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TO: Members of the State Board of Education

FROM: Nancy S. Grasmick 

DATE: April 26, 2011

SUBJECT: Due Process and Maryland Law and Regulation

PURPOSE:

To provide an analysis of steps in the process for imposing a long-term suspension or an expulsion and present concepts for proposed guidelines for a timely disposition of long-term suspension or expulsion cases in order to ascertain next steps.

BACKGROUND/HISTORICAL PERSPECTIVE:

At its March 22, 2011, the Maryland State Board of Education (MSBE) instructed staff to examine the issue of the process in administering a long-term suspension (more than ten school days) or an expulsion. Cases in the media, anecdotal accounts, and testimony have led to the Board's concern that students are sitting out of school awaiting a final decision on their appeals. The Department does not have a systematic mechanism for tracking cases in regard to this issue. If, parents and/or guardians have a complaint about a school system's discipline process, they contact the Department through the Office of the State Superintendent; Office of Legal Counsel; Office of Academic Policy; Division of Special Education/Early Intervention Services; and/or the Division of Student, Family, and School Support. There is no centralized data collection about these complaints. Thus, it is impossible to gauge if a problem exists in a particular school system or across the State in regards to this issue.

EXECUTIVE SUMMARY:

Maryland law, Section 7-305, Suspension and Expulsion, Education Article and its implementing regulations (COMAR 13A.08.01.11) govern suspension and expulsion in Maryland public school systems. Attachment I provides an analysis of the steps in the administration of a suspension over ten days and expulsion. If a suspension longer than ten school days or expulsion

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is warranted, the Central Office in a local school system becomes directly involved in the case. The LSS superintendent or his/her designee conducts an investigation. After the investigation, a conference is held with the student and parents and/or guardian. Also, a community resource list is provided to the family during that conference. If the superintendent or his/her designee finds that a long-term suspension is warranted, the parent may file an appeal to the local board of education within ten days of the determination. A hearing ensues that includes the right of the parent/guardian to bring counsel or witnesses. Moreover, the decision of the county board of education may be appealed to the State Board of Education

Attachment II provides a proposal for addressing concerns that delays are occurring in the process. The proposal contains specific time frames in which each step in the process should occur.

After the Board reviews and discusses the proposal, staff is prepared to take it to various stakeholder groups, including local school system superintendents, for feedback.

ACTION:

For discussion and determination of next steps.

NSG/cjb

Attachments (2)

Due Process For Long Term Suspensions/Expulsions

We begin with the presumption that, in the preponderance of disciplinary cases, it is better for a student to be in school rather than out of school. Delays in the discipline process may increase the time a student is out of school.

MSDE does not collect data that could tell us whether delays actually occur in the discipline process in Maryland public schools. Anecdotally, we believe there are individual instances of delays in the process based on phone calls or correspondence to MSDE from parents. This Board has expressed its concern that, in the discipline process, *justice delayed is justice denied and, obviously, education denied.*

In order to understand how and when delays can occur in the long-term suspension/expulsion process, we have described below each step of that process as set forth in statute and regulation.

§ 7-305 and COMAR 13A.08.01.11

Steps in the Process if Suspension Is To Be Over Ten Days

(1) Principal suspends student for 10 days initially, but thinks a longer suspension is warranted.

- The due process required at this stage is set forth in *Goss v. Lopez*, 419 U.S. 565 (1975) requiring oral or written notice to the student of the charge against him, and explanation of the evidence and an opportunity to present his side of the story. This generally occurs in an informal meeting between the principal and the student.

- Ten Day clock begins to run on the initial suspension period.

(2) Principal “immediately” reports in writing to the superintendent or designee that he wants to suspend student for more than ten days.

- How long does it take to “immediately report”?

(3) Superintendent or designee orders an “investigation”

- **How long does investigation take?**

(4) If investigation convinces the superintendent or designee that a suspension longer than ten days is warranted, the superintendent or designee must “promptly” hold a “conference” with the student and his parent or guardian.

- **How soon is the conference held after the investigation is completed?**

(5) After the conference, the superintendent or designee decides whether to suspend/expel the student for more than 10 days.

- **Does this decision immediately follow the conference or does it happen later? When is the written determination issued?**

(6) Parent may appeal the “determination” to the local board within 10 days after it is made.

- The appeal does not stay the superintendent’s decision.
- The student is out-of-school.
- **Is the parent timely notified (in writing or orally?) of the determination so that an appeal in 10 days is possible? (Ten Day appeal clock runs from the date the determination is made.)**

(7) If the student/parent appeals, the local board has three choices in terms of an appeal hearing:

- (a) Whole board “hearing”;
- (b) “hearing” before a committee of the board;
- (c) “hearing” before a hearing examiner pursuant to § 6-203.

- **Each of those choices may yield different time frames.**

Hearing Examiner Process	Committee Process	Whole Board Process
-Board refers a case to H.E.	-Committee schedules hearing.	-Local Board schedules hearing.
-H.E. schedules an evidentiary hearing with counsel, parents, witnesses present.	-Is it an evidentiary hearing? Transcript? Written decision?	-Is it evidentiary, transcript, etc.?
-H.E. takes testimony.	-Committee recommends decision to Local Board.	-Local Board issues written decision.
-Transcript & record prepared.		
-H.E. issues recommended decision.	-Local Board schedules argument.	
-Local Board schedules argument.	-Local Board issues written decision.	
-Local Board issues written decision		

- **If the length of the appeal time exceeds the length of the suspension imposed (say, for example, the long term suspension was for 30 days), does the student remain out of school pending the outcome of the appeal to the local board even after the suspension has been completed?**

- **For students who are expelled, their time out of school will continue, of course, through the entire local board appeal process.**

(8) Prior to the student's return to school, the principal must "confer" with the teacher who referred the student for discipline, other schools staff if appropriate, the student, and the parent or guardian.

• **Does the scheduling of these conferences delay the student's return to school? Parents' schedules may cause delay, but what else could factor in here? Should conferences be scheduled before or on the day the student should return?**

(9) Once the local board rules, a parent can appeal to the State Board. Even with our expedited process, the time period from filing the appeal to decision is approximately 2 months.

With those statutory due process requirements and issues in mind, we propose that the State Board present proposed Guidelines on Timely Disposition of Long Term Discipline Cases to the educational community for comment. Proposed Guidelines are attached for your consideration.

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Proposed Guidelines For Timely Disposition of Long Term Discipline Cases

To the Education Community:

We offer these proposed guidelines for discussion and comment to determine whether our view of the timely disposition of long-term discipline cases is one that is workable in schools.

We begin with the presumption that, in the preponderance of disciplinary cases, it is better for a student to be in school rather than out of school. Delays in the discipline process may increase the time a student is out of school.

MSDE does not collect data that could tell us whether delays actually occur in the discipline process in Maryland public schools. Anecdotally, we believe there are individual instances of delays in the process based on phone calls or correspondence to MSDE from parents. This Board has expressed its concern that in the discipline *process, justice delayed is justice denied and, obviously, education denied.*

The State Board presents these Proposed Guidelines to the educational community for discussion and comment. By June 10, 2011, please send your comments to: Chuck Buckler, Maryland State Department of Education, Division of Student, Family, and School Support, 200 West Baltimore Street, Baltimore, Maryland 21201-2595; or cbuckler@msde.state.md.us; or Fax (410)333-8148.

I. PRE-SUPERINTENDENT DECISION TIMELINE – 10 DAYS

Within the 10 days of the initial suspension period the school system should complete the following steps:

- Principal makes recommendation to superintendent for a longer suspension period or expulsion;
- Superintendent or designee orders an investigation;
- The investigation is completed;
- Superintendent or designee holds a conference with parent and student; and
- Superintendent issues his/her written decision.

We have recommended the 10 day time period because statutorily that is the total number of days the student can legally be suspended from school at this juncture. If delays occur at this stage, keeping the student out of school may not be legally supportable.

We recommend that, if there is a delay beyond the 10 day suspension period, that the student be readmitted to school pending the Superintendent's decision

II. POST-SUPERINTENDENT DECISION TIMELINE

Once the Superintendent issues his written decision to suspend the student for the longer period of time (30 days? 60 days? 90 days?) or to expel the student from school (for the rest of

the year? forever?), a parent has two choices – to appeal or not to appeal. There is no “stay” of the discipline during the appeal process.

A. *“No Appeal” timeline – student should return to school on the first day after suspension time has run.*

- Student serves his suspension/expulsion time. (30 days, 60 days, 90 days, a year, etc.)
- Superintendent or designee schedules and holds parent/student conference no later than the day on which the student is to return to school.

We propose this timeline because it reinforces the position that it is educationally essential and fair that a student be returned to school without delay. Students should not be kept out of school by a school system’s failure to schedule parent/student conferences timely. We encourage school systems to work diligently with parents to make timely scheduling possible and convenient for the parents.

B. *“Appeal” Timeline – 30-40 days – In no circumstance should a student be kept out of school awaiting the decision of the local board, if the student has served the full suspension period and met any conditions that may have been imposed (e.g. drug counseling.)*

- Parent files an appeal with the local board within ten days of the Superintendent’s decision;
- Local board schedules and conducts appeal hearing within the 30 day time period after the date the appeal is filed;
- Local board issues written decision within 10 days of the end of the appeal hearing; and

We propose this timeline because it assures that timely decisions will be made for most students on long term suspension/expulsion. But, if the local board cannot make a timely decision the Superintendent must return the student to school on the first day after the student has served his/her time in suspension/expulsion, conducting the parent/student conference beforehand. In this way, students who appeal would not be penalized by delay in returning to school while awaiting a decision of the local board.

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