

Maryland Association of Boards of Education
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 23, 2013; Published December 13, 2013)
(Public Comment through January 13, 2014)

MABE supports the State Board of Education’s initiative to require local boards of education to reform their student discipline 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.

Therefore, MABE fully supports the intent and, as amended herein, the adoption of regulatory changes consistent with fortifying Maryland regulations governing local student discipline policies to ensure school safety, the fair administration of student discipline, the reduction and ultimate elimination of disparate impacts on minority and special education students, and uninterrupted student learning. Maryland school systems are committed to all of their students becoming college and career ready and ensuring that the appropriate use of school discipline furthers that goal.

MABE believes local discretion, accompanied by accountability for results, produces better outcomes than statewide mandates that do not reflect the unique local situations existing within Maryland’s twenty-four fiscally dependent and locally governed school systems. Accordingly, MABE urges state policy makers to defer to the expertise of Maryland’s highly qualified and nationally recognized local superintendents and administrators when determining precisely how to best implement student discipline policy reforms. In this light, MABE appreciates the recent statement of State Board President Dr. Charlene Dukes emphasizing the State Board’s intent to recognize “local control and encourage discretion and reasonableness in imposing school discipline.”

In our view, a number of the changes proposed by the State Board in these regulations 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 facilitating the intended policy objectives of the State Board, while at the same time identifying several necessary corrections and clarifications to the regulations published on December 13, 2013.

Key:

Current Regulations: regular type

State Board amendments published 10/4/13: New = *italics*; Deletions = bracketed [...].

State Board changes published 12/13/13: *shown in green italics double underlined*

MABE amendments: *New language = *blue underlined italics*; deletions = ~~red strike through (in italics or regular type)~~; deletions of published 12/13/13 changes = ~~green strike through in italics double underlined~~*

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

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 MABE's recommended amendments to COMAR 13A.08.01.11A:

- **COMAR 13A.08.01.11A(6) - MABE proposes the amendment to item (6) and replacing the reference to “long-term” with “extended” as a necessary technical correction.**

.11 Disciplinary Action.

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

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

Explanations of MABE's recommended amendments to COMAR 13A.08.01.11B:

- **COMAR 13A.08.01.11B(2)(a) and (3)(a) - MABE supports amending the language in (2)(a) and (3)(a)(i) referring to student conduct that would “pose an imminent threat of serious harm to other students and staff”. MABE believes the inclusion of the qualifiers “imminent” and “serious” are overly restrictive and would invite litigation. Superintendents should remain empowered, within their sound discretion, to protect students and staff from any threat of harm in our schools. Such decisions are and will remain appealable.**
- **COMAR 13A.08.01.11B(2)(c) and (3)(c) – MABE supports amending the language in (2)(c) and (3)(c) to remove the term “comparable” defining educational services and to replace the mandate for provision of currently undefined and unfunded “appropriate behavioral support services” with the facilitation of access to such services. These newly mandated services were added on the date of State Board adoption without substantive discussion, MSDE or State Board explanation of intent or opportunity for comment prior to publication.**
- **COMAR 13A.08.01.11B(3)(a)(ii) – MABE supports amending the language in (3)(a)(ii) to remove the terms “chronic and extreme” and “exhausted”, and to substitute more educationally appropriate terms “frequent and significant” and “unsuccessful” to define the actionable behavior disrupting learning for other students. Removal of the term “across the**

school day” recognizes that such disruption need not occur in all classes to constitute an actionable disruption of learning for other students.

- COMAR 13A.08.01.11B(2)(c) and (3)(c) – On December 13, 2013, the State Board published added language to the definitions of expulsion and extended suspension to ostensibly require that students returning to school from such discipline should be returned to “the student’s” regular academic program instead of to “a” regular academic program. MABE supports removing the newly added language which could create a new right for a disciplined student to attend a particular school – a right not possessed by any other student. This new language also could result in the need to move the victim of assault, harassment, etc. as the perpetrator now has the right to return to the school that they were suspended or expelled from. This language also seriously could undermine the ability to place students in alternative schools should that be the most appropriate placement for the student returning from extended suspension or expulsion.
- MABE also supports several additional non-substantive corrections to clarify the regulations for school systems, administrators, and educators who will be required to carry them out.

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

(1) (text unchanged)

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

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

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

(c) *The school system provides the excluded student with comparable educational services as defined in COMAR 13A.08.01.11(F) and facilitates access to the provision of appropriate behavioral support services to promote successful return to [a] the student’s regular academic program.*

(3) “Extended suspension” means the [temporary removal] *exclusion* of a student from [school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or the local superintendent’s designated representative.] *a student’s regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:*

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

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

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

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

(c) *The school system provides the excluded student with-comparable educational services as defined in COMAR 13A.08.01.11(F) and facilitates access to the provision of appropriate behavioral support services to promote successful return to [a] the student’s regular academic program.*

(4) (text unchanged)

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

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

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

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

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

- COMAR 13A.08.01.11C(3)(d) - MABE supports amending the language in (3)(d) referring to student conduct that would “pose an imminent threat of serious harm to other students and staff”. MABE believes the inclusion of the qualifiers “imminent” and “serious” are overly restrictive and would invite litigation. Superintendents should remain empowered, within their sound discretion, to protect students and staff from any threat of harm in our schools. Such decisions are and will remain appealable.
- COMAR 13A.08.01.11C(3)(d)(ii) – MABE supports reconfiguring (3)(d) and adding language in (3)(d)(ii) to recognize the need to protect the learning environment from frequent and significant disruptions and to define the actionable behavior that disrupts learning for other students.
- COMAR 13A.08.01.11C(3)(g) and (h) – 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 and clarification that the appeal timeframe is measured in “school” days to facilitate due process and an orderly and workable appeal process recognizing 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 45-calendar 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.

C. Suspension and Expulsion.

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

[(2)] (1)—[(3)] (2) (text unchanged)

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

(a)—(b) (text unchanged)

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

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

(i) the local superintendent or designated representative determines that the student’s return to school would pose ~~an imminent~~ threat of ~~serious~~ harm to other students or staff; or

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

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

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

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

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

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

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

(i) This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and

(ii) This timeline shall also apply in the event that the local board elects to use a hearing examiner.

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

(i) The student or the student's parent or guardian or representative: ~~M~~ may bring counsel and witnesses to the hearing.

~~(j) All parties to the appeal s~~ Shall ~~be~~ provided one another with their ~~the school system's~~ witness list and a copy of the documents that they intend to ~~the school system will~~ present at the hearing 5 days before hearing. ~~;~~ ~~and~~

~~(ii) May bring counsel and witnesses to the hearing.~~

[(e)] ~~(k)~~—[(g)] ~~(m)~~ (text unchanged)

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

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

(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 - 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.**

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

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

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

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

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

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

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

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

.12 Arrests on School Premises.

A.-E. (Text unchanged)

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

.15 Reporting Delinquent Acts.

A.-B. (Text unchanged)

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

Explanations of amendments to COMAR 13A.08.01.21:
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| <ul style="list-style-type: none">• COMAR 13A.08.01.21C - MABE supports mandating that each local school system develop a “measurable multi-year plan” to immediately reduce and ultimately eliminate the disproportionate or disparate impact of the “school system’s” discipline process on minority students, but not to mandate the elimination of such impacts within a prescribed time period. MABE agrees with the Advocates for Children and Youth (ACY) that disparate impact is a more useful standard than disproportionate impact because the latter simply deals with raw numbers of students disciplined by racial and ethnic groups whereas disparate impact examines different treatment of students who are similarly situated or who have common characteristics (i.e. different discipline for the same behavior). |
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.21 Reducing and Eliminating Disproportionate/Disparate/Discrepant Impact

A. The Department shall develop a method to analyze local school system discipline data to determine whether there is a disproportionate or disparate 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 or disparate 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 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.