



## **Maryland Disability Law Center's Response to Questions from the Maryland State Board of Education regarding the Timely Disposition of Long Term Discipline Cases**

**September 27, 2011**

Maryland Disability Law Center (MDLC) appreciates the opportunity to submit testimony regarding the State Board of Education's Guidelines for the Timely Disposition of Long Term Discipline Cases. MDLC submits the following responses to the questions posed by the State Board.

### **1. Please describe your state-wide experiences in dealing with issues relating to long-term suspension and expulsion.**

Maryland Disability Law Center (MDLC) is the designated Protection and Advocacy agency for the State of Maryland, mandated to advance the civil rights of people with disabilities. MDLC is a leader in Maryland's educational advocacy community, working on issues such as school discipline, restraint and seclusion, truancy and juvenile justice. MDLC has significant experience addressing suspension and expulsion issues that impact students with disabilities throughout Maryland. MDLC attorneys regularly provide direct representation in the discipline process, as well as advocacy at IEP meetings, to ensure that special education students receive appropriate services. Through our individual cases and coalition work, MDLC seeks to identify and address systemic issues such as the one currently before the State Board of Education.

MDLC has long had concerns regarding the discipline process Statewide. Some of the problems we have observed include: "illegal send-homes" (parents are called to pick up their child without formal suspension proceedings); failure to provide documentary evidence to parents regarding the incident prior to (and sometimes even during) the superintendent's designee conference; failure to hold manifestation meetings for students with disabilities; and failure to provide educational services during long term suspensions or expulsions.

The issue of the denial of timely discipline hearings is also a long standing problem. A 2008 case in Prince George's County renewed our focus on the issue. The case involved a sixteen year old student with multiple disabilities, including a learning disability. He was suspended in early March 2008 for allegedly setting a fire in the boys' bathroom. The student asserted that he did not start the fire. However, the IEP team determined that the conduct was not a manifestation of his disability and the student was proposed for expulsion. After more than a month, the family contacted MDLC, and we filed a special education complaint with MSDE on the student's behalf because he had not had his expulsion hearing before the superintendent's designee and because the student was not provided special education services during his exclusion as is required by the Individuals with Disabilities Education Act (IDEA). Based on the investigation from the pupil personal worker, the superintendent's designee sent a letter to the parents in mid-April stating that "there are insufficient grounds to consider [the student's] expulsion." The student was finally permitted to return to school on April 21<sup>st</sup>. While MSDE, in its complaint investigation, did not address the issue of the delay in the hearing process

because it was not a special education issue, MSDE did order compensatory education services to the student due to the school system's failure to provide educational services during the time he was excluded from school.

MDLC is particularly aware of the problems caused by delays in the discipline process. The result is that students like the one described above are out of school, without appropriate services, unnecessarily and for extended periods of time. Even when timelines are in place, they are not adhered to and students are left lingering with no services, too often because they are awaiting a superintendent's designee conference. The delays caused by the lack of timelines and flaws in the process raise serious due process concerns, including a failure to provide timely hearing and a denial of child's constitutional right to education.

**2. How many cases in a calendar year has your organization dealt with in delays to the due process procedures in long-term suspension and expulsion? Have these cases been concentrated in particular jurisdictions? How did you get involved in the case?**

MDLC receives hundreds of calls each year from parents and other advocates statewide who contact us through our intake line for information or representation. Through our contacts with families, individual case representation, policy work, and work with coalition partners we are able to identify systemic concerns and issues. However, MDLC does not record cases in a way that would allow us to give precise numbers of the cases we handled in a calendar year on this particular issue. We have experienced first hand the problems in Prince George's County regarding the discipline process, including delays in scheduling suspension conferences before the superintendent's designee and failure to provide appropriate special education services during the long term suspension. Below are several case examples that highlight these violations in the discipline process.

In late January 2011, "Dan", a 17 year old special education student enrolled in 9<sup>th</sup> grade for the third time in Prince George's County Public Schools (PGCPS), was suspended for being in the vicinity of a fight. School staff acknowledged that he did not participate in the fight, but Dan was proposed for expulsion. Despite having an IEP, Dan was not offered special education services during his exclusion, but was merely given "work packets" to complete. In late February, the family contacted MDLC and we immediately contacted PGCPS because a suspension hearing had not yet been scheduled and because Dan was not receiving services. As a result of MDLC's advocacy, Dan was placed in an alternative program, and a hearing was finally scheduled for the end of March. The day after the hearing, Dan was allowed to return to school. However, by this time he had already been excluded for close to two and half months.

"Brad" is a student receiving special education services who, in late October 2010, was suspended from his high school for fighting, which Brad claims was in self-defense. However, Brad did not have his expulsion hearing until early December, at which point he was expelled. He received 4 hours per week of services during his suspension and no services once he was expelled. The last week of February 2011, his expulsion was reduced to a suspension of time served. However, his parents did not receive notice of this decision or the fact that Brad could return to school until mid-March, 2011. Brad finally returned to school in March, having received no services from December 2010 to March 2011.

"Kyle" is a 14 year old from PGCPS with mental illness and a history of being bullied by his peers. He was removed from school during the first week of May 2009, after being accused of

smoking marijuana at school. The marijuana was brought to school by other students. A hearing with the superintendent's designee was not held until the end of June. With MDLC representation, the hearing officer reinstated Kyle to school and expunged the suspension. However, Kyle missed approximately 7 weeks of school with no services except the provision of "work packets."

Other cases demonstrate the failure to implement even minimal due process rights. For example, "Mike" is a 17 year old special education student who was removed from school in 2010 for being in a part of the school building during class time to which he was not assigned. School officials suspended him for three days. At the end of the suspension, school officials informed Mike's parents that he could not return to school until his parents came with him to "shadow" him throughout the school day to ensure that he went to all of his classes. His parents could not (and should not have had to) do that, so Mike was out of school for two weeks before the family contacted us. We immediately contacted the attorney for the school system and Mike was allowed to return to school.

**3. In situations where there has been a 'perceived' delay in long-term suspension and/or expulsion, what were the causes for the delays?**

The Public School Superintendent's Association of Maryland noted in their August 30, 2011 written testimony that "The vast majority of superintendents believe that the current expectation that decisions on their level for long-term [suspension/expulsion] cases be determined within the ten-day suspension by the school principal is realistic. On rare occasions there have been incidents where the parents or attorney of the student could not make an appointment within the ten days."

MDLC has yet to encounter a case where parental unavailability or an attorney representing a student was the cause of significant delay in scheduling a superintendent's designee conference. In fact, we had been advised in the past that the delays in scheduling the suspension hearings in Prince George's County were due to a backlog of cases. Unfortunately, we even have a current case in PGCPs where we are waiting for a superintendent's designee conference. In our experience, delays in the investigations completed by pupil personnel workers in PGCPs have also delayed the scheduling of the superintendent's designee conference.

**4. In examining Section 7-305, Education Article and COMAR 13A.08.01.11, what recommendations would you make to improve the process set forth in that law and regulation?**

Section 7-305 of the Education Article and COMAR 13A.08.01.11, as written, fails to ensure that students' due process rights are protected. It is critical that the discipline procedures, including specific timelines, are explicitly set forth to ensure uniformity statewide and that the right to a timely hearing and the right attend school are protected. The regulation should therefore be amended as follows:

I. Pre-Superintendent Decision Timeline – 10 school days

The timelines as set out in the State Board's Proposed Guidelines should be adopted and the language made mandatory so that a student is only out of school for 10 days based on the initial recommendation from the principal. MDLC strongly agrees with the proposed State Board's

guideline that “if there is a delay beyond the 10 day suspension period, that the student be readmitted to school pending the Superintendent’s decision.” COMAR 13A.08.01.11(C)(4) must be clarified so that there is no ambiguity as to the student’s right to return to school. Specifically, the regulations should be amended to indicate that the superintendent or designated representative shall hold a conference with the student and the student's parent or guardian within 10 days of the initial suspension, and should also indicate that if the conference does not take place within 10 days, the student shall be readmitted to school pending the superintendent’s or superintendent’s designee’s decision.

In addition, a section should be added at COMAR 13A.08.01.11(C)(4) to address the need for written notice, in the parent’s native language, prior to the Superintendent’s conference outlining the specific reasons for the proposed long-term suspension or expulsion and an explanation of the parents’ rights at the Superintendent’s conference. MDLC suggests that this notice include the following:

- the parents’ right to bring an attorney or advocate to the Superintendent’s conference
- the right to review documentary evidence regarding the incident prior to the conference
- the right to question witnesses at the Superintendent’s conference
- the right to obtain schoolwork from the student’s school pending the decision
- the right for the student to return to school after 10 school days of suspension regardless of whether a decision has been issued
- a list of community resources, including legal and counseling resources

## II. Post-Superintendent Decision Timeline

MDLC suggests that the regulation at 13A.08.01.11(C)(4)(d) be amended to add that written notice shall be issued by the Superintendent after the conference containing:

- the specific length of suspension or expulsion (beyond 10 school days) and the reasons for the decision;
- the right to appeal and information about the appeal process; and
- information about the right to counsel in the appeal process.

Under the current regulations, a parent has 10 calendar days to appeal “after the determination” of the Superintendent or the designee. *See* COMAR 13A.08.01.11(C)(4)(d)(i). Parents are often confused as to whether the timeline begins from the date they were told the decision at the conference or from the date of the written decision which sometimes comes much later. The regulations must be clear that the appeal time is based on the date a written decision is mailed. In addition, parents have expressed concern that 10 calendar days does not afford them sufficient time to find legal counsel to appeal. For this reason, MDLC joins other advocates in the recommendation that the regulation at 13A.08.01.11(C)(4)(d)(i) be revised to provide the parent with 15 days to appeal the Superintendent’s written decision.

Lastly, MDLC supports the proposal to make the appeal process uniform statewide. Upon consideration and review of the handful of counties that currently have specific timelines related to the appeal procedures, we believe that school systems should be required to hold the appeal hearing within at least 15 calendar days of the date the parent requests an appeal and issue a decision within 5 calendar days. These changes would prevent students from languishing at home without services waiting for their appeal hearing and decision and would allow parents time to secure counsel if needed.

MDLC would welcome the opportunity to work with MSDE to re-draft the regulations.

**5. What experiences have you had in working with local school systems regarding improvements to the disciplinary process and timelines? What were the successes? What were the barriers?**

MDLC meets regularly with staff from Baltimore City Public Schools, Prince George's County Public Schools and Baltimore County Public Schools to discuss our concerns, and school discipline issues are always an agenda item. These meetings provide an opportunity for MDLC to communicate to these school systems our concerns regarding systemic issues and to attempt to resolve matters productively.

A specific example of our collaborative work with a schools system is our participation with a group of stake-holders who gathered together over a period of about one year to revise the Baltimore City Schools' Code of Conduct. Concern about high rates of suspension linked with increased involvement in the Juvenile Justice system was shared by the Courts, the Department of Juvenile Services, and other agencies serving youth in Baltimore. The stake holders included legal and non-legal advocates, service providers, court representatives, agencies serving youth, school teachers, principals, and other administrators, parents, and students. This group revised BCPS's Code of Conduct with clearly defined behaviors, clearly defined levels of responses, and interventions that must be tried in some circumstances before suspension can be used.

Thank you for your consideration of these comments.

For more information, please contact:

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