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TO: Members of the State Board of Education

FROM: Lillian M. Lowery, Ed.D. *lm Lowery*

DATE: July 24, 2012

SUBJECT: Report: A Safe School, Successful Students, and a Fair and Equitable Disciplinary Process Go Hand in Hand (Final)

PURPOSE:

The purpose of this item is to: (1) seek State Board approval of the Report: A Safe School, Successful Students, and a Fair and Equitable Disciplinary Process Go Hand in Hand, as revised, and (2) request the State Board grant permission to publish regulatory amendments identified in that report.

BACKGROUND:

The State Board of Education conducted an exhaustive examination and review of the issue of school discipline and the use of long term suspension/expulsion as a disciplinary practice. This examination and review began over two years ago following the release of a State Board opinion in an appeal involving the expulsion of a ninth grade student for the majority of the school year, during which time the student received intermittent homework assignments but no follow-up, grading, or other interaction with school personnel.

Based on this examination and review the Board released at its meeting on February 28, 2012, a report of its findings and proposed regulatory changes (*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*). At that time, the Board announced that it was inviting the public to submit comments on the report up and until March 30, 2012.

The Board, at its May 2012 meeting, had the opportunity to discuss in the comments received with the aid of a very detailed analysis and compilation of the comments prepared by staff. At last month's meeting of the State Board, the Board used a structured framework which highlighted key decision points regarding modification or acceptance of the regulatory changes identified in the Report. Using this framework, the Board provided direction to staff as to the necessary revisions to be made to the Report and the proposed regulatory actions.

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ACTION:

The Board is asked to approve as a final product the revised report: **A Safe School, Successful Students, and a Fair and Equitable Disciplinary Process Go Hand in Hand**. The Board is also asked to “Grant Permission to Publish” the proposed amendments to regulations cited in that report.

Attachments –

- (1) Draft Report
- (2) Proposed Regulations

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, 7-303—7-305, 7-307, 7-308 and 8-404, Annotated Code of Maryland;
Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.10 Guidelines for Students' Responsibilities and Rights.

- A. Each local board of education shall have a document on students' responsibilities and rights.
- B. This document shall conform to guidelines established by the State Board of Education.
- C. The local document shall be disseminated periodically to all members of the school community, including students, teachers, administrators, and parents or guardians.
- D. There shall be broad involvement of representatives of the school community in the review of the document.

.11 Disciplinary Action.

A. Local Regulations. Each local board of education shall adopt a set of regulations [designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion] *that:*

- (1) *Reflect a rehabilitative discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;*
- (2) *Are designed to keep students in school so that they may graduate college and career ready;*
- (3) *Prohibit disciplinary policies that trigger automatic discipline without the use of discretion;*
- (4) *Explain why and how long-term suspensions or expulsions are last resort options.*

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

- (1) "Confer" means a discussion or dialogue by any means, for example, telephone, electronic mail, or face-to-face meeting, where the views of the teacher are communicated and considered.
- (2) "Expulsion" means, [at a minimum, the removal of the student from the student's regular school program and may be further defined by a local board of education] *the total exclusion of a student from the student's regular school program for 45 school days or longer for conduct that the superintendent determines, on a case by case basis, is violent or poses a serious danger of physical harm to others in the school.*
- (3) "Extended suspension" means the temporary removal of a student from [school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or the local superintendent's designated representative] *the student's regular school program for a time period between 11-45 school days for conduct that the superintendent determines, on a case by case basis, poses a danger of harm to others in the school.*
- (4) "In-school suspension" means the removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.
- (5) "Long-term suspension" means the removal of a student from school for a time period between 4-10 days for disciplinary reasons by the principal.
- [(5)] (6) "Principal" means the principal of a school or the principal's designee.
- [(6)] (7) "Short-term suspension" means the removal of a student from school for up to but not more than [10] 3 school days for disciplinary reasons by the principal.
- [(7)] (8) "Suspension" means the application of extended suspension, in-school suspension, or short-term suspension or long-term suspension.

[C. Suspension and Expulsion.]

[(1)] In those instances when the behavior of a student is disruptive and detrimental to the operation of the school, the student may be suspended or expelled.]

[(2)] C. (1) In-School Suspension.

- (a) An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to:
 - (i) Appropriately progress in the general curriculum;
 - (ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;
 - (iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and
 - (iv) Participate with peers as they would in their current education program to the extent appropriate.
- (b) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(c) The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school.

(d) After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.

(e) The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.

(f) Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension.

(g) Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

[(3)] (2) 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.

(b) The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(c) At or before the conference, the student shall receive oral or written notice of the charges against him or her. If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story.

(d) A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.

(e) If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the local superintendent

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

(a) At the request of the principal, a local superintendent or the designated representative may suspend a student for more than 10 school days or expel the student.

(b) Upon receipt of a written report from a principal requesting an extended suspension or an expulsion the local superintendent or designated representative promptly shall make a thorough investigation of the matter.

(c) If after the investigation the local superintendent or designated representative finds that [a longer] an extended suspension or an expulsion is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) *The process described in (a)-(c) of this section of the regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the conduct at issue was violent, dangerous, or a threat to the safety of the school.*

[(d)] (e) If after the conference the local superintendent or designated representative finds that an extended suspension [of more than 10 school days] or an expulsion is warranted, the student or the student's parent or guardian may[:] [(i)] [A] appeal to the local board within 10 days after the determination;

[(ii)] Be heard before the local board or its designated committee; and

[(iii)] Bring counsel and witnesses to the hearing.]

(f) *If an appeal is filed, it shall be heard before the local board or its designated committee, or hearing officer and completed within 30 days of the date of appeal was received by the local board.*

(g) *The student or the student's parent or guardian:*

(a) *shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing five days before hearing;*

(b) *may bring counsel and witnesses to the hearing.*

(h) *The local board shall issue its decision within 10 days after the close of the hearing.*

[(e)] (i) 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 board.

[(f)] (j) The appeal to the local board does not stay the decision of the county superintendent.

[(g)] (k) The decision of the local board is final.

[(5)] (4) A student expelled [under] or suspended from school shall remain away from the school premises during those hours each school day when the school the student attends is in session, and may not participate in school-sponsored activities. The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by the student's parent or guardian.

(5) *A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.*

(6) If a student has been suspended or expelled, the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student's parent or guardian.

(7) If a student's disruptive behavior results in action less than suspension, the principal shall confer with the teacher who referred the student to the principal before returning the student to that teacher's classroom. The principal may satisfy this requirement by consulting with the teacher before returning the student to the classroom.

(8) A local superintendent may deny attendance to a student who is currently expelled or on extended suspension from another school system for a length of time equal to that expulsion or extended suspension. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion or extended suspension of the student, on receipt of the request for information.

D. **Restitution.** Unless the student is referred to the Department of Juvenile Services, if a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian, and other appropriate individual, the principal shall require the student or the student's parent or guardian to make restitution. The restitution may be made in the form of monetary restitution not to exceed the lesser of the fair market value of the property, or \$2,500, or by the student's assignment to a school work project, or both.

E. **Corporal Punishment.** Corporal punishment may not be used to discipline a student in a public school in the State.

F. Minimum Education Services

(1) *In order to establish accountability and to keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at minimum provide that:*

(a) *Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher which shall be reviewed and corrected by teachers on a weekly basis and returned to the student.*

(b) *Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or e-mail with those out-of-school suspended/expelled students and their parents.*

.12 Arrests on School Premises.

A. When possible and appropriate, arrest by police should be made during nonschool hours and away from the school premises.

B. When an arrest on school premises during the school hours is necessary, the responsible school official shall ascertain the facts from the arresting officer which will enable the school official to fully advise the parent or guardians and other school officials of the nature of the charge, the identity of the arresting officer, and the location of the student.

C. When an arrest has taken place on school premises or during school hours, every effort shall be made by school officials to inform the parent or guardians immediately and thereafter promptly to advise the local superintendent of schools.

D. Arrest on school premises during school hours shall be effectuated in such a manner as to avoid both embarrassment to the student being arrested and jeopardizing the safety and welfare of other students.

E. School officials may not permit questioning of a student under arrest on the school premises and shall request the arresting officer to remove the student from the premises as soon as practicable after the arrest is made.

F. *Beginning in the 2013-2014 school year, data on school arrests shall be reported in a manner and format developed by the Department and approved by the State Board.*

.12-1 Bringing or Possessing a Firearm on School Property.

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

(1) "Alternative educational setting" means an alternative education program that allows the student to continue the student's education within the public school system and, if in a secondary school, the opportunity to earn credit.

(2) "Expulsion" means at a minimum the removal of a student from the student's regular school program.

(3) "Firearm" means a weapon as defined in 18 U.S.C. §921.

(4) "School property" means buildings, land that surrounds the buildings, and vehicles, that are owned or leased by a local school system.

(5) "Year" means a calendar year of 12 months.

B. General Provisions.

(1) Except as provided in §B(2) of this regulation, if the local superintendent or designee finds that a student has brought a firearm onto school property or to a school-sponsored activity or has possessed a firearm on school property or at a school-sponsored activity, the student shall be expelled for a minimum of 1 year.

(2) The local superintendent may specify in writing, on a case-by-case basis, a shorter period of expulsion or an alternative educational setting, if alternative educational settings have been approved by the local board, for a student who has brought a firearm onto school property or to a school-sponsored activity or has possessed a firearm on school property or at a school-sponsored activity.

(3) Nothing in this regulation applies to a firearm:

(a) That is lawfully stored inside a locked vehicle on school property; or

(b) For activities approved and authorized by the local school system, if the local school system adopts appropriate safeguards to ensure student safety.

C. Students with Disabilities. An identified student with disabilities who brings a firearm onto school property or to a school-sponsored activity or who possesses a firearm on school property or at a school-sponsored activity may be suspended or expelled in accordance with the procedures set out in Education Article, §7-305, Annotated Code of Maryland, and COMAR 13A.08.03.

D. Administrative Procedures.

(1) Annually by August 1, each local school system shall provide the State Board of Education with a report that includes:

(a) Written certification that the local school system is in compliance with the requirements of this regulation;

(b) A description of the circumstances surrounding any expulsions imposed under State law as required by §B(1) of this regulation;

(c) The number of incidents in which a student brought a firearm onto school property or to a school-sponsored activity or possessed a firearm on school property or at a school-sponsored activity;

(d) The name of the school where each incident took place;

(e) The type of firearm involved;

(f) The disposition of each case, including the number of students:

(i) Expelled from each school, and

(ii) Placed in alternative educational settings; and

(g) A description of alternative educational settings used in compliance with this regulation.

(2) Each local school system shall report each incident in which a student brings a firearm onto school property or to a school-sponsored activity or possesses a firearm on school property or at a school-sponsored activity to the appropriate juvenile justice or criminal enforcement agency.

E. Nothing in this regulation precludes a local school system from developing or applying more stringent regulations and procedures.

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.15 Reporting Delinquent Acts.

A. Delinquent acts are offenses committed by a person who is under 18 years old which would be crimes if committed by an adult. School officials shall promptly report to the responsible law enforcement agencies all delinquent acts coming to their attention whether occurring on or away from the school premises which involve students attending the particular school.

B. Delinquent acts do not include conduct which has been traditionally treated as a matter of discipline to be handled administratively by the particular school, except that all conduct of a serious nature should be promptly reported to the parent or guardians concerned.

C. *Beginning in the 2013-2014 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department and approved by the State Board.*

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.21 Reducing and Eliminating Disproportionate/Discrepant Impact

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 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 1 year and eliminate it within 3 years.

D. The local school system will report its progress annually to the State Board.