

TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., State Superintendent of Schools 

DATE: July 23, 2024

SUBJECT: COMAR 13A.08.01.17
School Use of Reportable Offenses
Permission to Adopt

Purpose

The purpose of this item is to request permission to adopt amendments to regulation COMAR 13A.08.01.17 *School Use of Reportable Offenses*. The regulation was published in the Maryland Register from October 6, 2023 to November 6, 2023. Comments were received from three different entities. The Maryland State Department of Education (MSDE) recommended three revisions to the regulation which were deemed substantive by the Attorney General's Office. The State Board granted MSDE permission to re-publish the amended regulation; the regulation was again published in the Maryland Register from May 31, 2024 to July 1, 2024. Comments were received from one entity. MSDE does not recommend any further revisions and therefore requests permission to adopt the regulation.

Regulation Promulgation Process

Under Maryland law, a state agency, such as the State Board of Education (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 (AELR) Committee 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, MSDE staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board 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/Historical Perspective

Under Maryland law, when a student is arrested for certain offenses, the law enforcement agency making the arrest shall notify the student's local superintendent, the school principal, and for a school that has a school security officer, the school security officer of the arrest and the charges within 24 hours of the arrest, or as soon as practicable. The offenses which necessitate this notification are known as "reportable

offenses.” Reportable offenses are those offenses that occur off school premises, did not occur at an event sponsored by the school, and are serious criminal offenses. Reportable offenses are dictated by statute and include murder, arson, armed carjacking, sexual offenses, among other serious offenses. Offenses that are related to the student’s membership in a criminal organization must also be reported. *See* Md. Code, Education § 7-303.

The intent of the reportable offense law is not to “punish” the student, but instead to provide the local education agency (LEA) with information that may impact the safety dynamics within the school community. This is different from school discipline where the LEA is using positive and punitive measures to correct inappropriate behavior in school. The reportable offense law governs the exchange and use of arrest information regarding serious and criminal offenses for the purpose of educational programming and for the maintenance of a safe and secure school environment.

Proper implementation of State law and regulations governing reportable offenses can be difficult. LEAs must balance the educational rights and needs of the individual student charged with a reportable offense alongside the overall safety of the students and staff, often with very limited information about the circumstances of the offense. As the LEA is provided with information shortly after arrest, there often has not been a hearing by the adult or juvenile court to determine the student’s innocence or guilt, and students are cautious in sharing information with the LEA as that information may be used against them in court. This can lead to LEAs making decisions to remove a student from their regular school program out of an abundance of caution, even when it may not always be necessary to maintain the safety and security of a school.

In 2022, the Maryland General Assembly expressed concern about the purported misuse or overuse of school removals for students arrested for a reportable offense. In response, the General Assembly passed House Bill (HB) 146: *Education – Reportable Offenses, Student Discipline, and School Disruptions – Presence of an Attorney and Reporting* (2022 Md. Laws, Chap. 742). In general, the bill:

1. Amends the definition of a reportable offense in Md. Code, Education § 7-303 to clarify that the offense took place off school property and did not occur at an event sponsored by the school;
2. Requires MSDE to submit a report to the General Assembly by December 30th of each year regarding certain information about reportable offenses at the LEA level;
3. Requires the LEA to submit all necessary information to MSDE to comply with reporting requirements;
4. Requires the LEA to invite the student’s attorney, if the student has an attorney, to meetings regarding the removal of the student from the regular school program, including the manifestation determination review for students with disabilities;
5. Applies the provisions of Md. Code, Education § 7-305 (*Suspensions and Expulsions*) to a removal due to a reportable offense; and
6. Requires the LEA to comply with all the requirements of the Individuals with Disabilities Education Act (IDEA) including manifestation determination reviews, when removing a student due to a reportable offense.

While MSDE informed LEAs of the changes to the law, three legal advocacy organizations – Maryland Office of the Public Defender, the Public Justice Center, and Disability Rights Maryland – reached out to MSDE with concerns about the implementation of the law as it related to their clients. MSDE met virtually with these organizations on two occasions (July 8, 2022, and June 29, 2023) to learn more about the organizations’ experiences in representing their clients and used this information to help inform next steps. The legal advocacy organizations addressed concerns about the LEAs’ understanding of the definition of reportable offenses; data collection by the LEAs; implementation of the requirements to invite the student’s attorney, if the family has an attorney, to meetings to discuss any removal of the student from the school for a reportable offense; and application of requirements under IDEA. MSDE reviewed written documentation submitted by the organizations. MSDE also conducted outreach to the LEAs to learn more about their reportable offenses policies. This information was considered when MSDE drafted the proposed regulation.

In addition to proposing updated regulations to the State Board, MSDE will be updating existing guidance, such as the *Model Policy Bulletin on School Use of Reportable Offenses*. MSDE also held three technical assistance sessions for the LEAs, followed by five open office hours to assist the LEAs in understanding reporting requirements under the law. MSDE will continue to hold these sessions to provide a consistent, scheduled opportunity to meet with MSDE staff for clarification and feedback on reportable offenses.

Executive Summary

MSDE reviewed the regulation and made the proposed amendments with two goals in mind. First, the proposed regulation was amended to align with the statutory language of Md. Code, Educ. § 7-303 and 305. Second, and most importantly, MSDE thoughtfully considered how to provide enough clarity such that students facing community-based charges are not inappropriately removed from their educational program. In July 2023, MSDE recommended the following amendments to the regulation:

A. *Definitions.*

MSDE updated the language of criminal “gang” to “organization” to align with the statute. MSDE also updated the definition of reportable offense to be consistent with the statute. This change clarifies that offenses occur off school property and not at school-sponsored events. It also updates the list of reportable offenses to match the statute.

MSDE also proposed a definition for “regular school program,” which means “the courses, classes, and related services the student is enrolled in by a local school system at the time of the student’s reportable offense.” MSDE notes that while the language of “regular school program” also exists in the school discipline regulations, it is not the intent of MSDE to change the meaning of “regular school program” in that regulation, as defined by State Board appeals.

B. *Notification by Law Enforcement.*

In alignment with the statute, MSDE added language clarifying how law enforcement will inform the LEA of the reportable offense. MSDE will consider ways to work with partners to communicate expectations with local law enforcement agencies around the State.

C. Safety Determination Procedures and Plan.

MSDE drafted updated procedures that require the school principal, with appropriate staff, to determine if the student's presence presents a risk to the safety of other students and staff. If there is a safety concern, then the principal, with the input of the parent, will develop a safety plan. If the student has an attorney, the attorney must be invited to any meeting between the parent or guardian and the principal related to the safety plan.

D. Removal from the Regular School Program.

Consistent with new statutory requirements, proposed procedures require that if the school principal determines that removal from the regular school program is necessary for the maintenance of safety, the principal shall inform the local superintendent. The local superintendent will conduct a meeting with the parent or guardian and student and make a determination as to whether the student is an imminent threat of serious harm to other students or staff. The procedures apply a 10 school day timeline for this process, as well as instituting appeal provisions.

E. Review Procedures.

MSDE changed the review procedures to require that at a minimum any safety plan is reviewed every 45 school days, or when the LEA is notified of the disposition of the case. This review must include the input of the parent or guardian. MSDE also added appeal provisions.

F. Confidentiality of Information and Retention of Documents.

MSDE broke out existing general provisions into separate sections for ease of the reader. The confidentiality provisions and retention of documents are the same as the current regulations.

G. Students with Disabilities.

MSDE broke out existing general provisions into separate sections for ease of the reader. There is now a section focused on obligations to students with disabilities. This incorporates existing language and adds a new provision from the statute applying the manifestation determination review process to changes in placement resulting from a reportable offense removal.

H. Reportable Offense Involving Rape or a Sexual Assault.

MSDE broke out existing general provisions into separate sections for ease of the reader. This section contains the current language on sexual offenses and physical proximity to alleged victims. MSDE also incorporated a new provision from the Maryland Sexual Offender Registry statute that provides for alternative educational programming for student registrants.

I. General Provisions.

MSDE kept current language about the need to designate school security officers in public schools with students enrolled in grades six through 12. It also kept current language stating LEAs may not charge the student or parent for alternative educational programming or related services.

J. Data Collection.

MSDE added a new section to address data collection requirements from the statute. This data will be shared annually from the LEA to MSDE. MSDE will use this data to comply with statutorily required reporting to the Governor and General Assembly, consistent with federal and State privacy laws.

Public Comment

The proposed amendments to COMAR 13A.08.01.17 *School Use of Reportable Offenses* were brought before the State Board on July 25, 2023, requesting permission to publish. The State Board approved the request, and the regulation was posted in the Maryland Register for public comment from October 6, 2023 to November 6, 2023. MSDE received comments from three entities: the Maryland Coalition to Reform School Discipline, the Maryland Suspension Representation Project, and Anne Arundel County Public Schools. The comments included suggested revisions in the following areas:

- Definitions included in the proposed regulation;
- Safety determination, appeal, and review procedures;
- Schools' obligations under specific portions of the regulation; and
- Data collection.

All comments were reviewed and MSDE recommended the following three revisions to the amended regulation:

- **13A.08.01.17(A) and 13A.01.17(D)(1)**: Adding language to clarify that a student may not be removed solely on the basis of the reportable offense charge;
- **13A.08.01.17(D)(5)**: Amending the language to require LEAs to provide students' parents/guardians notice of appeal rights and procedures. In guidance, MSDE will provide a document to LEAs with appeal language; and
- **13A.08.01.17(G)**: Revising this provision to make clear that students with Section 504 plans are also entitled to manifestation determination reviews.

The Office of the Attorney General determined the changes to be substantive, and therefore, MSDE requested—and was granted—permission to re-publish the regulation.

The amended regulation was re-published in the Maryland Register from May 31, 2024 to July 1, 2024. MSDE received comments from the Maryland Suspension Representation Project and the Maryland Coalition to Reform School Discipline. All comments have been reviewed and are included in the attached Public Comment Summary document with MSDE's responses and recommendations. A copy of the letter received regarding the regulation is also attached. MSDE does not recommend any further amendments to the regulation at this time.

Action

MSDE requests permission to adopt amended regulation COMAR 13A.08.01.17 *School Use of Reportable Offenses*.

Attachments

COMAR 13A.08.01.17 *School Use of Reportable Offenses*

Public Comment Summary

Letter from the Maryland Coalition to Reform School Discipline and the Maryland Suspension Representation Project

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-101.1, 7-301, 7-301.1, 7-303—7-305, 7-305.1, 7-307, 7-308, and 8-404, Annotated Code of Maryland; Ch. 273, Acts of 2016; Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.17 School Use of Reportable Offenses.

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

(1) "Appropriate educational programming" means a regular or alternative education program that allows a student the opportunity to continue the student's education within the public school system and, if in secondary school, the opportunity to receive credit.

(2) "Criminal [gang] organization" has the meaning stated in Criminal Law Article, §9-801, Annotated Code of Maryland.

(3) "Law enforcement agency" means the law enforcement agencies listed in Public Safety Article, §3-101(e), Annotated Code of Maryland.

(4) "Local school system" means the schools and school programs under the supervision of the local superintendent.

(5) "Local superintendent" means the county superintendent, for the county in which a student is enrolled, or a designee of the superintendent, who is an administrator.

(6) "Regular school program" means the courses, classes, and related services the student is enrolled in by a local school system at the time of the student's reportable offense.

[6](7) "Related services" means any supportive intervention that is available through the local school system.

[7](8) "Reportable offense" means an offense that:

(a) A crime of violence, as defined in Criminal Law Article, §14-101, Annotated Code of Maryland;

(b) Any of the offenses enumerated in Courts and Judicial Proceedings Article, §3-8A-03(d)(4), Annotated Code of Maryland;

(c) A violation of Criminal Law Article §4-101, 4-102, 4-203 or 4-204, Annotated Code of Maryland;

(d) A violation of Criminal Law Article, §5-602—5-609, 5-612—5-614, 5-617, 5-618, 5-627 or 5-628, Annotated Code of Maryland;

(e) A violation of Criminal Law Article, §4-503, 9-504 or 9-505, Annotated Code of Maryland;

(f) A violation of Criminal Law Article §6-102, 6-103, 6-104 or 6-105, Annotated Code of Maryland;

(g) A violation of Criminal Law Article §9-802 or 9-803, Annotated Code of Maryland;

(h) A violation of Criminal Law Article §3-203, Annotated Code of Maryland;

(i) A violation of Criminal Law Article §6-301, Annotated Code of Maryland;

(j) A violation of Criminal Law Article §9-302, 9-303 or 9-305, Annotated Code of Maryland;

(k) A violation of Criminal Law Article §7-105, Annotated Code of Maryland; or

(l) An offense related to membership in a criminal gang.]

(a) Occurred off school premises;

(b) Did not occur at an event sponsored by the school; and

(c) Involved any of the following:

(i) A crime of violence, as defined in § 14–101 of the Criminal Law Article;

(ii) Any of the offenses enumerated in § 3–8A–03(e)(4) of the Courts Article;

(iii) A violation of § 4–101, § 4–102, § 4–203, or § 4–204 of the Criminal Law Article;

(iv) A violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–606, § 5–607, § 5–608, § 5–608.1, § 5–609, § 5–612, § 5–613, § 5–614, § 5–617, § 5–618, § 5–627, or § 5–628 of the Criminal Law Article;

(v) A violation of § 4–503, § 9–504, or § 9–505 of the Criminal Law Article;

(vi) A violation of § 6–102, § 6–103, § 6–104, or § 6–105 of the Criminal Law Article;

(vii) A violation of § 9–802 or § 9–803 of the Criminal Law Article;

(viii) A violation of § 3–203 of the Criminal Law Article;

(ix) A violation of § 6–301 of the Criminal Law Article;

(x) A violation of § 9–302, § 9–303, or § 9–305 of the Criminal Law Article;

(xi) A violation of § 7–105 of the Criminal Law Article;

(xii) A violation of § 6–202 of the Criminal Law Article; or

(xiii) A violation of § 10–606 of the Criminal Law Article.

[8](9) "School principal" means the principal of the public or nonpublic school in which a student is enrolled, or a designee of the principal, who is an administrator.

[9](10) "School security officer" means an individual designated to maintain the security and safety of a school.

(a) School security officer includes:

(i) A school principal or other school administrator;

(ii) A law enforcement officer; or

(iii) Other individual employed by a local school system or a local government who is designated by the [county] local superintendent or a school principal to help maintain the security and safety of a school.

(b) School security officer does not include:

- (i) A teacher;
- (ii) A school counselor;
- (iii) A school psychologist; or
- (iv) A school social worker.

[10](11) "Student" means an individual enrolled in a public school system in the State who is 5 years old or older and younger than 22 years old.

(12) "Student with a disability" means a student eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

[B. Administrative Procedures.

(1) Promptly, upon receipt of information from a law enforcement agency of an arrest of a student for a reportable offense, the local superintendent shall provide the school principal of the school in which the student is enrolled with the arrest information, including the charges. If the student who has been arrested is an identified student with disabilities who has been enrolled by the public school system in a nonpublic school program, the local superintendent shall provide the principal of the nonpublic school with the arrest information, including the charges.

(2) The school principal with appropriate staff members shall immediately develop a plan that addresses appropriate educational programming and related services for the student and that maintains a safe and secure school environment for all students and school personnel. The school principal shall request that the student's parent or guardian:

- (a) Participate in the development of the plan; and
- (b) Submit information that is relevant to developing the plan.

(3) If the plan results in a change to the student's educational program, the school principal shall promptly schedule a conference to inform the parent or guardian of the plan. The plan shall be implemented not later than 5 school days after receipt of the arrest information.

(4) The school principal and appropriate staff shall review the plan and the student's status and make adjustments as appropriate:

- (a) Immediately upon notification from the State's Attorney of the disposition of the reportable offense; or
- (b) Pending notification from the State's Attorney, at a minimum on a quarterly basis.

(5) The parent or guardian shall be informed of any adjustments to the plan.

(6) Each local school system shall provide a review process to resolve any disagreement that arises in the implementation of this regulation.]

B. Notification by Law Enforcement. If a student is arrested for a reportable offense or an offense that is related to the student's membership in a criminal organization, the law enforcement agency making the arrest:

(1) *Shall notify the following individuals of the arrest and the charges within 24 hours of the arrest or as soon as practicable:*

- (a) *The local superintendent;*
 - (b) *The school principal; and*
 - (c) *For a school that has a school security officer, the school security officer; and*
- (2) *May notify the State's Attorney of the arrest and charges.*

[C. General Provisions.

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §C(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction, an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal may transmit the information obtained under this regulation as a confidential file to the local superintendent of another public school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

(3) A local superintendent or school principal who transmits information about a student under §C(2) of this regulation shall include in the confidential transmittal information on any educational programming and related services provided to the student.

(4) A fee may not be charged to the student or parent or guardian for the alternative educational programming or related services that are developed for the student.

(5) Notice of the reportable offense charge alone may not be the basis for suspension or expulsion of the student. However, nothing in this regulation is intended to limit the manner in which a school obtains information or uses information obtained by any lawful means other than through notice of the arrest.

(6) Appropriate educational programming and related services shall be provided to an identified student with disabilities in accordance with the Individuals with Disabilities Education Act and State special education law and regulations, including COMAR 13A.05.01.

(7) The reportable offense information obtained by a local superintendent, school principal or school security officer shall be:

(a) Transmitted only to school personnel of the school in which the student is enrolled as necessary to carry out the purposes set forth in this regulation; and

(b) Destroyed when the first of the following occurs:

- (i) The student graduates;
- (ii) The student otherwise permanently leaves school;
- (iii) The student turns 22 years old;
- (iv) The criminal case involving the reportable offense is dismissed;
- (v) The student is found not guilty of the reportable offense; or
- (vi) The student pleads to a lesser offense that is not a reportable offense.

(8) Reportable offense involving rape or a sexual offense.

(a) Except as otherwise provided in paragraph §C(8)(b) of this regulation, the local superintendent and the school principal shall consider prohibiting a student who is arrested for a reportable offense involving rape or a sexual offense from attending the same school or riding on the same school bus as the alleged victim of the reportable offense if such action is necessary or appropriate to protect the physical or psychological well-being of the alleged victim.

(b) If a student is arrested for a reportable offense involving rape or a sexual offense and is convicted of or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.

(9) Nothing in this regulation is intended to limit the manner in which a local school obtains information or uses information obtained by any lawful means other than that set forth in §C(2) of this regulation.

(10) Each public school that enrolls students in grades six through 12 in the State shall designate at least one school security officer.]

C. Safety Determination Procedures and Plan.

(1) Promptly, upon receipt of information from a law enforcement agency or another verified source of an arrest of a student for a reportable offense:

(a) The local superintendent shall provide the school principal of the school in which the student is enrolled with the arrest information, including the charges.

(b) If the student who has been arrested is an identified student with disabilities who has been enrolled by the public school system in a nonpublic school program, the local superintendent shall provide the principal of the nonpublic school with the arrest information, including the charges.

(2) The school principal, in consultation with appropriate staff members, shall consider whether the student's presence presents a risk to the safety of other students and staff.

(3) If the school principal believes the student presents a safety risk, the school principal shall immediately develop a plan that:

(a) Addresses appropriate educational programming and related services for the student; and

(b) Maintains a safe and secure school environment for all students and staff.

(4) The school principal shall request that the student's parent or guardian:

(a) Participate in the development of the plan; and

(b) Submit information that is relevant to developing the plan.

(5) If the student has an attorney, the school principal shall invite the student's attorney to participate in any meeting with the student's parent or guardian to discuss the plan.

D. Removal from regular school program.

(1) A student may not be removed from the student's regular school program unless the student presents an imminent threat of serious harm to other students or staff.

(2) Notice of the arrest for a reportable offense may not be the sole basis for a change in the student's regular school program.

(3) If the plan developed in paragraph C(3) of this regulation includes removal of the student from the student's regular school program, the school principal shall promptly inform the local superintendent in writing.

(4) Upon receipt of a written report from a school principal requesting a removal from the regular school program, and no later than ten school days from the notification of the reportable offense, the local superintendent shall:

(a) Promptly hold a conference with the student, the student's parent or guardian, and if the student has an attorney, the student's attorney; and

(b) Make a determination as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.

[4](5) Implementation of the plan must occur by the tenth school day following notification of the reportable offense.

[5](6) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days after the receipt of the written determination and notice of the appeal rights.

[6](7) If an appeal is filed, the local board or its designated committee or hearing officer shall have 45 calendar days from the date the appeal was received to hear the appeal and issue a decision, as follows:

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

(b) This timeline shall also apply if the local board elects to use a hearing examiner.

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

[8](9) The student or the student's parent, guardian, or representative:

(a) Shall be provided with the school system's witness list and a copy of the documents that the school system will present at the hearing no later than five business days before the hearing; and

(b) May bring counsel and witnesses to the hearing.

(10) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the local board.

(11) The appeal to the local board does not stay the decision of the local superintendent.

(12) The decision of the local board is final.

E. Review Procedures.

(1) With the input of the school principal, appropriate staff, the student, and the student's parent or guardian, the local superintendent shall review the plan and the student's status and make adjustments as appropriate:

(a) Immediately upon notification from the State's Attorney of the disposition of the reportable offense; or

(b) Pending notification from the State's Attorney, at a minimum every 45 school days.

(2) If the student has an attorney, the local superintendent shall invite the student's attorney to participate in any meeting with the student or the student's parent or guardian to discuss the review of the plan.

(3) The student and the student's parent or guardian shall be provided in writing with the local superintendent's review decision.

(4) If the student or the student's parent or guardian disagrees with the local superintendent's review decision, the student or the student's parent or guardian may appeal the decision consistent with paragraphs §D(5)-(11) of this regulation.

F. Confidentiality of Information and Retention of Documents.

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §F(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction, an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal may transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

(3) A local superintendent or school principal who transmits information about a student under §F(2) of this regulation shall include in the confidential transmittal information on any educational programming and related services provided to the student.

(4) Nothing in this regulation is intended to limit the manner in which a local school obtains information or uses information obtained by any lawful means.

(5) The reportable offense information obtained by a local superintendent, school principal, or school security officer shall be:

(a) Transmitted only to school personnel of the school in which the student is enrolled and as necessary to carry out the purposes set forth in this regulation; and

(b) Destroyed when the first of the following occurs:

(i) The student graduates;

(ii) The student otherwise permanently leaves school;

(iii) The student turns 22 years old;

(iv) The criminal case involving the reportable offense is dismissed;

(v) The student is found not guilty of the reportable offense; or

(vi) The student pleads to a lesser offense that is not a reportable offense.

G. Students with Disabilities

(1) Appropriate educational programming and related services shall be provided to an identified student with a disability in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and State special education law and regulations, including COMAR 13A.05.01.

(2) Removal of a student with a disability resulting in a change of placement [under COMAR 13A.08.03.05] shall be conducted in conformance with the requirements of the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and State special education law and regulations, including requirements related to a manifestation determination.

(3) If the student has an attorney, the attorney shall be invited to attend any meeting to discuss the manifestation determination.

H. Reportable Offense Involving Rape or a Sexual Offense.

(1) Except as otherwise provided in paragraph § H(2) of this regulation, the local superintendent and the school principal shall consider prohibiting a student who is arrested for a reportable offense involving rape or a sexual offense from attending the same school or riding on the same school bus as the alleged victim of the reportable offense if such action is necessary or appropriate to protect the physical or psychological well-being of the alleged victim.

(2) If a student is arrested for a reportable offense involving rape or a sexual offense and is convicted of or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.

(3) Consistent with Criminal Procedure Article, § 11-722(e), Annotated Code of Maryland, a student who is required to register with the Maryland Sex Offender Registry may receive an education in accordance with State law in any of the following locations:

- (a) A location other than a public or nonpublic elementary or secondary school, including by:*
 - (i) Participating in the Home and Hospital Teaching Program for Students; or*
 - (ii) Participating in or attending a program approved by a local board;*
- (b) A Regional Institute for Children and Adolescents; or*
- (c) A nonpublic educational program as provided by § 8-406 of the Education Article if:*
 - (i) The registrant has notified an agent or employee of the nonpublic educational program that the registrant is required to register under this subtitle; and*
 - (ii) The registrant has been given specific written permission by an agent or employee of the nonpublic educational program to attend the nonpublic educational program.*

I. General Provisions

(1) Each public school that enrolls students in grades six through 12 in the State shall designate at least one school security officer.

(2) A fee may not be charged to the student or parent or guardian for the alternative educational programming or related services that are developed for the student.

J. Data Collection.

(1) Each year the local school system shall provide to the Department the following information for each reportable offense for which the local school received information under this regulation:

- (a) The nature of the reportable offense;*
- (b) Verification that the offense occurred off school premises;*
- (c) Action taken by the local school and local board after being notified of the reportable offense;*
- (d) The race, ethnicity, gender, and disability status of the student arrested for the reportable offense;*
- (e) The grade of the student arrested for the reportable offense;*
- (f) The regular school program of the student arrested for the reportable offense;*
- (g) Whether the student's regular school program was altered as a result of the reportable offense;*
- (h) If the student was removed from the student's regular school program as a result of the reportable offense:*
 - (i) The amount of time during which the student was removed; and*
 - (ii) The student's placement and educational programming during the period of removal; and*
- (i) If removed from the student's regular school program, the student's academic performance during the time period the student was removed, including attendance, grades, and standardized test scores, and any additional disciplinary actions.*

DR. CAREY WRIGHT
Interim State Superintendent of Schools

COMAR 13A.08.01.17 School Use of Reportable Offenses

Reportable offenses are serious criminal offenses that occur off school premises and not at an event sponsored by the school. Reportable offenses are dictated by statute and include serious offenses such as murder, arson, armed carjacking, and sexual assault.

Timeline Summary

July 25, 2023 - **COMAR 13A.08.01.17 School Use of Reportable Offenses** presented to the State Board.

October 6, 2023, to November 6, 2023 - Amendments to **COMAR 13A.08.01.17 School Use of Reportable Offenses** were published in the Maryland Register.

March 26, 2024 – Comments on **COMAR 13A.08.01.17 School Use of Reportable Offenses** were brought back to the State Board with a request to make three additional amendments based on comments and republish in the Maryland Register. The State Board approved to republish.

May 31, 2024, to July 1, 2024 – Three new amendments to **COMAR 13A.08.01.17 School Use of Reportable Offenses** were published in the Maryland Register.

July 23, 2024 – There was one comment submitted regarding amendments to **COMAR 13A.08.01.17 School Use of Reportable Offenses**. MSDE has no requests for further amendments. MSDE requests adoption of amendments to **COMAR 13A.08.01.17 School Use of Reportable Offenses**.

Public Comment Summary- July 23, 2024

COMAR 13A.08.01.17 – School Use of Reportable Offenses

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>13A.08.01.17.(A)(6): Definition of "regular school program"</p> <ul style="list-style-type: none"> • <u>Comment</u>: We continue to strongly recommend that “regular school program” be defined as: Regular school program means the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in. • <u>Rationale</u>: Under the proposed regulations, “regular school program” is defined solely as “classes, courses, and related services the student is enrolled in.” See Proposed Regulation, 13A.08.01.17(A)(6). As we previously stated, this definition is problematic as it is vague and overly broad. As defined, a student could be transferred to an alternative school or to virtual school, where the classes and courses are the same, but where there is still a “removal” of the student to a nontraditional educational setting. This is precisely the type of removal that the law was intended to protect against and the due process protections provided by HB 146 would not necessarily be triggered by such a removal. We therefore recommend a more precise definition of “regular school program.” In MSDE’s memorandum to the Board requesting permission to re-publish the proposed regulations, it states that MSDE “notes that while the language of “regular school program” also exists in the school discipline regulations, it is not the intent of MSDE to change the meaning of “regular school program” in that regulation, as defined by State Board appeals.”¹ Yet, it seems that MSDE is doing just that by defining “regular school program” as it does in the proposed reportable offense regulations. It is not sound policy to define “regular school program” differently in the reportable offense and discipline contexts, especially since the discipline regulations apply to the reportable offense removals as HB 146 intended. While MSBE in a recent opinion stated that a student may not have the right to attend a specific school, it also affirmed that a transfer to an alternative school (which we deem virtual school to be) requires compliance with the discipline regulations. See <i>L.S. v. Prince George’s County Bd. of Educ.</i>, MSBE Op. 23-13, at 4-5 (2023). Likewise, the Maryland Office of the Attorney General, in a legal opinion dated May 31, 2019, concluded that placement of a student in an alternative school “results in the removal of a student from the student’s home school and from the student’s current or regular education program. In that regard, the placement meets the definition of each of the four kinds of suspension.” Thus, in the discipline context “regular school program” does not include an alternative school or virtual school and should be made explicit in the reportable offense regulations as well. 	<p>MSDE does not recommend changing the definition of “regular school program” from the proposed language. MSDE believes that the definition reinforces the balance between the right of the student with a reportable offense to maintain access to their educational program and the safety of a specific school building.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • <u>Comment:</u> We continue to recommend that “imminent threat of serious harm” be defined and that the definition include the following language: “posing likely and immediate danger of significant physical injury.” • <u>Rationale:</u> We encourage MSDE to take the opportunity at long last to define “imminent threat of serious harm” as it is a critical legal term and standard not only for the reportable offense regulations but for the discipline regulations as well. Our proposed definition of “imminent threat of serious harm” is consistent with the MSDE’s interpretation of this term in its guidance provided to school systems. See MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018. Without a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their respective school system’s interpretations. A review of the school discipline and school-based arrest data statewide demonstrates evidence of the disparate treatment depending on where students live based on varying interpretations of “imminent threat of serious harm” among school systems. 	<p>MSDE will review all definitions of “imminent threat of serious harm” across the Department and recommend one common definition to be used in all contexts.</p>
	<p>13A.08.01.17(D)(2): “Notice of the reportable offense charge or arrest alone may not be the basis for change in the student’s regular school program”</p> <ul style="list-style-type: none"> • <u>Comment:</u> We appreciate that this version of the proposed regulations under (D)(2) added the very important language that clarifies that “Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.” This language is consistent with recent MSBE opinions regarding reportable offense cases. See T.R. and B.J. v. Caroline County Bd. of Educ., MSBE Op. No. 20-06 (2020); F.W. v. Baltimore County Bd. of Educ., MSBE Op. No.23-22 (2023). It also provides critical guidance to administrators and reinforces the understanding that when a student has been arrested and charged, the reportable offense is a pre-adjudicated offense, meaning the student has not yet been found involved and is presumed innocent. 	

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>13A.08.01.17(C) Safety Determination Procedures and Plan and (D) Removal from Regular School Program</p> <ul style="list-style-type: none"> • <u>Comment</u>: We continue to believe that additional guidance is required regarding the safety determination process and suggest that language be added to 13A.08.01.17(C)(2) so it reads: The school principal, in consultation with appropriate staff members, shall consider whether the student’s presence presents a risk to the safety of other students and staff and whether and how such risk can be mitigated through interventions or supports. • <u>Rationale</u>: When school staff are determining whether the student’s presence at school presents a risk to the safety of other students and staff, a review of whether and how such risk can be mitigated must be an integral part of the analysis and discussion. The goal should be to keep the student in their regular school program to avoid educational instability and resulting harm. Administrators therefore need to think through whether any identified risk can be mitigated through interventions or supports that would allow the student to remain in their regular education program. Examples of interventions or supports in the student’s regular school program that could mitigate risk include restrictions or increased supervision within the school building, a schedule change, additional staffing, counseling, referral to the Student Support Team, and daily check-ins with the student to assess for safety. In addition, in many situations, the Department of Juvenile Services (DJS) is providing support and services to the student and the juvenile court is still maintaining oversight. The services and supervision by the DJS and the court, as well as services and support by the school system, can mitigate any potential risk. Moreover, by considering interventions and supports to mitigate any safety concerns, school systems will be required to consider the risk more effectively without relying solely on the nature of the charge. 	<p>Clarification of what it means to make a determination regarding the reportable offense and safety will be covered in guidance.</p>
	<p>13A.08.01.17(D)(5): Appeal timeline and notice of appeal rights</p> <ul style="list-style-type: none"> • <u>Comment</u>: We are pleased that the revised proposed regulations now require a “written determination and notice of the appeal rights” found in 13A.08.01.17(D)(6). As we previously reported, in our experiences, some parents/guardians only received a telephone call regarding the determination and were not advised of their right to appeal. This proposed regulatory provision is critical to protecting the due process rights of students. 	

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>13A.08.01.17(E): Review Procedures</p> <ul style="list-style-type: none"> • <u>Comment:</u> The proposed regulations require a review of the placement upon notice of disposition and “Pending notification from the State’s Attorney, at a minimum every 45 school days.” 13A.08.01.17(E)(1)(b). Our concern is that 45 days is an arbitrary timeline and does not match the juvenile justice process, which seeks to resolve complaints expeditiously. The 2013 MSDE Model Policy related to reportable offenses recommended a review every 30 days" or until matter resolved." We recommend that a review occurs every 30 days or upon request by the student’s parent/guardian or their attorney based on changed circumstances. • <u>Rationale:</u> We continue to be concerned that the review process of 45 school days leaves students vulnerable to falling behind academically and unnecessarily excludes them from their regular school programs. In our experience, the State’s Attorney’s Office often may not notify the school system of the disposition of the charge as required under Maryland Code, Educ. § 7-303(c); as a result, students’ removals are often unnecessarily extended. Reviewing the placement every 30 days rather than 45 school days would allow school systems to determine the status of the case, and whether the threat of serious harm continues. With more frequent reviews, students can be expeditiously returned to their regular school programs when the safety threat is resolved. 	<p>MSDE recommended the 45-day timeline to account for the additional administrative processes associated with the new proposed regulations. Requiring LEAs to review safety plans every 30 days rather than every 45 days may place an undue burden on the LEA.</p> <p>However, while LEAs are required to review a student’s placement every 45 days <i>at a minimum</i>, nothing in the regulation precludes the LEAs from meeting more frequently as additional information comes to light. MSDE will address this point in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>13A.08.01.17(E): Review Procedures</p> <ul style="list-style-type: none"> <p><u>Comment:</u> The proposed regulations provide no guidance or direction to school systems as to a student’s right to attend their regular education program when a school system becomes aware of a charge post-disposition. In effect, there is no time limitation as to when a past charge can be used as a basis to remove a student from their regular school program. We therefore continue to recommend that the regulations state: Upon notification of disposition, if a student is in the community, there is a presumption that the student shall return to the student’s home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.</p> <p><u>Rationale:</u> The proposed regulations are silent on how long the disposition of a charge can impact the school placement of a student. The language from the statute implies that once the State’s Attorney’s office communicates the disposition of the charge the student should be permitted to return to school. The regulations should clarify that intent. In the recent decision by MSBE, F.W. v. Baltimore County Board of Education, MSBE Op. 23- 22 (2023), the juvenile case for a reportable offense was three years old when the school system removed the youth from their regular school placement and placed them in a virtual school for 12 months before the appeal was resolved. We believe that the regulations must provide greater clarity regarding the expectations for both the student and the school system when a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community. In fact, in most instances, the court views school as a protective factor and assumes that the student will be back in their regular school program as soon as possible post-disposition. Allowing school systems to exclude students based on a charge when there have already been dispositions that permit them to be in the community has the effect of disenfranchising students based on a past criminal record in the absence of any present safety threat. Once the court has imposed a disposition, the charge has been fully adjudicated and the reportable offense matter should be closed. Certainly, the statute did not intend to give school systems unending authority to deny enrollment in a student’s regular school program due to past criminal or juvenile involvement for a charge that has been adjudicated or is no longer an open case.</p> 	<p>The proposed regulation is not silent on how long a charge can impact a student’s placement. COMAR13A.08.01.17(E)(1) is clear that a student’s placement is to be reviewed immediately upon notification of disposition from the State’s Attorney. Prior to notification of disposition, the regulation requires review of the student’s safety plan and status every 45 days. Rather than providing the LEA with boundless power to exclude a student from the regular school program, the regulation ensures that safety plans are regularly reviewed and adjusted as appropriate. Guidance will further clarify and explain this expectation.</p>
	<p>13A.08.01.17(G): Students with disabilities</p> <ul style="list-style-type: none"> <p><u>Comment:</u> We appreciate the proposed regulations now clarify that a manifestation determination review must be scheduled for any student with a Section 504 plan, as well as a student with an IEP prior to the scheduling of the reportable offense conference.</p> 	

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<p>Level of Service</p> <ul style="list-style-type: none"> • <u>Comment:</u> We are disappointed that the MSDE failed to address the issue of what level of services a student removed for a reportable offense change is entitled to receive. Students who have been removed from their regular school program due to a reportable offense charge are not considered “suspended or expelled,” and are therefore entitled to full educational services as opposed to the minimal level of education services for suspended or expelled students which may only consist of daily classwork assignments. See COMAR 13A.08.01.11(F). The regulations should therefore clarify what level of services a student with a reportable offense is entitled to during the 10 days during which time the superintendent’s designee conference occurs and during any subsequent removals. • In addition, we are concerned about school systems’ over-reliance on virtual schools for this population of students. As the pandemic revealed, virtual school cannot provide a meaningful education for many students and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a “virtual school” program, which does not in any way allow students to fully access the curriculum, instruction, and activities and services (such as free breakfast and lunch) available to students attending school in-person is not appropriate. Moreover, many households do not have reliable internet service, completely shutting children assigned to a virtual school program out of an education. Unless a court has set limitations on a student’s ability to attend school in-person, a student with a reportable offense who is in the community should be permitted to attend in-person school. 	<p>Under the proposed regulation, removal from the student’s regular school program and placement into another program requires the development of a safety plan that “addresses appropriate educational programming and related services for the student” (see 13A.08.01.17(C)(3)(a)). Every effort should be made to provide the student with an equivalent level of services, to the extent practicable. It is possible that a student may not be able to access the full range of services available in the regular school program during the program of removal. However, the school must strive to maintain a school environment that is safe and secure for all students and staff. Striking this balance may, in some cases, mean that the student is not able to access the exact services offered by the regular school program; however, the student must remain on track to earn their required credits for graduation.</p> <p>The assertion that LEAs are over-reliant on virtual school placement for students accused of reportable offenses is unfounded. Data from the 2022-2023 school year collected from the LEAs indicates that 86.7% of students accused of reportable offenses were retained in their regular school program, 3.5% were placed in virtual school, 3.8% were placed on home and hospital, 2.3% were placed in alternative schools, .6% were placed in night school, and .3% transferred to another school either within or outside of the district. The remaining 2.8% were detained in juvenile or adult correctional facilities or put in therapeutic placement, placements made not by the LEAs but rather by the justice system or other entities.</p>

July 1, 2024

Mary L. Gable, Assistant State Superintendent
Maryland State Department of Education
200 West Baltimore St.
Baltimore, MD 21201

Re: Comments to revised proposed regulations to amend Regulation .17 under
COMAR 13A.08.01

Dear Ms. Gable,

The Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD) appreciate the opportunity to submit comments regarding the updated proposed revisions to Regulation .17 under COMAR 13A.08.01 being considered by the Board of Education. As with our prior comments submitted in November 2023 on this topic, the comments below reflect our continued concerns regarding the implementation of House Bill 146, which amended Md. Code, Educ. §§ 7-303 and 7-305 during the 2022 Legislative Session, and the resulting impact on students.

13A.08.01.17.(A)(6): Definition of "regular school program"

Comment: We continue to strongly recommend that “regular school program” be defined as: *Regular school program means the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in.*

Rationale: Under the proposed regulations, “regular school program” is defined solely as “classes, courses, and related services the student is enrolled in.” *See Proposed Regulation, 13A.08.01.17(A)(6).* As we previously stated, this definition is problematic as it is vague and overly broad. As defined, a student could be transferred to an alternative school or to virtual school, where the classes and courses are the same, but where there is still a “removal” of the student to a nontraditional educational setting. This is precisely the type of removal that the law was intended to protect against and the due process protections provided by HB 146 would not necessarily be triggered by such a removal. We therefore recommend a more precise definition of “regular school program.”

In MSDE’s memorandum to the Board requesting permission to re-publish the proposed regulations, it states that MSDE “notes that while the language of “regular school program” also exists in the school discipline regulations, it is not the intent of MSDE to change the meaning of “regular school program” in that regulation, as defined by State Board appeals.”¹ Yet, it seems that MSDE is doing just that by defining “regular school program” as it does in the proposed reportable offense regulations. It is not sound policy to define “regular school program”

¹ *See* MSDE Memorandum Permission to Re-publish, March 26, 2024, <https://www.marylandpublicschools.org/stateboard/Documents/EdPolicyCommittee/03132024/COMAR-13A.08.01.17-School-Use-of-Reportable-Offenses-A.pdf> at 3.

differently in the reportable offense and discipline contexts, especially since the discipline regulations apply to the reportable offense removals as HB 146 intended.

While MSBE in a recent opinion stated that a student may not have the right to attend a specific school, it also affirmed that a transfer to an alternative school (which we deem virtual school to be) requires compliance with the discipline regulations. *See L.S. v. Prince George's County Bd. of Educ.*, MSBE Op. 23-13, at 4-5 (2023). Likewise, the Maryland Office of the Attorney General, in a legal opinion dated May 31, 2019, concluded that placement of a student in an alternative school “results in the removal of a student from the student's home school and from the student's current or regular education program. In that regard, the placement meets the definition of each of the four kinds of suspension.” Thus, in the discipline context “regular school program” does not include an alternative school or virtual school and should be made explicit in the reportable offense regulations as well.

13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”

Comment: We continue to recommend that “imminent threat of serious harm” be defined and that the definition include the following language: “*posing likely and immediate danger of significant physical injury.*”

Rationale: We encourage MSDE to take the opportunity at long last to define “imminent threat of serious harm” as it is a critical legal term and standard not only for the reportable offense regulations but for the discipline regulations as well. Our proposed definition of “imminent threat of serious harm” is consistent with the MSDE’s interpretation of this term in its guidance provided to school systems. *See MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018.*

Without a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their respective school system’s interpretations. A review of the school discipline and school-based arrest data statewide demonstrates evidence of the disparate treatment depending on where students live based on varying interpretations of “imminent threat of serious harm” among school systems.²

13A.08.01.17(D)(2): “Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.”

Comment: We appreciate that this version of the proposed regulations under (D)(2) added the very important language that clarifies that “*Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.*” This language is consistent with recent MSBE opinions regarding reportable offense cases. *See T.R. and B.J. v. Caroline County Bd. of Educ.*, MSBE Op. No. 20-06 (2020); *F.W. v. Baltimore County Bd. of Educ.*, MSBE Op. No.23-22 (2023). It also provides critical guidance to administrators and reinforces the understanding that when a student has been arrested and charged, the reportable offense is a pre-adjudicated offense, meaning the student

² In the recently adopted regulations regarding restraint and seclusion, MSDE incorporated the definition of “serious physical harm” from federal law and we encourage MSDE to define the term “harm” or “injury” in these regulations as well. *See* COMAR 13A.08.04.02(22) (defining “serious physical harm” to have the same meaning as “serious bodily injury” as defined in 18 U.S.C. §1365(h)(3)).

has not yet been found involved and is presumed innocent.

13A.08.01.17(C) Safety Determination Procedures and Plan and (D) Removal from Regular School Program

Comment: We continue to believe that additional guidance is required regarding the safety determination process and suggest that language be added to 13A.08.01.17(C)(2) so it reads: The school principal, in consultation with appropriate staff members, shall consider whether the student's presence presents a risk to the safety of other students and staff *and whether and how such risk can be mitigated through interventions or supports.*

Rationale: When school staff are determining whether the student's presence at school presents a risk to the safety of other students and staff, a review of whether and how such risk can be mitigated must be an integral part of the analysis and discussion. The goal should be to keep the student in their regular school program to avoid educational instability and resulting harm. Administrators therefore need to think through whether any identified risk can be mitigated through interventions or supports that would allow the student to remain in their regular education program. Examples of interventions or supports in the student's regular school program that could mitigate risk include restrictions or increased supervision within the school building, a schedule change, additional staffing, counseling, referral to the Student Support Team, and daily check-ins with the student to assess for safety.

In addition, in many situations, the Department of Juvenile Services (DJS) is providing support and services to the student and the juvenile court is still maintaining oversight. The services and supervision by the DJS and the court, as well as services and support by the school system, can mitigate any potential risk. Moreover, by considering interventions and supports to mitigate any safety concerns, school systems will be required to consider the risk more effectively without relying solely on the nature of the charge.

13A.08.01.17(D)(5) Appeal timeline and notice of appeal rights

Comment: We are pleased that the revised proposed regulations now require a "written determination and notice of the appeal rights" found in 13A.08.01.17(D)(6). As we previously reported, in our experiences, some parents/guardians only received a telephone call regarding the determination and were not advised of their right to appeal. This proposed regulatory provision is critical to protecting the due process rights of students.

13A.08.01.17(E). Review Procedures

Comment: The proposed regulations require a review of the placement upon notice of disposition and "*Pending notification from the State's Attorney, at a minimum every 45 school days.*" 13A.08.01.17(E)(1)(b). Our concern is that 45 days is an arbitrary timeline and does not match the juvenile justice process, which seeks to resolve complaints expeditiously. The 2013 MSDE Model Policy related to reportable offenses recommended a review every 30 days" or until matter resolved." We recommend that a review occurs *every 30 days or upon request by the student's parent/guardian or their attorney based on changed circumstances.*

Rationale: We continue to be concerned that the review process of 45 school days leaves students

vulnerable to falling behind academically and unnecessarily excludes them from their regular school programs. In our experience, the State’s Attorney’s Office often may not notify the school system of the disposition of the charge as required under Maryland Code, Educ. § 7-303(c); as a result, students’ removals are often unnecessarily extended. Reviewing the placement every 30 days rather than 45 school days would allow school systems to determine the status of the case, and whether the threat of serious harm continues. With more frequent reviews, students can be expeditiously returned to their regular school programs when the safety threat is resolved.

Comment: The proposed regulations provide no guidance or direction to school systems as to a student’s right to attend their regular education program when a school system becomes aware of a charge post-disposition. In effect, there is no time limitation as to when a past charge can be used as a basis to remove a student from their regular school program. We therefore continue to recommend that the regulations state: *Upon notification of disposition, if a student is in the community, there is a presumption that the student shall return to the student’s home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.*

Rationale: The proposed regulations are silent on how long the disposition of a charge can impact the school placement of a student. The language from the statute implies that once the State’s Attorney’s office communicates the disposition of the charge the student should be permitted to return to school. The regulations should clarify that intent.

In the recent decision by MSBE, [*F.W. v. Baltimore County Board of Education*](#), MSBE Op. 23-22 (2023), the juvenile case for a reportable offense was three years old when the school system removed the youth from their regular school placement and placed them in a virtual school for 12 months before the appeal was resolved. We believe that the regulations must provide greater clarity regarding the expectations for both the student and the school system when a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community. In fact, in most instances, the court views school as a protective factor and assumes that the student will be back in their regular school program as soon as possible post-disposition.

Allowing school systems to exclude students based on a charge when there have already been dispositions that permit them to be in the community has the effect of disenfranchising students based on a past criminal record in the absence of any present safety threat. Once the court has imposed a disposition, the charge has been fully adjudicated and the reportable offense matter should be closed. Certainly, the statute did not intend to give school systems unending authority to deny enrollment in a student’s regular school program due to past criminal or juvenile involvement for a charge that has been adjudicated or is no longer an open case.

13A.08.01.17(G) Students with Disabilities

Comment: We appreciate the proposed regulations now clarify that a manifestation determination review must be scheduled for any student with a Section 504 plan, as well as a student with an IEP prior to the scheduling of the reportable offense conference.

Level of Service

Comment: We are disappointed that the MSDE failed to address the issue of what level of services a student removed for a reportable offense change is entitled to receive. Students who have been removed from their regular school program due to a reportable offense charge are not considered “suspended or expelled,” and are therefore entitled to full educational services as opposed to the minimal level of education services for suspended or expelled students which may only consist of daily classwork assignments. *See* COMAR 13A.08.01.11(F). The regulations should therefore clarify what level of services a student with a reportable offense is entitled to during the 10 days during which time the superintendent’s designee conference occurs and during any subsequent removals.

In addition, we are concerned about school systems’ over-reliance on virtual schools for this population of students. As the pandemic revealed, virtual school cannot provide a meaningful education for many students and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a “virtual school” program, which does not in any way allow students to fully access the curriculum, instruction, and activities and services (such as free breakfast and lunch) available to students attending school in-person is not appropriate. Moreover, many households do not have reliable internet service, completely shutting children assigned to a virtual school program out of an education. Unless a court has set limitations on a student’s ability to attend school in-person, a student with a reportable offense who is in the community should be permitted to attend an in-person school.

Thank you for your consideration of these comments. Should you need additional information, please feel free to contact any of our organizations.

Regards,

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