and implement a disciplinary policy that uses out-of-school suspensions, expulsions and law enforcement involvement only in the most severe cases. In all but the most severe cases, it should be mandatory for a discussion between involved teachers, administrators, students, and parents before any student is suspended or expelled, or when criminal charges may be filed.
MSDE policy should strongly encourage district Administrators and principals to identify alternatives to Out-of-School Suspensions and principals should do whatever possible to use in-school alternatives to out-of-school suspensions and expulsions. **(12)**

. . .

Comment:
We ask that the school systems be required to document the discipline options for certain offenses in their codes. Baltimore City's Code of Conduct is a model for outlining the levels of interventions that should take place and the options given to schools for disciplinary responses. Helping school internalize a different way of approaching misbehavior - not simply suspending students but offering more effective responses to help change student behavior – will require re-working local discipline codes. **(3)**

. . .

Comment:
The goals for the reforms to the school discipline regulations include increasing positive student behavior, increasing learning time, and decreasing the disproportionality of suspensions and expulsions. The introduction to disciplinary actions (Section .11) should clearly state these goals along with language which recommends that time out of the classroom as a result of disciplinary actions is kept at a minimum. The section should also state that discipline resulting from a non-violent offense should not impede on a student's ability to earn credits and graduate.

We suggest a change to COMAR 13A.08.01.11A:

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 counseling and standards for appropriate disciplinary measures, and may permit suspension, or *when appropriate, expulsions pursuant to COMAR 13.A.08.01.12-1.* **Any disciplinary actions shall contribute to a goal of fostering positive behavior and keeping all students in the classroom as often as possible. Any disciplinary action that results in time**

out of the classroom shall be kept at a minimum and discipline resulting from non-violent offence should not impede on a student's ability to learn. (4)

. . .

Comment:
Require districts to adopt a graduated approach to discipline that allows them to still have significant control over shaping their local disciplinary strategies but places limits on the use of the most serious disciplinary consequences and encourages the use of alternative practices, such as referrals to counseling services, conflict resolution, restorative practices, and peer mediation. (7)

. . .

Comment:
We urge you to begin the regulations by stating that the overarching goals of school discipline are to keep school safe and teach students appropriate behaviors – and that neither of these goals cans be achieved by the inequitable and frequent use of out-of-school suspensions. Instead, schools must reserve school exclusion for situations when a student presence presents a real danger to the school community. Other types of misbehavior must be addressed – in school where the student can continue to learn – by providing consequences that teach appropriate behavior and allow the student to redress the harm s/he has caused. Finally, that it is the expectation of the State Board that schools will, maintain low levels of out-of-school suspensions, expulsions, arrests, and referrals to the juvenile and criminal justice systems. **(19)**

IV. Professional Development

A few commenters emphasize the importance of professional development in classroom management.

Comment:
MSBE/MSDE should make mandatory teacher training in classroom management, conflict resolution and how to recognize and provide support for children with learning disabilities within the first 12 months of assignment. Additional "cultural sensitivity training" for teachers in high minority population schools should be required and highlight the cultural contexts of their students. This should include briefing on the minority community's historically troubled relationship with law enforcement. **(12)**

Comment:
Professional development is an important component in establishing a safe, positive learning environment. MSEA has repeatedly testified in support of programs such as Positive Behavior Intervention and Support Program (PBIS) and bullying prevention. These programs have shown results in reducing suspension rates. MSEA initiates and offers support and programs to help schools sustain the use of positive and effective practices to maintain a positive teaching and learning environment; these programs include our Culture, Abilities, Resilience, and Effort (C.A.R.E) Workshop, I Can Do It (ICDI) Classroom Behavior and Management Workshop, and Bullying and Harassment Workshop. We would be pleased to work with the Department and LSSs to deliver these training programs to staff members.

While funding is a complicating factor, appropriate training must be provided for all educators, guidance counselors, administrators, and pupil personnel workers so that they can work together to:

- support finding the root cause [academic failure, emotional distress, family/home issues, legal issues, substance abuse] of altercations to make sound educational decisions; and
- plan and develop interventions and positive methods of improving student behavior. **(21)**

Comment:
I am very passionate about the issue of student discipline and have worked hard in my life outside of work within my children's schools to effect change. Last, but certainly not least, I would be remiss if I did not mention the critical need for research-based, proven effective, professional development for teachers who need it - - - and not all of them do. I will end with two of my favorite anecdotes. The superintendent in the system for which I worked was very tall – she was over six feet in heels. She was visiting an elementary school one day and the students had been instructed to be on their best behavior. As she was greeting second grades, one little boy looked her up and down and remarked, "You are tall as shit." Without missing a beat, she responded, "Why yes I am, but that is not a school word." She emphasized with staff later how important it is to understand not to reprimand that child in a way that would make him think maybe his parents were bad because language such as that were commonplace in his house. Just to let him know that in school we have different expectations and saying bad words doesn't make him bad. I love this story because it made me look at many situations differently. We are often too far quick to judge, punish, and demean. The second - - my sister initially taught self-

contained emotionally disturbed middle school students. One day, a student got angry with her, smashed his lunch and called her a stupid bitch. Instead of writing a referral, or yelling at him, she simply replied, "Hey, no one calls me stupid." It completely diffused the situation and disarmed the student. Those are the skills all teachers need. **(14)**

V. Alternative Education and Minimum Education Services

The most comments that the State Board received concerned alternative education and the mandate for minimum education services. Many of the commenters supported the concept of the provision of minimum education services or alternative education to suspended students. Some commenters felt that providing minimum education services put a burden on LEAs and teachers. Many requested changes to the draft regulation. The comments fell into six discernible categories:

(1) Keep the Current Regulation As Is.
(2) State Board's New Approach Is Just About Right.
(3) Go Bigger.
(4) Go Smaller.
(5) Funding Needed.
(6) Way Too Much of a Burden

(1) Keep the Current Regulation As Is

Comment:
By current Maryland state law, principals may suspend students up to ten days. These days may be composed of one to ten-day(s) individual short-term suspension. All suspensions from school are legal excused absences, and work may be made up when a student returns to school; therefore, there is no requirement to send work home during the suspension.

It is our recommendation that this current Maryland state law remain unchanged. All students who are suspended are permitted to make up all missed work, and their absences are coded as excused absences. During this ten-day period, if all suspended students are to get homework daily, additional staffing will be required. Each principal will need to assign a liaison for every suspended student, and this is an unfunded mandate. Currently, suspensions are legal absences, and all students are allowed to make up missed work when they return to school after being suspended. Please do not change this procedure.

Home and hospital programs require sick students to be absent from school for four weeks, 20 school days, before they become eligible to receive this service. A student who chooses to violate a school system's policies and rules or state laws would be treated differently and more favorably than sick students by this state board proposal.

Be fair and consistent with all students. Continue to allow suspended students to make up work when they return to school after a suspension. This procedure will not put an undue burden on teachers and staff. **(18)**

Comment:
Local boards of education are charged with meeting the educational needs of all students entrusted to their care which charge includes the safety of students and school system staff. The Report and Proposed COMAR changes that the State Board is considering seemingly stem from

one student discipline appeal (Atanya C.) with difficult facts that sharply divided even the State Board and is now on the verge of proving the legal adage that "bad facts make bad law."

We cannot stress strongly enough its conclusion that the Report focuses almost entirely on the presumed rights of a handful of disruptive students with less concern for protecting the learning environment for the vast majority of students that come to school to learn, and the hardworking and caring adults whose mission is to educate the next generation.

We would for a moment suggest that the rights of disruptive students should not be protected and would argue the local boards go to extraordinary lengths to educate even the students who exhibit the most challenging behaviors. Moreover, the State Board in its quasi-judicial role remains the final protector of the rights of disruptive students through an appeal process that has stood the test of time and is not in need of wholesale change.

The major premise behind the Report though well intentioned is fundamentally flawed. This is, the educational rights of disruptive students have been wrongly truncated. In fact, the opposite is true. The educational rights and safety of all students and the safety of school staff have been well protected under the current system without proposed changes to COMAR that will upset the excellent balancing of interests that has been a hallmark of Maryland education for decades, and is no small part of our annual top ranking in the nation. **(77-1)**

(2) State Board's New Approach Is Just About Right

Comment:
Providing Minimum Education services should help to address the issues of falling behind in classwork, which could further aggravate the student's school demeanor.

The statistic found on page 3 states only 23% of the high schools provide the suspended student with schoolwork. This is a definite problem but can be addressed with a legally binding policy that is measured and enforced.

At an average cost of $315K of government assistance needed for the 8800 high school drop outs annually, it costs over $2.7 billion and growing for us to have student that do not remain in school or receive some kind of training to be employable. (Pages 10 and 11) **(34)**

. . .

Comment:
We share all of the concerns you have written in your report. No school administrator wants to suspend of expel students. If all schools had alternative education programs, Saturday School programs, teacher monitored after-school detentions, in-school suspension rooms, extended counseling services, and that like, the suspension rate would obviously go down. But across the state, as you describe, these offerings are inconsistent across the LEA's and totally absent in many. We applaud your efforts to address this very serious educational issue but we also share your concerns about the financial issues associated with additional programs. If any of us had the total answer, we would have implemented it long ago. We think your suggestion of LEA's sharing best practices is essential. Perhaps sharing of resources for items like Saturday School or

Alternative Schools in various counties can be discussed and potentially implemented. We also think that virtual learning environment offers considerable potential in dealing with this particular issue. Since suspensions ultimately have an economic impact on our communities our business leaders and the advocates listed in the report need to step forward and positively help us in any way that they can. We will work diligently to address this issue and will help formulate ways in which to decrease suspensions and enhance the educational experience for all of the students we serve each day. **(2)**

(3) Go Bigger

Comment:
MSBE/MSDE should make a clear definition of 'minimal educational services' **required** to be provided to suspended students, and delivery of those services tracked and reported on quarterly. They should be viewed as the absolute 'floor' and the objective should be set for all districts to have 100% for this service level objective, and in 2013 have 4 pilots underway for higher level alternative educational services. In 2014 have assessed the most effective alternative methods and begin full implementation. **(12)**

Comment:
In its study, the State Board documents the harms of separation from school both to the individual student and to society. All too often in Maryland, students are suspended without educational services. Those student become under-credited, increasingly disengaged, and at risk of dropping out. Recognizing this issue, COMAR 13A.08.01.11(F) requires that each student suspended out-of-school receive daily homework assignments. These measures, however, are insufficient to remedy the problem.

Students need instruction, not just homework assignments, in order to stay on pace with their class and receive course credit; schools should be required to provide such instruction. The regulation should state that students who are suspended out-of-school for ten days or fewer should "receive instruction commensurate with the program afforded to the student in the regular classroom." (See COMAR 13A.08.01.11(B)(2)(a)(iii) for educational services provided students who receive in-school suspensions.) With the aid of technology, such instruction may be provided at reasonable cost and from a distance.

Schools districts should also be required to collect and report data on the number of hours and type of instruction received by students who are suspended out-of-school or expelled. This information will not only ensure that districts can be sure they are providing services equitably, but it will also allow them to assess which types of instruction are most effective in keeping students on track.

The regulation also should state that students serving an extended suspension should be given an alternative placement, and must, whether or not an alternative school is available, receive treatment and other services to address the behavior that led to the suspension. **(19)**

Comment:
We recommend language similar to that used to describe educational services provided to in-school suspension students in section 11.C(2)(a)(i), in which the student is afforded the opportunity to "Appropriately progress in the general curriculum." **(3)**

Comment:
Require that students be provided with the minimal educational services the Board outlines in the regulations in every situation in which the student is excluded from school, as opposed to limiting this requirement only to out-of-school suspensions, to best ensure students do not fall behind. **(7)**

Comment:
We strongly advise that the regulation require that both school work and homework be provided. We recommend language similar to that used to described educational services provided to in-school suspension students in .11.C(2)(a)(i), in which the student is afforded the opportunity to "appropriately progress in the general curriculum." Especially with regard to students who are given long term or extended suspensions, there may be no practical way to "make up" classwork after the fact, resulting in increased school failure and increased drop-out rates which is exactly what this regulation seeks to address. **(9)**

Comment:
We ask that regulation require that students be provided with educational services in every situation in which the student is excluded from school. The Board has indicated that even students who are expelled should not be automatically denied access to all education services, except in the case of "serious extenuating circumstances" that threaten a safe school environment. See Report at 27. We fail to understand what extenuating circumstances could exist where the provision of school work and homework to a student would be a threat to a safe school. Work can be provided digitally, by mail, to a parent, or in any number of ways that could maintain the safety of the school without denying the student the opportunity to make progress in his or her education. The "extenuating circumstances" language fails to provide sufficient guidance to school system as to when the cessation of all services would be permissible. **(9)**

. . .

Comment:
We recommend the following change in bold:

> *(1) Each student suspended out-of-school who is not placed in an alternative education program shall receive daily homework assignments from each teacher which shall be reviewed and corrected by teachers on a weekly basis and returned to the student* **and one of the following:**
>
> **a. Placement in an alternative school setting**
> **b. Virtual learning opportunities**
> **c. Daily or weekly in-person sessions with a teacher**

(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 and to communicate weekly about homework assignment and school-related issues by phone or e-mail with those out-of-school suspended students **and parents. (4)**

Comment:
Requiring that school districts provide educational services during a suspension is extremely important to ensure that youth who are suspended do not fall behind academically and become disengaged from school. However, we do not believe the provision of homework that will be graded is sufficient. The educational services should give students the opportunity to appropriately progress in the general curriculum. Students, particularly those who are struggling academically, will have great difficulty progressing without direct instruction from a teacher. Thus, students who are not placed in an alternative school program should be provided with weekly in-person sessions with a teacher. In our county, students who are recommended for expulsion and awaiting the conference with the superintendent's designee are provided with Home and Hospital Teaching for 6 hours per week. This should be the minimum requirement for those students who are suspended and not placed in an alternative school setting.

Additionally, the regulation should provide that even students who are expelled under the proposed definition at 13A.08.01.12-1 and are under the age of 16 should be given these minimum education services to comply with the compulsory attendance law. **(25)**

Comment:
While the Board of Education's desire to reduce suspensions is clear, we think even more can be done to support and promote effective alternatives to suspensions and expulsions. We fear that without an emphasis directly in the regulations on the importance of using effective alternatives to suspensions, expulsions, arrests, and other exclusionary discipline practices, school districts may not actively pursue the alternatives that exist to assist students in learning appropriate behavior and receiving the support they need. Specifically, we recommend that the Board include more language about such alternatives in *Regulation .11 Disciplinary Action.* Since this regulation describes the various exclusionary discipline responses, adding information about effective alternatives to those options would encourage school districts to find ways to incorporate more evidence-based prevention and intervention measures into their disciplinary frameworks. We think this would make it more likely for districts to take advantage of the many organizations like ours that exist in communities across the state to provide such services. In addition, while we recognize that every district and community does not have access to the same community-based resources, districts should still be actively encouraged to utilize strategies that can be implemented in-school. **(13)**

(4) Go Smaller

Comment:
We suggest the following changes:

(1) Each student suspended out-of-school who is not placed in an alternative education program shall receive ~~daily~~ homework assignments FOR THE PERIOD OF THE SUSPENSION from each teacher which shall be reviewed ~~and corrected~~ by teachers ~~on a weekly basis~~ and returned to the student IN A TIMELY MANNER WITH APPROPRIATE FEEDBACK.

Rationale – Strike "daily" from requirement since not all classes require daily homework. Also, homework should be reviewed and have feedback provided, not necessarily "corrected." Strike "on a weekly basis" to allow for those students who do not submit the assignments on a weekly basis.

(2) Each principal shall assign a school staff person to be the liaison between the teachers and the various students on LONG-TERM OR EXTENDED out-of-school suspension WHO ARE NOT PLACED IN AN ALTERNATIVE EDUCATION PROGRAM and to communicate weekly about homework assignments and school-related issues by phone or e-mail with those out-of-school suspended students.

Rationale – No need to do this if students are on a short-term suspension or placed in an alternative education program. **(1)**

. . .

Comment:
We suggest the following changes:

(1) Each student suspended **for more than ten days** out-of-school who is not placed in an alternative education program shall have ~~receive daily~~ homework assignments **made available** from each teacher which shall be review and corrected by teachers on a weekly basis and returned to the student.

(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 and to communicate weekly about homework assignments and school related issues by phone or email with those out-of-school suspended students.~~ **Each principal in a school with a suspension rate of 10 percent or in schools identified as having rates that reflect disproportionality in special education, race, or gender shall assign a school staff person to be the liaison between the teachers and various students on out-of-school suspension in excess of ten days. (14).**

Comment:
Students not assigned to an alternative program would be required to receive "minimum educational services," defined as daily homework, corrected and returned to the student with at

least one staff person assigned to be the liaison between teachers and suspended students. This mandate would require an inordinate amount of time. Additionally, homework is not always an appropriate substitute for missed classroom activities or lessons. Should a staff person be designated as liaison that would be subject to collective bargaining? Additionally, there is no guidance provided on the manner in which homework would be corrected and returned. That is, would the parent be obligated to return the work or is a staff person obligated to go to the suspended student's home to collect and return homework.

We respectfully recommend that homework be required in suspension of four to ten days, and be limited to core academic subject. **(17)**

Comment:
There must be responsibility placed upon the student to avail himself or herself of opportunities to continue his/her education. The onerous and time consuming requirements should not be that of the teacher or administration alone. Therefore amend the language to say:

(1) Each student suspended out-of-school who is not placed in an alternative education program shall ~~receive daily~~ have homework assignments **made available** from each teacher which shall be reviewed and corrected by teachers ~~on a weekly basis~~ and returned to the student.

(2) Each principal shall designate ~~a school staff person~~ **an administrator or designee** to be the liaison between the teachers and the various students on out-of-school suspension and to communicate weekly about homework assignments and school-related issues by phone or email with those out-of-school suspended students. **(21)**

Comment:
Homework is just the tip of the iceberg in terms of what students are missing from school. The classroom interactions, the lessons that are taught, the tests and quizzes that are missed cause far more problems. Recommend instituting a study hall in schools (with a compensated teacher) for students who are falling behind or who have been suspended. This would have to be optional unless transportation is provided. And, this should be a recommendation, not a regulation. Local school systems need to be given the autonomy to determine how to best help student who have been suspended catch up on school work and assimilate back into the school environment based on available resources and needs. We need to keep in mind that based on the aggregate data 86 percent of students are behaving. That number is higher in some schools. Making a one-size fits all regulations that deflects scarce resources from *the majority* of students is not in the best interest of the students. **(14)**

(5) Funding Needed

Comment:
While we agree that alternative education programs are a viable option, a truly effective alternative program that focuses on positive student behavioral changes while adequately addressing course content requires specialized staff such as counselors, psychologists, behavior management specialists, secondary teachers highly qualified in a variety of content areas, and

administrators. In a time when funding is being reduced and the possibility of staff reduction exists, potential for the successful implementation of broader alternative education regulations is minimal and is likely to take away resources from students who are sitting in our schools. Since this would an unfunded mandate it would be necessary for funding to be provided to put additional resources in our schools and additional support for our alternative programs. **(8)**

Comment:
Additional staffing may be required to comply with the proposals. For example, students who are serving in-school suspension require supervision. A staff member may be required to instruct or supervise this student in addition to his or her regular class. If more than one student was serving in-school suspension, in effect, another class would be created. In a scenario with the least impact, one teacher would be teaching an additional class of students serving in-school suspension (collective bargaining again). Alternatively, if suspended students are dispersed throughout several classes, teacher class sizes would increase, even if temporarily. **(17)**

Comment:
While many schools around the state are currently using the PBIS model and have met with success; unfortunately, limited resources (human and capital) have delayed full implementation of the program in all schools. We are in support of MSDE providing funding for this program to be implemented at Level II and III. We urge the SBOE to identify and to provide ongoing funding to sustain and initiate:

- Proactive intervention programs
- Professional development
- Alternative learning programs
- Counseling and family support services
- Technology infrastructure **(21)**

Comment:
The requirement that the district assign staff to act as liaisons between teachers and students on out-of school suspension is actually an unfunded mandate. While the goal of the provision is worthy one, our schools would need additional funding to secure the additional staff that would be required. **(26)**

Comment:
The current policy suggests that each school designate a dedicated resource to help suspended students with schoolwork while they are out of school. Although I would agree this is a wonderful option it is not realistic. Class sizes have increased by more than 10% in the last few years and the number of teachers and resources in the schools has decreased.

So, if a dedicated resource is needed it must be funded. A dedicated resource would cost $100K a year per school that is money we do not have. However, if it prevents a percentage of the 8800 student from dropping out of school, staying out of prison or needing government assistance, it is money well spent and saves millions of dollars and potentially better lives for many in our communities.

I recognize that economic times are tough but we cannot afford to take shortcuts in this area or we will pay for it many times over in government assistance and lives that do not get the opportunity to live up to their potential. **(34)**

Comment:
I believe that alternative programs are a vital part of the school system. It has become increasingly important to student to get their education. Once again, we do not have the resources to run an effective alternative program that provides the students with the highly qualified teachers as well as the emotional and behavioral support of a counselor or psychologist. Certainly, a system program would need even more resources. We just don't have them.

I believe that all students have the right to learn and be in school. I also believe that some students who are making choices that clearing indicating that a traditional school is not for them. However, without the monetary support, the changes you recommend would compromise the safety of our schools because there would not be the appropriate supports at the school or system level. **(33)**

Comment:
This section requires additional time from staff. This is money. Either we stop doing something else or we find funding for this. After 40 years in education I have seen too many programs that systems were asked to absorb without additional or adequate funding. Before this becomes a requirement, the funding issue needs to be addressed. **(23)**

I suggest that you **fund** this program. Additional money can be used to hire additional staff and faculty at schools that have larger suspension rates. This will allow for teachers to use additional planning time to prepare work for students who are suspended. This would also allow for teachers to work with students who are serving in-school suspensions. What you are proposing is an unfunded mandate. Teachers are already working extra hours in order to do their jobs; the addition of more work without time to accomplish it will not meet with success. **(30)**

(6) Way Too Much Burden

Comment:
Minimum Education Services require daily homework assignments from each teacher to be reviewed and corrected on a weekly basis. This places a burden on teachers to initiate the work when students may not have been exposed to material during the daily lesson and is contradictory to best practices involving homework. This will require teachers to come up with individualized lessons for suspended students along with their daily teaching responsibilities. Teachers teaching six periods a day, averaging 25-30 students per class could be required to develop multiple individualized lessons per day depending on the number of students suspended at any given period.

This new provision requires every school to have a liaison between all teachers and suspended students to communicate weekly assignments and handle all communication of school-related issues with suspended students. This consumes very limited staff time and resources in an ear of diminishing funding resulting in the elimination of positions. **(8)**

Comment:
Minimum Education Services requires schools to provide daily homework that is graded on a weekly basis to any student who is, "suspended out-of-school." Homework is not always assigned on a daily basis depending on the class. This provision could require the creation of new assignments for suspended students. Additionally, not all teachers grade homework on a weekly basis. Requiring them to do so may prove to be time consuming. The regulation also demands that each principal assign a school staff person to be the liaison between the teachers and students on out-of-school suspensions. This staff person will be required to communicate weekly about homework assignments and school-related issues by phone or email with suspended students. This will create an extra burden on staff that already has demanding schedules. It could also cause a potential budgetary impact if it is determined that new staff must be hired to fulfill these responsibilities.

We would like to note that suspended students in our school system are already allowed to make up any missed work due to a suspension. However, the "Minimum Education Services" subpart would require additional work to service these students in excess of what the Board considers necessary and fair. Suspended students should have the opportunity to make up what they miss during their exclusion, but the requirement of special liaisons and daily homework graded on a weekly basis is excessive.

The regulations also fail to address whether or not this applies to expelled students. These provisions would, on their face, require that students suspended for an entire year be provided daily homework, even if they were expelled for an offense that threatens the safety of the school. **(28)**

Comment:
The requirement is noble in its intent, but it is not feasible given the current structure of schools Maryland. Some schools suspend more students than others, and these schools would need additional staff and faculty to meet this requirement. Also, some teachers will have a larger percentage of students suspended which will result in additional work. I agree that something needs to be done, but it will not get done until we recognize that all schools with the most at risk students. This proposed regulation will cause more excellent teachers to leave underperforming schools. **(30)**

Comment:
I am writing to let you know as a teacher, I do not support the proposed policy change of teachers providing homework for students who are suspended. In many cases this would increase my workload. It is my understanding we teachers would not get paid for fulfilling this requirement or given additional time to get the homework together. I already feel overwhelmed by the large amount of paperwork I am required to do, and spend many hours after school to complete the paperwork I have. It is unfair to expect teachers to have their work load increased without being given the extra time or pay to do so. **(31)**

Comment:
While the idea behind this plan is laudable, it is not very workable. For instance, I teach a course that involves the use of a CAD program that is quite expensive. Therefore, a student who is homebound for whatever reason is unable to access the program and do the assigned work in it. In order for this student to stay current, it would be necessary for the school to provide access both to the program and if the student did not have a computer, to a computer. **(32)**

Comment:
We ask our staff to provide work for our students while on suspension if the parent makes the request. Although teachers have a choice, it is rare for a teacher not to provide work. Many times when the student returns to school the work is incomplete, not started, or worse yet, lost. The time it takes for staff to gather all the work and provide written directions to help the student understand is monumental when you consider that they only have 45 minutes during their planning period to take care of these requests in addition to their other administrative duties (i.e. grading, planning, IEP meetings, etc.). Providing students with a mentor or home instructor is once again a costly option for local school systems. **(33)**

Comment:
The proposed requirement to provide daily educational service to suspended students, and to designate a staff person to stay in weekly contact with the suspended student, places tremendous burden on limited school resources. This regulation, rather than placing the burden to stay current academically on the offending student and family, shifts all the responsibility to the school, and in essence, "punishes" the school for imposing disciplinary consequences. This regulation, therefore, may render school administrators reluctant to take necessary steps to ensure a safe and productive school climate. **(37)**

Comment:
We oppose the staff liaison provision as an unfunded mandate in time of shrinking budgets. In addition, the State Board is urged to consider the hidden costs of important educational matters left undone that would come from requiring teachers to do daily makeup work for the 95,000 Maryland students suspended each year. Finally, how do we calculate the loss of teacher times for activities such a planning, contact with parents, remedial instruction, and data analysis that could result from this provision? That loss well may have serious negative effects on local school system efforts to continue to lead the nation in educational excellence. **(77-1)**

VI. Disproportionate Discipline

The Board received 18 individual comments on its approach to disproportionality in school discipline. One commenter said:

We agree that disproportionality is a serious concern. Our school system administrators are committed to reducing and eliminating disproportionality in the suspensions of minorities and students with disabilities. Progress has been made but the inequity remains a priority concern. To require schools to monitor and develop plans to address this issue is reasonable. Our school system has committed itself to address this issue of disproportionality in all areas where it exists and has actively developed programs and processes to address this. This is an area where best practices and shared results make a difference in the lives of student and the life of a school. **(24)**

The comments fall into 4 categories:

(1) Go Further/Be Stronger
(2) Step Back/Too Aggressive
(3) It's A Societal Problem
(4) Better/Different Analytical Model

(1) Go Further/Be Stronger

Comment:
To the extent that disciplinary process is shown to have disproportionate impact on minority and/or special education students, a school system must present a plan to this Board to end such disparate impact.

This Board has acknowledged the disparate impact of the current disciplinary process, and local schools are required by statute to "establish special programs in the county and Baltimore City for students . . . who exhibit disruptive classroom behavior." Still, few have used restorative techniques. If we keep allowing schools to "establish special programs" that are not different in philosophy or restorative in approach, we will continue to experience the same dismally disparate results. We encourage the Board to require that the programs established by the local districts be infused with restorative principles that focus on the harm done, the learning that can come from it, and the action needed to restore community. **(10)**

. . .

Comment:
Specify that the plans developed under Section .21 of the proposed regulations to address disproportionality must result in few uses of exclusionary discipline measures. Otherwise, districts may elect to implement more zero-tolerance measures as their strategy to reduce disparities. **(7)**

. . .

Comment:
Parental/guardian involvement (rights and responsibilities) in achieving the desired behavior changes are routinely being bypassed and usurped for African American students and families;

the practice in place seems to treat these children as independent offenders without parental authority over them, and that 'Due Process' when applied to African American student routinely excludes or inhibits the parent/guardian right to advocate on behalf of their child;
The data point to the majority of African American student suspensions for "violent" acts being 1) Fighting, 2) Sexual Conduct. We believe this needs to be stratified further. Public school discipline polices have become excessive and abusive to the extent of creating a hostile environment for normal adolescent behaviors. In contrast, we see at private schools the teachers and school Administration handle conflicts with more progressive approaches (e.g., go run across the campus 10 times, go to the gym and get in the ring with boxing gloves for 3 round were two creative examples witnessed). There are obviously degrees, however, the point is there is a dramatically less frequent application of suspensions and expulsions for similar infractions. Sexual conduct is another complex area that may need further examination. In either case, the act of suspension and consequential risk of negatively impacting the students, school educational objectives, families, and communities should be the method of last resort and only after exhausting alternative disciplinary methods. It seems fairly evident that in a reality and practice, the primary motivation for Administrators to use Suspension is retribution and punishment.

We find appalling and unacceptable that well over half of all African American student suspensions are for non-violent/non-dangerous conduct.

MSBE/MSDE policy should define Superintendents' accountability to monitor, maintain, and report data on disciplinary actions taken by teachers, especially use or recommendations of suspensions and expulsion. The data should include the race and sex of the child, and teachers and schools should be held accountable if their disciplinary actions are over-zealous or discriminatory. **(12)**

. . .

Comment:
Given the clear evidence that African American boys and other boys of color are suspended at much higher rates than their peers, districts should be required to collect and report disciplinary data broken down by race/ethnicity and gender.

Although the school system must report its progress annually to the State Board the proposed regulation includes no enforcement mechanism for boards that make little or no progress toward their goals. The proposed regulation should include sanctions to each annual progress report for schools that are not moving toward the elimination of disparity within three years. **(19)**

(2) Too Aggressive

Comment:
There is no question that disproportionality is a serious concern and is something that we have been focused on intensely here. Unfortunately, this is an immensely complicated issue and is something that has proven to be an intractable problem for school districts across the country. As it has existed for decades, it cannot be resolved simply by fiat in three years. We, as well as the LEAs across the state, have redirected and targeted resources to reduce this disparity. We have made progress but we have yet to solve this problem completely.

We appreciate that the State Board is committed to reducing and eliminating disproportionality in suspension of minorities and students with disabilities. It is our assertion that it would be far more effective to have schools that have been successful in reducing disproportionality share best practices and disseminate a tool kit of proven, successful strategies with other schools. We also suggest that the State Board consider hiring experts in this field to work with each LEA, review the data, visit the schools, and make recommendations that have proven to be successful elsewhere in similar environments. **(5)**

. . .

Comment:
We recommend that a plan to reduce disproportionate impact only be required when there is a finding that the discipline imposed has been inappropriate or has been employed inappropriately. The demand to completely eliminate impacts is unrealistic. As an alternative to total elimination in three years, we recommend a reduction within a year followed by continual growth toward reducing the disproportionate impact. **(17)**

. . .

Comment:
Three years to remove the disparate impact of suspension seems unrealistic. Suspension is just one of the tools used by school administrators to help students and their parents understand that students need to behave appropriately in school to ensure the maintenance of safe and orderly learning environments for all. Therefore, statewide disciplinary standards need to support this. **(18)**

. . .

Comment:
The pressure in recent years to lower suspension rates to certain subcategories of race have caused parents, teachers, and students to bring up concerns that discipline is becoming more lax and is applied inconsistently. School Resource Officers have also been severely cut, which have increased fears that our schools may become unsafe. There is a perception that some schools are "sweeping under the rug" some incidents to appear as though behavior is improving, when this may not be the case. While we are pleased that our school system is increasing diversity training and making considerable efforts to address racial biases, we are concerned that pressures to reduce and then eliminate the disparities could create an unsafe environment where bad behaviors are ignored. (A similar example of this type of pressure exists with NCLB – as pressures to reduce AYP in schools have resulted in erasures on tests in schools across the nation.)

We question the meaning of reducing and then eliminating the disparity in three years. Does it mean that school systems must also eliminate the disparity of suspensions between Asian American female students and Caucasian male students, for example? It is unrealistic to assume that suspension of all races can be equal, and pressures to do so would force our schools to consider race as a factor when implementing discipline, an obviously undesirable risk and indefensible consequence of the directive. **(22)**

(3) Better Model

Comment:
We agree that regulations are needed to end the "disproportionate impact on minority and/or special education students." Report at 17. However, we have serious concerns with proposed COMAR §13A.08.01.21(B) which permits school systems to rely on the discrepancy model to assess the impact on special education students. The problem with this approach is that the discrepancy model does not measure disproportionality, that is, it does not compare the number of suspensions for a group, here students with disabilities, to it does not compare the number of suspensions for a group, here students with disabilities, to their percentage or proportion of the overall school or district census. Rather, the discrepancy model used by MSDE is a comparative discrepancy ratio that looks to the likelihood that a student in one group, e.g., students with disabilities, will be suspended in comparison to another group, e.g., regular education students. If the goal of the Board is to "end disparate impact" of school exclusion on both students of color and those with disabilities, the discrepancy model cannot be used. Instead, local school districts should be required to determine whether there is a disproportionate impact of discipline on students with disabilities, just as they would be required to do for students of color under .21(B). This is especially important in light of the fact that the following section, proposed .21(C), would require an corrective action plan whenever MSDE "identifies a school's discipline process as have a *disproportionate* impact on minority or special education students." If the intent of the Board is to require correction of disproportionality for both groups, it is crucial that the regulations require measurement of disproportionality for both groups, not discrepancy for one and disproportionality for the other. **(9)**

. . .

Comment:
The study encourages the end of "disparate impact" in the application of discipline and notes that discipline is meted out in a way that may cause a disproportionate impact on African-American males and other minorities. However, the study does not appear to recognize the unique situation in some counties, whose student population is majority African-American. If MSDE is developing analysis to determine the impact of school discipline on minority students within each school system, we would like to be consulted by MSDE before the analysis for our county is finalized to ensure that the data points are in fact relevant and useful for us. There may be other criteria that we should agree upon that will provide us with better information regarding the profile of a student who engages in certain types of conduct, rather than solely focusing on race. **(15)**

. . .

Comment:
The Department shall develop a method to analyze local school discipline data to determine whether there is a disproportionate impact on minority students. Question – Will the method follow the parameters of the MSA method of analyzing subgroup data: i.e., n = 5? Additionally, will a confidence interval be applied to the data analysis?

The Department may use the discrepancy model to assess the impact of discipline on special education students. Question – How is this different from the disparate impact analysis? If it is

not, perhaps address the disproportionate impact on both minority and special education students. **(1)**

Comment:
This proposal states that when MSDE determines that disproportionate impact exists, school systems will be required to present MSBE with a plan to reduce the impact within a year and eliminate the impact within three years. The standard for determining when disproportionate impact exists is not defined. It is unclear whether the standard for disabled students will be utilized or some other, as yet undefined, criteria. We believe that the standard found at 20 U.S.C. §1416 (a)(3)(C) would be an acceptable model. Specifically, states are monitored when disproportionate representations of racial and ethnic minorities in special education is the result of inappropriate identification. **(17)**

Comment:
I believe this regulation is premature and Maryland needs to first develop a data system that allows for multivariate and bivariate analysis in order to better determine where the problems are.

Recommend deletion of this regulation at this time. I believe a better solution would be to utilize the state Longitudinal Data System to gather extensive data. Then, add a component to the school system Master Plans to address issues suspension in general, requiring data to determine and or document whether or not there is a disproportionate impact on minority students, FARMS students, and students receiving special education services. The Master Plan should also include data reporting requirements in terms of disproportionate identification of students for special education services because it all links together. These data are already collected in the annual school system Special Education Staffing reports that are required by MSDE, so that component would not place an additional burden on school systems. The data just need to be incorporated in the LDS.

MSDE should use the data gathered in the Master Plans, attained by adding a component regarding special education identification and discipline to the state's longitudinal data systems, to look at trends. Assessing the impact of disproportionate expulsion/suspension is extraordinary complex and without an adequate information system in place it will not be done well or correctly, leading to false conclusions and assumptions, which will not be in the best interest of the students or school resources. **(14)**

(4) Societal Problem

Comment:
This section implies that some systems are unfairly punishing select groups of students based on race or ability. There are many laws that already cover this kind of behavior and should be applied to these systems, if this is occurring. Anything other than that meaning would imply that school systems can alter socioeconomic factors that society at large with all its resources has not been able to do. The last thing that school systems need is another goal with a guaranteed failure at the end. Or worse yet, ignoring unacceptable behavior at their peril. **(23)**

. . .

Comment:
It is also not just a school problem, it is a community problem, it is a family problem and it crosses over many agencies - - - social services, foster care, juvenile justice etc. The Texas study also found among the main factors juveniles in the justice system had in common were: lack of parental control, drug abuse, and school referral. It could that the drug abuse resulted in misbehavior in school, which resulted in the referrals; or the lack of parental control spilled over into school. Further, it was students who were disciplined more than 11 times who had a high rate of drop out, repeat grade, and involvement in the juvenile justice system. And, students, who were disciplined for discretionary reasons had a higher probability for dropping out, falling behind, and involvement juvenile justice. That seems to indicate a need to focus energy and resources differently based on the type of offense and the number of offenses. **(14)**

. . .

Comment:
In fairness to all, race should be considered irrelevant. I have read your report citing subjective perceptions toward African Americans, but this interpretation is also subjective itself. Conversely, in this day and age, school administrations are diverse and there is a lot of sensitivity and understanding towards minority groups to prevent suspensions.

Although there is apparently a higher percentage of African Americans receiving suspensions, we should consider other demographic and socio-economic differences such as more than double the single parenting rates. There are numerous studies showing negative consequences including behavorial issues in children resulting from the absence of parental figures. This is an unfortunate statistic, but this and similar differences should be studied, understood, and be taken into account before mandating equal proportions of suspensions.

Trying to equalize discipline or punishment based on racial groups can lease to unfairness. The implementation of the mandate may leave the Board with two undesirable outcomes: Either the offenders will be inadequately disciplined or lesser offending children will have to be suspended to allow for further suspensions among the other group. This would be terribly unfair to both groups. In fact, inadequate discipline will be counterproductive to reducing the achievement gap. **(11)**

. . .

Comment:
Disproportionate data are a result of multiple factors, not just discipline. There is significant research on the correlation between third grade reading levels and discipline issues as well as the correlation between third grade reading levels and incarceration rates. And, it occurs in terms of poverty and gender as well. We know boys are suspended at greater rates than girls. We know African American boys at the greatest risk. Poverty is also a factor to be considered. Also, in the extensive date examined by Texas in its groundbreaking study Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement (a comprehensive analysis of millions of school and juvenile justice records over

time) found that while African American students are more likely to be suspended for discretionary reasons, they are less likely to be suspended/expelled for state mandated reasons. We know that students receiving special education services are suspended or expelled at a high rate, but national studies have shown that it is important to note which special education students. For instance, students identified as having an emotional disturbance are expelled/suspended at higher rates, but students identified as autistic or developmentally delayed are disciplined at lower rates. **(14)**

. . .

Comment:
We support all children of all races, gender, and background and believe all children should be treated equally. The same consequences should apply for all children who misbehave according to clear guidelines set in the school district's "Students Rights and Responsibilities."

Statistically, it has been proven that African-American and Hispanic students are suspended at a higher rate than Caucasians. On page 9 of the report, it states that no study to date has found differences in racial behavior sufficient to explain racial differences in school punishment. The disparity data is being used to prove that a certain group of minority students are being mistreated by the school districts.

However, a study by Joshua Kinsler with the University of Rochester, in October of 2011 based on sound data analysis, "School Discipline, a Source or Salve for the Racial Achievement Gap" concludes that:

- Closing the school discipline gap would make the test score cap worse.
- Black principals and white principals alike are tougher on kids in predominately black schools.
- Because of racial economic inequality, schools with a majority of African-American and Hispanic Students grow up in tough circumstances that increase the risk of misbehavior (single family households, low income, living in areas with high crime rate.)
- Tough discipline standards are used by principals as a rational tool to manage potential behavior problems.
- Suspending a highly disruptive child from a classroom helps the other students to learn better.
- Eliminating suspension would cause a school to deteriorate, especially in schools with more at-risk where a greater number of students who are misbehaving would remain in the classroom, cause proportionally larger disruption than in school with fewer at-risk children.

Another item of the report that is not mentioned is that Caucasian student are suspended at a higher rate than Asian Americans, but this disparity is not pointed out as in issue in this report. We question that any disparities that exist are solely the fault of the school system. While the data shows notable information that warrants immediate and constant attention, we caution against the conclusion that schools can be entirely responsible for shrinking the disparity. **(22)**

VII. Changing Terminology

The Board received comments on the proposed changes in disciplinary terminology. The comments addressed two definitional categories, (1) Short Term/Long Term Suspensions and (2) Extended Suspension/Expulsion. Preliminarily, however, the comments that questioned the legality of the State Board's proposed changes are address here.

Comment:
The proposed changes to the regulation appear to conflict with Education Article §7-305. The State Board suggests removal of the term "expulsion" and substitution of the term "extended suspension" in Section B., Terms Defined. However, the term "expulsion" is still used in Section C., Suspension and Expulsion. It is unclear whether the State Board is eliminating expulsion as an option under the regulation. However, it is clear that state law provides this option. **(15)**

Comment:
Additionally, we question the authority of an agency other than the General Assembly to amend statutory language. MSBE proposed to exclude "expulsion" unless the offense is bringing or possessing a firearm on school property. Therefore, the term is not actually being deleted; it is being redefined. However, whether the term "expulsion" is considered to be deleted or redefined, it is doubtful that an agency can change what the General Assembly has passed. **(17)**

Response:
The draft regulations do not violate §7-305 of the Education Article which allows suspensions and expulsions. The draft regulations also allow for suspensions and expulsions, but limits the use of the term "expulsion" to its meaning in §7-305 (e) which addresses bringing a firearm to school. Other behaviors can be the cause of exclusion from school for long periods of time. Under the draft regulations, those exclusions are called "extended suspensions" not "expulsions."

Comment:
The definition of a long-term suspension is contrary to the authorizing statute (7-305). While it may be relevant for purposes of disaggregating data, it is not relevant to the student discipline process outlined in these regulations. Accordingly, this definition must be deleted in order to comply with the language of the statute.

- Delete the new (4) ~~"Long-term suspension" means the removal of a student from school for a time period between 4-10 days for disciplinary reasons by the principal.~~
- (6) Amend to the original/current regulation and law. "Short-term suspension" means the removal of a student from school for up to but not more than ~~[10] 3~~ **10** school days for disciplinary reasons by the principal. **(21)**

Comment:
The definition of "long-term suspension" conflicts with case law precedent that indicates that any suspension 10 days or less is a short term suspension. The State Board casting long term suspension for a period between 4-10 days is in direct contradiction of governing case law. **(15)**

Response:
The draft regulation does not conflict with §7-305 which allows principals unilaterally to suspend a student for up to 10 days. The draft regulation does not limit the principal's authority to do so. The draft regulation recasts that 10 day period into "short-term suspensions" (1-3 days) and long-term suspensions (4-10 days). This change is merely definitional.

Comment:
The provision requiring a student who was suspended to be allowed to return to school on the day that the terms of the suspension are met seems unnecessary. See, COMAR 13A.08.01.11-6. Further, this provision ignores the requirement of §7-305(e)(4)(i) that requires that a student may not return to the classroom after suspension or expulsion without the principal conferring with the teacher who referred the student for discipline and other appropriate personnel. Rather, the regulation purports mandatory return once the student has served his time. COMAR 13A.08.01.11-7 references this statutory provision so there appears to be an inherent conflict with the new proposed section 11-6 and the current 11-7. **(15)**

Response:
The draft regulation does not require a student to be returned to school without the statutorily required teacher conference. It is presumed that such a conference can and will be held promptly without delaying the student's return to school after he/she has completed the terms of the suspension.

(1) Short Term/ Long Term Suspension

Comment:
We applaud the Board for revisiting the terminology and considering new vocabulary as a necessary step in addressing the overuse of out of school suspension and expulsion. Specifically, defining short term suspensions as 1-4 days and long term suspensions as 4-10 days will hopefully indicate to school administrators the seriousness of removing a child from school and reduce the days students are out of school. However, we are concerned that some of the terminology may need further refining. **(9)**

. . .

Comment:
"We advocate returning to a five (5) days suspension limit, which was imposed on principals in COMAR before it was changes in the 1990's to 10 days. If a principal wanted to extend the suspension for an additional 10 days a review had to be held by a Superintendent's Designee prior to the 5th day." **(36)**

. . .

Comment:
Will the change in terminology affect the longitudinal data in any way since in all prior years the categories of suspension have not been broken out? I think it's an issue of semantics and the

categories of suspension under 10 days, extended suspension (suspensions over 10 days), and expulsion should be maintained to ensure continuity in data interpretation. **(14)**

Comment:
It seems logical to use a school week (5 days) as a parameter for a short-term versus long-term suspension. **(1)**

(2) Extended Suspension/Expulsion

To understand the comments made on the extended suspension/expulsion topic, some brief explanation of what the State Board proposed in the Report is necessary. Specifically, the draft regulation, COMAR 13A.08.01.11(B), redefines **"extended suspension" to mean "the removal 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. Extended suspensions can include total exclusion from school only when that is the only means by which to ensure a safe school."** By including the authority to exclude a student from school when that is the only means to ensure a safe school, the State Board imbedded in the definition of extended suspension the concept of "exclusion" formerly embodied in the term "expulsion." Therefore, the Board deleted the definition of expulsion – which was vague at best. Because, however, expulsion is federally mandated for bringing a firearm to school, the Board retained the definition of expulsion in the "firearms" section of the discipline regulations, COMAR 13A.08.01.12-1, specifically for the purpose of that regulation alone. Under the current regulation, expulsion for possession of a firearm has consistently been defined as "at a minimum the removal from a student's regular school program." COMAR 13A.08.01.12-1A(2).

Comment:
Extended Suspension (COMAR 13A.08.01.11(B)(2))
The first clause of the "Extended suspension" definition states that a student may be removed "from school for a specified period of time longer than 10 days for disciplinary reasons." We urge you to delete this clause. Requiring a student to miss school for a period of time from 11 to 365 days for undefined "disciplinary reasons" runs contrary to your mission of educating and rehabilitating all students. In your study, you state that "[t]en day suspensions have far ranging, negative impacts on meeting our commitments to reduce the achievement gap and to produce a productive and sustainable workforce which can compete globally." (p. 28). Furthermore, you state that "out-of-school suspensions, particularly those over 10 days, should be reserved for only violent and dangerous conduct." (p.14). It would appropriate to suspend a student for more than 10 days only if he were violent, and his presence in school presented a danger of serious physical harm to others. This is a specific circumstance, not a vague "disciplinary reason." **(19)**

Comment:
The second clause of the definition states that "[e]xtended suspensions can include total exclusion from school only when that is the only means by which to ensure a safe school." We ask that you delete the undefined concept of "total exclusion" and make extended suspensions of over 10 days available only when the student's presence in school presents a danger of serious

physical harm to others. This language of serious physical harm appears in the compulsory attendance law.

Students who present a danger of serious physical harm and thus are given an extended suspension should "receive instruction commensurate with the program afforded to the student in the regular classroom." (See COMAR 13A.08.01.11(B)(2)(a)(iii) for educational service provided students who receive in-school suspensions). This would provide the student with instructional services necessary to stay on pace with their classes and receive course credit. Students serving extended suspensions ideally would be placed in an alternative school that would provide necessary treatment and/or counseling. **(19)**

Comment:
"Extended Suspension" means the[temporary] removal 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. *Extended suspensions* **should only be necessary when the danger of physical harm to a student or staff is present and** *can include total exclusion from school only when that is the only means by which to ensure a safe school.* **(4)**

Comment:
The current language stating, "Extended suspensions can include total exclusion from school only when that is the only means by which to ensure a safe school" does not provide a sufficient nexus between the student's behavior impacting the safety of a school. The language should be changed to: Extended suspensions can include total exclusion from school only when the student's presence in school presents a danger of serious physical harm to others. This language is taken from the Compulsory Attendance Law, Md. Education Code, §7-301 (d).[1]

We also recommend that the word "temporary" be retained in the definition so that extended suspensions do not, in effect, become permanent expulsions from school. **(25)**

Comment:
We do not believe that eliminating the expulsion category and including in the extended suspension category any removal for over 10 days, with no outer limit, is an effective solution. An "extended suspension" for a year is effectively an expulsion. The proposed regulations eliminate the word expulsion, except for weapons offenses under the Gun Free Schools Act and COMAR equivalent but do not eliminate the concept, much less define it. Instead, the proposed regulations allow suspension for greater than 10 days, and possibly forever, within the definition of "extended suspension:" "Extended suspension means the [temporary] **removal of a student from school** for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent of the local superintendent's designated representative." The deletion of the word "temporary" can clearly be read to mean that the Board intends to allow permanent expulsion. Moreover, while the Gun Free Schools Act mandates expulsion for a minimum of one year for what everyone would agree are very serious offenses, the new extended suspension rule gives license to local school districts to expel for a year or longer for less serious offenses.

[1] §7-301(d) applies to a student who has a mental, emotional, or physical disability who is withdrawn from school because he/she presents a danger of serious physical harm to others. The school system must, however, provide FAPE in the appropriate setting.

Instead, we recommend that extended suspensions are specifically defined as only appropriate when "the student's presence in school presents a danger of serious physical harm to others." We suggest retaining the word "temporary" in the definition of "extended suspension" in .11(B)(2), as we believe it better expresses the intention that "extended suspension" not be used as a permanent solution and is not expulsion by another name. **(9)**

Comment:
Under the proposed regulation, students who are recommended for extended suspension must be allowed to return to school pending the superintendent's determination if a conference has not been held by the 10th day of suspensions "unless the local superintendent or designated representative consider the conduct at issue as violent, dangerous, or a threat to the safety of the school community." (COMAR 13A.08.01.11(B)(4)(d)). This language is vague and undefined, and should be replaced with a clearer statement of behavior that would trigger continued exclusion from school pending a determination. We recommend that the clause beginning with "unless" instead read: ". . .unless the student's presence in school presents a danger of serious physical harm to others." The recommended language appears in Maryland's compulsory attendance law. **(19)**

Comment:
We agree that student should be returned to school after the 10th day of the initial suspension if additional time is necessary to complete the process described in .11(C)(4)(a)-(c). However, the exception that a student may continue to be excluded for over 10 days for conduct that a superintendent or designated representative determines is "violent, dangerous, or a threat to the safety of the school community" is overly broad and will likely end up swallowing the rule. This will lead to the same problem of student languishing in the disciplinary process that happens under the current regulations. **(25)**

Comment:
"Extended suspension" means the [temporary] removal of a student from school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or local superintendent's designated representative. Extended suspensions ~~can~~ **may** include total exclusion from school ~~only~~ when that is the ~~only~~ means by which to ensure a safe school.

Delete "only" in both places. Add "should" prior to "include". Extended suspensions as newly defined are suspensions over 10 days. There may be other reasons that do not fall under the "ensure a safe school" caveat and that reasoning should be left to the superintendent to determine based on his/her knowledge of the school and the details of this particular incident. Factors such as number of offenses, interventions, parental support, etc. need to be considered when making the determination to place a student on extended suspension. Recommend that extended suspension not be an option for students in PreK-3 unless the student is exhibiting and demonstrating violent behavior, which should prompt a determination for special education services. **(14)**

Comment:
The draft 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. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspensions or, when appropriate, expulsions pursuant to COMAR 13A.08.01.12-1.

DELETE "pursuant to COMAR 13.A.08.01.12-1." This COMAR regulation specifically addresses possession of a fire arm (as required by federal law). There are other reasons that a student may need to be expelled from school (i.e., seriously assaulting another student setting a school on fire, etc.). Superintendents are well-reasoned professionals capable of, and paid to, make high level decisions, such as the decision to expel a student from school. One possible addition that could be made, and is recommended (other than for a violation of COMAR 13.A.08.01.12-1) is that expulsion should not be an option for elementary students. **(14)**

Comment:
We are concerned that expulsion would be removed except for violation of the federal firearm regulation. There are circumstances in which a School Superintendent may need to exercise the decision to expel a student, either due to the significance of the offense, or the repeated nature of the offense. In the first instance, an example would be that a student who has made threats of school violence and is found to have a "hit list" which names of students and/or staff that they intend to harm. The second instance would include a student who has repeatedly been found to be selling drugs at school. Our school system, as other Maryland public schools, provides a hierarchy of responses and consequences for discipline to intervene and correct behavior. Required safeguards are provided for those special education students whose behavior is a manifestation of their disability, and their Individual Educational Plan (IEP) addresses the necessary modification needed to address their disability, as opposed to suspension and/or expulsions.

Unfortunately, there are those circumstances in which student must be expelled to meet the expectation of providing a school learning environment which is safe, orderly and drug free. This is an expectation of not just schools, but also or parents and the community. And as noted, this occurs only after a number of previous attempts at intervention and correction, through a hierarch of responses and corrections of behavior. **(20)**

Comment:
The draft regulation states: 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, if appropriate, expelled pursuant to COMAR 13A.08.01.12-1. Delete "pursuant to COMAR 13A.08.01.12-1" (the firearms regulation)

The draft regulation states: If the principal finds that an extended suspension or expulsion under COMAR 13.A.08.01.12-1 is warranted, the principal immediately shall report the matter in writing to the local superintendent. Delete "under COMAR 13.A.08.01.12-1". Also deleted in C. (4)(b)(c), (e), and (k). **(14)**

Comment:
Amend the language to say:
(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, any may permit suspensions or, when appropriate, expulsions pursuant to COMAR 13A.08.01.12-1 **and other actions of a comparable nature.**
(C) In those instances when the behavior of a student is disruptive and detrimental to the operations of the school, the student may be suspended or, if appropriate, expelled pursuant to COMAR 13A.08.01.12-1 **and other action of a comparable nature.**
All other provisions must be similarly amended.

The purpose of the suggested amendments is to ensure the LSSs maintain flexibility in determining appropriate disciplinary action, thereby assuring the safety of all students in an equitable and fair manner. Furthermore, limiting expulsion to weapons usage, as the current proposed regulations suggest, is not appropriate and does not provide a safe school environment.

"Extended suspension" means the [temporary] removal of a student 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. Extended suspensions ~~can~~ **may** include total exclusion from school ~~only~~ when that is the **best** ~~only~~ means by which to ensure a safe school. **(21)**

Comment:
MSBE has proposed the deletion of .11 Disciplinary Action (2) "Expulsion" means at minimum, "the removal of the student from the student's regular school program and may be further defined by a local board of education." Please allow each school system the ability to define "expulsion." In our schools, "expulsion" is the label used for seven of the most severe/violent offense committed by students. However, all students are assigned to alternative programs while they are expelled from their home schools. **(18)**

Comment:
We question the effect that eliminating expulsions could have, weighed with the increases cost to the schools system to provide long term "educational support" for up to 365 days. Expulsions are rarely applied by our school system (only 30 last year) and are used effectively as a wake-up call to students and parents. Reportedly, an expulsion is a means, for reasons clearly stated in our "Students Rights and Responsibilities," to say "enough is enough" and it is also a means to show students and families that the school system will assure a safe environment. Changing long term suspensions from "over 10 days" to "4-10 days" and replacing expulsions with "extended suspensions" where the school system would be required to provide "educational services" are changes that were made without regard to economic reality.

If the only aggressive act that would ensure an expulsion involves firearms, there is a deep concern that drug use, bullying, alcohol, use of other weapons such as knives, and other dangerous behaviors will sharply increase in the absence of a harsh tool such as an expulsion. **(22)**

Comment:
MSBE has proposed deleting the term "expulsion," and inserting "total exclusion." According to the report, total exclusion would be allowed only in "serious, extenuating circumstances" where that is ". . .the only way to ensure a safe school environment." There is no standard to determine when total exclusion in the "only way" to ensure a safe school environment. Does a local school retain the authority to make that determination or, contrary to current regulations, will MSBE be reviewing the merits of a disciplinary action to determine whether a particular case was serious enough to warrant "total exclusion"? **(17)**

Comment:
This proposal also raises the question of the difference between "total exclusion" and "extended suspension." Extended suspension is described as a suspension for up to 365 days or more. If the result in both instances is that a student would no longer attend school, this would appear to be a distinction without a difference. **(17)**

Comment:
The proposed definition of "extended suspension" is confusing. Is an extended suspension something less than exclusion from attending school? §7-305 (8) (e) (1) clearly provided for a student to remain away from school premises during a suspension or expulsion. However, the proposed regulation would only allow such exclusion to occur if that is "the only means by which to ensure a safe school." What would be the standards by which a school system would determine that exclusion is the only means? **(15)**

Comment:
The report accompanying the proposed regulations, "A Study of School Discipline Practices" argues for the elimination of the expulsion sanction unless a student brings or possesses a firearm on school property. However, the proposed regulations are unclear, at best, as to whether the power to expel has been limited or eliminate. Expulsion is abolished in the definitions section of the proposed regulations yet COMAR 13A.08.01.11 (C) retains expulsion in the general disciplinary implementation process.

Further ambiguity is added to the expulsion issue as the regulations create a new subset of disciplinary authority that replaces expulsion with an "extended suspension" of "total exclusion," which has been created despite the fact that expulsion is still included in the implementation regulation. In addition, the "total exclusion" sanction can only be imposed if it is "the only means by which to ensure a safe school." The regulations fail to specify what conduct would be eligible for expulsion. This raises significant questions as to what offenses will meet the "safe school" standard particularly since the proposed standard does not address how to handle students who commit multiple violations of the same offense (such as 3rd drug offense) or engage in conduct that constitutes a disruption to the educational environment. We believe that certain cumulative offenses, such as a 3rd drug or alcohol violation, warrant expulsion. The proposed regulations are not instructive on this matter. This local board requests that the power to expel, and the circumstances that warrant it, should remain part of the local Board's purview. **(28)**

Comment:
In the context of general education students, our school system has concerns with this provision as currently written. The expansion of "extended suspensions" from the current 11-45 days to as long as 365 days will be problematic in determining at what point minimum educational services are not adequate for student on extended suspensions. At present, our school system provides minimum educational services to students on extended suspension and alternative educational settings to students excluded for more than 45 days (currently classified as expelled from school). The provision defines minimum educational services but does not provide guidelines for when placement in an alternative educational setting would necessary for the provision of adequate educational services. **(26)**

Comment:
Our school system distinguishes between a suspension and an expulsion and treats the consequences as well as the strategies for intervention differently. The seriousness of the infractions, the impact on students, and the effect on future conduct are important factors in applying a suspension, a discipline tool that is considered an excused absence. In fact, according to the State Board's own study, suspension appears to be an effective tool of student discipline. Sixty four percent of those suspended just one time were not involved in misconduct again and 98 percent of the suspensions are for five days or less. Students who are suspended have the right to receive work from his/her teachers and to make up tests. Suspension has minimal educational impact on the student but results in significant change in student behavior. Since current practice appears to be working, there appears little need to make the suggested statutory changes which only serve to limit the use of suspensions as a disciplinary tool. **(24)**

VIII. Open and Timely Process

The State Board received 32 separate comments on the draft regulations designed to address delays in the discipline process. The majority of those comments concerned the return to school after the 10th day of suspension. Other comments concerned the appeals timeline/process. Others addressed the notice provisions and the witness and evidence list provisions.

(1) 10th Day Return

Comment:
Amend the draft regulation to read: *The process described in (a)-(c) of this section of the regulation shall be completed by the 10th day of the initial suspension. If additional time is necessary to complete the process, the student shall be allowed to return to school, unless the local superintendent or designated representative considers the conduct at issue as violent, dangerous, or* ***if*** *a ~~threat to the safety of this school community~~* **student presents a danger of serious physical harm to others. Should this exclusion from school be necessary, the judgment shall be sent in writing to the parent and student. (4)**

. . .

Comment:
There are certain situations beyond the control of the school system that could delay the process described, i.e., the incarceration of the student, the failure of the parent/legal guardian to respond to the school system's request for a conference, etc. In such cases, it would be more appropriate to provide the student with educational services in an alternative program or at home rather than return the student to the school

Amend the regulation to read: (d) The process described in (a)-(c) of this section of the regulation shall be completed by the 10th day of the initial suspension, UNLESS THE DELAY IS BEYOND THE SCOPE OR BY NO FAULT OF THE LOCAL SCHOOL SYSTEM. If additional time is necessary to complete the process, the student shall be ~~allowed to return to school, unless the local superintendent or designated representative consider the conduct at issue as violent, dangerous, or a threat to the safety of the school community.~~ AFFORDED EDUCATIONAL SERVICES PROVIDED BY THE LOCAL SCHOOL SYSTEM. **(1)**

. . .

Comment:
We believe that parent/guardians must be partners in this process and held accountable for their responsibility in meeting deadlines; otherwise, some parents/guardians or their representatives will intentionally delay the process to assure that their child is placed back in school.

Amend the language to say:
The process described in (a) – (c) of this section of the regulation shall be completed on the 10th **school** day of initial suspension. If additional time is necessary to complete the process, the students shall be allowed to return to school, unless the local superintendent or designated representative consider the conduct and issue as violent, dangerous, or a threat to the safety of

the school community **or if the delay was caused, under documented circumstances, by the student, parent or guardian. (21)**

. . .

Comment:
We would suggest the following wording: "the student shall be allowed to return to school. Unless the local superintendent or designated represented representative, ***in consultation with the school principal,*** consider the conduct at issue . . . ." The principal intimately knows the student and the history behind the extended suspension and should be consulted in the situation described in .11 Disciplinary Action. **(2)**

. . .

Comment:
Regarding in-school suspension, 11.C(2)(d), "After **10** days of cumulative in-school suspension, the student, the student's parent or guardian, and the principal shall confer." We suggest that contact with the student's family take place much sooner than 10 days of cumulative in-school suspensions, and suggest "3" days.

We are supportive of the inclusion of the 10th day time limit for the consideration of extended suspension requests. However, in 11.C(4)(d), we recommend removing "or a threat to the safety of the school community". This phrase is vague and could be open to broad interpretation, allowing students to be excluded without proper cause. **(3)**

. . .

Comment:
The "10 days or return" provision places an unfair burden on the local school system and would require the district to return a student to school even if there are delays in the disciplinary process that are fully justifiable or simply beyond the school's control.

Proposed regulation 13A.08.01.11C(4)(d) states that a student does not need to be returned if the superintendent of schools – or the superintendent's designee – "consider the conduct at issue as violent, dangerous, or a threat to the safety of the school community." However, proposed regulation 13A.08.01.11B(2) says any extension beyond the tenth day is not permitted unless it "is the only means by which to ensure a safe school." This extraordinary high standard is unrealistic, unfair, and provides for the very real possibility of a violent student returning to the same school that the victim may be attending. Under your proposal, students whom the superintendent of schools considers to be violent, dangerous, or threatening to the safety of the school community would be required to be returned to the general school environment unless the school system can demonstrate that there is no other way to ensure a safe school. The proposed language indicates that this would occur regardless of cost, resources, and availability of personnel.

Further, the "10 days to return" provision puts form over substance, is a one-size-fits-all provision, and provides no leeway for *justifiable* delay. This provision may well result in the

return of students involved in the most serious offenses due to the involvement of police and the inability of school personnel to investigate until the police have completed their investigation. **(5)**

. . .

Comment:
Section C. (4)(d) – For suspension for more than 10 days or expulsion (proposed to be limited to only firearms violations) if the process for completion of the investigation, including the parent conference, is not completed within 10 days the student shall be allowed back in school unless the conduct was violent, dangerous, or a threat to safety of the school.

Currently, our school system requires that a complete investigation be conducted prior to a student receiving a disciplinary consequence. When there is a request for an extended suspension beyond 10 days, a discipline conference is held and serves as a rehabilitative measure to help keep the student's behavior from becoming repetitive. Working with the parents, the student and school, the best possible placement, interventions and resources are determined for the student. Failure to have this conference with the parent and the student prior to returning to school could compromise the success of a student returning to their home school or an alternative setting. **(8)**

. . .

Comment:
In proposed .11.C (4)(d), if the process is delayed, we suggest that a student should be permitted to return to school, unless "the student's presence in school presents a danger of serious physical harm to others." The language in the amendments proposed by the Board, "violent, dangerous, or a threat to the safety of the school community," is not specific enough to prevent inconsistent and arbitrary enforcement. **(9)**

. . .

Comment:
There needs to be language added that protects the school system when the process is unable to be completed within ten days because the parent/guardian has delayed the process. The current language is almost an incentive for parents to not cooperate since the student will be allowed back in school. Perhaps, "If additional time is necessary to complete the process, the student shall be allowed to return to school. . . . .community, or the parent/guardian conference has not occurred as a result of documented parent/guardian lack of cooperation despite good faith effort by the school system." **(14)**

. . .

Comment:
When there is a need for a superintendent's designee hearing for a student, and the hearing is rescheduled due to a parent's or an attorney's request, the student should not be able to return to school. If the delay is on the part of the school system, the student should be returned to school. School systems should consider if an alternative program can be assigned until the superintendent's designee hearing is held. **(18)**

. . .

Comment:
Our school system uses expulsion to address serious infractions of school rules and state laws that seriously impact the safety of the students and the security of the school. Nearly all students who are out of school for longer than 10 school days fall into the category of students who have been recommended for expulsion. Administrators consider the recommendation for expulsion as a serious consequence since the student conduct is serious. To focus only on the student who has been suspended for the 10 days or recommended for expulsion ignores the safety of the student who may have been a victim or the school's need to secure its building and programs. It also does not allow for those extenuating circumstances that interfere with compliance to a 10-days-or-return provision. Again it is a one-size-fits all provision that is not in everyone's best interest. Return every student recommended for expulsion to school just because the process was not completed in 10 days would be to disregard the severity and dangerous nature of very serious offenses and their negative, even dangerous, impact on the school environment. We would ask the State Board to seriously consider that the interests of the schools, the interests of victims and general student populations and the disciplined students must be balanced. The provisions as written do not provide the balance that schools need to effectively manage schools and student behavior. **(24)**

. . .

Comment:
We feel that the 10-day completion process is too stringent, in that it does not allow for rescheduling of a suspension conference at the parent's request. **(26)**

. . .

Comment:
The proposed regulations require that if a student is suspended for more than 10 days, the superintendent's designee must hold a disciplinary conference within 10 days of the initial suspension. Our school system is very consistent in meeting with students and their families within the prescribed time frame; however, families do not always cooperate with scheduling attempts. The proposed regulations provide no exception for the school system when individuals attempt to evade the process and fail to appear for their disciplinary hearings. Under the proposal, schools would have no choice but to attempt to schedule the hearing while permitting the student to attend school, even if they evade the suspension conference. **(28)**

. . .

Comments:
The new regulation would also permit the student to attend school unless their conduct is "violent, dangerous, or a threat to the safety of the school community." As noted above, this rule fails to determine whether repeated violations of the code of student conduct, or other conduct, e.g., bullying, that significantly disrupts the educational environment, and calls into question whether the school is in fact "safe," would qualify under the standard. The standard is not well defined and will likely lead to costly litigation. Furthermore, the regulation appears to specifically apply only to circumstances in which the suspension conference is not held in 10 days. **(28)**

Comment:
There is no mention in the proposed regulation about protection of the victim(s). Allowing a student to return to school on the 11th day to keep up with educational instruction is putting the needs of the offender over the health and emotional well-being of the victim and/or the school's safety. The state anti-bullying legislation does, however include assurance of protection of the victim. So, it is clear how our school system will be able to comply with both COMAR and anti-bullying legislations when one may contradict the other. **(98)**

(2) Appeals Timeline and Appeals Process

Several commenters addressed the changes proposed to the appeals timeline.

Comment:
The inclusion of specific right for student and parents during the appeals process outlines in section 11.C(4)(g) is an important addition to the appeals process. Giving families access to these same procedural protections, including the opportunity to see documents and the evidence against the student, should also be required for the conference in 11.C(4)(c) since it will determine whether the student is recommended for long-term suspension.

In the initial conference with the principal in 11.C(3)(c), the "right to an explanation of the evidence" should be clarified to include the right, as above, to see documents and evidence.

The addition of 11.C(6), that filing an appeal should not be used as a reason to keep students out of school beyond the initial suspension, is an important clarification. **(3)**

Comment:
Under the proposal, the local board must hear a disciplinary appeal within 30 days of receiving the request. While we endeavor to hear appeals as quickly as possible, it is not always an achievable goal. Imposing a strict 30-day timeline can be untenable when attempting to coordinate the schedule of seven different members of the board the appellant's schedule, appellant's counsel, the school system's counsel, and witnesses. The proposed regulations also mandate the disclosure burden is imposed only on the school system. Additionally, the local board would be required to issue a decision within 10 days of the close of the hearing. We usually employ outside counsel to advise in hearing student disciplinary appeals. When we vote on the merits of the case, outside counsel is tasked with writing the legal opinion. Requiring outside counsel to issue an expedited opinion will result in increased legal costs for the Board at a time when the Board will likely have to absorb new financial burdens imposed by the State. **(28)**

. . .

Comment:
The 30-day requirement would be difficult to implement and has the potential to disrupt the operation of the school. Factors that would impact the fulfillment of this requirement include:

Inability of both parties to agree on a date within 30 days in which each party's witnesses are available (Depending on the time of the year, i.e. pulling administrators and teachers out of a

high school to prepare for and attend a hearing during the month of May when an extensive amount of the end of the year testing and graduation activities are occurring, could interfere significantly with the operation of the school);

Insufficient time for both parties to prepare for the hearing.

(h) Requires decision within 10 days of hearing
Many times, evidentiary hearings require an exchange of written memorandums of law or written closing arguments between the parties. These cannot occur until a copy of the transcript of the evidentiary hearing is received which frequently takes between 10-14 days. Requiring that a decision be made within the 10 days would infringe on both parties ability to adequately represent their case and prevent the Hearing Officer from conducting a thorough analysis of the evidence presented by both parties. **(8)**

. . .

Comment:
The requirement for the local board to issue its decision within 10 days after the close of the hearing is also impractical for a system as large as ours. Currently, our Board addresses all appeals in Executive Session on the same day of a regular Board meeting. We schedule review of appeals at the next Board meeting after the Board's hearing examiner issues a recommendation. We continuously seek ways to improve efficiency in the appeal process. The requirement for a local board to issue its decision within 10 days would require a system our size to schedule additional meeting solely for the purpose of deciding these appeals and employ additional staff or redeploy existing staff to process the appeals more quickly.

During the past two years, we have focused on improving the amount of time it takes to process student discipline appeals. As a result our review of the school system's internal appeal process, we have discovered that during the first semester of a school year, the numbers of discipline referrals are not as numerous as the number referred during the second semester, particularly around Spring Break and thereafter. When there are lower numbers of appeal to address, unless a school system assigns more personnel and hearing officers to process the appeals, the time line will be problematic. Requiring local boards to allocate more funding just for processing cases is not the best use of resources.

Before finalizing the time lines, we ask that the State Board first examine its own appeals process to consider whether the timelines it is imposing on local boards is reasonable. On average, it takes the State Board several months to issue decisions on student appeals. While we do not suggest that local board boards should be given months to complete the appeals process, 40 days total will be unworkable in most situations. The time line, for a system our size, should be expanded to at least 60 days. **(15)**

Comment:
The shortened timeline for local appeals raises serious concerns about several aspects of the proposed COMAR provisions. It would effectively eliminate the option to use hearing examiners in these local discipline cases (as permitted) because there would not be sufficient time for transcripts and other required steps to occur.

The proposed timelines do not take into account any delays in the hearing/review process caused by the parent or the incarceration of the student. Surely the State Board would not seek to force local school systems to proceed without the parent or student, which would, at the very least, hurt the quality of the decision-making process and potentially create troubling due process issues.

With respect to the present timelines, it is noteworthy that the Report acknowledges that delays at the local level are not typically a problem. On the other hand, the delays at the State Board level can and have extended to many months, sometimes even longer than a year. Any shortened appeal timeline that would be imposed on local school systems who hear far more cases than the State Board, we would argue, should apply equally to appeals before the State Board. In fact, the State Board could lead by example and pilot the proposed shortened timelines with their far smaller caseload before disrupting existing, effective local practices. **(77-1)**

(3) Notice

Comment:
The process requirements included in the proposed regulation provide important protections that have not previously been guaranteed to students and parents. Specifically, a school system must now provide the student, parent, or guardian with the school's witness list and a copy of the documents that it will present at the appeal hearing. Additionally, the local board must issue its decision within 10 days after the close of the hearing. (COMAR 13A.08.01.11(B)(4)(g)). While these protections are necessary to safeguard students' rights and to ensure a timely process, they do not go far enough.

The regulations should require that students and parents or guardians receive in writing the reasons for any disciplinary exclusion from school prior to any conference relating to the exclusion. Under the proposed regulation, students who are suspended for 10 or fewer days must receive either "*oral or written* notice of the charges against him or her," and that notice may be given "*at or before* the conference." (COMAR 13A.08.01.11(B)(3)(c), emphasis added). Students who are given an extended suspension or expelled, received witness lists and documents only upon appeal from the decision made at the conference, not in preparation for the initial conference. (COMAR 13A.08.01.11(B)(4)(c)). Without written notice afforded before conferences, students are not given the opportunity to understand the charges against them and to fully defend themselves. **(19)**

. . .

Comment:
The current regulations require that a student received oral *or* written notice of the charges against him or her. The regulations should require that the school provide the student and parent with oral and written notice of the charges. If a principal decides to suspend the student, the school should also be required to provide parents and students with a written notice of the school's decision regarding the length of the suspension and how to appeal the decision. As the Board writes in its report, a 10-day suspension results in a student missing two full weeks of school. Student and their parent should be entitled to a written notice regarding the basis for the suspension and an opportunity to have that decision reviewed. **(25)**

Comment:
.11.C.2.b
A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension **orally and in writing** and has been given the opportunity to respond before the suspension becomes effective.

.11.C.2.c
The school principal shall provide the student's parents with written notification of the in-school suspension action **and the reasons for the action** taken by the school.

.11.C.3.c
Before the conference to be held promptly after the time of the incident in question, the student and parent shall receive oral and written notice of the charges against him or her. If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story.

Under sections .11.C.2.b and .c and in Section .11.C.3.c, student and parents should have the ability to obtain the notice of suspension with the reasons for the suspension in writing promptly after the incident occurs. **(4)**

. . .

Comment:
We recommend that the words "oral or" be removed from .11(C)(3)(c) so that students are informed in writing about the charges against them. **(9)**

. . .

Comment:
The proposal requires translation into parents' native language and to have interpreters present in hearings. There is no explanation as to whether a family must request an interpreter or the school would make this determination independently. The cost of an interpreter is an additional cost and some smaller jurisdictions may have limited access to, and funds for, an interpreter. **(17)**

(4) Witness List and Evidence

Comment:
The requirement for a local board to provide a witness list and copy of documents that will be presented at the hearing to the student or her parents five (5) days prior to the hearing could be problematic. There should be mutuality in this requirement. The student has the right to call witnesses and present documents and may present information during a hearing that the administration did not have in its possession prior to the hearing.

In addition, providing a list of witnesses could result in the parents or their counsel attempting to contact school system witnesses for information. If the regulation indicated that disclosure of

witnesses does not mean that the parents can access these witnesses prior to a hearing and obtain discovery, this may be more appropriate. **(15)**

. . .

Comment:
The due process protections that the Board has added to the appeals process in .11(C)(4)(g) in front of the local board should be added to the regulations governing the conference with the superintendent or designee. The decision from the conference at this level will determine whether a student is out of school for an extended suspension that could possibly last an entire school year. Schools should be required to provide students and parents with a copy of the evidence that the superintendent is using as a basis for the decision. Assuming that most students do not choose to appeal from this level because of the length and complexity of the appeal process, this is their last opportunity to dispute the allegations. It is imperative that the regulations require the basic tenant of due process that a student be given a copy of the evidence against him or her that is the basis for the suspension. **(25)**

. . .

Comment:
While we are pleased that the Board is recommending that students and parents be provided documents and witness lists prior to an appeal hearing, we believe that these protections should also be provided earlier in the process. Students and parents should have the same procedural protections, including the opportunity to see documents and witness lists, prior to the superintendent's designee conference in .11.C(4)(c), since that conference will determine whether the students is recommended for long-term suspension. This information is already prepared for the superintendent's designee, but is rarely shared with parents before the conference unless requested. Since relatively few students appeal the lower level decision this additional protection would ensure a more open and fair process at the superintendent's designee level. **(9)**

. . .

Comment:
In order to maintain safe schools, we create a community where both students and adults understand the expectations and help to report any issues. If student names and/or statements are given to the violator's representative, our students will be less likely to come forward on issues that may happen when an adult is not around (i.e. drugs, bullying, weapons, theft). It is difficult to convince parents and students to do the right thing when the mantra of some students is "snitches get stitches." We do whatever we can to protect the confidentiality of our witnesses in order to keep our school safe.

P. 32, C(4)(e)(iii)(a) – Amend the language to say:
Shall be provided ~~the school system's witness list and~~ a copy of the documents that the school system will present at the hearing five days before the hearing unless the parents waive the five day timeline.

We are concerned for the safety of all students. The identity of a witness who is a minor must be withheld. Additionally, the waiver process would afford parents the opportunity to expedite his or her child's entrance back to school. **(21)**

Comment:
(g) Requires provision of school system's witness list and copy of documents that school system will present at the hearing five days before the hearing.

Often in a student discipline case witnesses consist of staff and students. The reality of providing the statement of students to the suspended student(s) and their representatives would compromise school safety in two ways.

First, students would hesitant to report incidents that occur or be part of the investigative process because there could be a concern of retribution or retaliation for statements being given. This could limit the effectiveness of the investigation as administrators try to get a clear understanding of the actual incident. Student having feelings of concern for harassment, intimidation, and or verbal and physical threats would be of grave concern since their name or statement was given to the party who was suspended.

Second, we have experienced students who when returning from a suspension have bullied, harassed and intimidated other students they suspected reported the incident. If this regulation is approved, the occurrence of bullying, harassment and intimidation will most likely increase when the student returns to school and ultimately increase the threat of violence. This sequence of events will undermine our efforts to maintain safe schools.

Additionally, the requirement for the school system to provide a list of witnesses and statements to the suspended student would shorten the school systems, already short, preparation time by five days. During this time, the suspended student would be provided information and additional time to prepare for the hearing creating an imbalance between the parties of a quasi-judicial proceeding. **(8)**

Comment:
Sometimes suspensions occur very close to the end of the year, and it is in the best interest of the school systems, and most definitely the parents and students (particular high school seniors) to expedite the process. In those cases where the school system is working in the best interest of the student to resolve an issue prior to the end of the school year and a hearing/conference/investigation can be expedited, there needs to be a waiver component to the five day rule. Perhaps, adding language that "parents may waive the five day requirement". Also, the names of minor witnesses must be redacted. **(14)**

Comment:
Further, we emphasize that school systems must be required to meet the needs of the non-English-speaking parents, both with regard to notices, processes, and any documentation. **(10)**

IX. Arrests

Five comments concerned the issues of arrests on school property. One commenter said:

The Board should challenge all schools to create additional, more restorative, alternatives to be used prior to referring a student to the juvenile justice system. Such alternatives should be created in concert with local law enforcement and juvenile justice authorities, and can include referrals to Restorative Dialogues, Restorative Reflections, or Community Conferences. **(10)**

Several comments addressed data collection.

Comment:
Allow for better monitoring of school discipline practices by requiring that date on school-based arrests and referrals to the juvenile justice system collected be disaggregated by each of the following variable: offense, race/ethnicity, gender, school, age, grade, special education, status/disability, and limited English proficiency status. **(7)**

. . .

Comment:
We ask that data specifically include the number of students who are excluded from school due to out of school arrests, pursuant to the "reportable offenses" provision found in Education Article 7-303. See also COMAR §13A.08.01.17. We are concerned that some school systems suspend or exclude students based on a reportable offense report and we believe that the State should have the data to understand the implications of that provision on school exclusion. **(9)**

. . .

Comment:
COMAR 13A.08.0.12(F) requires that "data on school arrests shall be reported in a manner and format developed by the Department." Reporting only school arrests, however, is insufficient to track and understand the connection between school discipline, school arrests, and involvement with the juvenile and criminal justice systems. Instead, the regulation should require that "comprehensive data school arrest, school-based citations and tickets, referrals to the juvenile justice system, referrals to the criminal justice system and disposition of those referrals shall be reported, and educational services received by referred and detained students in a manner and format developed by the Department."

In addition, school should be encouraged to eliminate arrests and referrals for misdemeanor offenses and to reduce other arrests, school-based citations and tickets, referrals to the juvenile justice system, and referrals to the criminal justice system. As in COMAR 13A.08.01.21, "Reducing and Eliminating Disproportionate Impact," high rates in any of the above-listed categories should trigger reduction plans. Local school boards should be required to present plans to the state board to reduce the levels of arrests, citations and tickets, and referrals to the juvenile and criminal justice systems within three years to a reasonable number determined by the Department. Local bard that do not meet their goals will receive appropriate sanctions determined by the Department. (See comments below on "Reducing and Eliminating Disproportionate Impact," COMAR 13A.08.01.21(C)).

Like the data collection in the previous comment, the collection required under "Reporting Delinquent Acts" in COMAR 13A.08.01.15(C) also is insufficient. It should be expanded to require that: "[b]eginning in the 2013-2014 school year, the local school system shall report data to the Department on school arrests, school-based citations and tickets, referrals to the juvenile justice system, and referrals to the criminal justice system in a form and manner developed by the Department." **(19)**

. . .

Comment:
Beginning in the 2013-2014 school year, the local school system shall report data to the Department on school arrest, and referrals to the juvenile justice system **as well as student with multiple office referrals** in a form and manner developed by the Department. **Such reporting shall include all referrals, charges or arrest that the school system is aware of that could impact the school environment.**

This amendment would allow for accurate documentation and reporting of school disciplinary referrals. Students who are repeatedly referred to the office may be at risk and could benefit from early support and interventions that would prevent later suspensions and/or expulsions. **(21)**

One commenter suggested that training of school resource officers would be beneficial.

Comment:
In the section, 'Arrests on School Premises,' the Board should include a recommendation that school districts that utilize school resource officers or school-based law enforcement in their school environments, encourage those officers to participate in training designed to improve youth and police interactions.

.12 Arrest on School Premises.

G. When possible and appropriate, school resource officer and school-based law enforcement shall participate in training designed to address youth and police relationships and to reduce school-based arrests for misbehavior in the school setting. (4)

X. Violent v. Non-Violent Conduct

Ten comments addressed the violent v. non-violent conduct dichotomy.

Comment:
The recently released "*Study of School Discipline Practices and Proposed Regulatory Changes*" report also shines a spotlight on the type of offense for which students are suspended out-of-school and requires that systems categorize, analyze and substantially reduce suspensions for non-violent/non-dangerous" offenses. We support the concept that, whenever possible, students should not be excluded from school for non-violent and non-dangerous offenses. Our school system will continue to shine its own spotlight in this area, as we attempt to bring consistency and reason to the disciplinary process.

We do request, however, that the State Board of Education consider some revisions to the offenses categorized as "non-dangerous". Specifically, we question whether offenses in the "alcohol" and "threats to teachers and students" categories are truly "non-dangerous" in the school setting. For example, there are alcohol related offenses where certainly a more therapeutic and less disciplinary approach is necessary. As any school administrator will attest, however, there are some alcohol offenses that are quite dangerous for the student, other students in the school, and the overall school culture. There are situations where threats to teachers and students can create an unsafe school environment. Please do not place these offenses in a category that will restrict the ability of the administrator involved to make a decision that is appropriate and promotes a safe school environment. **(37)**

Comment:
The new regulations you are suggesting give principals the ability to suspend if a student is violent. This is a must to keep our schools safe for our students.

When a student performs a criminal act during the school day or at a school event, whether it is violent or not, he or she must have consequences. By definition, a "criminal act" means the individual has broken the law and therefore a suspension is warranted. **(34)**

Comment:
In the charts found on pages five through eight, "Threats to Students and Teachers" is classified as "non-violent." This is inconsistent with the stance that school systems are required to take regarding bullying. Schools are required to address bullying through concrete steps. At times the best course of action is to remove the perpetrator. Often an aspect of bullying involves threats. Thus, if "threats to students" is classified as non-violent, a student who has been subjected to such threats by another student would be forced to confront his/her perpetrator. This outcome contradicts school systems' requirements to address bullying. **(17)**

Comment:
Every student has the right to a safe and non-disruptive environment. Teachers have a right to safe working environment. The SBOE should seek to further define the terms non-violent offense, violent and dangerous and extended expulsion after input from stakeholders. Such definitions should be conformity with definitions in the State criminal code. **(21)**

Comment:
The State BOE proposed that students would only be suspended out of school for offenses that are violent. This ignores other situations in which out-of-school suspension may be appropriate (e.g., drug possession, bullying). Allow local school systems to retain control over determining the severity of behavioral infractions. Allow local school systems to retain control over determining appropriate consequences for student misbehavior. **(28)**

Comment:
Violent v. non-violent conduct is difficult to dichotomize because each act is individual. **(2)**

Comment:
We propose that the State Code of Conduct Workgroup, which the Board has asked be reconvened, include representatives from each district as well as advocated and parents. The Workgroup (and thus the districts) would then collaborate to develop and propose to the Board a uniform State-wide policy governing the use of out of school suspension and expulsion and produce draft regulations that reflect the Board's vision to reduce exclusions from school.

We do not support the proposal for the Workgroup to produce a coding system for offenses as violent or non-violent. This distinction would be unnecessary if the Workgroup instead provides clear definitions and guidelines for the appropriate use of suspension. Additionally, this coding could prove detrimental to students. As the Board noted, our goal is to educate and improve the student, not to punish or further disadvantage him or her. The "violent" label is serious indeed, and may have repercussions on the student's future ability to change schools, get a job, or be accepted to college. However, if the Board continues to believe that the terms "violent" and "non-violent," as well as "serious," are to be used, those terms must be defined in order to monitor how school districts compare. **(9)**

Comment:
As the State Board is aware, local boards have been asked to implement anti-bullying initiatives and strong enforcement against bullying has been encouraged. Bullying does not always come in the form of violent behavior, e.g., cyber-bullying, and may not impact school safety. However, if a local board or superintendent fails to address a complaint of cyber-bullying and take appropriate action, including suspending or expelling a student for bullying conduct, that presents a problem. The State Board cannot limit the ability of local boards to address this type of behavior while at the same time request that local boards get tougher on addressing bullying complaints. **(15)**

Comment:
MSBE has proposed that out-of-school suspensions be reserved for "only violent and dangerous conduct would be the "decision of the local school systems." However, since school systems will be asked to code suspensions as either violent or dangerous conduct or non-violent non-dangerous conduct, there is a concern that school systems will be second-guessed and penalized for their interpretation and assessment of their own disciplinary events. **(17)**

Comment:
Suspension needs to be an option when there is victim that is being bullied or harassed to protect the victim's rights.

If students are demonstrating actions that put other student's rights at risk, then suspension also need to be an options the principal can utilize to protect the victim's rights.

The County officials have taken a tough stand on bullying and to be consistent with the policy then suspension needs to be a consequence for such actions against another student. **(34)**

XI. Special Education Issues

Several commenters pointed out issues they believed affected special education students.

Comment:
The report suggests that local school systems should employ technology, including live feeds from classrooms, to students who are home on suspension. It must be noted that this is not an option for special education students based on COMAR13A.05.01.10(C)(6)(b).

Assuming, arguendo, that the use of live feeds did conflict with special education regulations, federal privacy concerns exist for both the suspended student and his/her classmates. During the live feed, any person in the suspended student's home would be able to hear or view non-disciplined students in direct contravention of COMAR 13.08.02. Likewise, non-disciplined students would be aware of which of their classmates have been subjected to disciplinary action. **(17)**

Comment:
Under the Individuals with Disabilities Education Act (IDEA) suspended or expelled students with disabilities are still entitled to services that allow the student to participate in the general curriculum and advance toward achieving the goals of the student's IEP. We recommend that the Board clarify that although. .11(F) applies to student with disabilities, school systems must continue to meet obligation to provide a Free Appropriate Public Education (FAPE) to suspended student with disabilities under federal and state special education law. **(9)**

Comment:
I am pleased that MSDE is proposing to revise its policy and regulations with regard to suspensions and expulsions. I support the changes proposed, but am writing to urge MSDE to go further and act in accordance with undisputed and well-established guidelines that address student behavior in a more effective and enlightened manner.

There would be fewer contradictory regulations if state laws were aligned with federal requirements of FAPE and Child Find. In the case of student behaviors, there is incontrovertible and exceedingly sufficient evidence that a history of behaviors is a clear indicator of a student's need for social, emotional, or mental health support services. Schools cannot ignore this under their duty of Child Find and must refer the student for assessment. Principals must ensure this is the uniform practice and that their school addresses student needs. This is the best, in fact only, way that they can provide a safe environment for all students.

We are reticent in our duty to provide FAPE and derelict in both our civic and ethical responsibility if we do not avail ourselves of the enlightenment provided to us by decades or research and data evidence, neatly summed up by the National Association of School Psychologists, based in Bethesda:

> We know how to promote children's mental health effectively – and appropriately – within the school context. Districts around the country employ school psychologists, counselors, and social

workers who provide services that support student health and improve school outcomes.

In addition to prevention and wellness promotion, school-based professionals provide assessment, counseling, intervention, consultation, and referral. A longitudinal study reported in the Journal of School Health in 2005 showed that programs that strengthen students' social, emotional, and decision-making skills also have a positive impact on their academic achievement, both in terms of higher standardized test scores and better grades.

School-based services are also a good investment over the long term. One such program, the Seattle Social Development Project (focused on grades 1-6), has estimated a $9,837 per-student savings in averted long-term social problems. School mental health services should be provided as part of a continuum of care that integrates school and community resources. Well-coordinated student support services can be effectively structured according to a three-tiered pyramid model:

- The bottom tier consists of prevention and wellness promotion programs for all students, provided by school employed mental health staff (school psychologists, counselors, and social workers), such as anti-bullying programs, social skills development, improving school attendance, depression screening, positive behavioral supports.
- The middle tier includes targeted services to at-risk students, such as individual or group counseling and behavioral interventions, provided by school staff and sometimes supported by community specialist.

http://www.nasponline.org/press/nsbasbmh.pdf

I urge you to take the position that supports and serves all students as required under federal law (FAPE and Child Find), that strengthens the social and emotional intelligence of students through a responsive and responsible adult school community, that will best provide the safe and productive environment and academic support for which we strive. Include in the changes the requirement that any student with a behavior sufficiently server to warrant intervention be referred immediately to counseling and/or assessment. Require every school to report and review their history of suspensions and referrals to ensure they are compliant with Child Find and FAPE. **(98)**

Comment:
My child has a special ed teacher with no experience in dealing with children with disabilities because he admitted this to me himself. His only way of discipline is to put the child out of class. The other issue is the staff who I don't know is trained to provide restraint on students

have put my child in restraints that I don't think is necessary. My son was restrained by a one-on-one aide who was not trained in which she was caught sitting on top of my son by the Assistant Principal and I filed a complaint with the state and they found that to be a violation. I think the principals of the schools should be held accountable for allowing this to go on and suspending the child if this is illegal. When the principal hire these people, he/she should provide the proper training to the staff. BCPS don't need more law suits because they can't afford to kick out money they don't have. **(99)**

XII. Address School Systems with Higher Than Average Suspension Rates

Several commenters suggested that the draft regulation address school systems with suspension rates higher than the State average.

Comment:
It is essential that the Department require school systems with rates of out-of-school suspension higher than the State average, in the aggregate or in certain categories (such as disrespect) to develop plans to reduce them. A system could have a very high out-of-school suspension rate compared to other counties for a certain category, such as disrespect, that does not disparately impact minority groups but is nevertheless unacceptable. **(3 & 4).**

Comment:
Section .21
A. The Department shall develop a method to analyze local school discipline date to determine whether there is a disproportionate impact on minority students, **an overall high number of suspensions or expulsions compared to the state average, or a high number of referrals to the juvenile and criminal justice systems.**
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 or special education students, **an overall high number of suspension or a high-number of referrals to the juvenile and/or criminal justice systems;** *the local school system shall prepare and present to the State Board a plan to reduce the disproportionate or* **high penetration** *impact within 1 year and eliminate it within 3 years.*
D. The local school system will report annually its progress to the State Board. **(4)**

Comment:
Require districts exhibiting high rates of suspension, expulsions, school-based arrests, or referrals to the criminal/juvenile justice systems to submit plans to the Board outlining their plans to implement disciplinary practices that reduce school exclusion and justice-system involvement while improving school safety and academic achievement. In other words, we recommend employing the same approach used in Section .21 to districts that are struggling with disciplinary issues but may not have the highest rates of disproportionality. **(7)**

Comment:
Reducing Out-of-School Suspensions and Expulsions
The study describes the State Board's finding that Maryland school districts overuse out-of-school suspensions and expulsions, and exclude too many students from school for non-violent offenses. The proposed regulations, however, provide no guidance as to the desired level of suspension, no incentives for schools to reduce suspensions, and no sanctions for schools that maintain punitive, exclusionary practices. Much like the system created in "Reducing and Eliminating Disproportionate Impact," COMAR 13A.08.01.21 (C), the State Board should monitor school districts with high rates of out-of-school suspensions, both first-time and repeat, and expulsions. Districts that voluntarily reduce suspensions and, thereby, keep students in

school, should be rewarded. Districts that maintain high numbers as determined by the Department, however, should be required to submit plans to reduce suspensions. Districts that do not reduce suspensions in compliance with those plans should face sanctions in a period of time and manner determined by the Department. **(19)**

XIII. Data Collection

We received two comments about suspension data collection.

Comment:
Some data is not collected on page 5 of the Report. 85% of suspensions –ignores large volume of in-school removals that are not counted as in-school suspensions. **(29)**

Comment:
We also urge the board to improve upon the data it currently collects with regard to suspensions and expulsions by requiring schools to track and report on the number of days students are suspended, both in- or out-of-school suspension. By tracking the total number of days a student is suspended will allow districts to assess inequities and learning losses related to suspension with far more accuracy. **(19)**