Maryland Association of Boards of Education

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March 28, 2012

Mr. James H. DeGraffenreidt, Jr., President
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Subject: MABE Comments on Student Discipline Report & Proposed COMAR Changes

Dear Mr. DeGraffenreidt:

The Maryland Association of Boards of Education (MABE) submits the following comments regarding the State Student Discipline Report (the Report) and Proposed COMAR Changes. We thank you for the opportunity to speak on behalf of Maryland's 24 local boards of education on this important matter. Our comments will be divided among several categories of concern.

Report Assumptions

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."

MABE 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.

MABE would not for a moment suggest that the rights of disruptive students should not be protected and would argue that 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. That 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.

Effects of Suspensions

The Report attempts to consider various aspects of the effect of suspensions in Maryland based solely upon the consequence for the disruptive student and uses 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.

Proposed COMAR Changes

The Report recommends the modification of the longstanding definitions of suspension and expulsion in various ways. These terms and the local discretion to interpret and use these tools to advance the educational mission of each school system is remanded by the Maryland Legislature to local school systems. Any effort by the State Board to usurp that statutory authority, we would argue, is contrary to Maryland law and outside of the power of the State Board.

Other new terminology that is not sufficiently defined includes phrases such as "total exclusion." Furthermore, such exclusion may only occur when it "is the only means by which to ensure a safe school." Schools will face a terribly difficult burden of proof that exclusion is "the only means to ensure a safe school." Local school systems will have to prove that increased supervision, in-school suspension, assigning an aide, searching the student on arrival, and changing class and lunch schedules to separate the bully and the victim, etc., are not effective strategies. An entire new body of case law will have to be developed through many appeals to determine the meaning of the new language proposed by the State Board.

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.

Local boards oppose the staff liaison provision as an unfunded mandate in a 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 suspened each year. Finally, how do we calculate the loss of teacher time for activities such as planning, contacts 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.

MABE requests that the State Board reject this Report and enter into a 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.

Respectfully submitted,

Gary W. Bauer
President

GWB:kwb
Enclosure
Copy to:
Members of the State Board of Education
Dr. Bernard J. Sadusky, State Superintendent of Schools
MABE Board of Directors