



## School Discipline in Maryland: A Look Backward and Forward

---

### **PURPOSE:**

To provide the Task Force on Student Discipline (Task Force) with a historical perspective on the school discipline reform that occurred from 2009-2014 and a foundation for moving forward to study school discipline, both in terms of the legal landscape and the current research and data.

### **LEGAL LANDSCAPE:**

#### **Federal Law**

One federal law directly impacts school discipline, the Gun-Free Schools Act, 20 U.S.C. §7961, which requires each State receiving federal education funds to pass a law that requires its LEAs to expel from school for one year any student who brings a firearm to school. The LEA can mitigate one-year term of the expulsion on a case-by-case basis. Maryland passed its version of the Gun-Free Schools Act requiring expulsion for one year for bringing a firearm on school property subject to mitigation on a case-by-case basis. Ed. Art. §7-305(f).

While the Obama Administration issued a series of policies and guidelines concerning school discipline and disproportionality of discipline, the Trump Administration has not endorsed them. The Administration has delayed for two years the implementation of special education regulations directing how school systems must calculate disproportionality of discipline of students with disabilities. Each State, at this juncture, can adopt its own model to measure disproportionality. Maryland has done so.

#### **State Law**

- **Discipline Rules**

State law defines the broad contours of the school discipline process, including the process a principal must use to suspend a student for up to 10 days and the process a superintendent must use to suspend a student for more than ten days. The law includes appeal rights after long-term suspensions and expulsions. A suspended or expelled student may not be returned to the classroom until the principal confers with the teacher or staff person who referred the student for discipline. That same process applies if disruptive student conduct results in discipline less than suspension. The law allows the principal to require the student or parents to make restitution if damages to school property occurred. Ed. Art. §7-305.

- **Limits on Suspension/Expulsion**

State law prohibits a principal from suspending or expelling students who are in Pre-K, kindergarten, first or second grade unless expulsion is required under the Gun-Free Schools Act or if the school administration determines there is an imminent threat of serious harm to students or staff that cannot be reduced or eliminated by other interventions. Ed. Art. §7-305.1.

State law prohibits suspension/expulsion solely for attendance-related offences. Ed. Art. §7-305(b).

State law prohibits corporal punishment. Ed. Art. §7-306.

- **Special Programs**

State law requires each school system to provide a “continuum model” of prevention and intervention programs to promote positive behavior and reduce disruption and to establish special programs for students who exhibit disruptive classroom behavior. Ed. Art. §7-304. State law requires each elementary school that has a suspension rate that exceeds 10% of its enrollment to implement a PBIS Program or an alternative behavior modification program in collaboration with MSDE. Ed. Art. §7-304.1(b). Likewise, if a school has a truancy rate that exceeds 1% of its enrollment, it must implement a PBIS Program or an alternative research-based behavior modification program. Ed. Art. §7-304.1(c). Any truant student K-12 must be referred to the school system’s “active intervention” program. Ed. Art. §7-302.2

- **Arrests in the Community**

When law enforcement arrests a student in the community for a “reportable offense,” law enforcement must notify the superintendent, principal, and SRO as soon as practicable. The school may use the information to provide “appropriate education programming” to the student to maintain a safe and secure school environment. If the offense is rape or sexual assault, but the student is awaiting trial, the principal may prohibit the student from riding the same bus or attending the same school as the victim. After conviction, the principal must prohibit the offender from riding the same bus and attending the same school as the victim. Ed. Art. §7-303.

- **SROs**

State law requires each public school that enrolls students in grades 6-12 to designate at least one school security officer. Ed. Art. §7-303(i).

## **State Board Authority to Govern School Discipline in Maryland Schools**

As you know, the State Board has the broad statutory authority to adopt education policies affecting all school systems in Maryland and to carry out the provisions of State education law. To implement the provisions of State law governing school discipline, the State Board has adopted a comprehensive set of regulations and policies. COMAR 13A.08.01.11. The regulations are Attachment #1 to this transmittal. The process the State Board went through to adopt new regulations and policies is set forth in *An Overview of School Discipline Policy and Regulations in Maryland*.

## **Local Authority to Impose School Discipline**

Certainly imposing discipline in schools is a uniquely local enterprise, as long as the school system follows the State Board regulations in doing so. During the development of the school discipline regulations, local control was the central issue of contention. The State Board received 1,417 comments advocating for total local control. The State Board’s response was:

While the tension between statewide policy making and local control of school will always exist, it is our view that the regulations balance those two important interests. Specifically, we point out that the regulations contain provisions that recognize local control. For example, proposed regulations, Section .01, Statement of Purpose, states, “the purpose of this action is to have each local board of education adopt a set of discipline policies and regulations that...” Further Section .11, Disciplinary Action, Part A, states, “Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effecting learning....” Thus, the proposed

regulations recognize the local board of education's role in establishing disciplinary policy and practice.

The Maryland Association of Boards of Education argued that the regulations exceeded the State Board's legal authority given the fact that Ed. Art. §7-305 gives discretion to principals and superintendents to impose discipline "as warranted." The State Board responded:

It is our view that the authority to impose discipline "as warranted" does not mean that local authority is unfettered. It means as warranted by law and sound education policy. The State Board has the authority to define in regulation education policy for Maryland. We can debate whether it is correct or sound. That is a policy debate, however. That debate does not translate into a conclusion that the Board's exercise of its authority to define "as warranted" was illegal exercise.





## **An Overview of School Discipline Policy and Regulations in Maryland**

---

In order to place school discipline in context for future discussions of this Task Force, some historical background on school discipline reform may be helpful in order to understand in some detail the issues the Maryland State Board of Education (State Board) grappled with beginning in 2009 to reform school discipline policy in Maryland.

### **HOW IT ALL STARTED:**

In August 2009, the Maryland State Board issued an opinion in an appeal of the almost year-long expulsion imposed on a ninth grade student for fighting in school. She was given little or no educational services over that year. In the opinion, the State Board put all local school systems on notice of its concerns about the lack of educational services provided to the student represented in the appeal and apparently to the thousands of students who received out of school suspensions that year across all school systems.

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

### **GATHERING INPUT, DATA AND DOING THE RESEARCH:**

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

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

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

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

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

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

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

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

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

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

At the July 2012 meeting, the Board issued its final report, entitled *School Discipline and Academic Success: Related Parts of Maryland’s Education Reform*. In that report, the Board addressed the impact of school discipline on school safety. It explained that we often rely on a presumption that separating disorderly students from school will make schools safer places to learn for those students who are not disruptive. This presumption was not necessarily supported by research which raised

serious questions about the effectiveness of using out-of-school suspensions as a means of providing a safe school.<sup>1</sup> Daniel Losen and Russell Skiba, *Suspended Education: Urban Middle Schools in Crisis* (2010).

Some have argued that suspensions remove disorderly students and deter other students from misbehaving, thereby improving the school environment so that well-behaving students can learn without distractions....Yet, despite nearly two decades of implementation of zero tolerance disciplinary policies and their application to mundane and non-violent misbehavior, there is no evidence that frequent reliance on removing misbehaving students improves school safety or student behavior.

*Id.* at 2; see also *Breaking Schools' Rules* at 4.

The American Psychological Association's 2006 Zero Tolerance Task Force explained that the assumption that the removal of disruptive students would result in safer schools, although intuitive is not supported by data.

“[D]ata on a number of indicators of school climate have shown the opposite effect, that is, schools with higher rates of school suspension and expulsion appear to have *less* satisfactory rating of school climate, to have *less* satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters. Perhaps more important, recent research indicates a negative relationship between the use of school suspension and expulsion and school-wide academic achievement, even when controlling for demographics such a socioeconomic status. Although such findings do not demonstrate causality, it becomes difficult to argue that zero tolerance creates more positive

---

<sup>1</sup> The Board read and was influenced, in part, by national reports and research on school discipline issues:

Daniel Losen, *Discipline Policies, Successful Schools, and Racial Justice* (2011)

<http://nepc.colorado.edu/publication/discipline-policies> ;

Daniel Losen and Russell Skiba, *Suspended Education: Urban Middle Schools in Crisis* (2010)

<http://www.splcenter.org/get-informed/publications/suspended-education> ;

Alicia Darenbourg, et al., *Overrepresentation of African American Males in Exclusionary Discipline: The Role of School Based Mental Health Professionals in Dismantling the School to Prison Pipeline*, J. Afr. Am. Males in Educ., No. 3 (2010) <https://www.isbe.net/Documents/ovr-rep-afr-amer-males.pdf> ;

Michael Krezmien, et al., *Juvenile Court Referrals and the Public Schools: Nature and the Extent of the Practice in Five States*, 26 J. Contemp. Crim. Just., No. 3 (2010)

<http://ccj.sagepub.com/content/26/3/273.abstract> ;

Zero Tolerance Task Force, Am. Psychol. Assn., *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations* (2006)

<http://www.apa.org/pubs/info/reports/zero-tolerance.pdf> ;

Council of St. Gov'ts Just. Ctr., *Breaking School Rules: A Statewide Study of How School Discipline Relates to Student's Success and Juvenile Justice Involvement*, (2011)

[https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf) ;

Russell Skiba, et al., *Discipline Is Always Teaching: Effective Alternatives to Zero Tolerance in Schools* (2005)

<http://youthjusticenc.org/download/education-justice/prevention-intervention-alternatives/Discipline%20is%20Always%20Teaching%20-%20Effective%20Alternatives%20to%20Zero%20Tolerance%20in%20Schools.pdf> ;



school climates when its use is associated with more negative achievement outcomes.”

*Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations at 4-5 (emphasis in original).*

If out-of-school suspensions do not necessarily create safer schools, the Board asked if they served some other worthy societal purpose. In this regard, the Board recognized that there are several reasons why a society metes out punishment for bad behavior.<sup>2</sup>

- Retribution: to right a wrong by giving the person his “just desserts” in the form of a punishment appropriate to the harm caused.
- Incapacitation/Deterrence: to deter future bad conduct by making it impossible for the offender to offend again and showing others that a like offense will be punished as severely.
- Rehabilitation: to provide correction to the offender and turn him around.

The Board concluded that in the school context, suspensions for retribution purposes have no place at all. While suspensions for deterrence purposes may make us think that schools are safer, they do not necessarily serve that purpose. Indeed, as the American Psychological Association's Zero Tolerance Task Force report states, “Rather than reducing the likelihood of disruption, however, school suspension in general appears to predict higher future rates of misbehavior and suspensions among those students who are suspended.” *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendation at 5.*

The Board learned from this research that its goal as educators should be a rehabilitative one - - to improve the student, not to disadvantage those students who may be most in need of our help. Indeed, the Board exhorted all educators to keep their eyes on the prize – eliminating the achievement gap and graduating college and career ready students – even in the heat of the school discipline process.

In its report, the Board announced that it was adopting a rehabilitative approach to school discipline and proposed a regulation directing each school system to adopt a set of regulations 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 use of discretion;
- (4) Explain why and how long-term suspension or expulsions are last resort options.

---

<sup>2</sup> See, Kevin Carlsmith, et al., *Why Do We Punish*, 83 J. Pers. Soc. Psychol., No. 2, 284-299 (2002); See also, Banks, *Ethics and the Criminal Justice System*, 103-126, [https://www.sagepub.com/sites/default/files/upm-binaries/5144\\_Banks\\_II\\_Proof\\_Chapter\\_5.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/5144_Banks_II_Proof_Chapter_5.pdf) ;



## **REGULATORY INITIATIVES:**

Thus, in July 2012, the Board granted permission to publish proposed school discipline regulations. The Board explained that to keep students in school, it was proposing a regulation that would reduce the number of long-term out-of-school suspensions for non-violent offenses. In addition to keeping students in school, the Board determined to end the disproportionate impact of school discipline on minorities and on special education students. The Board also proposed in the regulation a requirement that school systems to provide “minimum education services” to all students suspended/expelled students out of school.

During the public comment period on those proposed regulations, 803 commenters made 2,213 suggestions for changing the proposed regulations. In January 2013, the Board reviewed all of the comments and agreed to make substantive changes to the proposed regulations. The proposed regulations, therefore, were withdrawn.

In April 2013, based on suggestions from MABE, PSSAM, MSEA, and public commentary, the Maryland State Board of Education convened a Workgroup to address, among other things, when the imposition of an “extended suspension” (11-45 days) or “expulsion” (over 45 days) was appropriate. It was co-chaired by Dr. D’Ette W. Devine, Superintendent, Cecil County Public Schools and Diana Morris, JD, of the Open Society Institute of Baltimore. The Workgroup met four times between May and June of 2013. The Workgroup presented its findings at the June 25, 2013, Maryland State Board Meeting. The Workgroup was guided by the following findings of the State Board:

- Students frequently receive extended suspensions and expulsions for behavior that does not pose an ongoing threat to school safety.
- Out-of-school suspensions carry severe consequences for students, including making them far more likely to drop out or enter the juvenile justice system. This is especially true for longer periods of school exclusion, as in extended suspensions and expulsions.

Most members of the Workgroup believed that local administrators should have considerable discretion in school discipline matters, but that disciplinary consequences should serve educational purposes and should not be used to punish students. Thus, in discussing when extended suspension or expulsion could be appropriate, Workgroup members focused on whether a student’s return to school would have continuing effects on school safety rather than on the conduct for which the student was initially suspended. In other words, the assessment of whether a student should receive an extended suspension or an expulsion should be prospective, not retrospective.

There was a contingent within the Workgroup – comprised primarily of school administrators and school board members – who felt extended suspensions should also be an option for disruptive behavior that interferes with other students’ learning. Another contingent – comprised of advocates and some parents – disagreed with this view. Their view was that extended suspensions are an inappropriate response to classroom disruptions as there are alternate methods for addressing that behavior. A significant percentage of the Workgroup’s meetings were spent discussing this issue, but they were unable to achieve consensus. Thus, the Workgroup recommendations reflected a compromise position in which school disruptions would be permissible justifications for extended suspensions, but only in the *very rare* circumstances. The Board accepted the Workgroups findings and at its October 2013 meeting, voted to publish new proposed regulations.

At its meeting on January 28, 2014, the Board reviewed the public comments it received on the proposed regulations. A total of 3,278 comments were received from constituents or constituent groups.

#### A. Comments in Support

1,814 comments were in support of the proposed disciplinary regulations. Proponents of the proposed regulations came from a variety of backgrounds including parents, teachers, PSSAM, the Montgomery County's Public Defender's Office, the ACLU, the National Association For The Advancement of Color People (NAACP) in Allegany and Montgomery Counties, the Maryland Disability Law Center (MDLC), the Open Society Institute – Baltimore, Advocates for Children and Youth (ACY), and other advocate organizations.

Most of the comments by supporters of the proposed regulations could be categorized into four distinct categories:

- 574 comments supported ending zero tolerance discipline policies;
- 448 comments supported the regulations that allowed school principals to make discretionary discipline decisions;
- 411 comments encouraged the State Board to enact the disciplinary regulations. They believed that students make mistakes and should be held accountable at the school;
- 359 comments supported the reduction of the use of out-of-school suspension for non-violent behavior. Those suspensions disproportionately impact students of color and students with disabilities.

Several supporters stated:

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

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

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

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

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

The disproportionate effect with which current school discipline policies negatively impact youth with mental health needs is of particular concern to the Joint Committee on Access to Mental Health

Services. While students with Individual Education Plans (IEP) under the Individuals with Disabilities Act (IDEA) may be entitled to manifestation hearings for violations of school rules, such protections are not afforded for many other students with mental health disorders that do not have IEPs.”

Allegany County NAACP offered:

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

Montgomery County NAACP stated:

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

Advocates for Children and Youth wrote:

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

The ACLU of Maryland stated:

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

The Open Society Institute of Baltimore commented:

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

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

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

The Maryland Disability Law Center stated:

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

## B. Comments in Opposition

There were 1,464 comments in opposition to the proposed disciplinary regulations.

Opposition to the proposed disciplinary regulations could be categorized into three categories:

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

The most common comments and the MSDE’s responses were shared with the Board at its January 2014 meeting.

**Comment:** “We believe our Superintendent and elected local boards of education are the best fit to determine the needs of our school system....”

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

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

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

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

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

with the question, “Does the use of out-of-school suspension create a safer school or better school for students?” The Board explained that, although it is a strong intuitive assumption, the assumption that the out-of-school suspension of disruptive students will result in safer schools is not supported by the research and the data. While opponents’ concerns for school safety is real and should not be ignored, Maryland Public Schools’ discipline data show that most out-of-school suspensions in Maryland are for non-violent events.

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

Comments were also received from the MABE with several local board of education agreeing with MABE. They were Anne Arundel, Calvert, Frederick, Harford, Howard, and Washington County. Below are MABE’s comments and proposed amendments.

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

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

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

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

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

could also undermine the ability to place students in alternative schools should that be the most appropriate placement for the student returning from extended suspension or expulsion.

**MSDE Response:** At the December 2013 Board meeting, Board President Charlene Dukes explained the intent of this part of the regulation. She followed that up with a letter to MABE and others stating:

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

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

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

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

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

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

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

...

*(ii) The student has engaged in frequent or significant disruption of the educational process that has created a substantial barrier to*

*learning for other students and other available and appropriate behavioral and disciplinary interventions have been unsuccessful.*

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

**Comment:** COMAR 13A.08.01.21C – MABE supports mandating that each local school system develop a “measureable 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.

**MSDE Response:** Those changes can be made whenever the regulations are next amended. It is time to move forward.

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

**Comment:** MSEA commends the State Board for its efforts but opposes the adoption of regulations at this time. We have previously expressed our specific concerns relative to language, educator workload, and student safety. We appreciate the State Board’s comments at the December Board meeting relative to the intent of the language in the regulations regarding the return of a student to his/her regular academic program; however, the clarification alone is not legally enforceable. Regardless, we remain concerned about interpretation, unintended consequences, and student and educator safety. Indeed, we have heard from many educators already that the regulations are being interpreted as meaning no suspension for any reasons, which is an indication that administrators are addressing the numbers problems, but not the behavior problems. Finally the published regulation indicate that there is little fiscal impact; however, the lack of staffing, alternative services, intervention programs, and community and parent support is required for change to be successful and are lacking in local school systems across the State, and therefore fiscal impact is significant. To begin to address this issue head on, it is essential to identify funding sources based on identified needs.

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

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

Finally, MSEA cited a number of initiatives such as the War on Poverty and inclusion of special education students in the regular classroom, which after many decades have not fully realized their



ideals. They conclude that these regulations “will be harmful to students, educators, and the safety of public schools.”

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

On January 28, 2014, the Board voted to promulgate the regulations and they became final on February 17, 2014 and remain in effect today. A copy of the regulation is Attachment #1

### **CODE OF CONDUCT:**

In conjunction with revising the school discipline regulations, the State Board appointed a Workgroup of school district representatives and other stakeholders to update the Guidelines for a State Code of Conduct, including disciplinary options for each type of infraction to reflect the school discipline reform efforts of the State Board. The Workgroup met through 2013 and early 2014. It presented “*The Maryland Guidelines for a State Code of Discipline*” at the July 22, 2014 State Board meeting. The purpose of the *Guidelines* was to provide a framework for local school systems to use to establish local codes of conduct and develop new discipline-related policies. The *Guidelines* included behavioral expectations for all members of the school community who have a direct impact on creating healthy teaching and learning environments and promoting student success. They also provided suggested prevention, intervention, restorative, and incentive-based strategies to respond to student misconduct, detailed explanations of specific student behaviors that are not permitted, and other factors for local districts to consider in revising their policies. The Board adopted the *Guidelines* at its July 22, 2014 meeting.

### **DISPROPORTIONALITY IN SCHOOL DISCIPLINE:**

The discipline reform work continued as MSDE tackled the problem of disproportionality in school discipline. The regulations directed MSDE to develop a method to analyze school system discipline data to determine disproportionate impact, if any, on minority students and students with disabilities. That work was statistically challenging and complex. It was completed in January 2017 when MSDE presented to the Board its report “*Reducing and Eliminating Disproportionality in School Discipline.*” The Report explained:

When the Maryland’s discipline data is disaggregated by student group, however, it becomes clear that the experience of individual student groups varies widely. For example, 8.1% of African American students and 10.1% of students with disabilities received an out-of-school suspension or expulsion, compared to 2.3% of white students and 3.6% of students without disabilities. While the use of exclusionary discipline has decreased for all students in Maryland, when schools use out-of-school suspensions and expulsions to discipline, the data demonstrate that students of color and with disabilities are more likely to be on the receiving end.

The Report set forth in some detail the statistical models that MSDE would use to measure disproportionality. In the simplest of terms, MSDE proposed to use a Risk Ratio Measure and a State Comparison Measure to capture, not only disproportional discipline among student groups within each school, but also whether a particular school is applying exclusionary discipline more frequently than the statewide exclusionary discipline rates.

From January to June 2017, MSDE focused on getting the word out to school systems about the disproportionality measures and gathering years of discipline data for each school. From August 2017 to June 2018, MSDE used teams to help each school system analyze its discipline data and conduct root cause analysis of disproportionality, if necessary.

### **SCHOOL ARREST DATA COLLECTION:**

Because the State Board was concerned about “school to prison pipeline”, it directed MSDE to collect data from school system on when they referred a student to law enforcement based on conduct at school. The first report on school arrest data was published in December 2017.

