



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Karen B. Salmon, Ph.D.

DATE: August 28, 2018

SUBJECT: COMAR 13A.08.01.11 (C)
Disciplinary Actions – Suspension and Expulsion
ADOPTION

PURPOSE:

Request that the State Board adopt COMAR 13A.08.01.11 (C) – *Disciplinary Actions – Suspension and Expulsion*. This regulation came before the State Board in December for permission to publish. Following a question from a local school system, a clarification has been added to the regulation. The local school system requested guidance on the phrase “not more than 5 school days” and its meaning. The Maryland State Department of Education (MSDE) was asked if the phrase meant not more than 5 cumulative schools days in a school year or if the 5 school days referred to each incident. The language in the regulation was revised to state that a student could be suspended for up to “five school days per incident” if there was an imminent threat of serious harm to other students or staff that could not be reduced or eliminated through interventions and supports.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review Committee (AELR) for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the MSDE staff reviews and summarizes the public comments. Thereafter, the MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND:

On July 1, 2017 Senate Bill 651 (2017 Md. Laws, Chap. 843) was enacted by the Maryland General Assembly. This bill prohibits a child enrolled in a public prekindergarten program, as defined by the bill, kindergarten, first or second grade from being suspended or expelled from school, subject to exceptions. The bill allows a student in the specified grades to be expelled if required by federal law. It also allows a student to be suspended for up to five school days per incident if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports. The bill specifies the interventions and supports that must be provided to students who are suspended from prekindergarten, kindergarten, first grade, or second grade and to any other students in those grades who are disruptive or commit an act that would otherwise be grounds for suspension.

EXECUTIVE SUMMARY:

Senate Bill 651 requires that on or before May 1, 2018, the Maryland State Department of Education shall adopt regulations to carry out requirements of the law.

The provisions of the law prohibit suspension or expulsion for students in prekindergarten, kindergarten, first, or second grade except as provided in §C(1)(b) of this regulation. The law also lists specific interventions and steps that school personnel will take before implementing a suspension or expulsion. The regulations reflect the provisions of the law and clarify definitions. A guidance document for local school systems is in development through consultation with a stakeholder group.

The State Board reviewed the regulations and granted permission to publish at the March 20, State Board Meeting. The regulation was published in the Maryland Register from May 11, 2018 through June 11, 2018. During the public comment period, the MSDE received three comments from Disability Rights Maryland (DRM).

Comments from DRM were as follows:

1. The amount of time a student may be removed from a classroom pending completion of a mental health consultation -- MSDE must establish a limit on the amount of time a student may be out of class awaiting the completion of a mental health consultation and, ultimately, a suspension determination. Without limitations on the time students may be removed from the class during this process, students may be subjected to a de facto in-school suspension. Students need to be removed from class for the shortest time practicable, limiting the amount of missed instructional time.

MSDE Response: Local school systems are responsible for developing procedures to implement the regulation and are expected to return students to class in the shortest amount of time practicable. The availability of resources within a school system to conduct and complete mental health consultations may vary and may have an impact on the amount of time in which a student returns to class. The MSDE will develop guidelines to assist school systems implementing procedures to ensure that mental health consultations occur in a timely manner.

2. Documentation of the mental health consultation and determination of imminent threat of serious harm -- MSDE must mandate that the mental health consultation and determination of whether a student is an imminent threat of serious harm that cannot be reduced or eliminated through interventions and supports be documented. This documentation should be provided to the student and his family, and a copy of the documentation should be kept in the student's disciplinary records. The documentation is important to ensuring the LEA has followed legal requirements, and also puts the family on notice of any behavioral issues – regardless of whether the behavior results in a removal.

MSDE Response: Regarding documentation of the mental health consultation and determination of imminent threat of serious harm, The Maryland Safe to Learn Act of 2018 (Chapter 30 of the Education Article, Annotated Code of Maryland) mandates that the MSDE develop a model policy for the establishment of an assessment team or teams in each local school system. The model policy must contain mechanisms for the assessment of student behavior and interventions if student behavior poses a threat to the safety of an individual attending or working in a public school. The development of the model policy presents an opportunity to address specific practices for documentation and communication with parents.

3. The appeal process for prekindergarten through second grade suspensions -- COMAR regulations currently provide an appeal process for extended suspensions and expulsions; however, there is no appeal process for suspensions of five days or fewer. MSDE should ensure that there is a consistent appeal process for families disputing the suspension of their prekindergartner, kindergartner, first grader or second grader.

MSDE Response: Each LEA has their own appeal process which can be used for suspensions less than 10 days.

Upon careful review of the submitted comments, the MSDE recommends no changes to COMAR 13A.08.01.11 (C) – *Disciplinary Actions – Suspension and Expulsion* at this time.

ACTION:

Request that the State Board adopt COMAR 13A.08.01.11 (C) – *Disciplinary Actions – Suspension and Expulsion*.

District 2 — District 3	(text unchanged)
District 4 Baltimore Harford	SHA District Office 320 West Warren Road Hunt Valley, MD 21030 [(410) 229-2381] (410) 229-2300
District 5 Anne Arundel Calvert Charles Saint Mary's	SHA District Office 138 Defense Highway Annapolis, MD 21401 [(410) 841-1019] (410) 841-1000 or (410) 841-5450
District 6 Allegany Garrett Washington	SHA District Office 1251 Vocke Rd. LaVale, MD 21502 [(301) 624-8141] 301-624-8400
District 7 Carroll Frederick Howard	SHA District Office P. O. Box 308 5111 Buckeystown Pike Frederick, MD 21704 [(301) 624-8141] 301-624-8100

E. Application. Applications shall be submitted in duplicate on forms [provided by the Engineering Access Permits Division] obtained from the Administration's website found at www.marylandroads.com or by other methods as determined acceptable by the Administration.

F. Plans.

(1) All applicants shall submit detailed plans for review, indicating the true relationship between their planned improvements and the Administration's existing right-of-way, including easements, drainage facilities, and pavement. Plans shall be prepared by a registered land surveyor or registered professional engineer [unless the requirement is waived by the Engineering Access Permits Division]. Plans shall show dimensions, existing and proposed contours, storm drain facilities, structures, parking, interior traffic patterns, typical section through the State Highway Administration right-of-way, proposed curbs, sidewalk ramps, proposed widenings, etc.

(2) — (6) (text unchanged)

[G. Engineering Fee. In connection with the processing of applications, an engineering fee may be charged for each point of access and offsite roadway improvement.]

[H.] G. Performance Surety. In order to ensure complete and satisfactory compliance with the terms and specifications of the entrance permit, the permittee shall be required to submit a performance bond, letter of credit, or certified check, in a form acceptable to the Administration. The amount of the bond, check, or letter of credit shall be the next highest even thousand dollar above 150 percent of the cost estimate for the construction. This estimate must be acceptable to the SHA. If a bond is submitted, the SHA shall be designated as the obligee and the permittee as principal. In instances when a certified check is submitted, the check shall be made payable to the State Highway Administration and include the permittee's federal identification number.

[I.] H. (text unchanged)

[J.] I. Inspection Cost. At the discretion of the Administration, a State highway construction inspector may be assigned full-time to inspect the work stipulated in the permit. All projects shall be inspected by the Administration. [The cost of this inspection shall be the responsibility of the permittee and be submitted before the permit is issued. If the cost, including any necessary laboratory work, is expected to exceed \$5,000, it shall be paid in advance.] *The Administration may require construction inspection reimbursement for any permit with over \$50,000 in estimated neat construction*

costs. This [cost] reimbursement shall be calculated on the base pay of the assigned employee, plus overhead, and all administrative and general expenses.

[K.] J.—[L.] K. (text unchanged)

.06 General Information.

[A. A. It is highly recommended that all tentative plans for commercial sites be reviewed with Administration representatives before the applicant develops his completed plans. However, the applicant shall furnish the Administration an authorization from the owner, or proof of ownership, before receiving information regarding State Highway Administration future highway plans. This is in accordance with Transportation Article, §8-322(b), Annotated Code of Maryland, and opinions of the Attorney General relative to it.]

[B.] A.—[G.] F. (text unchanged)

CHRISTINE NIZER
Administrator
Motor Vehicle Administration

**Title 13A
STATE BOARD OF
EDUCATION**

Subtitle 08 STUDENTS

13A.08.01 General Regulations

Authority: Education Article, §7-305.1, Annotated Code of Maryland

Notice of Proposed Action

[18-120-P]

The Maryland State Board of Education proposes to amend Regulation .11 under **COMAR 13A.08.01 General Regulations**. This action was considered at the March 20, 2018, State Board of Education meeting.

Statement of Purpose

The purpose of this action is to prohibit suspension or expulsion of students in prekindergarten, kindergarten, first grade, or second grade, with certain exceptions, per State law.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Walter J. Sallee, Director, Student Services and Strategic Planning, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0417 (TTY 410-333-6442), or email to walter.sallee@maryland.gov, or fax to 410-333-0880. Comments will be accepted through June 11, 2018. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on 9 a.m., July 24, 2018, at 200 West Baltimore Street, Baltimore, Maryland 21201.

.11 Disciplinary Action.

A. (text unchanged)
 B. Terms Defined. In this regulation, the following terms have the meanings indicated:

(1)—(6) (text unchanged)
 (7) “Public prekindergarten program” means:
 (a) Any publicly funded prekindergarten program established under Education Article, §7-101.1, Annotated Code of Maryland; or

(b) Any qualified vendor of prekindergarten services as defined in Education Article, §7-101.2, Annotated Code of Maryland.

(8) “Restorative practices” means practices conducted in a whole-school ethos or culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting and that:

- (a) Are conducted by trained staff;
- (b) Focus on repairing the harm to the community through dialogue that emphasizes individual accountability; and
- (c) Help build a sense of belonging, safety, and social responsibility in the school community.

[(7)] (9)—[(8)] (10) (text unchanged)

C. Suspension and Expulsion.

(1) Prohibition.
 (a) Except as provided in §C(1)(b) of this regulation, a student enrolled in a public prekindergarten program, kindergarten, first grade, or second grade may not be suspended or expelled from school.

(b) A student described under §C(1)(a) of this regulation may only be:

- (i) Expelled from school if required by federal law; or
- (ii) Suspended for not more than 5 school days per incident if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.

(c) The principal or school administration shall promptly contact the parent or guardian of a student suspended or expelled under §C(1)(b) of this regulation.

[(1)] (2) (text unchanged)

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

(a) In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal, *except as provided in §C(1) of this regulation.*

(b)—(e) (text unchanged)

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

(a) At the request of a principal, a local superintendent or the designated representative may suspend a student for more than 10 school days or expel the student, *except as provided in §C(1) of this regulation.*

(b)—(l) (text unchanged)

[(4)] (5)—[(8)] (9) (text unchanged)

D.—G. (text unchanged)

H. Intervention and Support.

(1) School personnel shall provide intervention and support to address the student’s behavior if the student is:

(a) Suspended under §C(1)(b) of this regulation; or

(b) Enrolled in a public prekindergarten program, kindergarten, first grade, or second grade and:

- (i) Is disruptive to the school environment; or
- (ii) Commits an act that would be considered an offense subject to suspension but for the student’s grade.

(2) Intervention and support provided under §H(1) of this regulation includes:

- (a) Positive behavior interventions and supports;
- (b) A behavior intervention plan;
- (c) A referral to a student support team;
- (d) A referral to an individualized education program team;

and

- (e) A referral for appropriate community-based services.
- (3) The school system, to the best of its ability, shall remedy the impact of a student’s behavior on school climate through appropriate intervention methods including restorative practices.

KAREN B. SALMON, Ph.D.
 State Superintendent of Schools

Title 13B
MARYLAND HIGHER
EDUCATION COMMISSION

Subtitle 08 FINANCIAL AID

13B.08.19 Institutional Audit Requirements for Educational Excellence Awards

Authority: Education Article, §§11-105(u), 18-204(c), and 18-307, Annotated Code of Maryland

Notice of Proposed Action

[18-127-P]

The Maryland Higher Education Commission proposes to adopt new Regulations .01—.06 under a new chapter, **COMAR 13B.08.19 Institutional Audit Requirements for Educational Excellence Awards**. This action was considered at a public meeting of the Commission held on December 13, 2017.

Statement of Purpose

The purpose of this action is to adopt new regulations to require institutional audits of financial aid awards made under the Howard P. Rawlings Program of Educational Excellence Awards.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Institutions of higher education will audit their performance in awarding Educational Excellence Awards. This will result in costs to the institution, but may result in savings to the State due to the return to the State of any improperly granted awards.

Revenue (R+/R-)

Expenditure

II. Types of Economic Impact. (E+/E-)

Magnitude

A. On issuing agency:

Return of improperly granted awards (R+)

Unknown