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**TO:** Members of the State Board of Education  
**FROM:** Jack R. Smith, Ph.D.  
**DATE:** May 23, 2016  
**SUBJECT:** Overview on Reducing and Eliminating Disproportionate/Discrepant Impact  
COMAR 13A.08.01.21

**PURPOSE:**

The purpose of this agenda item is to provide a historical overview of Maryland's work to revise regulations that govern Student Discipline in Maryland Public Schools. This overview includes a summary of COMAR 13A.08.01.21 *Reducing and Eliminating Disproportionate/Discrepant Impact* and an outline of the framework proposed to analyze local school system discipline data to determine whether there is a disproportionate impact on minority or special education students.

**BACKGROUND:**

In August 2009, the Maryland State Board of Education issued an opinion in an appeal of the almost year-long expulsion of a ninth grade student. This appeal raised concerns regarding the lack of educational services provided to students subject to exclusionary discipline practices and appeal processes. The work to understand the impact of educational services provided during a suspension or expulsion continued from August 2009 through April 2010. The State Board approved the Maryland State Department of Education's plan to study the use of long-term suspensions/expulsions which included an invitation to the public and representatives from several State educational stakeholder groups to provide comments on the topic of educational services during suspensions and expulsions. In August 2010, the State Board accepted the Department's report titled *Study of Student Long-term Suspensions and Expulsions*. The report summarized local school system practices in the provision of educational services during suspensions and expulsions and an analysis of public and stakeholder comments on the topic.

Further, in 2011, the State Board directed the Department to review and address issues arising from zero-tolerance discipline policies. In response, the Department developed *Guidelines for the Timely Disposition of Long Term Discipline Cases*. These guidelines were posted for public comment, and several panels of State educational stakeholders were invited to address the board.

In February 2012, the State Board released a draft report titled *A Safe School, Successful Students, and A Fair and Equitable Discipline Process Go Hand in Hand*. This report contained a draft of possible regulatory changes. The State Board again provided an opportunity for comments from the public and State educational stakeholders. After multiple revisions, the board issued its final report titled *School Discipline and Academic Success: Related Parts of Maryland's Education Reform* which linked changes in school discipline philosophy to improve academic performance and reduction in the achievement gap. Research on discipline practices indicated a disproportionate impact, high correlations between middle school suspensions and dropouts, and a correlation between dropout rates and participation in the criminal justice system. Research also conveyed a lack of positive outcomes from the use of zero-tolerance practices.

In January 2013, the State Board reviewed public comments and agreed to make additional changes to the proposed regulations. In January 2014, the State Board adopted amendments to COMAR 13A.08.01.11, .12, .15 and new regulation 13A.08.01.21 (Attached).

#### **EXECUTIVE SUMMARY:**

In 2014, the Department began work to implement COMAR 13A.08.01.21: *Reducing and Eliminating Disproportionate/Discrepant Impact*. This regulation requires the Department to develop a method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students. If the Department identifies a school'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 plan to reduce the impact within one year and eliminate it within three years.

The Department has created a framework for the method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students or a discrepant impact on special education students. The framework has been developed in consultation with national and State experts in school discipline and has included the review of several models implemented across the country. The next steps are to gain stakeholder feedback on the framework, the model, and finalize the proposed method for implementation.

#### **ACTION:**

Information only. No action required.



Jack R. Smith, Ph.D.  
Interim State Superintendent of Schools

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**TO:** Members of the State Board of Education  
**FROM:** Lillian M. Lowery, Ed.D. *Lillian M. Lowery*  
**DATE:** January 28, 2014  
**SUBJECT:** COMAR 13A.08.01 General Regulations (Adoption)

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**PURPOSE:**

The purpose of this action is to seek adoption of regulations that govern Student Discipline in Maryland Public Schools.

**HISTORICAL BACKGROUND:**

In August 2009, the Maryland State Board issued an opinion in an appeal of the almost year-long expulsion of a 9<sup>th</sup> grade student. The Maryland State Board of Education put local school systems on notice about its concerns related to the lack of educational services provided in 81,331 out of school suspensions and the time taken to process appeals.

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

At the April 2010 Board meeting, and with the Board's invitation, representatives of 8 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 Association of Student Councils (MASC), the American Civil Liberties Union (ACLU), and the Open Society Institute of Baltimore (OSI) 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 entitled *Study of Student Long Term Suspensions and Expulsions* prepared by the Department. 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 the discipline regulations and revisions to Student Records Manual to enhance data on long-term suspensions and expulsions.

At the February 2011 meeting, the Maryland State Board of Education, in response to a news article on the suicide of a suspended student in another state, directed the State Superintendent to discuss the tragedy with the 24 local superintendents to determine if Maryland's local school systems had similar zero-tolerance discipline policies with the goal to determine steps that could be taken to avoid such a tragedy in Maryland.

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

Based on response to proposed *Guidelines for Timely Disposition*, the Board requested that panels of stakeholders be invited to address the Board on this topic. 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 63 percent of the out-of-school suspensions were for non-violent offenses. The draft report concluded that disproportionate impact of school discipline falls on students of color and students with disabilities. The Report also 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 of 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.

The Board agreed with the commenters to change the draft regulations to better reflect its general philosophy of school discipline, returned the concept of expulsion to the regulations, and addressed issues around the 10-day return to school policy. The Board also discussed the ways to revise the draft report.

At the July 2012 meeting, the Board issued its final report, entitled *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*; linking changes in school discipline philosophy to better academic performance and reduction in the achievement gap. The Board also granted permission to publish proposed school discipline regulations. During the public comment period on those proposed regulations, 803 commenters made 2,213 suggestions for changing the proposed regulations.

In January of 2013, the Board reviewed all of the comments and agreed to make substantive changes to the proposed regulations. The proposed regulations were withdrawn.

Based on suggestions from MABE, PSSAM, MSEA, and public commentary, the Maryland State Board of Education convened a workgroup to address specific issues. The workgroup began its work in April 2013. 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 convened four meetings between May and June of 2013. The workgroup presented its findings at the June 25, 2013, Maryland State Board Meeting. The Board accepted the workgroup's findings and voted to publish new proposed regulations.

At the October 2013 Maryland State Board of Education meeting, the proposed disciplinary regulations were withdrawn due to some inaccurate language and the revised disciplinary regulations were published in the Maryland Register, Vol.40, Issue 25, on Friday, December 13, 2013.

It is those regulations that are the subject of this memo.

### **Comments of Support**

In the public comment period a total of 3,278 comments were received from constituents or constituent groups. 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, the Public School Superintendents' Association of Maryland (PSSAM), the Montgomery County's Public Defender's Office, the American Civil Liberties Union (ACLU), a legislatively appointed committee, 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 of Baltimore (OSI-Baltimore), Advocates for Children and Youth (ACY), and other advocate organizations.

Several supporters stated:

"All Maryland children have a constitutional right to education, and they should not be deprived of the opportunity to learn for 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 Public School Superintendents’ Association of Maryland wrote:

“Given your clarification and explanation of intent, local school superintendents support the proposed regulatory changes to COMAR 13A.08.01-Subtitle-Students.”

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 Individualized 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 conveyed:

“Disproportionality and Data. The inclusion of an accountability system to reduce the disproportionality of suspensions and expulsions for African Americans 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 systems and other stakeholder...”

“The ACLU applauds the Board’s commitment to solicit testimony and various points of view over the past several years.”

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 three state-wide conferences on creating safe schools, implementing effective alternatives to suspensions, 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, 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 highlighted:

“MDLC commends the Maryland State Board of Education and the Maryland State Department of Education for convening a wide-reaching work group so that school districts, teachers, administrators, parents, advocates, and associations such as the Maryland State Educational Association and the Maryland Association of Secondary School Principals, could come together over a significant period of time to discuss and make recommendations regarding the proposed regulations. MDLC appreciated the opportunity to participate in that process, which allowed the participants to address concerns and work on compromises.”

“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....”

The Board’s specific goal to address the disparate impact on minority students and students with disabilities in exclusionary practice is of critical importance. As confirmed by MSDE’s study, exclusionary practices continue to be imposed disproportionately on students with disabilities and on minority students....”

## **IN SUMMARY**

Comments by supporters of the proposed regulations could be categorized into five distinct categories:

- 574 comments supported ending zero tolerance. These comments disagreed with the practice of zero tolerance which eliminates school principal discretion for managing student behavior;
- 448 comments supported the Maryland State Board of Education, believing that the regulations empower school principals to make disciplinary decisions;
- 411 comments believed that the Maryland State Board of Education should 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 school suspension.” These comments focused on the use of out-of-school suspension for non-violent behavior that disproportionately impacts students of color and students with disabilities ; and finally,
- 22 comments supported the regulations for many reasons such as the mental health needs of students, the need for structure when suspending students, and sexual orientation.

## **Opponents of the Regulations**

There were 1,442 comments in opposition to the proposed disciplinary regulations. Most opponents of the proposed disciplinary regulations cited local control of school disciplinary practice and enforcement.

**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 schools 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....”

**Comments-**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 students?” The Board explained that, although it is strongly intuitive assumption, the assumption is that the out-of-school suspension of disruptive students will result in safer school is not supported by the research and the data.

The regulations are focused on school safety in the context of 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 for 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.”

For example, 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.” Opponents’ concerns for school safety is real and should not be ignored but, research and Maryland Public School’s data indicate that most out of school suspensions in Maryland are used for non-violent events.

Comments were also received from the Maryland Association of Boards of Education (MABE) with several local boards of education agreeing with MABE. They were by 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 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 was based. We do not recommend such change to the regulation.

**Comment-** COMAR13A.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 also 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.

**MSDE Response-** At the December Board meeting, Board President 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 regulations 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 for 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 staff sees merit in these comments, it is the view of staff that it is time to finalize these regulations and entertain amendments at a later date.

**Comment-COMAR 13A.08.01.11C(3)(g).** MABE supports an amendment to impose the same standards on both parties for disclosure of witness lists and other documents intended to be used in the hearing.

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

**Comment-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 “returned to” students (students out of school by definition).

**MSDE Response-** At the very beginning, and at the very heart of the State Board's study of school discipline issues, was the concern that students suspended out of school receive, at the very least, received minimum educational services. This comment would weaken that regulatory requirement.

**Comment - 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

better term than disproportionate because disparate impact examines different treatment of students who are similarly situated and who have common characteristics (i.e. different discipline for the same behavior).

**MSDE Response-** Before making any amendments to this section, MSDE should be given the opportunity to consider the meaning of the terms, to develop its methodology and test it.

**Comment-** To delete “long-term suspension” and put “extended suspensions” on the list.

**MSDE Response-** We would not recommend deleting long-term suspensions because a suspension of 4-10 days is still significant.

**Comment-** Add “as defined in COMAR 13A.08.01.11(F)” to make clear that the “comparable” education services to be provided to extended suspension or expelled students are those same minimum education services provided to any student suspended from school as set forth in 13A.08.01.11(F).

**MSDE Response-** It is MSDE staff’s view that the addition is not necessary because it would be unreasonable to conclude that the State Board intended to create two different types of educational services to be provided to students depending on the length of their suspensions. “Minimum educational services” is the minimum expectation. Of course, if school systems can find ways to deliver educational services that exceed the minimum that would be an excellent outcome.

**Comment-** MABE made two technical suggestions. First to rearrange the terms in .11B(8). Second, to change “officer” to examiner in .11C(3)(g).

**MSDE Response-** In our view, those technical changes can be made whenever the regulations are next amended. It is time to move forward.

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

**Comment-** MSEA commended the State Board for its efforts but opposed the adoption of regulations at this time. MSEA cited the lack of “supports, resources, programs, staff, professional development/or time...” The organization suggests waiting until the Best Practices Workgroup and the Student Code of Conduct reports are completed, published, and discussed. MSEA stated:

“For these reasons, MSEA is opposed to the adoption of the proposed discipline 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 suspensions for any reason, which is an indication that administrators are addressing the numbers problem, but not the behavior problems. Finally the published regulations 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. In staff’s view, the current discipline regulations and policies also have unintended and bad consequences which the State Board’s Report chronicled in great detail. It is time to change that part of the education landscape.

It is MSDE’s intent to monitor how these regulations are being implemented. If indeed referrals to juvenile justice increase, criminal charges increase, or informal suspension become a way for schools to manipulate the numbers, MSDE’s data and monitoring will uncover those problems. Staff plans to report data findings about discipline to the Board at least annually, but more frequently if necessary.

As to resources, funding, and training, we think it is important to review the local school systems suspension data to determine the extent of the funding issue by school system and by school. We plan to begin review in 2015. What we learn will be part of our report to the Board. Some initial questions come to mind to guide our thinking:

- Which of the 24 school systems actually need more resources to provide an alternative school setting for suspended/ expelled students? What resources are the local school systems asking for?
- For students suspended for less than ten days, do the local school systems plan to place them in alternative settings or do they plan to use the homework/liaison model? We note Dorchester County has a program established to deliver class work outside the school building for suspended students. (P.77 of Guide). It currently has an enrollment of 15. What resources does it require? What does it cost?
- For each school in each system, what is the data on the number of students suspended for 1-3days or 4-10 days that will show us the anticipated workload for teachers and the liaisons in those schools that use a homework/liaison model.

## IN SUMMARY

170 comments were not related to the proposed disciplinary regulations and thus were not included in the count. These comments were in opposition to the draft guidelines for a student Code of Conduct. 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 Maryland State Board of Education is attempting to mandate that local boards of education use specific disciplinary policy and practices; and
- 23 comments we classified as “other” because of the many and varied reasons for opposition.

## CONCLUSION

The State Board of Education has been carefully examining the negative effects of suspension and expulsion over the past several years. In its February 2012 report, *A Safe School, Successful Students, and A Fair and Equitable Disciplinary Process Go Hand in Hand*, the Board determined that 63 percent of the out-of-school suspensions were for non-violent offenses and the disproportionate impact of school discipline seemed to fall upon minority students and students with disabilities. The disproportionate impact upon the aforementioned student groups was reiterated in a separate report issued by the Board at the July 2012 meeting, entitled *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*.

In addition to the disproportionate impact, research indicates that there is a high correlation between middle school suspension and dropping out of school. According to Cornell et al. (2013) “The frequent use of suspension as a disciplinary practice is predictive of higher dropout rates for both White and Black students, and is not explained by other social demographics or by student attitudes that are associated with breaking school rules.”<sup>1</sup>

There is also a high correlation between students dropping out of school and participation in the criminal justice system (Balfanz, 2007)<sup>2</sup>. According a report prepared for the Maryland General Assembly by the Taskforce to Study High School Dropout Rates of Persons in the Criminal Justice System entitled *School Dropouts and Their Impact on the Criminal Justice System* (2012), Maryland tax payers spend over \$400 million per year in incarceration costs for Maryland dropouts.

In its examination of school discipline policies, the State Board is also concerned about so-called “zero tolerance” practices. According to research conducted by Russ Skiba (2000), “There is no credible evidence that zero tolerance reduces violence or drug abuse by students. Furthermore,

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<sup>1</sup> Dewey Cornell, Anne Gregory, Xiato Fan, Peter Sheras, “How are suspension rates related to dropout rates” The University of Virginia Curry School of Education, Issue 7 (2013).

<sup>2</sup> Robert Balfanz, Lisa Herzog, Douglas MacIver, “Preventing Disengagement and Keeping Students on Path in Urban Middle Grades Schools: Early Identification and Effective Interventions,” The Educational Psychologist, 42 (2007): 223-235

school suspension and expulsion result in a number of negative outcomes for both schools and students.<sup>3</sup>

Though a good part of the public comment on the proposed regulations was positive, opponents expressed concerns about local control and a belief that the Maryland State Board of Education is attempting to mandate a particular disciplinary practice. Funding issues, safety issues, unintended consequences as well as very specific suggestions for changes in the regulations were topics discussed by opponents. We have addressed those comments herein.

In contrast to the real concerns expressed by opponents of the proposed regulations, the Maryland State Board of Education has received positive feedback from supporters, the majority of whom want an end to zero tolerance policies because they are punitive and don't allow for school principal's discretion, want the State Board to enact the regulations because they believe minor misdeeds should be managed in school, and support the regulations because they do not eliminate "local control", and because they reduce school suspensions that unfairly impact minorities and students with disabilities disproportionately.

The fact is, in Maryland we are already in the process of reducing suspensions. Since 2009<sup>4</sup>, When the Maryland State Board of Education began examining disciplinary practices, student suspensions are down from 153,000 events to 92,000 events. The number of unduplicated suspensions has declined from 75,544 to 51,465<sup>5</sup>. Moreover, Maryland's local school systems use of out-of-school suspension is at an all-time low of 5.1%<sup>6</sup>.

The proposed regulations provide structure for long-term suspension, minimum educational services, school arrest, and offer a preview into some of our challenges such as disproportionate/ disparate impact.

It is time to act.

**ACTION:**

I am recommending State Board adoption of proposed amendments to Regulations .11, .12, and .15 and new Regulation .21 under COMAR 13A.08.01 General Regulations.

Attachment

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<sup>3</sup> Russell J. Skiba Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice Policy Research Report #SRS2 August, 2000

<sup>4</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2008-2009, Maryland State Department of Education Report

<sup>5</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2012-2013, Maryland State Department of Education Report

<sup>6</sup> Suspension, Expulsions, and Health Related Exclusions Maryland Public Schools 2012-2013, Maryland State Department of Education Report

# **Proposed Method to Determine Disproportionate/Discrepant Impact**

**COMAR 13A.08.01.21**

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Maryland State Department of Education

May 23, 2016

Karen Salmon, Ph.D., Interim Chief Performance Officer  
Kristina Kyles-Smith, Assistant State Superintendent  
Division of Student, Family, and School Support



# Purpose of Discussion

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- To provide a historical overview of the process to improve school discipline and academic success during years 2008-2014
- To provide an update of the strategies to meet the requirements of Code of Maryland Regulations (COMAR) 13A.08.01.21: *Reducing and Eliminating Disproportionate/Discrepant Impact*

# Historical Timeline of Discipline Reform

## August 2009

- Opinion issued on appeal for an almost year long suspension of 9<sup>th</sup> grade student
- Concern raised about lack of educational services provided during suspensions and expulsions

## December 2009

- State Board approved study to address educational services during suspensions and expulsions

## April 2010

- State Board received comments from stakeholder groups

## August 2010

- State Board accepted report: *Study of Long Term Suspensions and Expulsions*.
- Provided recommendations for amending COMAR

## Aug – Dec 2011

- State Board directed a review of Maryland's discipline policies
- Public comments received
- State educational stakeholders addressed the Board

# Historical Timeline of Discipline Reform Continued...

July 2012

- State Board issued final report: *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*

November 2012

- Proposed regulations published
- Over 800 public comments received

January 2013

- State Board withdrew proposed regulations
- School Discipline Workgroup appointed

June 2013

- Workgroup recommendations accepted by the State Board

December 2013

- Revised regulations published

January 2014

- Approximately 2,400 additional public comments received

January 28, 2014

- Regulations adopted as final

# Background

FOR PUBLIC COMMENT BY MARCH 30, 2012

A Safe School, Successful Students,  
and  
A Fair and Equitable Disciplinary Process  
Go Hand in Hand

A Study of School Discipline Practices  
and  
Proposed Regulatory Changes

Maryland State Board of Education

February 2012

The report summarizes...

- ❑ Negative effects of suspensions and expulsions,
- ❑ Significant disproportionate consequences for students of color and students with disabilities, and
- ❑ Use of exclusionary discipline practices for non-violent offenses.

# Reducing and Eliminating Disproportionate/Discrepant Impact

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- COMAR 13A.08.01.21:
  - 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 process as having a disproportionate on minority students or a discrepant impact on special education students, the local school system shall prepare and present to the State Board a plan to:
    - Reduce 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.

# Measure

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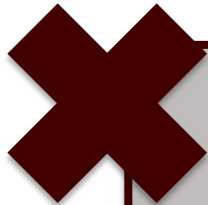
- Investigated several formulae for measuring disproportionality/ discrepancy
  - Composition Index
  - Risk Index
  - Relative Risk Ratio
  - Gap Measure
- Engaged in interdepartmental collaboration
  - Executive Team
  - Division of Curriculum, Assessment and Accountability
  - Division of Special Education/Early Intervention Services
- Consulted with National external experts
- Consulted with Regional Educational Lab
- Stakeholder Feedback (in process)

# Model

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- Developed a conceptual framework of a methodology to:
  - Identify the degree of disproportionality in a given year by school;
  - Identify the overall frequency of suspensions for students who are minority or receive special education services; and
  - Apply same methodology to all students.

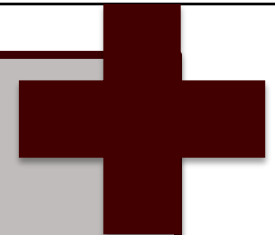
# Model



## Risk Ratio Model

The degree of disproportionality between subgroups within a school

- Compares rate of suspension for each subgroup within a school



## Gap Threshold Model

The degree of disproportionality of a subgroup compared to a State average of each subgroup

- Identifies the frequency at which each subgroup is suspended



# Method

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- Both models will be used to determine the schools with a disproportionate/ discrepant impact
  - Risk Ratio identifies the degree of disproportionality between two distinct groups and is a relative measure
  - Gap Threshold distinguishes schools that have a high risk from those with a low risk

# Next Steps

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- Ongoing Stakeholder Feedback:
  - Public School Superintendents Association of Maryland
  - Maryland Association of Boards of Education
  - Local Directors of Special Education
  - Local Directors of Student Services
  - Principals
  - Local Accountability Coordinators
  - Information Technology contacts
  - Advocates for Children and Youth
  - American Civil Liberties Union
  - Open Society Institute
  - Maryland Disability Law Center
- Present preliminary report to the State Board