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September 22, 2011

Mr. James DeGraffenreidt, Chair
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland, 21201

RE: State Board's Proposed Guidelines for Timely Disposition of Long-Term Discipline Cases

Dear Chairman DeGraffenreidt and Members of the State Board of Education:

Thank you for the opportunity to present comments on proposed Guidelines for Timely Disposition of Long-Term Discipline Cases. We applaud the State Board's undertaking of this critical issue and goal of ensuring uniformity throughout the state for long-term suspensions. We agree with the presumption that for students it is better to be in school and that delay in the discipline process results in too much critical, educational time being lost for those students.

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

The Legal Aid Bureau, Inc. (Legal Aid) is a private non-profit law firm that represents indigent persons in civil matters throughout Maryland. This year, Legal Aid celebrates 100 years of legal service provision to Maryland's poor. As part of this general law practice, we represent parents who seek legal assistance in preventing the long-term suspension or expulsion of their child. In addition to our general practice, Legal Aid represented over 4,900 children last year in the child welfare system. These children had been abused or neglected. Within this area of practice, many of our clients have educational concerns which often involve their not receiving educational services. Our most problematic education cases in the foster care population occur with clients who are placed in group home settings.

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?



Baltimore City

Our general intake unit receives several requests each month during the school year for assistance in long-term suspension and expulsion. While we are not able to assist with every case and often make referrals or provide advice only, several concerns arise with respect to long-term suspension. Parents and students are not provided access to the evidence being reviewed by the suspension counselor either before or at the suspension conference. For families for whom English is not their first language, translated documents and neutral interpreters are not provided. Additionally, the hearing for the appeal is not scheduled in a timely manner.

A case which highlights lack of due process, language access issues, lengthy time for hearing on appeal, and concerns about alternative education programs.

In our general practice, we represented a 13-year-old who had progressed from the ESOL program to a regular education setting at a Baltimore City Public School. At the suspension conference in early December, he was called a "model student" by his ESOL coordinator who had worked with him for the past four years. He had never had a single disciplinary incident in his entire educational history. Our client adamantly denied the accusations and maintained his innocence throughout the proceedings.

No notice regarding the disciplinary incident was sent to the parents in *Spanish*, despite the fact that they were identified as an English Learner family and required such translation. At the suspension conference, an employee of Baltimore City Public Schools served as interpreter because BCPS failed to engage a *neutral interpreter*. *Both of these actions were a denial of due process.*

The suspension conference was held three days after the incident. The suspension counselor came to the "suspension conference" with a pre-drafted letter recommending expulsion based on a file from the principal which no one else at the conference was allowed to see. This was a clear violation of the student's and the parents' due process rights to see and confront evidence and witnesses being used against them. The suspension counselor read selectively from the file; would not allow anyone to view documents in it; did not have the video tape that the parents were told they would see at North Avenue, as there were no eyewitnesses to the alleged incident; and asked the student questions which called for speculation and for which he would have no reasonable way of ascertaining the answer. The suspension counselor requested answers to her specific questions. Not once did she ask the student to tell his version of events in an open-ended fashion; and had our attorney not been present, no information regarding our client's side of the story, lack of disciplinary history, or his positive academic history would have been elicited. *The suspension conference should not be one where the designee has predetermined the result but should be one where the evidence is considered in a fair and impartial manner. Simple due process requires that the parent and student are entitled to the information that is being presented against them.*

A timely appeal was noted, but the hearing was not scheduled to occur until 75 calendar days after the incident. However, based on the BCPS's review of the matter several days prior to the hearing, an offer was made to readmit the student. The parent accepted the offer and withdrew her appeal. *It should not take almost one-third of a school year for a hearing to be scheduled.*

The parent was offered alternative school placement but declined as she felt that it would not be in her son's best interest to be placed in a school setting with other students who had discipline issues. During the time that the appeal was pending, the student was able to complete work packets as long as the school provided them for his parent to pick up. No other educational services were offered to the student while awaiting his hearing and/or re-admittance.

Baltimore County

The general law practice receives about three to four requests per month during the school year from clients seeking assistance with long-term suspension/expulsion of their child. However, due to

staffing, time, and budget constraints, Legal Aid is limited in its ability to provide representation to all of these clients and cannot represent all of the clients who seek representation. It is unfortunate for the students who cannot be represented that they may have a different outcome due to their lack of representation.

Consistent issues and concerns arise concerning the long-term suspension/expulsion process in Baltimore County. The "superintendent's suspension hearing" usually occurs on the tenth day with the superintendent's designee. However, it has been our experience that the parent is handed the paperwork which supports the request for long-term suspension when they arrive for the hearing. They are unaware of the possibility of requesting this information in advance of the hearing so that they can prepare.¹ The parent typically goes to the hearing completely unprepared with no opportunity to provide information contrary to what is contained in the packet prepared by the school. Parents and students do not understand and know their rights and that this is their opportunity to present witnesses and evidence refuting the claims. Giving this information to parents in a clear and concise manner would help to ensure a fair process.

Many parents and students do not appeal this decision as they seek mitigation. If they appeal, their child will be out of school that much longer. If they go to mitigation, their child will be offered alternative education. However, even the alternative education presents its own set of concerns. For a student who has no prior disciplinary issues, it may not be an appropriate setting as they will be placed with students who have more serious disciplinary issues. No transportation is offered for evening programs; for parents of limited means and who have conflicting work-schedules, this may be an extreme hardship or impossible.² Often, the alternative schools are full or do not offer the classes that the student needs to graduate. The end result is that the student does not get the credits they need to progress toward graduation. When the student does return to a regular school setting, they often seem to be a target for re-suspension. It often seems that they are called to the office for minor infractions resulting in again being placed on long-term suspension. When there is a second long-term suspension, the student typically drops out of school.³

In our experience, the student has not been given any missed school work prior to the designee hearing. It is an issue that we raise and is not one that is automatically addressed without it being raised as a concern. Finally, two overriding systemic deficiencies are the lack of individualized assessment of the student and the application of the appropriate discipline for that particular student.

¹ However, this school year, a potential client, who sought our assistance, was provided with notice that they would receive this packet 24 hours before the hearing.

² The problems associated with the placement of students in alternative education are not just in Baltimore County.

³ Again, this is not isolated to Baltimore County. The practice in Anne Arundel County of having probation officers located within the schools is one that could lead to greater number of students dropping out. When a student is placed on long-term suspension or expulsion, they are also typically charged in juvenile court. When the student returns to school, the presence of a probation officer located within the school creates an atmosphere that could increase the chances of the student dropping out.

David (not his real name)

David had been approached on several prior occasions by another student wanting to fight. In the middle of the first marking period, David had been able to avoid a fight but on this occasion he was not able to do so. He did not initiate the fight, but a teacher was unintentionally struck while David was defending himself against the other student. At the suspension hearing, the designee found that David had *not* physically attacked another student but had been involved in fighting and inadvertently struck a staff member intervening in the "fight." Without representation, his parent would not have been able to present the facts of the case. He was placed on long-term suspension but permitted to go to the alternative school and evening high school at the start of the second marking period. He was allowed to return to his regular school at the start of the next semester. Despite believing that her son should not have been suspended and not wanting him to have to attend an alternative school, the parent decided not to appeal the decision solely based on the length of time that the process of the appeal would take; the appeal would result in David being out of school for a longer period than accepting the plan to return the next semester. *An appeal should not be a lengthy process that deters parents and students from asserting their rights and innocence and forces parents to place their children in alternative school settings.*

Thomas (not his real name)

Thomas' father's primary language was Russian. Thomas was an academically gifted student in a magnet program with honors and advanced placement classes. A fire alarm had been pulled half-way down by another student and had been left in this position; this student admitted to doing so. Thomas believing that the alarm was inoperable pulled it down further, and the alarm sounded. Thomas had no prior disciplinary violations. However, the school policy for setting off a fire alarm is suspension for two semesters.

Thomas' father, through an interpreter, called our office the day before the suspension hearing. We were unable to provide an advocate on such short notice, but the father did not want to postpone the case as his son had already been out of school for over a week. When the father arrived for the hearing, he was handed, for the first time, the packet of evidence supporting the request for long-term suspension. The designee recognized that the case could not proceed without an interpreter, and the hearing was postponed for a week. Ensuring that neutral interpreters are provided would have prevented this type of delay.

We were able to represent him at the next hearing and present evidence on Thomas' behalf demonstrating the facts in the case. Thomas was only given a three week suspension. Without representation, this honor/AP student, with no prior disciplinary history, would most likely have been placed on long-term suspension for two semesters.

Prince George's County

Our experience in Prince George's County has been similar to that outlined by Maryland Disability Law Center. Many of our young clients in group homes have experienced lengthy periods of time when they are not provided educational services. As many of these clients are students with disabilities, we have filed complaints with MSDE on their behalf and corrective action has been demanded. However, we have seen the same types of problems occur repeatedly over the past several years.

When a student with a disability is placed on suspension for a period to exceed 10 ten days, a manifestation meeting should occur to determine if the action is a manifestation of their handicapping condition. If the IEP team determines that it is a manifestation, the suspension is removed. This manifestation meeting often does not occur. Under IDEA, even if the student is place on long-term suspension, the student must receive a free appropriate public education that meets the goals and objectives in their IEP while they are on suspension. Unfortunately, too often, the student is not provided any educational services for several months.

Tyrone (not his real name)

Tyrone, a child in foster care, attended a high school in Prince George's County. During the 2010-2011, Tyrone had many suspensions. Tyrone received no educational services from December 9 to March 14. On March 14, he was enrolled in an alternative education program. He had ten days of suspension in this alternative setting but no IEP team meeting was ever convened to determine whether the behavior was a manifestation of his handicapping condition; this was determined to be a violation of IDEA. No educational instruction was provided during these ten days of suspension, no Behavioral Intervention Plan ("BIP") was ever created, and there was no meeting with the superintendent or designee. During the 2010-2011 school year, MDSE found that the student was not afforded FAPE for a total of seventy-one (71) school days, almost one-third of a school year.

Finally, the Discipline Tracking form that is to be maintained in the student's educational record, contained data that was inconsistent with the information documented in the summaries of the IEP team meetings. In order in ensure that students are provided with disciplinary removal protections and special education services in accordance with IDEA, each LEA must accurately record information regarding disciplinary removals.⁴

Wicomico County

Legal Aid has two offices which serve the Eastern Shore, one in Salisbury and one in Easton. These offices receive several calls each year regarding discipline issues. Legal Aid does not have the contract to represent children who are placed in foster care under the jurisdiction of the Circuit Court for the Eastern Shore counties. However, children whom we represent in other jurisdictions are occasionally placed on the Eastern Shore. It is through the representation of these children that Legal Aid has encountered problems with Wicomico County.

Nick (not his real name)

Nick, a child in foster care from Baltimore City, began to attend a high school in Wicomico County in August 2010, after transferring from a Baltimore City high school. On December 10, 2010, Nick was enrolled in a non-public, separate day school located in Cambridge, Maryland (Dorchester County) after a determination was made by his IEP team that this setting was the most appropriate and the least restrictive to meet his special education needs. Nick continued to reside in Wicomico County. The change in school placement was not related to a disciplinary issue.

⁴ Project HEAL at the Kennedy Krieger Institute has observed undocumented school removals on the Eastern Shore (e.g., modified school days, calling parents to pickup as an intervention on BIP, requests to keep the kids at home, letting kids sit in the school parking lot, etc.).

On January 12, 2011, Nick was suspended from the non-public school and told that he was not permitted to return. During the month that Nick had been in the non-public school, he was never provided with a one-to-one aid as required by his IEP. *No manifestation meeting was ever held, and no long-term suspension/expulsion conference was ever held even though Nick continued to be a Wicomico County public school student. Nick remained out of school with no educational services for over 60 calendar days.* At the end of February a conference call occurred in which Wicomico County participated, but they stated that they did not have the resources to meet Nick's IEP and suggested home-hospital teaching disregarding the fact that there was no "emotional crisis."

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

Legal Aid does not know the causes for the all of the delays. In one of the cases highlighted above, it was due to the lack of an interpreter. In two Anne Arundel County cases, the designee needed additional time to make a decision.⁵ In one case, the Superintendent denied the principal's request for long-term suspension, and the student returned to school. However, the student was out of school for a month. Furthermore, the school did not provide the school work that she was missing despite the educational guardian's request for that work. In the other case, the student was placed on long-term suspension for the remainder of the school year, but the school closed out her grades for the year and waived final exams. The student was permitted to return to school at the start of the next school year.

Legal Aid has represented a client in Frederick County where a conference was not scheduled. The parent received a letter several weeks after the expiration of the 10 days advising that the principal's request had been approved and that if the parent wanted a meeting, they could request one. During this time period, the students have not been provided with the school work that they are missing.

Failing to have this conference has resulted in a superintendent not having critical information from the parent and the student. In one particular case, the student and parent had sought the help of the school to deal with being bullied by another student and to prevent a possible fight. The student had gone to the Vice-Principal on three separate, prior occasions; the parent went to the school to address this further and to seek further assistance. The student was only advised to "stay out of their way." Eventually, a fight occurred and the student was placed on long-term suspension with a conference. Prior to obtaining legal representation, the parent was unable to obtain the student's coursework; and the student failed Chemistry. Four months later, after the student obtained legal representation, a settlement was reached where the student returned to her home school. Had the conference been held within the 10 day time period, this needless delay and loss of educational opportunity could have been avoided.

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, fail 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

⁵ In both of these cases, there were video tapes of the incident; and unlike the Baltimore City case, the designee did permit the advocate, student and parent surrogate to review the video tape at the time of the conference. It was the review of the video tape in the first case that clarified the student's lack of culpability in the incident.

the right to attend school are protected. The regulation should therefore be amended as follows

- *It is critical that the language be modified to be mandatory: "Within the 10 days of the initial suspension period the school system shall [should] complete the following steps."*

The practices across the state vary regarding this initial phase. Legal Aid supports requiring that the process be complete in ten days and recognizes that this may require that the conferences be held prior to the 10th day. It is our position that it will be beneficial to accelerating the process of returning the student to school with the least delay particularly in cases where the Superintendent denies the principal's request. *Furthermore, if the decision is not rendered in 10 days, the student should be readmitted to school while the decision is pending.*

- *The following provision should be added:*

The Superintendent or designee shall provide a qualified, neutral interpreter if a parent is limited English proficient or is hearing impaired. The student is not permitted to act as an interpreter. For a parent who requires interpreter service, the decision of the Superintendent and the notice of the right and method of appealing shall also be provided in the parent's native language, within appropriate timeframes.

According to the U.S. Census Bureau's latest information, almost fifteen percent of Maryland households speak a language other than English. It is crucial that the parent understand the nature of the proceeding and their options. It is also crucial that the parents be able to effectively communicate with the Superintendent or designee at the conference. For these reasons, Legal Aid recommends adding this provision.

The written notice to the parent about the suspension conference shall include the following information:

- *The right to bring an advocate to the conference*
- *The right of the student and parent to receive a copy of the investigation report and notice of the right to appeal together with a list of legal and counseling resources, at least seventy-two hours in advance of the suspension conference with the superintendent or his/her designee.*
- *The right to question witnesses at the conference*
- *The right to call witnesses and present evidence at the conference*
- *The right to obtain schoolwork while the student is on suspension*
- *The right to return to school after the tenth day of suspension, regardless of whether a decision has been issued*
- *A list of local legal and counseling resources*
- *The time periods that will apply for the parents to appeal if there is a decision to expel the student or to place the student on long-term suspension*

The Superintendent's decision, in addition to providing the appropriate notices regarding the time to appeal, should also include:

- *The specific time period of the suspension, detailing the right of the student to return to school at the end of the period of suspension*
- *The type of alternative education that will be provided.*

Lastly, Legal Aid 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 no more than 15 calendar days from the date the parent requests an appeal and issue a decision within 5 days from the date of the hearing. 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.

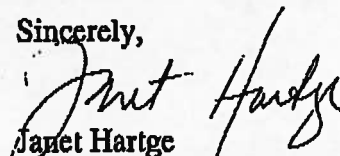
5. What experiences have you had in working with local school systems regarding improvements to the disciplinary process and timelines? What were the successes? What were the barriers?

Legal Aid together with other stakeholders worked with the Baltimore City Public School regarding its proposed policy for permanent expulsion of students. Legal Aid represented several of the children all of whom were under 16 and who were facing permanent expulsion. After winning the cases for the individual children, Legal Aid worked to change the permanent expulsion policy. Legal Aid attended workgroup sessions held by the Chief Executive Officer and the Board of School Commissioners and testified at board of education meetings on the issue. In collaboration with other education advocates, we facilitated significant changes and improvements to the proposed policy, including a requirement that the child's past history and current circumstances be considered. The original policy proposed required an automatic expulsion with no consideration of the individual child's situation.

In our child welfare cases, we always attempt to resolve the issue at the local level prior to filing a state complaint. However, we often find it necessary to file a state complaint.

Thank you for your consideration of these comments.

Sincerely,



Janet Hartge
Assistant Director of Advocacy for
Children's Rights

