

Maryland Association of Boards of Education

MABE's Proposed Amendments to the Maryland State Board of Education's Proposed Amendments to Student Discipline Regulations (COMAR 13A.08.01.11, .12, .15, and .21) (Adopted July 24, 2012; Published November 2, 2012) (Public Comment through December 3, 2012)

Version II

Version II retains, with amendments, the State Board's expansion of the purposes of local student discipline regulations. Version II includes the State Board's proposed new requirements for local board policies to:

- prohibit "zero tolerance" policies;
- reflect a philosophy that fosters positive behavior;
- provide continuous education services to all suspended and expelled students; and
- hold school systems accountable for reducing and eliminating disproportionate impacts of student discipline policies on minority students.

MABE fully supports the intent and, as amended, the regulatory changes consistent with the intent to fortify Maryland regulations governing local student discipline policies to ensure school safety, the fair administration of student discipline, and uninterrupted student learning.

Version II also includes numerous substantive and technical amendments to COMAR 13A.08.01.11B through E (changes not included in Version I). MABE believes that many of the changes proposed by the State Board in these sections exceed the State Board's legal authority in light of the broad discretion provided in statute for principals and superintendents to make student discipline decisions "as warranted" under Section 7-305 of the Education Article. Notwithstanding this concern, MABE offers the following set of comprehensive amendments in the spirit of not only facilitating the intended policy objectives of the State Board (which we believe are achieved by Version I), but also to identify several necessary corrections and clarifications to the regulations published on November 2, 2012.

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-301, 7-303-7-305, 7-308 and 8-404, Annotated Code of Maryland; Federal Statutory Reference: 20 U.S.C. §1232g

Explanations of amendments to COMAR 13A.08.01.11A:

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| <ul style="list-style-type: none">• COMAR 13A.08.01.11A - MABE supports restoring the language proposed to be eliminated to retain the foundational principle that "Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning." |
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- COMAR 13A.08.01.11A - MABE supports an amendment to establish an effective date of the beginning of the 2014-2015 school year for the proposed regulations. The proposed revisions to the state’s longstanding student discipline regulations will require the adoption of revised board of education policies and school system regulations and procedures regarding not only student discipline but also regarding student services, student records, instruction, personnel, and school facilities. Additional impacts include the revision and/or expansion of existing alternative education programs; delivery of professional development to principals, counselors, school security officers, teachers, and other employees; and publication and communication of all revised policies and procedures for parents and students. For these reasons, MABE does not believe that the comprehensive revision of the local administration of student discipline policies and practices could reasonably be expected to be achieved by the beginning of the 2013-2014 school year.
- COMAR 13A.08.01.11A - MABE supports restoring the language proposed to be eliminated to continue to require that regulations should “provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion”; this language has been moved to later in the same section, under the new A(5) and (6).
- COMAR 13A.08.01.11A(1) - MABE supports eliminating the adjective “rehabilitative”, believing that this term is inappropriate in the context of student discipline regulations, but even more importantly that it is unnecessary to further the interest of requiring that local policies “reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior.”
- COMAR 13A.08.01.11A(3) and (4) - MABE proposes the amendment to item (3) and replacing the reference to “long-term” with “extended” in item (4) as necessary technical corrections.
- COMAR 13A.08.01.11A(4) - MABE supports eliminating the reference to extended suspensions and expulsions as “last resort options” because this language is so restrictive as to invite litigation in any instance in which it is chosen. This language may be appropriate in policy guidance identifying best practices, but not as a legal standard.
- COMAR 13A.08.01.11A(7) - MABE supports adding the language under the A(7) to be clear that local regulations should “establish accountability for the provision of minimum education services to keep suspended or expelled students on track with classroom work, as is reasonably possible.”

.11 Disciplinary Action

A. Local Regulations. *Beginning with the 2014-2015 school year and thereafter, each* ~~Each~~ local board of education shall adopt a set of regulations ~~‡~~designed to maintain an environment of order and discipline necessary for effective learning. These regulations should ~~[provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion that]:~~

- (1) Reflect a ~~rehabilitative~~ discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;
- (2) Are designed to keep students in school so that they may graduate college and career ready;
- (3) Prohibit disciplinary policies that trigger automatic discipline without the ability to consider individual circumstances ~~the use of discretion~~;
- (4) Explain why and how extended ~~long-term~~ suspensions or expulsions are intended to maintain an environment of order and discipline necessary for effective learning ~~last resort options~~;
- (5) provide for counseling;
- (6) provide standards for appropriate disciplinary measures, including suspensions and expulsions; and
- (7) establish accountability for the provision of minimum education services to keep suspended or expelled students on track with classroom work, as is reasonably possible.

Explanations of amendments to COMAR 13A.08.01.11B:

- **COMAR 13A.08.01.11B(2) - MABE supports amending the new definition of expulsion to accurately reflect that it means total exclusion from either the regular school program or alternative program.**
- **COMAR 13A.08.01.11B(3) - MABE supports amending the new definition of extended suspension to accurately reflect that it means temporary removal from either the regular school program or alternative program.**
- **COMAR 13A.08.01.11B(2) - MABE supports amending the language in (2) referring to student conduct to conform to the language in (3), so that in both cases the determination is to be based on conduct that is “violent or poses a danger of harm to others in the school”. MABE believes the inclusion of the qualifiers “serious” and “physical” are overly restrictive and would invite litigation.**
- **To be clear, the only true distinction between extended suspensions and expulsions, under the proposed regulations, is the time period. In both cases the student is guaranteed access to assignments and corrected work on a continuous basis.**

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

(1) (text unchanged)

(2) “Expulsion means, [at a minimum, the removal of the student from the student’s regular school program and may be further defined by a local board of education] *the total exclusion of a student from the student’s regular school program and any available alternative educational program for 45 school 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.*

(3) “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] *the student’s regular school program and any available alternative educational program for a time period between 11-45 school days for conduct that the superintendent determines, on a case by case basis, poses a danger of harm to others in the school.*

(4) (text unchanged)

(5) “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.

[(5)] (6) “Principal” means the principal of a school or the principal’s designee.

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

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

Explanations of amendments to COMAR 13A.08.01.11C(3)(d):

- **COMAR 13A.08.01.11C(3)(d) - MABE supports an amendment to clarify that the “unavailability of the student or the student's parent or guardian” may impede the superintendent’s ability to render a decision on the principal’s request for an extended suspension or expulsion.**
- **COMAR 13A.08.01.11C(3)(d) - MABE supports an amendment removing the additional requirement for a separate determination by the superintendent in cases where the it has already been determined by the principal that the “conduct at issue was violent, dangerous, or a threat to the safety of the school.”**

C. Suspension and Expulsion.

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

[(2)] (1) In-School Suspension.

(a)-(g) (text unchanged)

[(3)] (2) Suspension for Not More Than 10 Days.

(a)-(e) (text unchanged)

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

(a)-(b) (text unchanged)

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

(d) *The process described in (a)-(c) of this section of the regulation shall be completed by the 10th school day of the initial suspension unless the delay is caused by the unavailability of the student or the student's parent or guardian. 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 determines that the~~ conduct at issue was violent, dangerous, or a threat to the safety of the school.*

[(d)] (e) If after the conference the local superintendent or designated representative finds that an extended suspension [of more than 10 school days] or an expulsion is warranted, the student or the student's parent or guardian may[:] [(I)] [A] appeal to the local board within 10 days after the determination;

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

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

Explanations of amendments to COMAR 13A.08.01.11C(3)(f)(g) and (h):

- **COMAR 13A.08.01.11C(3)(f) – MABE supports an amendment to replace the reference to “hearing officer” with “hearing examiner”, in order to conform the term used in the regulations with the term used in statute.**
- **COMAR 13A.08.01.11C(3)(f) - MABE supports allowing 90 days for the completion of appeals, recognizing that 30 days is a severely restricted time frame in which to do so, and that under the new standards students are guaranteed access to continuous education services while out of school, and permitted to return to school upon completion of the terms of the removal from school. *Note: The proposed 30-day deadline would, perhaps unintentionally, negate the option of using a hearing examiner, as clearly authorized in Maryland statute under Section 6-203 of the Education Article.***
- **COMAR 13A.08.01.11C(3)(g) - MABE supports an amendment to clearly impose the same standards on both parties for disclosure of witness lists and other documents intended to be used in the hearing.**
- **COMAR 13A.08.01.11C(3)(h) - MABE supports an amendment to differentiate the mandated timeline for issuing decisions depending on whether the board or a hearing examiner is recommending the decision.**

(f) *If an appeal is filed it shall be heard before the local board or its designated committee, or hearing ~~officer~~ examiner and completed within ~~30~~ 90 days of the date of appeal was received by the local board.*

(g) ~~The student or the student's parent or guardian~~ All parties to the appeal:

(i) shall ~~be provided~~ one another with their ~~school system's~~ witness list and a copy of the documents that they intend to ~~the school system will~~ present at the hearing five days before hearing; and

(ii) may bring counsel and witnesses to the hearing.

(h) *The local board shall issue its decision:*

(i) within 10 days after the close of the hearing if heard before the local board or its designated committee; or

(ii) within 30 days of receipt of the hearing examiner's recommended decision in accordance with the procedures established under Section 6-203 of the Education Article of the Annotated Code of Maryland.

[(5)] (4) A student expelled [under] or suspended from school shall remain away from the school premises during those hours each school day when the school the student attends is in session, and may not participate in school-sponsored activities. The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by the student's parent or guardian.

Explanations of amendments to COMAR 13A.08.01.11C(5):

- **COMAR 13A.08.01.11C(5) - MABE supports an amendment to ensure that in cases in which there is an agreement with the parents or guardian, the regulations not unintentionally provide the expectation or the right to return to the student's regular school, e.g. parents may support withdrawal from school for the purpose of taking the GED, or a long-term placement in an alternative education program.**

(5) ~~A~~ *Unless previously agreed to by the student's parent or guardian, a student suspended or expelled from school shall be allowed to return to an appropriate school setting on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension or expulsion.*

(6)-(7) (text unchanged)

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

D.-E. (Text unchanged)

Explanations of amendments to COMAR 13A.08.01.11F:

- **COMAR 13A.08.01.11F(1)(a) - MABE supports amending the requirement for minimum education services to ensure that students are “provided access to assignments” which must be reviewed and corrected and “made available” to the student. These changes are intended to retain the intended outcomes of the proposed regulations, but would clarify that rather than mandating that assignments be “received by” students and corrected work be “returned to” students (students out of school by definition), the regulations should mandate student access to assignments and that any completed and corrected work be made available to the student.**
- **COMAR 13A.08.01.11F(1)(b) - MABE supports requiring school communication about assignments with parents and guardians of students in out of school suspensions or expulsions , but opposes mandating “weekly” contact in a section referring to students removed from school for time periods as brief as a one day suspension, or as long as a permanent expulsion.**

F. Minimum Education Services.

(1) *In order to establish accountability and to keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at minimum provide that:*

(a) *Each student suspended or expelled out-of-school who is not placed in an alternative education program shall ~~receive daily classwork and~~ be provided access to assignments ~~from~~*

~~each teacher~~ which shall be reviewed, ~~and corrected by teachers on a weekly basis and returned~~ and made available to the student.

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

.12 Arrests on School Premises.

A.-E. (Text unchanged)

F. *Beginning in the 2013-2014 school year, data on school arrests shall be reported in a manner and format developed by the Department, in consultation with local school systems, and approved by the State Board.*

.15 Reporting Delinquent Acts.

A.-B. (Text unchanged)

C. *Beginning in the 2013-2014 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department, in consultation with local school systems, and approved by the State Board.*

Explanations of amendments to COMAR 13A.08.01.21:

- **COMAR 13A.08.01.21C - MABE supports mandating that each local school system develop a “measurable multi-year plan” to immediately reduce and ultimately eliminate the disproportionate impact of the “school system’s” discipline process on minority students, but not to mandate the elimination of such impacts within a prescribed time period.**

.21 Reducing and Eliminating Disproportionate/Discrepant Impact

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

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

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

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

Key:

Current Regulations: regular type

State Board amendments: New = *italics*; Deletions = bracketed [...].

MABE amendments: *New language = blue underlined italics; deletions = ~~red strike through (in italics or regular type)~~.*

MABE explanations for proposed amendments: **Bolded and boxed**.