

Legal Aspects of School Disciplinary Removals

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We are all born with great potential.
Shouldn't we all have the chance to achieve it?



INTRODUCTION TO DISCIPLINE

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Discipline: Why does it matter?

**Time out
of
school**



Increased likelihood of:
poor academic
performance, repeating a
grade, or dropping out.

**Potential negative life
outcomes:**
Justice system contact,
unemployment, or poverty.



State Board of Education: Reduction of Exclusion, Philosophy of Positive Discipline

“In order for our students to get a world-class education, they need to be in school. Thus, **our school discipline philosophy focuses on keeping students in school.** If suspension or expulsion are necessary, as a last resort, the school must keep suspended or expelled students connected to the school by providing education services that will allow the student to return to school with the chance to become college or career ready.”

Report of the Maryland State Board of Education, July 2012



Maryland Center for Developmental Disabilities
at Kennedy Krieger Institute

What is COMAR?

- **Code of Maryland Regulations**
 - The official compilation of all administrative regulations issued by agencies of the state of Maryland, including the State Board of Education.



MSDE

- The Maryland State Department of Education (MSDE) recognized that students need access to teachers, peers, and instruction in order to develop and learn, and the use of out-of-school discipline can be harmful.
- In 2014, the Board implemented changes to the State's disciplinary regulations, which was an important step toward creating a more positive school environment and keeping students in school and learning.



An Overview of the 2014 Changes to COMAR 13.A.08.01

- **Expulsion**
 - Defined as 45+ days
- **Extended Suspension**
 - 10+ school days
 - Only when there is an “imminent threat of serious harm,” OR chronic and extreme disruption of the educational process, determined by Superintendent or designee
 - Exclusion duration - “shortest period practicable”
- **Long Term Suspension**
 - Four to 10 school days
 - Determined by principal
- **Short Term Suspension**
 - One to three school days
 - Determined by principal



Educational Services During Suspension

- All students, “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.”
- Students can complete work without penalty.
- Schools shall appoint a liaison for coordination and provide liaison’s contact information.



Short and Long Term Suspensions

- Suspensions up to 10 days are at the discretion of the principal.
- The student or the student's parent or guardian will be given a conference with the principal and any other appropriate personnel during the suspension period.
- The student will receive oral or written notice of the charges against him/her.
 - 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.
- If the principal finds that an extended suspension or expulsion is warranted, the principal will report the matter in writing to the local superintendent. [COMAR 13a.08.01.11]



Suspensions longer than 10 days

- **Superintendent's Designee Conference and Review**
 - For suspensions longer than 10 days, a superintendent's designee' reviews the referral and makes a determination.
 - Designee must investigate the charges and hold a conference with the student and parent(s) within the first 10 school days of the suspension.
 - The student may present witnesses at this conference, have a representative or attorney present, and has the right to review all documentary evidence, including any witness statements. The student may question witnesses, have witnesses testify, or give written statements on his/her behalf.



Expulsion and Alternative Education

- **Only with “imminent threat of serious harm”**
 - The Superintendent must review each expulsion recommendation by a designee to determine if expulsion is appropriate.

- **System provides “comparable educational services” such as:**
 - An alternative school
 - An evening school
 - Home correspondence courses/e-learning



Appeals to the School Board

- To appeal a suspension or expulsion decision, the student or parents must:
 - Send a letter to the Superintendent within 10 school days of the suspension or expulsion determination.
- The Board or a designated committee will hear and decide the appeal no later than 45 days from the receipt of the notice to appeal.
 - Some school districts have shorter timelines; however, some school districts had none before the changes to COMAR.



Due Process Rights: School Board Hearings



■ During the hearing

- Each party has an opportunity to present witnesses and be represented by a lawyer.
- The student may ask that the Board summon school personnel to the hearing.
- The student should request that the attorney for the school system send advance copies of the documents he/she intends to use at the hearing and a witness list.
- The student should attend the hearing; however, the student does not have to testify.

Appeal of the School Board's Decision

- The student can appeal to the State Board of Education or to Circuit Court. The appeal can determine the following:
 - Did the local school board violate State or local law, policies, or procedures?
 - Did the local school board violate the due process rights of the student?
 - Did the local school board act in an unconstitutional manner?



THE DISCIPLINE PROCESS FOR STUDENTS WITH DISABILITIES

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Spotlight On Suspension in MD



- In 2015-2016, there were 74,137 in-school and out-of-school suspensions and expulsions:
 - 62% Black or African American
 - 27% students with disabilities
- Of the 74,137 suspensions and expulsions:
 - 32,296 were for the offense of attacks/threats/fighting
 - 30,164 were for the offense of disrespect/disruption



Spotlight On Suspension in MD, cont'd ...



- The highest number of in-school and out-of-school suspensions and expulsions by district were:
 - Prince George's = 12,310
 - Baltimore City = 9,121
 - Baltimore County = 8,162



Removal of a Student with a Disability

▪ For Up to 10 Days

- A student with disabilities may be removed from school for **up to 10 days**, similar to his/her nondisabled peers.

▪ For more than 10 Days

- For students with disabilities, a suspension of **more than 10 school days** constitutes a *change in placement*.
- Parents must be notified in writing.
- The IEP team must conduct a “**manifestation meeting**.”

The Manifestation Meeting

- The IEP team will review all relevant information in the student's file, including: teacher observations, any relevant information provided by the parents, and the IEP to determine:
 - If the conduct was caused by, or had a direct and substantial relationship to the student's disability; or
 - If the conduct was the direct result of the school's failure to implement the IEP.

- Exceptions: drugs, weapons, or serious bodily injury

The Manifestation Meeting cont'd...

- If the answer is “yes” to either of the two manifestation questions, the IEP team must find a manifestation, rescind the suspension, and return the student to the placement from which the student was removed, unless parent and school system agree to a new placement.
- If the IEP team answers “yes” to the second question, the school system must take immediate corrective action.

When Manifestation is Found

- The IEP team should have an emergency meeting to:
 - Consider changes to IEP
 - Explore options for additional support
 - Review the functional behavioral assessment (FBA)
 - Revise the behavioral intervention plan (BIP)

Assessing Behavior: The Functional Behavioral Assessment

- The **FBA** is a systematic process for identifying and describing challenging behavior exhibited by a student, determining the functions of the behavior, and identifying the environmental and other settings that contribute to or predict the occurrence, non-occurrence, and maintenance of the behavior over time.

Intervention: The Behavioral Intervention Plan

- The **BIP** describes the actions adults will take to respond to the behavior, the replacement behavior that will be taught, and how data will be collected.

When Manifestation is NOT Found

- The school may remove a student with disabilities for more than 10 school days.
 - During this time, students with disabilities should continue to receive special education and related services and work toward the IEP goals and objectives.
- The school may refer to the “superintendent’s designee” for a longer suspension.
- The IEP team should *still* consider completing or revising existing FBA and BIP to address the behaviors that lead to the student’s suspension.

2017 MARYLAND LEGISLATIVE SESSION

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Maryland Center for Developmental Disabilities
at Kennedy Krieger Institute

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HB 425 / SB 651: Pre-kindergarten – 2nd Gr. Ban on Suspensions & Expulsions

- The proposed legislation will ban suspension or expulsion of students (with or without disabilities) in prekindergarten through second grade, with the exception of when a child possesses a firearm.
- The House Ways & Means Committee hearing was held on February 14, 2017.
- The Senate hearing is not yet scheduled for 1:00 p.m. on Wednesday, March 8, 2017.



HB 331 / SB 786: Restraint & Seclusion

- The proposed legislation will significantly reduce a school system or nonpublic school's ability to restrain or seclude a child in the school setting, unless under certain circumstances.
- The House Ways & Means Committee hearing was held on February 14, 2017.
- The Senate hearing will be held at 1:00 p.m. on Wednesday, March 8, 2017.



HB 174 / SB 710: Parental Consent

- The proposed bill will require written parental consent during the IEP process if the school system proposes to:
 - Enroll the student in an alternative education program that does not provide credits toward a diploma;
 - Identify the student for the State's alternative assessment; or
 - Include restraint or seclusion to a student's IEP.
- The House Ways & Means Committee hearing was held on February 9, 2017.
- The Senate hearing is scheduled for 1:00 p.m. on Wednesday, March 8, 2017.



Resources

- Disability Rights Maryland (formerly, Maryland Disability Law Center) published a manual titled, “The School Discipline Process,” which is free and available by calling or downloading.
 - 1-800-233-7201 (toll free)
 - <http://disabilityrightsmd.org/publications-2/>

- Advocates for Children & Youth
 - <http://www.acy.org/>
 - 410-547-9200



Contact Info

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