
TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., Interim State Superintendent of Schools

DATE: March 26, 2024

SUBJECT: COMAR 13A.08.01.17
School Use of Reportable Offenses
Permission to Re-Publish

Purpose

The purpose of this item is to request permission to re-publish amendments to regulation COMAR 13A.08.01.17 *School Use of Reportable Offenses*. The regulation was published in the Maryland Register from October 6, 2023, to November 6, 2023. Comments were received from three different entities. The Maryland State Department of Education (MSDE) is recommending three revisions to the regulation which are deemed substantive by the Attorney General’s Office and therefore requesting that the regulation be re-published.

Regulation Promulgation Process

Under Maryland law, a state agency, such as the State Board of Education (State Board), may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, MSDE staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

Background/Historical Perspective

Under Maryland law, when a student is arrested for certain offenses, the law enforcement agency making the arrest shall notify the student’s local superintendent, the school principal, and for a school that has a school security officer, the school security officer of the arrest and the charges within 24 hours of the arrest, or as soon as practicable. The offenses which necessitate this notification are known as “reportable offenses.” Reportable offenses are those offenses that occur off school premises, did not occur at an event sponsored by the school, and are serious criminal offenses. Reportable offenses are dictated by statute and include murder, arson, armed carjacking, sexual offenses, among other serious offenses. Offenses that are

related to the student's membership in a criminal organization must also be reported. See Md. Code, Education § 7-303.

The intent of the reportable offense law is not to “punish” the student, but instead to provide the local education agency (LEA) with information that may impact the safety dynamics within the school community. This is different from school discipline where the LEA is using positive and punitive measures to correct inappropriate behavior in school. The reportable offense law governs the exchange and use of arrest information regarding serious and criminal offenses for the purpose of educational programming and for the maintenance of a safe and secure school environment.

Proper implementation of State law and regulations governing reportable offenses can be difficult. LEAs must balance the educational rights and needs of the individual student charged with a reportable offense alongside the overall safety of the students and staff, often with very limited information about the circumstances of the offense. As the LEA is provided with information shortly after arrest, there often has not been a hearing by the adult or juvenile court to determine the student's innocence or guilt, and students are cautious in sharing information with the LEA as that information may be used against them in court. This can lead to LEAs making decisions to remove a student from their regular school program out of an abundance of caution, even when it may not always be necessary to maintain the safety and security of a school.

In 2022, the Maryland General Assembly expressed concern about the purported misuse or overuse of school removals for students arrested for a reportable offense. In response, the General Assembly passed House Bill (HB) 146: *Education – Reportable Offenses, Student Discipline, and School Disruptions – Presence of an Attorney and Reporting* (2022 Md. Laws, Chap. 742). In general, the bill:

1. Amends the definition of a reportable offense in Md. Code, Education § 7-303 to clarify that the offense took place off school property and did not occur at an event sponsored by the school;
2. Requires MSDE to submit a report to the General Assembly by December 30th of each year regarding certain information about reportable offenses at the LEA level;
3. Requires the LEA to submit all necessary information to MSDE to comply with reporting requirements;
4. Requires the LEA to invite the student's attorney, if the student has an attorney, to meetings regarding the removal of the student from the regular school program, including the manifestation determination review for students with disabilities;
5. Applies the provisions of Md. Code, Education § 7-305 (*Suspensions and Expulsions*) to a removal due to a reportable offense; and
6. Requires the LEA to comply with all the requirements of the Individuals with Disabilities Education Act (IDEA) including manifestation determination reviews, when removing a student due to a reportable offense.

While MSDE informed LEAs of the changes to the law, three legal advocacy organizations – Maryland Office of the Public Defender, the Public Justice Center, and Disability Rights Maryland – reached out to MSDE with concerns about the implementation of the law as it related to their clients. MSDE met virtually with these

organizations on two occasions (July 8, 2022, and June 29, 2023) to learn more about the organizations' experiences in representing their clients and used this information to help inform next steps. The legal advocacy organizations addressed concerns about the LEAs' understanding of the definition of reportable offenses; data collection by the LEAs; implementation of the requirements to invite the student's attorney, if the family has an attorney, to meetings to discuss any removal of the student from the school for a reportable offense; and application of requirements under IDEA. MSDE reviewed written documentation submitted by the organizations. MSDE also conducted outreach to the LEAs to learn more about their reportable offenses policies. This information was considered when MSDE drafted the proposed regulations.

In addition to proposing updated regulations to the State Board, MSDE will be updating existing guidance, such as the *Model Policy Bulletin on School Use of Reportable Offenses*. MSDE also held three technical assistance sessions for the LEAs, followed by five open office hours to assist the LEAs in understanding reporting requirements under the law. MSDE will continue to hold these sessions to provide a consistent, scheduled opportunity to meet with MSDE staff for clarification and feedback on reportable offenses.

Executive Summary

MSDE reviewed the regulation and made the proposed amendments with two goals in mind. First, the proposed regulation is amended to align with the statutory language of Md. Code, Educ. § 7-303 and 305. Second, and most importantly, MSDE thoughtfully considered how to provide enough clarity such that students facing community-based charges are not inappropriately removed from their educational program. MSDE is recommending the following amendments to the regulation:

A. Definitions.

MSDE updated the language of criminal "gang" to "organization" to align with the statute. MSDE also updated the definition of reportable offense to be consistent with the statute. This change clarifies that offenses occur off school property and not at school-sponsored events. It also updates the list of reportable offenses to match the statute.

MSDE also proposed a definition for "regular school program," which means "the courses, classes, and related services the student is enrolled in by a local school system at the time of the student's reportable offense." MSDE notes that while the language of "regular school program" also exists in the school discipline regulations, it is not the intent of MSDE to change the meaning of "regular school program" in that regulation, as defined by State Board appeals.

B. Notification by Law Enforcement.

In alignment with the statute, MSDE added language clarifying how law enforcement will inform the LEA of the reportable offense. MSDE will consider ways to work with partners to communicate expectations with local law enforcement agencies around the State.

C. Safety Determination Procedures and Plan.

MSDE drafted updated procedures that require the school principal, with appropriate staff, to determine if the student's presence presents a risk to the safety of other students and staff. If there is a safety concern,

then the principal, with the input of the parent, will develop a safety plan. If the student has an attorney, the attorney must be invited to any meeting between the parent or guardian and the principal related to the safety plan.

D. Removal from the Regular School Program.

Consistent with new statutory requirements, proposed procedures require that if the school principal determines that removal from the regular school program is necessary for the maintenance of safety, the principal shall inform the local superintendent. The local superintendent will conduct a meeting with the parent or guardian and student and make a determination as to whether the student is an imminent threat of serious harm to other students or staff. The procedures apply a 10 school day timeline for this process, as well as instituting appeal provisions.

E. Review Procedures.

MSDE changed the review procedures to require that at a minimum any safety plan is reviewed every 45 school days, or when the LEA is notified of the disposition of the case. This review must include the input of the parent or guardian. MSDE also added appeal provisions.

F. Confidentiality of Information and Retention of Documents.

MSDE broke out existing general provisions into separate sections for ease of the reader. The confidentiality provisions and retention of documents are the same as the current regulations.

G. Students with Disabilities.

MSDE broke out existing general provisions into separate sections for ease of the reader. There is now a section focused on obligations to students with disabilities. This incorporates existing language and adds a new provision from the statute applying the manifestation determination review process to changes in placement resulting from a reportable offense removal.

H. Reportable Offense Involving Rape or a Sexual Assault.

MSDE broke out existing general provisions into separate sections for ease of the reader. This section contains the current language on sexual offenses and physical proximity to alleged victims. MSDE also incorporated a new provision from the Maryland Sexual Offender Registry statute that provides for alternative educational programming for student registrants.

I. General Provisions.

MSDE kept current language about the need to designate school security officers in public schools with students enrolled in grades six through 12. It also kept current language stating LEAs may not charge the student or parent for alternative educational programming or related services.

J. Data Collection.

MSDE added a new section to address data collection requirements from the statute. This data will be shared from the LEA to MSDE. MSDE will use this data to comply with statutorily required reporting to the Governor and General Assembly, consistent with federal and State privacy laws.

Public Comment

The proposed amendments to COMAR 13A.08.01.17 *School Use of Reportable Offenses* were brought before the State Board on July 25, 2023, requesting permission to publish. The State Board approved the request, and the regulation was posted in the Maryland Register for public comment from October 6, 2023, to November 6, 2023. MSDE received comments from three entities: the Maryland Coalition to Reform School Discipline, the Maryland Suspension Representation Project, and Anne Arundel County Public Schools. The comments included suggested revisions in the following areas:

- Definitions included in the proposed regulation;
- Safety determination, appeal, and review procedures;
- Schools' obligations under specific portions of the regulation; and
- Data collection.

All comments have been reviewed and are included in the attached Public Comment Summary document with recommendations for actions. Copies of each of the letters received regarding the regulations are also attached. In response to stakeholder feedback, MSDE recommends the following three revisions to the amended regulation:

- **13A.08.01.17(A) and 13A.01.17(D)(1)**: Adding language to clarify that a student may not be removed solely on the basis of the reportable offense charge;
- **13A.08.01.17(D)(5)**: Amending the language to require LEAs to provide students' parents/guardians notice of appeal rights and procedures. In guidance, MSDE will provide a document to LEAs with appeal language; and
- **13A.08.01.17(G)**: Revising this provision to make clear that students with Section 504 plans are also entitled to manifestation determination reviews.

The Office of the Attorney General has determined the changes to be substantive, and therefore, MSDE requests permission to re-publish the regulation.

Action

MSDE requests permission to re-publish amended regulation COMAR 13A.08.01.17 *School Use of Reportable Offenses*.

Attachments

COMAR 13A.08.01.17 *School Use of Reportable Offenses*

Public Comment Summary

Letters from the Maryland Coalition to Reform School Discipline, the Maryland Suspension Representation Project, and Anne Arundel County Public Schools

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, 7-301.1, 7-303—7-305, 7-305.1, 7-307, 7-308, and 8-404, Annotated Code of Maryland; Ch. 273, Acts of 2016; Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.17 School Use of Reportable Offenses.

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

- (1) "Appropriate educational programming" means a regular or alternative education program that allows a student the opportunity to continue the student's education within the public school system and, if in secondary school, the opportunity to receive credit.
- (2) "Criminal [gang] organization" has the meaning stated in Criminal Law Article, §9-801, Annotated Code of Maryland.
- (3) "Law enforcement agency" means the law enforcement agencies listed in Public Safety Article, §3-101(e), Annotated Code of Maryland.
- (4) "Local school system" means the schools and school programs under the supervision of the local superintendent.
- (5) "Local superintendent" means the county superintendent, for the county in which a student is enrolled, or a designee of the superintendent, who is an administrator.
- (6) "Regular school program" means the courses, classes, and related services the student is enrolled in by a local school system at the time of the student's reportable offense.
- [6](7) "Related services" means any supportive intervention that is available through the local school system.
- [7](8) "Reportable offense" means *an offense that:*
 - (a) A crime of violence, as defined in Criminal Law Article, §14-101, Annotated Code of Maryland;
 - (b) Any of the offenses enumerated in Courts and Judicial Proceedings Article, §3-8A-03(d)(4), Annotated Code of Maryland;
 - (c) A violation of Criminal Law Article §4-101, 4-102, 4-203 or 4-204, Annotated Code of Maryland;
 - (d) A violation of Criminal Law Article, §5-602—5-609, 5-612—5-614, 5-617, 5-618, 5-627 or 5-628, Annotated Code of Maryland;
 - (e) A violation of Criminal Law Article, §4-503, 9-504 or 9-505, Annotated Code of Maryland;
 - (f) A violation of Criminal Law Article §6-102, 6-103, 6-104 or 6-105, Annotated Code of Maryland;
 - (g) A violation of Criminal Law Article §9-802 or 9-803, Annotated Code of Maryland;
 - (h) A violation of Criminal Law Article §3-203, Annotated Code of Maryland;
 - (i) A violation of Criminal Law Article §6-301, Annotated Code of Maryland;
 - (j) A violation of Criminal Law Article §9-302, 9-303 or 9-305, Annotated Code of Maryland;
 - (k) A violation of Criminal Law Article §7-105, Annotated Code of Maryland; or
 - (l) An offense related to membership in a criminal gang.]
 - (a) Occurred off school premises;
 - (b) Did not occur at an event sponsored by the school; and
 - (c) Involved any of the following:
 - (i) A crime of violence, as defined in § 14–101 of the Criminal Law Article;
 - (ii) Any of the offenses enumerated in § 3–8A–03(e)(4) of the Courts Article;
 - (iii) A violation of § 4–101, § 4–102, § 4–203, or § 4–204 of the Criminal Law Article;
 - (iv) A violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–606, § 5–607, § 5–608, § 5–608.1, § 5–609, § 5–612, § 5–613, § 5–614, § 5–617, § 5–618, § 5–627, or § 5–628 of the Criminal Law Article;
 - (v) A violation of § 4–503, § 9–504, or § 9–505 of the Criminal Law Article;
 - (vi) A violation of § 6–102, § 6–103, § 6–104, or § 6–105 of the Criminal Law Article;
 - (vii) A violation of § 9–802 or § 9–803 of the Criminal Law Article;
 - (viii) A violation of § 3–203 of the Criminal Law Article;
 - (ix) A violation of § 6–301 of the Criminal Law Article;
 - (x) A violation of § 9–302, § 9–303, or § 9–305 of the Criminal Law Article;
 - (xi) A violation of § 7–105 of the Criminal Law Article;
 - (xii) A violation of § 6–202 of the Criminal Law Article; or
 - (xiii) A violation of § 10–606 of the Criminal Law Article.
 - [8](9) "School principal" means the principal of the public or nonpublic school in which a student is enrolled, or a designee of the principal, who is an administrator.
 - [9](10) "School security officer" means an individual designated to maintain the security and safety of a school.
 - (a) School security officer includes:
 - (i) A school principal or other school administrator;
 - (ii) A law enforcement officer; or

(iii) Other individual employed by a local school system or a local government who is designated by the [county] local superintendent or a school principal to help maintain the security and safety of a school.

(b) School security officer does not include:

- (i) A teacher;
- (ii) A school counselor;
- (iii) A school psychologist; or
- (iv) A school social worker.

[10](11) "Student" means an individual enrolled in a public school system in the State who is 5 years old or older and younger than 22 years old.

(12) "Student with a disability" means a student eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

[B. Administrative Procedures.

(1) Promptly, upon receipt of information from a law enforcement agency of an arrest of a student for a reportable offense, the local superintendent shall provide the school principal of the school in which the student is enrolled with the arrest information, including the charges. If the student who has been arrested is an identified student with disabilities who has been enrolled by the public school system in a nonpublic school program, the local superintendent shall provide the principal of the nonpublic school with the arrest information, including the charges.

(2) The school principal with appropriate staff members shall immediately develop a plan that addresses appropriate educational programming and related services for the student and that maintains a safe and secure school environment for all students and school personnel. The school principal shall request that the student's parent or guardian:

- (a) Participate in the development of the plan; and
- (b) Submit information that is relevant to developing the plan.

(3) If the plan results in a change to the student's educational program, the school principal shall promptly schedule a conference to inform the parent or guardian of the plan. The plan shall be implemented not later than 5 school days after receipt of the arrest information.

(4) The school principal and appropriate staff shall review the plan and the student's status and make adjustments as appropriate:

- (a) Immediately upon notification from the State's Attorney of the disposition of the reportable offense; or
- (b) Pending notification from the State's Attorney, at a minimum on a quarterly basis.

(5) The parent or guardian shall be informed of any adjustments to the plan.

(6) Each local school system shall provide a review process to resolve any disagreement that arises in the implementation of this regulation.]

B. Notification by Law Enforcement. If a student is arrested for a reportable offense or an offense that is related to the student's membership in a criminal organization, the law enforcement agency making the arrest:

(1) *Shall notify the following individuals of the arrest and the charges within 24 hours of the arrest or as soon as practicable:*

- (a) *The local superintendent;*
- (b) *The school principal; and*
- (c) *For a school that has a school security officer, the school security officer; and*

(2) *May notify the State's Attorney of the arrest and charges.*

[C. General Provisions.

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §C(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction, an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal may transmit the information obtained under this regulation as a confidential file to the local superintendent of another public school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

(3) A local superintendent or school principal who transmits information about a student under §C(2) of this regulation shall include in the confidential transmittal information on any educational programming and related services provided to the student.

(4) A fee may not be charged to the student or parent or guardian for the alternative educational programming or related services that are developed for the student.

(5) Notice of the reportable offense charge alone may not be the basis for suspension or expulsion of the student. However, nothing in this regulation is intended to limit the manner in which a school obtains information or uses information obtained by any lawful means other than through notice of the arrest.

(6) Appropriate educational programming and related services shall be provided to an identified student with disabilities in accordance with the Individuals with Disabilities Education Act and State special education law and regulations, including COMAR 13A.05.01.

(7) The reportable offense information obtained by a local superintendent, school principal or school security officer shall be:

(a) Transmitted only to school personnel of the school in which the student is enrolled as necessary to carry out the purposes set forth in this regulation; and

(b) Destroyed when the first of the following occurs:

- (i) The student graduates;
- (ii) The student otherwise permanently leaves school;
- (iii) The student turns 22 years old;
- (iv) The criminal case involving the reportable offense is dismissed;
- (v) The student is found not guilty of the reportable offense; or
- (vi) The student pleads to a lesser offense that is not a reportable offense.

(8) Reportable offense involving rape or a sexual offense.

(a) Except as otherwise provided in paragraph §C(8)(b) of this regulation, the local superintendent and the school principal shall consider prohibiting a student who is arrested for a reportable offense involving rape or a sexual offense from attending the same school or riding on the same school bus as the alleged victim of the reportable offense if such action is necessary or appropriate to protect the physical or psychological well-being of the alleged victim.

(b) If a student is arrested for a reportable offense involving rape or a sexual offense and is convicted of or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.

(9) Nothing in this regulation is intended to limit the manner in which a local school obtains information or uses information obtained by any lawful means other than that set forth in §C(2) of this regulation.

(10) Each public school that enrolls students in grades six through 12 in the State shall designate at least one school security officer.]

C. Safety Determination Procedures and Plan.

(1) Promptly, upon receipt of information from a law enforcement agency or another verified source of an arrest of a student for a reportable offense:

(a) The local superintendent shall provide the school principal of the school in which the student is enrolled with the arrest information, including the charges.

(b) If the student who has been arrested is an identified student with disabilities who has been enrolled by the public school system in a nonpublic school program, the local superintendent shall provide the principal of the nonpublic school with the arrest information, including the charges.

(2) The school principal, in consultation with appropriate staff members, shall consider whether the student's presence presents a risk to the safety of other students and staff.

(3) If the school principal believes the student presents a safety risk, the school principal shall immediately develop a plan that:

(a) Addresses appropriate educational programming and related services for the student; and

(b) Maintains a safe and secure school environment for all students and staff.

(4) The school principal shall request that the student's parent or guardian:

(a) Participate in the development of the plan; and

(b) Submit information that is relevant to developing the plan.

(5) If the student has an attorney, the school principal shall invite the student's attorney to participate in any meeting with the student's parent or guardian to discuss the plan.

D. Removal from regular school program.

(1) A student may not be removed from the student's regular school program unless the student presents an imminent threat of serious harm to other students or staff.

(2) Notice of the arrest for a reportable offense may not be the sole basis for a change in the student's regular school program.

(3) If the plan developed in paragraph C(3) of this regulation includes removal of the student from the student's regular school program, the school principal shall promptly inform the local superintendent in writing.

(4) Upon receipt of a written report from a school principal requesting a removal from the regular school program, and no later than ten school days from the notification of the reportable offense, the local superintendent shall:

(a) Promptly hold a conference with the student, the student's parent or guardian, and if the student has an attorney, the student's attorney; and

(b) Make a determination as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.

[4](5) Implementation of the plan must occur by the tenth school day following notification of the reportable offense.

[5](6) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days after the receipt of the written determination and notice of the appeal rights.

[6](7) If an appeal is filed, the local board or its designated committee or hearing officer shall have 45 calendar days from the date the appeal was received to hear the appeal and issue a decision, as follows:

(a) This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and

(b) This timeline shall also apply if the local board elects to use a hearing examiner.

[7](8) *If due to extraordinary circumstances or unusual complexity of a particular appeal, the local board determines that it will be unable to hear an appeal and issue a decision within 45 calendar days, it may petition the State Superintendent for an extension of time.*

[8](9) *The student or the student's parent, guardian, or representative:*

(a) Shall be provided with the school system's witness list and a copy of the documents that the school system will present at the hearing no later than five business days before the hearing; and

(b) May bring counsel and witnesses to the hearing.

(10) 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 local board.

(11) The appeal to the local board does not stay the decision of the local superintendent.

(12) The decision of the local board is final.

E. Review Procedures.

(1) With the input of the school principal, appropriate staff, the student, and the student's parent or guardian, the local superintendent shall review the plan and the student's status and make adjustments as appropriate:

(a) Immediately upon notification from the State's Attorney of the disposition of the reportable offense; or

(b) Pending notification from the State's Attorney, at a minimum every 45 school days.

(2) If the student has an attorney, the local superintendent shall invite the student's attorney to participate in any meeting with the student or the student's parent or guardian to discuss the review of the plan.

(3) The student and the student's parent or guardian shall be provided in writing with the local superintendent's review decision.

(4) If the student or the student's parent or guardian disagrees with the local superintendent's review decision, the student or the student's parent or guardian may appeal the decision consistent with paragraphs §D(5)-(11) of this regulation.

F. Confidentiality of Information and Retention of Documents.

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §F(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction, an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal may transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

(3) A local superintendent or school principal who transmits information about a student under §F(2) of this regulation shall include in the confidential transmittal information on any educational programming and related services provided to the student.

(4) Nothing in this regulation is intended to limit the manner in which a local school obtains information or uses information obtained by any lawful means.

(5) The reportable offense information obtained by a local superintendent, school principal, or school security officer shall be:

(a) Transmitted only to school personnel of the school in which the student is enrolled and as necessary to carry out the purposes set forth in this regulation; and

(b) Destroyed when the first of the following occurs:

(i) The student graduates;

(ii) The student otherwise permanently leaves school;

(iii) The student turns 22 years old;

(iv) The criminal case involving the reportable offense is dismissed;

(v) The student is found not guilty of the reportable offense; or

(vi) The student pleads to a lesser offense that is not a reportable offense.

G. Students with Disabilities

*(1) Appropriate educational programming and related services shall be provided to an identified **student with a disability** in accordance with the Individuals with Disabilities Education Act, **Section 504 of the Rehabilitation Act of 1973**, and State special education law and regulations, including COMAR 13A.05.01.*

*(2) Removal of a student with a disability resulting in a change of placement **[under COMAR 13A.08.03.05]** shall be conducted in conformance with the requirements of the Individuals with Disabilities Education Act, **Section 504 of the Rehabilitation Act of 1973**, and State special education law and regulations, including requirements related to a manifestation determination.*

(3) If the student has an attorney, the attorney shall be invited to attend any meeting to discuss the manifestation determination.

H. Reportable Offense Involving Rape or a Sexual Offense.

(1) Except as otherwise provided in paragraph § H(2) of this regulation, the local superintendent and the school principal shall consider prohibiting a student who is arrested for a reportable offense involving rape or a sexual offense from attending the same school or riding on the same school bus as the alleged victim of the reportable offense if such action is necessary or appropriate to protect the physical or psychological well-being of the alleged victim.

(2) *If a student is arrested for a reportable offense involving rape or a sexual offense and is convicted of or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.*

(3) *Consistent with Criminal Procedure Article, § 11-722(e), Annotated Code of Maryland, a student who is required to register with the Maryland Sex Offender Registry may receive an education in accordance with State law in any of the following locations:*

- (a) *A location other than a public or nonpublic elementary or secondary school, including by:*
 - (i) *Participating in the Home and Hospital Teaching Program for Students; or*
 - (ii) *Participating in or attending a program approved by a local board;*
- (b) *A Regional Institute for Children and Adolescents; or*
- (c) *A nonpublic educational program as provided by § 8-406 of the Education Article if:*
 - (i) *The registrant has notified an agent or employee of the nonpublic educational program that the registrant is required to register under this subtitle; and*
 - (ii) *The registrant has been given specific written permission by an agent or employee of the nonpublic educational program to attend the nonpublic educational program.*

I. General Provisions

(1) *Each public school that enrolls students in grades six through 12 in the State shall designate at least one school security officer.*

(2) *A fee may not be charged to the student or parent or guardian for the alternative educational programming or related services that are developed for the student.*

J. Data Collection.

(1) *Each year the local school system shall provide to the Department the following information for each reportable offense for which the local school received information under this regulation:*

- (a) *The nature of the reportable offense;*
- (b) *Verification that the offense occurred off school premises;*
- (c) *Action taken by the local school and local board after being notified of the reportable offense;*
- (d) *The race, ethnicity, gender, and disability status of the student arrested for the reportable offense;*
- (e) *The grade of the student arrested for the reportable offense;*
- (f) *The regular school program of the student arrested for the reportable offense;*
- (g) *Whether the student's regular school program was altered as a result of the reportable offense;*
- (h) *If the student was removed from the student's regular school program as a result of the reportable offense:*
 - (i) *The amount of time during which the student was removed; and*
 - (ii) *The student's placement and educational programming during the period of removal; and*
- (i) *If removed from the student's regular school program, the student's academic performance during the time period the student was removed, including attendance, grades, and standardized test scores, and any additional disciplinary actions.*

DR. CAREY WRIGHT
Interim State Superintendent of Schools

Public Comment Summary- March 26, 2024

COMAR 13A.08.01.17 – School Use of Reportable Offenses

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17.(A)(6): Revise definition of "regular school program"</p> <ul style="list-style-type: none"> • <u>Comment</u>: Define a "regular school program" as <i>the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in.</i> • <u>Rationale</u>: Under the proposed regulations, "regular school program" is defined solely as "classes, courses, and related services the student is enrolled in." <i>See Proposed Regulation, 13A.08.01.17(A)(6).</i> This definition lacks specificity and will not trigger the protections contemplated by the statute. Under MSDE's proposed definition, a student could be transferred to another school, even to an alternative school or to virtual school, where the classes and courses are the same. We recommend a more precise definition of "regular school program" which includes the student's school placement prior to the charge. Clarifying this definition as the school the student attended at the time of charge will provide clarity and ensure equal and fair application across school systems. 	<p>MSDE does not recommend changing the definition of "regular school program" from the proposed language. MSDE believes that the definition reinforces the balance between the right of the student with a reportable offense to maintain access to their educational program and the safety of a specific school building.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): Define “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • <u>Comment</u>: The proposed regulations should define “imminent threat of serious harm” as <i>posing likely and immediate danger of significant physical injury</i>. • <u>Rationale</u>: Our proposed definition of “imminent threat of serious harm” is aligned with the Maryland State Department of Education’s (MSDE) interpretation of this term as used in the school discipline context. <i>See MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018</i>. We encourage MSDE to define the term “harm” in these regulations as it did in the recent regulations regarding restraint and seclusion, where MSDE incorporated the definition of “serious physical harm” from federal law. <i>See COMAR 13A.08.04.02(22)</i> (defining “serious physical harm” has the same meaning as “serious bodily injury” as defined in 18 U.S.C.§1365(h)(3)). Given that the standard of “imminent threat of serious harm” is the critical factor for whether or not a student is excluded from school under the reportable offense statute, MSDE must define that term just as it has defined other terms in the proposed regulations. In the absence of a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their school system’s policies. The disparate treatment of students depending on where they live is evident in a review of the school discipline and school-based arrest data statewide. Defining “imminent threat of serious harm” is an important step toward consistency in the treatment of students, protecting their due process rights, and ensuring that student’s school placements are not disrupted without serious cause. 	<p>MSDE will review all definitions of “imminent threat of serious harm” across the Department and provide one common definition to be used in all contexts.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): Define “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • Comment: Add to the proposed regulations: <i>Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.</i> • Rationale: Our proposed additional language is in line with holdings from recent MSBE opinions regarding reportable offense cases and should be added to the regulations to provide clarity on what is needed to change a student’s regular school program. See <i>T.R. and B.J. v. Caroline County Bd. of Educ.</i>, MSBE Op. No. 20-06 (2020); <i>F.W. v. Baltimore County Bd. of Educ.</i>, MSBE Op. No.23-22 (2023). This language also reinforces that when a student has been arrested and charged, the reportable offense is a pre-adjudicated offense, so the student has not yet been found to be involved or guilty. As MSBE has stated, there must be an individualized determination of any imminent threat based on more than just the alleged conduct. <i>Alexander and Arlene A. v. Harford County Bd. of Educ.</i>, MSBE Op. No. 18-21, at 9 (2018). 	<p>MSDE recommends adding “notice of the reportable offense charge or arrest alone may not be the basis for a change in the student’s regular school program” to the proposed regulation. This is a substantive change.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(D)(3)(b): Explain the meaning of “make a determination”</p> <ul style="list-style-type: none"> • <u>Comment</u>: We recommend that “make a determination” be changed to <i>conduct a thorough investigation and make an individualized determination about any safety threat.</i> • <u>Rationale</u>: The proposed language in 13A.08.01.17(D)(3)(b) states that the superintendent’s designee shall “<u>make a determination</u> as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.” We are concerned that this language is vague and is not sufficient to ensure due process. According to multiple MSBE opinions, the superintendent’s designee “must conduct a thorough investigation and make an individualized determination about any safety threat.” F.W. v. Baltimore County Bd. of Educ., MSBE Op. No. 23-22. at 5 (citing T.R. and B.J. v. Caroline County Bd. of Educ., MSBE Op. No. 20-06 (2020)); Alexander and Arlene A. v. Harford County Bd. of Educ., MSBE Op. No. 18-21, at 9; COMAR 13A.08.01.11(C)(4)(b). We believe that clearer enumeration of the superintendent’s designee responsibility in regard to this process will benefit school systems, and students and their families. We remain concerned that there is confusion and inconsistency within school systems regarding what process is required before a student’s “regular school program” can be changed based on a reportable offense. 	<p>Clarification of what it means to make a determination regarding the reportable offense and safety will be covered in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(D)(3)(b): Explain the meaning of “make a determination”</p> <ul style="list-style-type: none"> • <u>Comment:</u> The regulations should provide factors to be considered when determining “imminent threat of serious harm,” including factors spelled out in recent appeal cases such as the student’s past conduct, the student’s response to the consequence of the behavior, and the impact the student’s behavior has on the school environment. <i>T.R. and B.J. v. Caroline County Board of Educ.</i>, MSBE Op No. 20-06, at 8. • <u>Rationale:</u> The proposed language offers districts no guidance on how to determine whether the student’s presence in school poses an imminent threat of serious harm. MSDE’s Model Policy Bulletin on School Use of Reportable Offenses from 2013 instructs schools to “gain a complete picture of the student, the student’s needs, and the best course of action for the student and the school.” <i>T.R. and B.J. v. Caroline County Bd. of Educ.</i>, MSBE Op No. 20-06, at 8 (citing Model Policy at 3). The 2013 MSDE Model Policy and numerous MSBE opinions set out requirements for reaching the imminent threat determination. <i>Alexander and Arlene A. v. Harford County Bd. of Educ.</i>, MSBE Op. No. 18-21; <i>T.R. and B.J. v. Caroline County Bd. of Educ.</i>, MSBE Op. No. 20-06; <i>M.S. v. Prince George’s County Bd. of Educ.</i>, MSBE Op. No. 18-09 (2018) (expressing favor for an individualized approach to making the imminent threat determination, including consideration of a student’s disciplinary history). The reportable offense regulations will be more effective if those requirements are condensed into one regulation. 	<p>MSDE will provide a list of non-exhaustive factors for determining imminent threat of serious harm in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(D)(5): Appeal timeline and notice of appeal rights</p> <ul style="list-style-type: none"> • <u>Comment</u>: We recommend that the language in 13A.08.01.17(D)(5) read: 5) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days from the <i>date of the written determination plus 3 days for mailing. Any written determination notice shall include the appeal timeline and appeal process.</i> • <u>Rationale</u>: We are concerned that parents/guardians are generally not familiar with the reportable offense process and are not aware of their right to appeal the determination. It is critical that families are provided <u>written</u> notice of the determination and the appeal timeline and process. As most school systems' student handbooks and codes of conduct do not address reportable offenses, this process of changing a student's regular school program is done without full transparency. Due process requires more. We encourage MSBE to provide clear direction to ensure that the rights of students and parents are protected and school systems do not fall short of their legal obligation. 	<p>MSDE is in favor of requiring LEAs to include information regarding the appeal timeline and process with the written determination notice. The proposed regulation will be amended accordingly. This is a substantive change.</p> <p>In addition, MSDE will provide LEAs with a document that contains appeal language. This document can be attached to communication to parents.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(E): Clarify the review procedures when a charge is resolved</p> <ul style="list-style-type: none"> <p>Comment: We recommend that the regulations add to the review procedures: <i>Upon notification of disposition, if a student is in the community, there is a presumption that there are no safety issues and the student shall return to the student's home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.</i></p> <p>Rationale: In their current form, the proposed regulations are silent on how long a charge can impact the placement of a student. The proposed regulations do not differentiate a student involved in the juvenile justice system whose case is closed from a student who was recently arrested for an offense. The language from the statute implies that once the state's attorney's office communicates the disposition of the charge that the student should be permitted to return to their home school or the last school of record prior to the reportable offense charge. The regulations should clarify that school systems do not have unlimited power to disrupt a student's school placement once a charge has been resolved. If a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community, the school system should not be able to remove the student from their regular school placement when there are no current school discipline issues.</p> 	<p>The proposed regulation is not silent on how long a charge can impact a student's placement. COMAR13A.08.01.17(E)(1) is clear that a student's placement is to be reviewed immediately upon notification of disposition from the State's Attorney. Prior to notification of disposition, the regulation requires review of the student's safety plan and status every 45 days. Rather than providing the LEA with boundless power to exclude a student from the regular school program, the regulation ensures that safety plans are regularly reviewed and adjusted as appropriate. Guidance will further clarify and explain this expectation.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>13A.08.01.17(G): “Students with disabilities” should include students with Section 504 plans</p> <ul style="list-style-type: none"> • <u>Comment</u>: Clarify that a manifestation determination review must be scheduled for any student with an IEP or a Section 504 plan prior to the scheduling of the reportable offense conference. The proposed regulations do not make clear that students with a Section 504 plan are entitled to this protection. • <u>Rationale</u>: Schools must conduct an evaluation of a student who has a Section 504 plan before proceeding with a disciplinary removal that will result in a significant change in placement, which includes a removal from class or school for longer than ten consecutive days or a series of removal from class or school that together total more than ten days in a school year and constitute a pattern of removal. <i>See</i> 34 C.F.R. § 104.35(a). The evaluation is similar to that of a manifestation determination review for students with an IEP; the purpose of the evaluation is to determine whether the behavior that is at the root of the disciplinary action is a manifestation of the student's disability and if the student's behavior is a manifestation of a disability, the school may not proceed with disciplinary action that would exclude the student on the basis of disability. Since students with IEPs and students with Section 504 plans have the same procedural right to a determination of whether their behavior is a manifestation of their disability, if a student with an IEP must have a manifestation determination review prior to the scheduling of the reportable offense conference, so should a student with a Section 504 plan. 	<p>MSDE is in favor of adding students with a 504 plan to the regulation. This change is substantive.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Coalition to Reform School Discipline</p>	<p>Clarify the Level Services School Systems Must Provide</p> <ul style="list-style-type: none"> • <u>Comment</u>: Students with a reportable offense charge who have been ordered by a court to be in the community and attend school regularly need the consistency of their regular school program. We know that students with a reportable offense charge have experienced a wide range of school placements throughout the state, including home & hospital services, virtual school, or truncated alternative school programs. Because these students are not considered “suspended or expelled,” they are entitled to full educational services as opposed to the minimal level of education (e.g. daily classwork assignments) services for suspended or expelled students. <i>See</i> COMAR 13A.08.01.11(F). The regulations should clarify what level of services a student with a reportable offense charge is entitled to during the 10 days during which the superintendent’s designee conference occurs and during any subsequent removals. • We are further concerned about school systems’ over-reliance on virtual school for this population of students. As we learned during the pandemic, virtual school is difficult for many students, and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a “virtual school” program, which does not in any way allow students to fully access the curriculum, instruction, services (including free breakfast and lunch) and activities available to students attending school in-person, is not appropriate. 	<p>Under the proposed regulation, removal from the student’s regular school program and placement into another program requires the development of a safety plan that “addresses appropriate educational programming and related services for the student” (see 13A.08.01.17(C)(3)(a)). It is possible that a student may not be able to access the full range of services available in the regular school program during the program of removal. However, the school must strive to maintain a school environment that is safe and secure for all students and staff. Striking this balance may, in some cases, mean that the student is not able to access the exact services offered by the regular school program.</p> <p>The assertion that LEAs are over-reliant on virtual school placement for students accused of reportable offenses is unfounded. Data from the 2022-2023 school year collected from the LEAs indicates that 86.7% of students accused of reportable offenses were retained in their regular school program, 3.5% were placed in virtual school, 3.8% were placed on home and hospital, 2.3% were placed in alternative schools, .6% were placed in night school, and .3% transferred to another school either within or outside of the district. The remaining 2.8% were detained in juvenile or adult correctional facilities or put in therapeutic placement, placements made not by the LEAs but rather by the justice system or other entities.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17.(A)(6): Definition of "regular school program"</p> <ul style="list-style-type: none"> • <u>Comment:</u> We recommend that a “regular school program” be defined as: <i>Regular school program means the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in.</i> • <u>Rationale:</u> Under the proposed regulations, “regular school program” is defined solely as “classes, courses, and related services the student is enrolled in.” <i>See</i> Proposed Regulation, 13A.08.01.17(A)(6). This definition is problematic as it is vague and overly broad. As defined, a student could be transferred to an alternative school or to virtual school, where the classes and courses are the same, but the intended due process protections of HB 146 would not necessarily be triggered. We therefore recommend a more precise definition of “regular school program.” Narrowing this definition as the school the student attended prior to the charge will provide clarity and ensure equal and fair application across school systems. It needs to be clear when the due process protections are triggered, which is when a principal proposes to remove a student from the school they are attending prior to the charge. <p>While MSBE in a recent opinion stated that a student may not have the right to attend a specific school, it also affirmed that a transfer to an alternative school (which we deem virtual school to be) requires compliance with the discipline regulations. <i>See L.S. v. Prince George’s County Bd. of Educ.</i>, MSBE Op. 23-13, at 4-5 (2023). Likewise, the Maryland Office of the Attorney General in a legal opinion dated May 31, 2019, see attached, concluded that placement of a student in an alternative school “results in the removal of a student from the student’s home school and from the student’s current or regular education program. In that regard, the placement meets the definition of each of the four kinds of suspension.” Thus, “regular school program” in the discipline context clearly does not include an alternative school or virtual school and should be made explicit in the reportable offense regulations as well.</p>	<p>MSDE does not recommend changing the definition of “regular school program” from the proposed language. MSDE believes that the definition reinforces the balance between the right of the student with a reportable offense to maintain access to their educational program and the safety of a specific school building.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • <u>Comment</u>: The proposed regulations should define “imminent threat of serious harm.” We recommend that “imminent threat of serious harm” be defined as <i>posing likely and immediate danger of significant physical injury</i>. • <u>Rationale</u>: Our proposed definition of “imminent threat of serious harm” is consistent with the Maryland State Department of Education’s (MSDE) interpretation of this term as used in the school discipline context. <u>See MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018.</u> <p>In the recently adopted regulations regarding restraint and seclusion, MSDE incorporated the definition of “serious physical harm” from federal law and we encourage MSDE to define the term “harm” in these regulations as well. <u>See COMAR 13A.08.04.02(22)</u> (defining “serious physical harm” to have the same meaning as “serious bodily injury” as defined in 18 U.S.C. §1365(h)(3)). Given that the standard of “imminent threat of serious harm” is the linchpin to whether or not a student is excluded from their school under the reportable offense statute, MSDE has the responsibility to give meaning to that critical term as it has defined other terms in the proposed regulations. Without a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their respective school system’s interpretations. A review of the school discipline and school-based arrest data statewide demonstrates evidence of the disparate treatment depending on where students live based on varying interpretations of “imminent threat of serious harm” among school systems.</p> <p>Defining “imminent threat of serious harm” is a critical step toward providing greater consistency in the treatment of students, protecting their due process rights, ensuring school systems have a uniform legal understanding of this standard, and ensuring that students’ school placements are not disrupted without serious cause. As MSBE has previously stated: “a student who is not a continuing, pending threat to his fellow students or staff belongs back in his or her school because it is likely the best environment for the student.” <u>Alexander and Arlene A. v. Harford County Bd. of Educ.</u>, MSBE Op. No. 18-21, at 8 (2018).</p>	<p>MSDE will review all definitions of “imminent threat of serious harm” across the Department and provide one common definition to be used in all contexts.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • <u>Comment</u>: Add to the proposed regulations: “<i>Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.</i>” • <u>Rationale</u>: This proposed additional language is based on holdings from recent MSBE opinions regarding reportable offense cases and should be included in the regulations to provide clarity regarding the process. <i>See T.R. and B.J. v. Caroline County Bd. of Educ.</i>, MSBE Op. No. 20-06 (2020); <i>F.W. v. Baltimore County Bd. of Educ.</i>, MSBE Op. No.23-22 (2023). This language also reinforces the understanding that when a student has been arrested and charged, the reportable offense is a <u>pre-adjudicated</u> offense, meaning the student has not yet been found involved. As MSBE has stated, there must be an individualized determination of any imminent threat based on more than just the alleged conduct. <i>Alexander and Arlene A. v. Harford County Bd. of Educ.</i>, MSBE Op. No. 18-21, at 9. 	<p>MSDE recommends adding “notice of the reportable offense charge or arrest alone may not be the basis for a change in the student’s regular school program” to the proposed regulation. This is a substantive change to the regulation.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”</p> <ul style="list-style-type: none"> • <u>Comment</u>: The regulations should provide a list of non-exhaustive factors to be considered when determining “imminent threat of serious harm,” including factors spelled out in recent appeal cases, such as the student’s past conduct, the student’s response to the consequence of the behavior, and the impact the student’s behavior has on the school environment. • <u>Rationale</u>: The proposed regulations provide districts no guidance on how to determine whether the student’s presence in school poses an imminent threat of serious harm. The 2013 MSDE Model Policy Bulletin on School Use of Reportable Offenses instructs schools to “gain a complete picture of the student, the student’s needs, and the best course of action for the student and the school.” <i>T.R. and B.J. v. Caroline County Bd. of Educ.</i>, at 8 (citing Model Policy at 3). The 2013 MSDE Model Policy is attached. As per the Model Policy and numerous MSBE opinions, there are requirements for reaching the imminent threat determination and the reportable offense regulations will be more effective if the requirements are compiled and elucidated. <i>See Alexander and Arlene A. v. Harford County Bd. of Educ.</i>, MSBE Op. No. 18-21; <i>T.R. and B.J. v. Caroline County Bd. of Educ.</i>, MSBE Op. No. 20-06; <i>see also M.S. v. Prince George’s County Bd. of Educ.</i>, MSBE Op. No. 18-09 (2018) (expressing favor for an individualized approach to making the imminent threat determination, including consideration of a student’s disciplinary history). 	<p>MSDE will provide a list of non-exhaustive factors for determining imminent threat of serious harm in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(C) Safety Determination Procedures and Plan and (D) Removal from Regular School Program</p> <ul style="list-style-type: none"> • <u>Comment:</u> Add to 13A.08.01.17(C)(2) so it reads: The school principal, in consultation with appropriate staff members, shall consider whether the student’s presence presents a risk to the safety of other students and staff <i>and whether and how such risk can be mitigated through interventions or supports.</i> • <u>Rationale:</u> When school staff are determining whether the student’s presence at the school presents a risk to the safety of other students and staff, we believe that a review of whether and how such risk can be mitigated is an integral part of the analysis and discussion. The goal should be to keep the student in their regular school program to avoid educational instability and resulting harm. School systems therefore need to think through whether any identified risk can be mitigated through interventions or supports that would allow the student to remain in their regular education program. Examples of interventions or supports in the student’s regular school program that could mitigate risk include restrictions or increased supervision within the school building, a schedule change, additional staffing, counseling, referral to the Student Support Team, and daily check-ins with the student to assess for safety. <p>In addition, in many situations, the Department of Juvenile Services (DJS) is providing support and services to the student and the juvenile court is still maintaining oversight. The services and supervision by the DJS and the court, as well as services and supports by the school system, can mitigate any potential risk. Moreover, by considering interventions and supports to mitigate any safety concerns, school systems will be required to consider the risk more effectively without relying solely on the seriousness of the charge.</p>	<p>The proposed regulation requires the development of a safety plan that considers appropriate educational programming and related services for the student (See 13.A.08.01.17(C)(3)(a)). This includes consideration of services that could mitigate the risk of harm. These will be further explored in guidance provided by MSDE.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(C) Safety Determination Procedures and Plan and (D) Removal from Regular School Program</p> <ul style="list-style-type: none"> • <u>Comment:</u> Pursuant to the proposed regulations 13A.08.01.17(C)(3), the principal shall develop a plan if the principal believes the student presents a safety risk. If the plan includes removal from the student’s regular school program, the principal must notify the local superintendent in writing and provide a written report. <i>See</i> Proposed Regulations, 13A.08.01.17(D). We believe that the principal should be required to identify in the “plan” why behavior supports and other interventions would not mitigate any risk of imminent threat of serious harm. • <u>Rationale:</u> MSBE has repeatedly explained that long-term removals are “last-resort options.” COMAR 13A.08.01.11(A)(6); MSBE, <i>The Maryland Guidelines for a State Code of Discipline</i>, at 4 (2014); <i>K.B. v. Baltimore City Bd. of Sch. Comm’rs</i>, MSBE Op. No. 16-12, at 3 (2016). Requiring the plan to explain the reasons behavior supports or other interventions are not being used to keep the student in their current school will help to prevent the overuse of unnecessary removals. This particularly makes sense in the context of reportable offense removals since the behavior at issue happened off school grounds and therefore intrinsically presents less of a safety risk than behavior that occurs in school or on school grounds. Additionally, including the interventions and supports in the plan will make the principal’s report useful for understanding which interventions are ineffective or underutilized by schools. 	<p>MSDE will provide information related to potential interventions or services to mitigate risk in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(D)(3)(b): “Make a determination”</p> <ul style="list-style-type: none"> • Comment: We recommend that the proposed language – “make a determination” – be changed to <i>conduct a thorough investigation and make an individualized written determination about any safety threat.</i> • Rationale: The proposed language in 13A.08.01.17(D)(3)(b) states that the superintendent’s designee shall “<u>make a determination</u> as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.” We are concerned that this language is not sufficient to ensure due process. As MSBE has set forth in multiple opinions, the superintendent’s designee “must conduct a thorough investigation and make an individualized determination about any safety threat.” <i>F.W. v. Baltimore County Bd. Of Educ.</i>, MSBE Op. No. 23-22, at 5 (citing <i>T.R. and B.J. v. Caroline County Bd of Educ.</i>, MSBE Op. No. 20-06 (2020)); <i>Alexander and Arlene A. v. Harford County Bd. of Educ.</i>, MSBE Op. No. 18-21, at 9 (2018); COMAR 13A.08.01.11(C)(4)(b). We believe that clearer direction regarding the responsibility of the superintendent’s designee with regard to this process will benefit school systems, and students and their families. Based on our case experience, there is currently confusion and inconsistency by school systems regarding what is required before a student’s “regular school program” can be changed based on a reportable offense. 	<p>Clarification of what it means to make a determination regarding the reportable offense and safety will be covered in guidance.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(D)(5) Appeal timeline and notice of appeal rights</p> <ul style="list-style-type: none"> • <u>Comment:</u> We recommend that the language in 13A.08.01.17(D)(5) read: 5) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days from the <i>date of the written determination plus 3 days for mailing. Any written determination notice shall include the appeal timeline and appeal process.</i> • <u>Rationale:</u> In some cases, based on our experience, parents are only receiving a telephone call advising them that their child is being removed from their regular school program for a reportable offense. Parents are not aware of their right to appeal as they are not being provided written notice of the determination and the appeal timeline and process. Due process requires adequate notice and the opportunity to appeal. As most school systems' student handbooks and codes of conduct are silent on the issue of reportable offenses, this process of removing students based on a charge is occurring without full understanding by both school systems and parents. We encourage MSDE to provide clear direction to ensure that the rights of students and parents are protected and school systems do not fall short of their legal obligation. 	<p>MSDE is in favor of requiring LEAs to include information regarding the appeal timeline and process with the written determination notice. The proposed regulation will be amended accordingly. This is a substantive change.</p> <p>In addition, MSDE will provide LEAs with a document that contains appeal language. This document can be attached to communication to parents.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(E). Review Procedures</p> <ul style="list-style-type: none"> <p><u>Comment:</u> Pursuant to the proposed regulations, the placement must be reviewed every “45 school days.” <i>See</i> Proposed Regulation, 13A.08.01.17(E)(1)(b). The 2013 Model Policy recommended a review every 30 days “or until matter resolved.” We recommend that a review occurs <i>every 30 days or upon request by the student’s parent/guardian or their attorney, based on changed circumstances in the juvenile or criminal case.</i></p> <p><u>Rationale:</u> Delaying the review by 45 <u>school</u> days leaves students vulnerable to falling behind and it does not match the juvenile justice process which seeks to resolve complaints expeditiously. The reality is that many charges do not even go forward. In fact, in 2022, 57% of all cases forwarded to the Department of Juvenile Services were resolved with no formal or informal action taken; an additional 11% were resolved without ever being formalized in court; and approximately 40% of all cases that were formalized for court action were ultimately dismissed or did not go forward.¹ If there is a delay — as there often is – in the State’s Attorney’s Office notifying school systems of the status of the charge, students can be left illegally in a program that is not their regular school program. In our experience, the State’s Attorney’s Office rarely notifies the school system of the disposition of the charge. Requiring a review every 30 days rather than 45 <u>school</u> days would allow school systems to determine the status of the case and determine if the threat of serious harm is continuing. As a reminder, these students are not considered suspended or expelled students. Their unique situation requires a modified review period.</p> 	<p>Requiring LEAs to review safety plans every 30 days rather than every 45 days places an undue burden on the LEA. MSDE supports adding the requirement that the LEA review the plan upon request from the student’s attorney or parent/guardian pursuant to a change in circumstances in the case.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(E). Review Procedures</p> <ul style="list-style-type: none"> <p><u>Comment</u>: The reportable offense statute states: “The State's Attorney shall promptly notify either the local superintendent or the school principal of the disposition of the reportable offense required to be reported under subsection (b) of this section.” Maryland Code, Educ. § 7-303(c). The proposed regulations also indicate that there should be review of the program upon notice of disposition. However, neither the statute nor the regulations provide any other guidance or direction to school systems as to a student’s right to attend their regular education program post-disposition.</p> <p>We recommend that the regulations state: <i>Upon notification of disposition, if a student is in the community, there is a presumption that there are no safety issues and the student shall return to the student’s home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.</i></p> <p><u>Rationale</u>: As written, the proposed regulations are silent on how long a charge or disposition of a charge can impact the school placement of a student. The proposed regulations do not differentiate a student who has completed their program ordered by the court from a student who was recently arrested for an offense and has not yet participated in services. The language from the statute implies that once the state’s attorney’s office communicates the disposition of the charge the student should be permitted to return to school. The regulations should clarify that intent.</p> <p>Any other interpretation would suggest that there is a fundamental misunderstanding of the level of scrutiny that both the Department of Juvenile Services (DJS) and the courts engage in before a student is permitted to return to or remain in the community after an arrest and/or disposition of a charge. There are multiple levels of court review and DJS uses objective assessment tools during every stage of the process.² The court is also required to consider reasonable protections, such as a no contact order, for the safety of victims if a student is released pending adjudication. Md. Code Ann. Cts. & Jud. Proc. § 3-8A-15(j). In effect, the court, with detailed information about the case, is making a determination about whether a student poses an “imminent threat” to a person or specific geographic location, including the neighborhood and school. In many situations, with DJS supervision, court involvement, and the provision of services to the youth, students are safer and <u>less</u> of a safety threat and they should be permitted to return to their regular school program.</p> 	<p>The proposed regulation is not silent on how long a charge can impact a student’s placement. COMAR13A.08.01.17(E)(1) is clear that a student’s placement is to be reviewed immediately upon notification of disposition from the State’s Attorney. Prior to notification of disposition, the regulation requires review of the student’s safety plan and status every 45 days. Rather than providing the LEA with boundless power to exclude a student from the regular school program, the regulation ensures that safety plans are regularly reviewed and adjusted as appropriate. Guidance will further clarify and explain this expectation.</p>

Organization	Comment	MSDE Recommendation
	<p>In the recent decision by MSBE, <i>F.W. v. Baltimore County Board of Education</i>, MSBE Op. 23-22 (2023), the juvenile case and reportable offense were three years old when the school system removed the youth from their regular school placement and placed them in a virtual school for 12 months before the appeal was resolved. After a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community, the school system should not be able to remove the student from their regular school program. In fact, in most instances, the court views school as a protective factor and assumes that the student will be back in their regular school program as soon as possible as delays in school enrollment puts the student at risk. Therefore, there should be a presumption that the court believes the student does not pose any imminent threat to the school community when a student is permitted to return or remain in the community after the disposition of the case.</p> <p>Allowing school systems to exclude students based on a charge when there has already been a disposition that permits the student to be in the community has the effect of disenfranchising students based on a past criminal record in the absence of any present safety threat. To be clear, once the court has imposed a disposition, the charge has been fully adjudicated. We do not believe that it is the intent of the statute to provide jurisdiction for school systems to act on a charge that has been adjudicated or is no longer an open case.</p>	

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>13A.08.01.17(G) Students with Disabilities</p> <ul style="list-style-type: none"> • <u>Comment</u>: Clarify that a manifestation determination review must be scheduled for any student with an IEP or Section 504 plan prior to the scheduling of the reportable offense conference. As written, the proposed regulations do not make clear that students with a Section 504 plan are entitled to this protection. • <u>Rationale</u>: Schools must conduct an evaluation of a student who has a Section 504 plan before proceeding with a disciplinary removal that will result in a significant change in placement, which includes a removal from class or school for longer than ten consecutive days or a series of removal from class or school that together total more than ten days in a school year and constitute a pattern of removal. <i>See</i> 34 C.F.R. § 104.35(a). The evaluation is similar to that of a manifestation determination review for students with an IEP; the purpose of the evaluation is to determine whether the behavior that is at the root of the disciplinary action is a manifestation of the student's disability and if the student's behavior is a manifestation of a disability, the school may not proceed with disciplinary action that would exclude the student on the basis of disability. Since students with IEPs and students with Section 504 plans have the same procedural right to a determination of whether their behavior is a manifestation of their disability, if a student with an IEP must have a manifestation determination review prior to the scheduling of the reportable offense conference, so should a student with a Section 504 plan. 	<p>MSDE is in favor of adding students with a 504 plan to the regulation. This change is substantive.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>Level of Service</p> <ul style="list-style-type: none"> • <u>Comment:</u> It is important to note that students who have been removed from their regular school program due to a reportable offense are not considered “suspended or expelled.” We believe that students with a reportable offense charge are therefore entitled to full educational services as opposed to the minimal level of education services for suspended or expelled students which may only consist of daily classwork assignments. <i>See</i> COMAR 13A.08.01.11(F). The regulations should therefore clarify what level of services a student with a reportable offense is entitled to during the 10 days during which time the superintendent’s designee conference occurs and during any subsequent removals. Keeping students out of school with no access or minimal access to education services only puts the student at greater risk of falling behind. • In addition, we are concerned about school systems’ over-reliance on virtual school for this population of students. As the pandemic revealed, virtual school cannot provide a meaningful education for many students, and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a “virtual school” program, which does not in any way allow students to access fully the curriculum, instruction, and activities and services (such as free breakfast and lunch) available to students attending school in-person is not appropriate. Moreover, when assigning a student to a virtual school program, school systems assume that families have reliable internet which is often not the case. Unless a court has set limitations on a student’s ability to attend in-person, a student with a reportable offense who is in the community should be permitted to attend an in-person school. 	<p>Under the proposed regulation, removal from the student’s regular school program and placement into another program requires the development of a safety plan that “addresses appropriate educational programming and related services for the student” (see 13A.08.01.17(C)(3)(a)). It is possible that a student may not be able to access the full range of services available in the regular school program during the program of removal. However, the school must strive to maintain a school environment that is safe and secure for all students and staff. Striking this balance may, in some cases, mean that the student is not able to access the exact services offered by the regular school program.</p> <p>The assertion that LEAs are over-reliant on virtual school placement for students accused of reportable offenses is unfounded. Data from the 2022-2023 school year collected from the LEAs indicates that 86.7% of students accused of reportable offenses were retained in their regular school program, 3.5% were placed in virtual school, 3.8% were placed on home and hospital, 2.3% were placed in alternative schools, .6% were placed in night school, and .3% transferred to another school either within or outside of the district. The remaining 2.8% were detained in juvenile or adult correctional facilities or put in therapeutic placement, placements made not by the LEAs but rather by the justice system or other entities.</p>

Organization	Comment	MSDE Recommendation
<p>Maryland Office of the Public Defender, Disability Rights Maryland, and Public Justice Center (members of the Maryland Suspension Representation Project)</p>	<p>Community Offenses that are not a Reportable Offense</p> <ul style="list-style-type: none"> • <u>Comment:</u> The proposed regulations do not protect students who are excluded from their regular school program due to schools learning about a community-based charge or disposition that is not a reportable offense. We recommend that the regulations clarify that <i>community-based charges that are ‘less serious’ than those considered reportable offenses cannot be grounds for a change in a student’s regular school program.</i> • <u>Rationale:</u> We are concerned that school system policies may allow removal of a student to an alternative school based on a “community offense,” which is a charge less serious than a “reportable offense.”³ It is our legal position that school systems do not have jurisdiction to subject a student with a community offense charge to the discipline process unless there is a specific violation of the code of conduct. The legislature specifically enumerated the specific criminal offenses impact by the reportable offense statute. <i>See Md. Code, Educ. Article, Sec. 7-303.</i> 	<p>This regulation applies to reportable offenses as defined in both the regulation and the statute. “Community offenses” are outside of the scope of this regulation.</p>

Organization	Comment	MSDE Recommendation
<p data-bbox="216 293 485 350">Anne Arundel County Public Schools</p> <p data-bbox="216 451 478 542">Grace Wilson, Legislative and Policy Specialist</p>	<p data-bbox="548 272 1371 329">13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”</p> <p data-bbox="548 396 1381 1385">COMAR 13A.08.01.17.D. <i>Removal from Regular School Program</i> establishes a new standard for removing a student from their regular school program due to a charge of a reportable offense in the community. Under the new regulatory language proposed by the State Board, a student may not be removed from their regular school program as the result of a charge of a reportable offense unless the principal determines that the student presents an "imminent threat of serious harm to other students or staff." "Imminent threat of serious harm" is not only an extremely high standard for removal, but also a subjective standard that could be interpreted differently from school-to-school or school system-to-school system. AACPS believes that the standard of an "imminent threat of serious harm" is too high of a threshold to meet in order to change a student's regular school programming and that such a high standard may result in decreased safety for students and staff. AACPS requests that this standard be changed to permit a student's regular school programming to be changed if the principal determines the student poses a threat of serious harm to other students or staff, whether or not the threat of such serious harm is imminent. AACPS believes that school administrators should have the ability to remove any student who poses a risk of serious harm to students or staff members in order to preserve the safety of the educational environment for all students and staff. This alternate standard ensures that students charged with reportable offenses in the community are not unreasonably excluded from their regular school program, and that local school systems have the tools they need to ensure the safety of the school environment for all students and staff. At the very least, AACPS requests that the State Board provide a definition or specific guidance to local education agencies regarding what constitutes an "imminent threat of serious harm," so that local school systems can accurately implement this aspect of the regulation. This additional guidance will ensure that this regulatory standard is implemented consistently across school districts and across the State of Maryland.</p>	<p data-bbox="1409 293 1894 735">Imminent threat of serious harm is the same standard used in the suspension and expulsion context since 2014, so it is not new to LEAs. It is MSDE’s position that this standard strikes the best possible balance between the rights of the student accused of the reportable offense and the school’s interest in preserving the safety of the educational environment for students and staff. MSDE will review all definitions of “imminent threat of serious harm” across the Department and provide one common definition to be used in all contexts.</p>

Organization	Comment	MSDE Recommendation
<p data-bbox="216 293 485 350">Anne Arundel County Public Schools</p> <p data-bbox="216 451 480 542">Grace Wilson, Legislative and Policy Specialist</p>	<p data-bbox="548 261 1255 289">13A.08.01.17(C) Safety Determination Procedures and Plan</p> <p data-bbox="548 326 1339 1117">COMAR 13A.08.01.17.D. <i>Removal from Regular School Program</i> establishes new procedures for appealing the decision of a principal to remove a student from their regular school program as the result of a charge of a reportable offense. AACPS requests additional State guidance in regulation on the requirement that a student's attorney be invited to participate in any conference with the student and student's parents/guardians regarding the removal of the student from their regular school programming as the result of the student's charge with a reportable offense. AACPS is supportive of the requirement that a student's legal representative participate in any meeting regarding the student's removal from their regular school programming, but is concerned that a lack of guidance may result in unnecessary delays in the due process protections provided by the revised regulations. AACPS respectfully requests guidance that clarifies the obligation of a school or school system to contact and schedule a meeting including the student's attorney under this regulation. AA CPS would like to ensure that if a school or school system makes a reasonable effort to include the student's attorney in any meeting to discuss a change in the student's regular school program such efforts are not hampered by delays caused by the attorney's failure to make a good faith effort to participate in these meetings with their clients in a timely fashion. AACPS proposes the promulgation of specific guidance regarding efforts that must be made to notify a student's attorney of a meeting request and a limit on the amount of time a meeting may be delayed in order to accommodate the availability of the student's attorney.</p>	<p data-bbox="1367 293 1890 513">The regulation and legislation require that the LEA invite a student's attorney to participate in any conference related to the removal of the student from the regular school program. MSDE will expound upon the school district's obligations in relation to the inclusion of legal counsel in guidance.</p>

Organization	Comment	MSDE Recommendation
<p data-bbox="214 292 487 354">Anne Arundel County Public Schools</p> <p data-bbox="214 451 487 545">Grace Wilson, Legislative and Policy Specialist</p>	<p data-bbox="562 272 1318 305">13A.08.01.17(D)(5): Appeal timeline and notice of appeal rights</p> <p data-bbox="546 337 1339 626">AACPS recommends the 45-day timeline for reviewing appeals proposed by the State Board in this regulation be extended to 60 days to permit local education agencies sufficient time to review appeals under this regulation. The requirement that appeals under this regulation be heard and a decision issued within a 45-day period poses a significant burden to staff. AACPS believes that a 60-day timeframe for the hearing and disposition of appeals alleviates this burden on staff, while also ensuring the timely disposition of appeals under this regulation.</p>	<p data-bbox="1365 292 1885 639">MSDE must weigh the due process rights of the student accused of the reportable offense against the burden a 45-day review timeline would place upon the LEA. It is in the best interest of both parties to move swiftly, to ensure that the students’ educational needs are met and that any safety concerns are resolved. Moreover, the 45-day timeline is consistent with the school discipline appeal procedures which have been in place since 2014 (See COMAR 13A.08.01.11).</p>
	<p data-bbox="546 646 1045 678">13A.08.01 .17.G. Students with Disabilities</p> <p data-bbox="546 711 1339 1403">AACPS also requests that the State Board rescind the requirement...that a manifestation determination regarding the student's alleged reportable offense be conducted before a student with disabilities may be removed from their regular school program. When school systems are notified that a student was charged with a reportable offense in the community, local law enforcement does not typically provide information beyond the name of the student and the reportable offense they were charged with. While AACPS supports the intent of this regulatory language to protect the educational rights of students with disabilities, local school systems simply do not have the requisite information or skills to make a manifestation determination as it relates to the alleged criminal conduct of a student with disabilities that occurred in the community. As such, such a manifestation determination does not provide accurate nor helpful information in determining whether a student with disabilities should be removed from their regular school program. Moreover, AACPS requests that this provision of the regulations be amended to provide clarification as to whether this regulatory language applies to students receiving accommodations and/or related services under Section 504 of the Rehabilitation Act of 1973, in addition to students receiving special education services under the Individuals with Disabilities Education Act.</p>	<p data-bbox="1365 678 1894 1091">The new statutory change made by the General Assembly to Md Code, Educ § 7-305(g)(1) states “removal or exclusion of the child from the child's regular school program for more than ten consecutive school days for a reportable offense, shall be conducted in conformance with the requirements of the Individuals with Disabilities Education Act of the United States Code, including the requirements related to a manifestation determination.” As this requirement is prescribed in State law, the State Board does not have the authority to rescind it.</p>

Organization	Comment	MSDE Recommendation
<p data-bbox="216 329 485 386">Anne Arundel County Public Schools</p> <p data-bbox="216 488 478 578">Grace Wilson, Legislative and Policy Specialist</p>	<p data-bbox="548 297 911 321">13A.08.01.17.J. Data Collection</p> <p data-bbox="548 362 1325 1023">AACPS recommends that COMAR 13A.08.01.17.J. <i>Data Collection</i> be updated to reflect all data that is required to be reported by local education agencies to the Maryland State Department of Education (MSDE) regarding school use of reportable offenses. MSDE has required that local school systems report the following data points regarding school use of reportable offenses in addition to the data points outlined in this section of COMAR: date of birth of the student charged with a reportable offense; State and local student identification numbers; English language learner designation of the student; the date of the reportable offense; date of school notification of the reportable offense; certification that the superintendent notified the principal the student was charged with a reportable offense; certification that the principal met with the student and the student's parents/guardians; information regarding the participation of a student's attorney in the meeting required under the law/regulation; certification of the development for a safety plan, if necessary, for a student charged with a reportable offense; certification that the superintendent met with the student, student's parents/guardians and attorney as necessary; and the principal's decision regarding removal. AACPS believes that State regulation should reflect all of the data required to be reported by local school systems.</p>	<p data-bbox="1367 329 1892 516">Certain data requested of the LEAs is required to access other data needed to meet statutory reporting requirements. All data requested to be included will be outlined in the Reportable Offenses Data Collection Manual and included in guidance.</p>

MARYLAND COALITION TO REFORM SCHOOL DISCIPLINE

November 6, 2023

Mary L. Gable, Assistant State Superintendent
Maryland State Department of Education
200 West Baltimore Street
Baltimore, MD 21201

Re: Comments to proposed regulations to amend Regulation .17 under COMAR 13A.08.01

Dear Ms. Gable,

The Maryland Coalition to Reform School Discipline (CRSD) brings together advocates, service providers, and concerned citizens interested in transforming school discipline policies and practices within Maryland's public school system. CRSD is committed to making school discipline responsive to students' behavioral needs, fair, appropriate, and designed to keep youth on track to graduate. The undersigned CRSD members appreciate the opportunity to provide comments regarding the proposed regulations to amend Regulation .17 under COMAR 13A.08.01.

The reportable offense statute and regulations impact some of our students in greatest need and most at risk. It is therefore imperative that the Maryland State Board of Education ensures that the implementation of HB 146 protects the rights of students impacted by the statute and does not result in unintended consequences that deny students a stable school environment. Our juvenile courts view a stable school environment as a protective factor when students are placed in the community following an arrest. As educators, social workers, and direct service providers, we concur: in-person school attendance is important. Furthermore, we believe that our recommendations will promote consistent implementation of the reportable offenses statute across the state and reduce the disparate treatment of students based on where they live.

13A.08.01.17.(A)(6): Revise definition of "regular school program"

Comment: Define a "regular school program" as *the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in.*

Rationale: Under the proposed regulations, "regular school program" is defined solely as "classes, courses, and related services the student is enrolled in." *See* Proposed Regulation, 13A.08.01.17(A)(6). This definition lacks specificity and will not trigger the protections contemplated by the statute. Under MSDE's proposed definition, a student could be transferred to another school, even to an alternative school or to virtual school, where the classes and courses are the same. We recommend a more precise definition of "regular school program" which includes the student's school placement prior to the charge. Clarifying this definition as the school the student attended at the time of charge will provide clarity and ensure equal and fair application across school systems.

13A.08.01.17(A) and 13A.08.01.17(D)(1): Define “imminent threat of serious harm”

Comment: The proposed regulations should define “imminent threat of serious harm” as *posing likely and immediate danger of significant physical injury*.

Rationale: Our proposed definition of “imminent threat of serious harm” is aligned with the Maryland State Department of Education’s (MSDE) interpretation of this term as used in the school discipline context. See [MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018](#).

We encourage MSDE to define the term “harm” in these regulations as it did in the recent regulations regarding restraint and seclusion, where MSDE incorporated the definition of “serious physical harm” from federal law. See COMAR 13A.08.04.02(22) (defining “serious physical harm” has the same meaning as “serious bodily injury” as defined in 18 U.S.C. §1365(h)(3)). Given that the standard of “imminent threat of serious harm” is the critical factor for whether or not a student is excluded from school under the reportable offense statute, MSDE must define that term just as it has defined other terms in the proposed regulations. In the absence of a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their school system’s policies. The disparate treatment of students depending on where they live is evident in a review of the school discipline and school-based arrest data statewide. Defining “imminent threat of serious harm” is an important step toward consistency in the treatment of students, protecting their due process rights, and ensuring that student’s school placements are not disrupted without serious cause.

Comment: Add to the proposed regulations: *Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program*.

Rationale: Our proposed additional language is in line with holdings from recent MSBE opinions regarding reportable offense cases and should be added to the regulations to provide clarity on what is needed to change a student’s regular school program. See [T.R. and B.J. v. Caroline County Bd. of Educ.](#), MSBE Op. No. 20-06 (2020); [F.W. v. Baltimore County Bd. of Educ.](#), MSBE Op. No.23-22 (2023). This language also reinforces that when a student has been arrested and charged, the reportable offense is a pre-adjudicated offense, so the student has not yet been found to be involved or guilty. As MSBE has stated, there must be an individualized determination of any imminent threat based on more than just the alleged conduct. [Alexander and Arlene A. v. Harford County Bd. of Educ.](#), MSBE Op. No. 18-21, at 9 (2018).

13A.08.01.17(D)(3)(b): Explain the meaning of “make a determination”

Comment: We recommend that “make a determination” be changed to *conduct a thorough investigation and make an individualized determination about any safety threat*.

Rationale: The proposed language in 13A.08.01.17(D)(3)(b) states that the superintendent’s designee shall “make a determination as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.” We are concerned that this language is vague and is not sufficient to ensure due process. According to multiple MSBE opinions, the superintendent’s designee “must conduct a thorough investigation and make an

individualized determination about any safety threat”. *F.W. v. Baltimore County Bd. of Educ.*, MSBE Op. No.23-22, at 5 (citing *T.R. and B.J. v. Caroline County Bd. of Educ.*, MSBE Op. No. 20-06 (2020)); *Alexander and Arlene A. v. Harford County Bd. of Educ.*, MSBE Op. No. 18-21, at 9; COMAR 13A.08.01.11(C)(4)(b). We believe that clearer enumeration of the superintendent's designee responsibility in regard to this process will benefit school systems, and students and their families. We remain concerned that there is confusion and inconsistency within school systems regarding what process is required before a student’s “regular school program” can be changed based on a reportable offense.

Comment: The regulations should provide factors to be considered when determining “imminent threat of serious harm,” including factors spelled out in recent appeal cases such as the student’s past conduct, the student’s response to the consequence of the behavior, and the impact the student’s behavior has on the school environment. *T.R. and B.J. v. Caroline County Brd of Educ.*, MSBE Op No. 20-06, at 8.

Rationale: The proposed language offers districts no guidance on how to determine whether the student’s presence in school poses an imminent threat of serious harm. MSDE’s Model Policy Bulletin on School Use of Reportable Offenses from 2013 instructs schools to “gain a complete picture of the student, the student’s needs, and the best course of action for the student and the school.” *T.R. and B.J. v. Caroline County Bd. of Educ.*, MSBE Op No. 20-06, at 8 (citing Model Policy at 3). The 2013 MSDE Model Policy and numerous MSBE opinions set out requirements for reaching the imminent threat determination. *Alexander and Arlene A. v. Harford County Bd. of Educ.*, MSBE Op. No. 18-21; *T.R. and B.J. v. Caroline County Bd. of Educ.*, MSBE Op. No. 20-06; *M.S. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 18-09 (2018) (expressing favor for an individualized approach to making the imminent threat determination, including consideration of a student’s disciplinary history). The reportable offense regulations will be more effective if those requirements are condensed into one regulation.

13A.08.01.17(D)(5): Appeal timeline and notice of appeal rights

Comment: We recommend that the language in 13A.08.01.17(D)(5) read: 5) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days from the *date of the written determination plus 3 days for mailing*. *Any written determination notice shall include the appeal timeline and appeal process*.

Rationale: We are concerned that parents/guardians are generally not familiar with the reportable offense process and are not aware of their right to appeal the determination. It is critical that families are provided written notice of the determination and the appeal timeline and process. As most school systems’ student handbooks and codes of conduct do not address reportable offenses, this process of changing a student’s regular school program is done without full transparency. Due process requires more. We encourage MSBE to provide clear direction to ensure that the rights of students and parents are protected and school systems do not fall short of their legal obligation.

13A.08.01.17(E): Clarify the review procedures when a charge is resolved

Comment: We recommend that the regulations add to the review procedures: *Upon notification of disposition, if a student is in the community, there is a presumption that there are no safety issues and the student shall return to the student's home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.*

Rationale: In their current form, the proposed regulations are silent on how long a charge can impact the placement of a student. The proposed regulations do not differentiate a student involved in the juvenile justice system whose case is closed from a student who was recently arrested for an offense. The language from the statute implies that once the state's attorney's office communicates the disposition of the charge that the student should be permitted to return to their home school or the last school of record prior to the reportable offense charge. The regulations should clarify that school systems do not have unlimited power to disrupt a student's school placement once a charge has been resolved. If a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community, the school system should not be able to remove the student from their regular school placement when there are no current school discipline issues.

13A.08.01.17(G): "Students with disabilities" should include students with Section 504 plans

Comment: Clarify that a manifestation determination review must be scheduled for any student with an IEP or a Section 504 plan prior to the scheduling of the reportable offense conference. The proposed regulations do not make clear that students with a Section 504 plan are entitled to this protection.

Rationale: Schools must conduct an evaluation of a student who has a Section 504 plan before proceeding with a disciplinary removal that will result in a significant change in placement, which includes a removal from class or school for longer than ten consecutive days or a series of removal from class or school that together total more than ten days in a school year and constitute a pattern of removal. *See* 34 C.F.R. § 104.35(a). The evaluation is similar to that of a manifestation determination review for students with an IEP; the purpose of the evaluation is to determine whether the behavior that is at the root of the disciplinary action is a manifestation of the student's disability and if the student's behavior is a manifestation of a disability, the school may not proceed with disciplinary action that would exclude the student on the basis of disability. Since students with IEPs and students with Section 504 plans have the same procedural right to a determination of whether their behavior is a manifestation of their disability, if a student with an IEP must have a manifestation determination review prior to the scheduling of the reportable offense conference, so should a student with a Section 504 plan.

Clarify the Level Services School Systems Must Provide

Comment: Students with a reportable offense charge who have been ordered by a court to be in the community and attend school regularly need the consistency of their regular school program. We know that students with a reportable offense charge have experienced a wide range of school placements throughout the state, including home & hospital services, virtual school, or truncated alternative school programs. Because these students are not considered “suspended or expelled,” they are entitled to full educational services as opposed to the minimal level of education (e.g. daily classwork assignments) services for suspended or expelled students. *See* COMAR 13A.08.01.11(F). The regulations should clarify what level of services a student with a reportable offense charge is entitled to during the 10 days during which the superintendent’s designee conference occurs and during any subsequent removals.

We are further concerned about school systems’ over-reliance on virtual school for this population of students. As we learned during the pandemic, virtual school is difficult for many students, and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a “virtual school” program, which does not in any way allow students to fully access the curriculum, instruction, services (including free breakfast and lunch) and activities available to students attending school in-person, is not appropriate.

Again, CRSD appreciates the opportunity to provide comments to the proposed regulations. Should you wish to discuss our comments or need additional information, please contact Kelly Quinn, Deputy Director, The Choice Program at UMBC, and Chair of CRSD at kquinn@umbc.edu or Annie Carver, Staff Attorney, Project HEAL, and CRSD Policy Chair at CarverAr@kennedykrieger.org.

Sincerely,

The Choice Program at UMBC
Project HEAL at Kennedy Krieger Institute
Disability Rights Maryland
Maryland Office of the Public Defender
Public Justice Center
League of Women Voters Maryland
University of Baltimore School of Law, Sayra and Neil Meyerhoff Center for Families, Children and the Courts
ACLU - Maryland
FreeState Justice

cc: Amanda White, Assistant Attorney General



November 6, 2023

Mary L. Gable, Assistant State Superintendent
Maryland State Department of Education
200 West Baltimore St.
Baltimore, MD 21201

Re: Comments to proposed regulations to amend Regulation .17 under COMAR 13A.08.01

Dear Ms. Gable,

The undersigned organizations, members of the Maryland Suspension Representation Project, appreciate the opportunity to submit comments regarding the proposed revisions to Regulation .17 under COMAR 13A.08.01. The comments below reflect our ongoing concerns regarding the implementation of House Bill 146, which amended Md. Code, Educ. §§ 7-303 and 7-305 during the 2022 Legislative Session, and the resulting impact on students, including the clients we represent.

The following points and recommendations are based on the statute, recent decisions by the Maryland State Board of Education (MSBE), and our own practice experience.

13A.08.01.17.(A)(6): Definition of "regular school program"

Comment: We recommend that a "regular school program" be defined as: *Regular school program means the school the student attended prior to the charge, including the classes, courses, and related services the student is enrolled in.*

Rationale: Under the proposed regulations, "regular school program" is defined solely as "classes, courses, and related services the student is enrolled in." *See Proposed Regulation, 13A.08.01.17(A)(6).* This definition is problematic as it is vague and overly broad. As defined, a student could be transferred to an alternative school or to virtual school, where the classes and courses are the same, but the intended due process protections of HB 146 would not necessarily be triggered. We therefore recommend a more precise definition of "regular school program." Narrowing this definition as the school the student attended prior to the charge will provide clarity and ensure equal and fair application across school systems. It needs to be clear when the due process protections are triggered, which is when a principal proposes to remove a student from the school they are attending prior to the charge.

While MSBE in a recent opinion stated that a student may not have the right to attend a specific school, it also affirmed that a transfer to an alternative school (which we deem virtual school to be) requires compliance with the discipline regulations. See [L.S. v. Prince George's County Bd. of Educ.](#), MSBE Op. 23-13, at 4-5 (2023). Likewise, the Maryland Office of the Attorney General in a legal opinion dated May 31, 2019, see attached, concluded that placement of a student in an alternative school “results in the removal of a student from the student's home school and from the student's current or regular education program. In that regard, the placement meets the definition of each of the four kinds of suspension.” Thus, “regular school program” in the discipline context clearly does not include an alternative school or virtual school and should be made explicit in the reportable offense regulations as well.

13A.08.01.17(A) and 13A.08.01.17(D)(1): “imminent threat of serious harm”

Comment: The proposed regulations should define “imminent threat of serious harm.” We recommend that “imminent threat of serious harm” be defined as *posing likely and immediate danger of significant physical injury*.

Rationale: Our proposed definition of “imminent threat of serious harm” is consistent with the Maryland State Department of Education’s (MSDE) interpretation of this term as used in the school discipline context. See [MSDE Guidance, Prohibition of Suspension or Expulsion for Students in Grade PreK to 2, at 2, September 22, 2018](#).

In the recently adopted regulations regarding restraint and seclusion, MSDE incorporated the definition of “serious physical harm” from federal law and we encourage MSDE to define the term “harm” in these regulations as well. See COMAR 13A.08.04.02(22) (defining “serious physical harm” to have the same meaning as “serious bodily injury” as defined in 18 U.S.C. §1365(h)(3)). Given that the standard of “imminent threat of serious harm” is the linchpin to whether or not a student is excluded from their school under the reportable offense statute, MSDE has the responsibility to give meaning to that critical term as it has defined other terms in the proposed regulations. Without a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their respective school system’s interpretations. A review of the school discipline and school-based arrest data statewide demonstrates evidence of the disparate treatment depending on where students live based on varying interpretations of “imminent threat of serious harm” among school systems.

Defining “imminent threat of serious harm” is a critical step toward providing greater consistency in the treatment of students, protecting their due process rights, ensuring school systems have a uniform legal understanding of this standard, and ensuring that students' school placements are not disrupted without serious cause. As MSBE has previously stated: “a student who is not a continuing, pending threat to his fellow students or staff belongs back in his or her school because it is likely the best environment for the student.” [Alexander and Arlene A. v. Harford County Bd. of Educ.](#), MSBE Op. No. 18-21, at 8 (2018).

Comment: Add to the proposed regulations: “*Notice of the reportable offense charge or arrest alone may not be the basis for a change in the student's regular school program.*”

Rationale: This proposed additional language is based on holdings from recent MSBE opinions regarding reportable offense cases and should be included in the regulations to provide clarity regarding the process. See [T.R. and B.J. v. Caroline County Bd. of Educ.](#), MSBE Op. No. 20-06 (2020); [F.W. v. Baltimore County Bd. of Educ.](#), MSBE Op. No.23-22 (2023). This language also reinforces the understanding that when a student has been arrested and charged, the reportable offense is a pre-adjudicated offense, meaning the student has not yet been found involved. As MSBE has stated, there must be an individualized determination of any imminent threat based on more than just the alleged conduct. [Alexander and Arlene A. v. Harford County Bd. of Educ.](#), MSBE Op. No. 18-21, at 9.

Comment: The regulations should provide a list of non-exhaustive factors to be considered when determining “imminent threat of serious harm,” including factors spelled out in recent appeal cases, such as the student’s past conduct, the student’s response to the consequence of the behavior, and the impact the student’s behavior has on the school environment.

Rationale: The proposed regulations provide districts no guidance on how to determine whether the student’s presence in school poses an imminent threat of serious harm. The 2013 MSDE Model Policy Bulletin on School Use of Reportable Offenses instructs schools to “gain a complete picture of the student, the student’s needs, and the best course of action for the student and the school.” [T.R. and B.J. v. Caroline County Bd. of Educ.](#), at 8 (citing Model Policy at 3). The 2013 MSDE Model Policy is attached. As per the Model Policy and numerous MSBE opinions, there are requirements for reaching the imminent threat determination and the reportable offense regulations will be more effective if the requirements are compiled and elucidated. See [Alexander and Arlene A. v. Harford County Bd. of Educ.](#), MSBE Op. No. 18-21; [T.R. and B.J. v. Caroline County Bd. of Educ.](#), MSBE Op. No. 20-06; see also [M.S. v. Prince George’s County Bd. of Educ.](#), MSBE Op. No. 18-09 (2018) (expressing favor for an individualized approach to making the imminent threat determination, including consideration of a student’s disciplinary history).

13A.08.01.17(C) Safety Determination Procedures and Plan and (D) Removal from Regular School Program

Comment: Add to 13A.08.01.17(C)(2) so it reads: The school principal, in consultation with appropriate staff members, shall consider whether the student’s presence presents a risk to the safety of other students and staff *and whether and how such risk can be mitigated through interventions or supports.*

Rationale: When school staff are determining whether the student’s presence at school presents a risk to the safety of other students and staff, we believe that a review of whether and how such risk can be mitigated is an integral part of the analysis and discussion. The goal should be to keep the student in their regular school program to avoid educational instability and resulting harm. School systems therefore need to think through whether any identified risk can be mitigated through interventions or supports that would allow the student to remain in their regular education program. Examples of interventions or supports in the student’s regular school

program that could mitigate risk include restrictions or increased supervision within the school building, a schedule change, additional staffing, counseling, referral to the Student Support Team, and daily check-ins with the student to assess for safety.

In addition, in many situations, the Department of Juvenile Services (DJS) is providing support and services to the student and the juvenile court is still maintaining oversight. The services and supervision by the DJS and the court, as well as services and supports by the school system, can mitigate any potential risk. Moreover, by considering interventions and supports to mitigate any safety concerns, school systems will be required to consider the risk more effectively without relying solely on the seriousness of the charge.

Comment: Pursuant to the proposed regulations 13A.08.01.17(C)(3), the principal shall develop a plan if the principal believes the student presents a safety risk. If the plan includes removal from the student’s regular school program, the principal must notify the local superintendent in writing and provide a written report. *See Proposed Regulations, 13A.08.01.17(D).* We believe that the principal should be required to identify in the “plan” why behavior supports and other interventions would not mitigate any risk of imminent threat of serious harm.

Rationale: MSBE has repeatedly explained that long-term removals are “last-resort options.” COMAR 13A.08.01.11(A)(6); MSBE, [The Maryland Guidelines for a State Code of Discipline](#), at 4 (2014); [K.B. v. Baltimore City Bd. of Sch. Comm’rs.](#), MSBE Op. No. 16-12, at 3 (2016). Requiring the plan to explain the reasons behavior supports or other interventions are not being used to keep the student in their current school will help to prevent the overuse of unnecessary removals. This particularly makes sense in the context of reportable offense removals since the behavior at issue happened off school grounds and therefore intrinsically presents less of a safety risk than behavior that occurs in school or on school grounds. Additionally, including the interventions and supports in the plan will make the principal’s report useful for understanding which interventions are ineffective or underutilized by schools.

13A.08.01.17(D)(3)(b): “Make a determination”

Comment: We recommend that the proposed language –“make a determination”– be changed to *conduct a thorough investigation and make an individualized written determination about any safety threat.*

Rationale: The proposed language in 13A.08.01.17(D)(3)(b) states that the superintendent’s designee shall “make a determination as to whether the student poses an imminent threat of serious harm to other students or staff necessitating a removal.” We are concerned that this language is not sufficient to ensure due process. As MSBE has set forth in multiple opinions, the superintendent’s designee “must conduct a thorough investigation and make an individualized determination about any safety threat.” [F.W. v. Baltimore County Bd. of Educ.](#), MSBE Op. No.23-22, at 5 (citing *T.R. and B.J. v. Caroline County Bd of Educ.*, MSBE Op. No. 20-06 (2020)); [Alexander and Arlene A. v. Harford County Bd. of Educ.](#), MSBE Op. No. 18-21, at 9 (2018); COMAR 13A.08.01.11(C)(4)(b). We believe that clearer direction regarding the responsibility of the superintendent’s designee with regard to this process will benefit school systems, and students and their families. Based on our case experience, there is currently

confusion and inconsistency by school systems regarding what is required before a student's "regular school program" can be changed based on a reportable offense.

13A.08.01.17(D)(5) Appeal timeline and notice of appeal rights

Comment: We recommend that the language in 13A.08.01.17(D)(5) read: 5) If after the conference, the local superintendent finds that a removal from the regular school program is warranted, the student or the student's parent or guardian may appeal the removal to the local board within 15 calendar days from the *date of the written determination plus 3 days for mailing*. *Any written determination notice shall include the appeal timeline and appeal process.*

Rationale: In some cases, based on our experience, parents are only receiving a telephone call advising them that their child is being removed from their regular school program for a reportable offense. Parents are not aware of their right to appeal as they are not being provided written notice of the determination and the appeal timeline and process. Due process requires adequate notice and the opportunity to appeal. As most school systems' student handbooks and codes of conduct are silent on the issue of reportable offenses, this process of removing students based on a charge is occurring without full understanding by both school systems and parents. We encourage MSDE to provide clear direction to ensure that the rights of students and parents are protected and school systems do not fall short of their legal obligation.

13A.08.01.17(E). Review Procedures

Comment: Pursuant to the proposed regulations, the placement must be reviewed every "45 school days." See Proposed Regulation, 13A.08.01.17(E)(1)(b). The 2013 Model Policy recommended a review every 30 days "or until matter resolved." We recommend that a review occurs *every 30 days or upon request by the student's parent/guardian or their attorney, based on changed circumstances in the juvenile or criminal case.*

Rationale: Delaying the review by 45 school days leaves students vulnerable to falling behind and it does not match the juvenile justice process which seeks to resolve complaints expeditiously. The reality is that many charges do not even go forward. In fact, in 2022, 57% of all cases forwarded to the Department of Juvenile Services were resolved with no formal or informal action taken; an additional 11% were resolved without ever being formalized in court; and approximately 40% of all cases that were formalized for court action were ultimately dismissed or did not go forward.¹ If there is a delay — as there often is — in the State's Attorney's Office notifying school systems of the status of the charge, students can be left illegally in a program that is not their regular school program. In our experience, the State's Attorney's Office rarely notifies the school system of the disposition of the charge. Requiring a review every 30 days rather than 45 school days would allow school systems to determine the status of the case and determine if the threat of serious harm is continuing. As a reminder, these

¹ Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2022 at 46, available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf.

students are not considered suspended or expelled students. Their unique situation requires a modified review period.

Comment: The reportable offense statute states: “The State's Attorney shall promptly notify either the local superintendent or the school principal of the disposition of the reportable offense required to be reported under subsection (b) of this section.” Maryland Code, Educ. § 7-303(c). The proposed regulations also indicate that there should be review of the program upon notice of disposition. However, neither the statute nor the regulations provide any other guidance or direction to school systems as to a student’s right to attend their regular education program post-disposition.

We recommend that the regulations state: *Upon notification of disposition, if a student is in the community, there is a presumption that there are no safety issues and the student shall return to the student’s home school or the last school of record prior to the reportable offense charge unless there is a court order, protective order, or peace order which states that there shall be no contact between the student and another student at the school.*

Rationale: As written, the proposed regulations are silent on how long a charge or disposition of a charge can impact the school placement of a student. The proposed regulations do not differentiate a student who has completed their program ordered by the court from a student who was recently arrested for an offense and has not yet participated in services. The language from the statute implies that once the state’s attorney’s office communicates the disposition of the charge the student should be permitted to return to school. The regulations should clarify that intent.

Any other interpretation would suggest that there is a fundamental misunderstanding of the level of scrutiny that both the Department of Juvenile Services (DJS) and the courts engage in before a student is permitted to return to or remain in the community after an arrest and/or disposition of a charge. There are multiple levels of court review and DJS uses objective assessment tools during every stage of the process.² The court is also required to consider reasonable protections, such as a no contact order, for the safety of victims if a student is released pending adjudication. Md. Code Ann. Cts. & Jud. Proc. § 3-8A-15(j). In effect, the court, with detailed information about the case, is making a determination about whether a student poses an “imminent threat” to a person or specific geographic location, including the neighborhood and school. In many situations, with DJS supervision, court involvement, and the provision of services to the youth, students are safer and less of a safety threat and they should be permitted to return to their regular school program.

In the recent decision by MSBE, *F.W. v. Baltimore County Board of Education*, MSBE Op. 23-22 (2023), the juvenile case and reportable offense were three years old when the school system removed the youth from their regular school placement and placed them in a virtual school for 12

² See Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2022 at 25, available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf (describing the various objective assessment tools used to evaluate risk and safety when determining whether a young person should be detained or not and what level of services a young person may need).

months before the appeal was resolved. After a student has gone through the juvenile or criminal process and a court system has determined that the student is safe to be in the community, the school system should not be able to remove the student from their regular school program. In fact, in most instances, the court views school as a protective factor and assumes that the student will be back in their regular school program as soon as possible as delays in school enrollment puts the student at risk. Therefore, there should be a presumption that the court believes the student does not pose any imminent threat to the school community when a student is permitted to return or remain in the community after the disposition of the case.

Allowing school systems to exclude students based on a charge when there has already been a disposition that permits the student to be in the community has the effect of disenfranchising students based on a past criminal record in the absence of any present safety threat. To be clear, once the court has imposed a disposition, the charge has been fully adjudicated. We do not believe that it is the intent of the statute to provide jurisdiction for school systems to act on a charge that has been adjudicated or is no longer an open case.

13A.08.01.17(G) Students with Disabilities

Comment: Clarify that a manifestation determination review must be scheduled for any student with an IEP **or** Section 504 plan prior to the scheduling of the reportable offense conference. As written, the proposed regulations do not make clear that students with a Section 504 plan are entitled to this protection.

Rationale: Schools must conduct an evaluation of a student who has a Section 504 plan before proceeding with a disciplinary removal that will result in a significant change in placement, which includes a removal from class or school for longer than ten consecutive days or a series of removal from class or school that together total more than ten days in a school year and constitute a pattern of removal. *See* 34 C.F.R. § 104.35(a). The evaluation is similar to that of a manifestation determination review for students with an IEP; the purpose of the evaluation is to determine whether the behavior that is at the root of the disciplinary action is a manifestation of the student's disability and if the student's behavior is a manifestation of a disability, the school may not proceed with disciplinary action that would exclude the student on the basis of disability. Since students with IEPs and students with Section 504 plans have the same procedural right to a determination of whether their behavior is a manifestation of their disability, if a student with an IEP must have a manifestation determination review prior to the scheduling of the reportable offense conference, so should a student with a Section 504 plan.

Level of Service

Comment: It is important to note that students who have been removed from their regular school program due to a reportable offense are not considered "suspended or expelled." We believe that students with a reportable offense charge are therefore entitled to full educational services as opposed to the minimal level of education services for suspended or expelled students which may only consist of daily classwork assignments. *See* COMAR 13A.08.01.11(F). The regulations should therefore clarify what level of services a student with a reportable offense is entitled to during the 10 days during which time the superintendent's designee conference occurs and

during any subsequent removals. Keeping students out of school with no access or minimal access to education services only puts the student at greater risk of falling behind.

In addition, we are concerned about school systems' over-reliance on virtual school for this population of students. As the pandemic revealed, virtual school cannot provide a meaningful education for many students, and can cause real academic and social-emotional harm. Putting a student with a pre-adjudicated reportable offense charge in a "virtual school" program, which does not in any way allow students to access fully the curriculum, instruction, and activities and services (such as free breakfast and lunch) available to students attending school in-person is not appropriate. Moreover, when assigning a student to a virtual school program, school systems assume that families have reliable internet which is often not the case. Unless a court has set limitations on a student's ability to attend in-person, a student with a reportable offense who is in the community should be permitted to attend an in-person school.

Community Offenses that are not a Reportable Offense

Comment: The proposed regulations do not protect students who are excluded from their regular school program due to schools learning about a community-based charge or disposition that is not a reportable offense. We recommend that the regulations clarify that *community-based charges that are 'less serious' than those considered reportable offenses cannot be grounds for a change in a student's regular school program.*

Rationale: We are concerned that school system policies may allow removal of a student to an alternative school based on a "community offense," which is a charge less serious than a "reportable offense."³ It is our legal position that school systems do not have jurisdiction to subject a student with a community offense charge to the discipline process unless there is a specific violation of the code of conduct. The legislature specifically enumerated the specific criminal offenses impact by the reportable offense statute. *See* Md. Code, Educ. Article, Sec. 7-303.

Thank you for your consideration of these comments. Should you need additional information, please feel free to contact any of our organizations.

Regards,

Alyssa R. Fieo
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³ *See, e.g.,* Howard County Public Schools Policy 9280 – School Use of Community or Reportable Offenses, available at <https://policy.hcpss.org/9000/9280/#:~:text=Community%20Offense%20%E2%80%93%20Any%20violent%20act,t%20one%20or%20more%20persons;>

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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 31, 2019

The Honorable Erek L. Barron
Maryland General Assembly
414 House Office Building
Annapolis, Maryland 21401

The Honorable Susie Proctor
Maryland General Assembly
423 House Office Building
Annapolis, Maryland 21401

Dear Delegates Barron and Proctor:

You each asked for advice about a proposed alternative elementary school, the Fresh Start Academy ("FSA"), in Charles County Public Schools ("CCPS"). You asked whether the proposed program is consistent with State law. In particular, you raised a concern that the program violates Chapters 843 and 844, Maryland Laws 2017. As explained below, it is my view that the FSA would not be compliant with the 2017 law.

The Alternative Elementary School Proposal

The following description of the FSA comes from CCPS, including from handouts distributed at a public hearing that was held on May 14, 2019. According to the handout, the FSA will be a centralized academic, behavioral, psychological support program that will start with up to 12 students in kindergarten through second grade from 22 elementary schools who "repeatedly display extreme disruptive behavior...such as destruction of classrooms, running away from classrooms and causing physical harm to others..." The FSA will be located on a campus that houses an alternative education center for middle and high school students, although the FSA will be in a separate building. FSA students will ride dedicated school buses to the campus. The FSA will have a capacity of 15 students, and have one classroom for each grade. The facility will include a sensory room, which has been described as a quiet, soothing place used to calm students.

According to CCPS, a referral to the FSA can occur only after a school has exhausted other available and appropriate interventions. Referrals need to be submitted through a Student Support Team or the Student Conduct/Engagement Offices, and will be considered by a team of educators and specialists. Placement is for 45 days. The FSA will be staffed by a behavior specialist as program coordinator, three certified teachers, three classroom instructional assistants, a transition coordinator, and secretarial support. Additional counselors and school psychologists will help students attending the program.

FSA staff will develop an individual transition plan for each child when the child is ready to return to their home school. The transition coordinator will provide training to school administrators, teachers, and staff on how to continue successful support for the child. Staff from the home school will visit the FSA to keep a connection with the child and to learn techniques and strategies for reintegration to the classroom. Parents will receive training to help their child and opportunities to work with FSA staff.

State Law Governing Suspension of Pre-K through Second Grade Students

As a result of legislation enacted in 2017, Md. Laws 2017, Ch. 843 and 844, State law generally provides that “a student enrolled in a public prekindergarten program, kindergarten, first grade, or second grade may not be suspended or expelled from school.” Education Article (“ED”), § 7-305.1(b)(1). Exceptions to the general prohibition allow a suspension of these students only “if required by federal law” or “if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports” but not for more than 5 days. ED § 7-305.1(b)(2).

The intervention and support that must be provided when a student is suspended includes: (1) positive behavior intervention and supports (“PBIS”); (2) a behavior intervention plan; (3) a referral to a student support team; (4) a referral to an individualized education program (“IEP”) team; and (5) a referral for appropriate community-based services. ED § 7-305.1(c)(2). Even if a pre-k, kindergarten, first grade, or second grade student is not suspended, the supports must be provided when the student is “disruptive to the school environment or [c]ommits an offense subject to suspension but for the student’s grade.” ED § 7-305.1(c)(1)(ii). The State Board of Education has adopted regulations that essentially mimic the statute. See COMAR 13A.08.01.11C(1)(b) and § H(1)-(2).

Legal Analysis

The key question is whether placement in the FSA would be a “suspension” under ED § 7-305.1. When interpreting legislation, the cardinal rule is to “ascertain and effectuate the intention of the legislature,” *Oaks v. Connors*, 339 Md. 24, 35 (1995), the primary source of which is the language of the act itself. *State v. Pagano*, 341 Md. 129, 133 (1996). If the language is clear and unambiguous, courts usually will not look beyond the plain meaning of the language to discern legislative intent. *Gary v. State*, 341 Md. 513, 521 (1996). Nevertheless, we do not read the words of the statute “in a vacuum.” *Lockshin v. Semsker*, 412 Md. 257, 275 (2010). Instead, we interpret the language in light of “the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.” *Id.* at 276. If the statutory language, read in context, “is unambiguous and clearly consistent with the statute’s apparent purpose,” the inquiry will “ordinarily” end, “and we apply the statute as written, without resort to other rules of construction.” *Id.* at 275. If, however, the

statute is ambiguous, we must “resort to other recognized indicia” of legislative intent, such as “the structure of the statute...; how the statute relates to other laws; the legislative history, including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it; the general purpose behind the statute; and the relative rationality and legal effect of various competing constructions.” *Witte v. Azarian*, 369 Md. 518, 525-26 (2002).

CCPS may argue that students placed in the FSA have not been suspended. While ED § 7-305.1 prohibits suspension of more than 5 school days, it also mandates that the school system “remedy the impact of a student’s behavior through appropriate intervention methods including restorative practices.” ED § 7-305.1(d). Thus, CCPS may assert that placement in the FSA is such a remedy—a restorative practice—not a suspension because the student placed at the FSA would remain in a public school, receiving all academic instruction and access to other programs that CCPS offers, including transportation.

It is apparent from the legislative history that the problem that the legislature and other advocates for the bill wanted to address was “out-of-school” suspension of pre-K to second grade students. The legislative history of the 2017 legislation, now codified at ED § 7-305.1, is comprised of the testimony of 30 or so education stakeholders, including Disability Rights Maryland, the county government, the American Academy of Pediatrics, and parents. Even assuming that placement in the FSA is not an “out-of-school” suspension because the child will not be out-of-school in a literal sense, the law requires that intervention and support be provided to any pre-K to second grade student who is disruptive or who commits an act that would be a suspendable offense but for the student’s grade. ED § 7-305.1(c)(1)(ii). Intervention and support “includes” (1) PBIS; (2) a behavior intervention plan; (3) a referral to a student support team; (4) a referral to an IEP team; (5) a referral for appropriate community-based services. ED § 7-305.1(c)(2). Thus, the question is whether the FSA is an intervention and support of the type listed in the statute that can legally be used before a disruptive student is suspended.

The use of the term “includes” in the statute generally means that the list is not exclusive. See Singer & Singer, *Statutes and Statutory Construction*, § 47:25 at 444 (7th Ed. 2014). Rather, the specific terms on the list are considered examples of the class encompassed by the general term, “intervention and support.” *Id.* at § 47.14 at 378, 384; see also *Boffen v. State*, 372 Md. 724, 734-735 (2003). To avoid expanding the statute beyond its intended purpose, however, it is important to define the class that the specific enumeration encompasses. To do so, we look to the statute’s subject and purpose as the basis to determine the intended scope of the class. Singer & Singer at § 47:18 at 391.

The legislative intent of the 2017 legislation is set out in the Preamble:

WHEREAS, It is the intent of the General Assembly that school systems shall utilize restorative practices as an alternative to traditional school disciplinary practices to ensure that developmentally appropriate, age-appropriate, and proportional consequences are applied to a child's misbehavior in a way that supports personal growth and positive learning opportunities for all students.

Md. Laws 2017, Ch. 843 and 844.

The 2017 law defines restorative practices as “practices conducted in a whole school ethos and culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting...” ED § 7-305.1(a)(3). Restorative practices “help build a sense of belonging, safety and social responsibility in the school community.” *Id.* A placement in a program outside of the student's home school seems incongruent with the types of interventions listed in the statute. Each of the listed types seems to be an intervention that occurs in the home school setting. Certainly, PBIS and a behavior intervention plan are a whole school approach to behavior issues. The three other interventions listed are referrals for services or evaluation, not referrals to alternative program placements.¹ On its face, placement in a program removed from the “whole school ethos and culture” of the student's home school appears to be outside the general intent of the statute.² Accordingly, it is my view that even if the placement in the FSA is not viewed as an “out-of-school” suspension, the types of interventions and supports that the legislature considers appropriate are those that occur in the home school, not those that occur in an alternative placement. As such, placement in the FSA would likely violate the 2017 law.

Furthermore, in my view placement in the FSA would be considered a suspension under current law. Under the applicable law, a suspension can occur only when a team of educators determines that a student poses “an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.” ED § 7-305.1 (b)(2)(ii). The law appears to presume that the school has already tried one or more of the allowable interventions and supports but has not been

¹An IEP team can recommend a 45-day placement in an alternative setting, but that process is governed by special education laws that contain very limited reasons for such placement. COMAR 13A.08.03.06.

²MSDE has published guidance for school systems to implement the 2017 legislation. The guidance includes several pages of appropriate interventions and supports. None of these are alternative programs that remove the child from the school. See *Prohibition of Suspension and Expulsion for Students in PreK to 2*, available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/TA/GuidanceProhibitionSuspensionExpulsionStudentsGradesPreK2.pdf>.

successful in changing the students' behavior. Thus, a five-day suspension can occur because the student poses an imminent threat of serious harm. ED § 7-305.1 (b)(2)(ii).

The Education Article does not contain a definition for "suspension." The State Board of Education defined that term in regulations that were promulgated before enactment of the 2017 legislation. A "suspension means the application of extended suspension, in-school suspension, short-term suspension or long-term suspension." COMAR 13A.08.01.11B(10). The regulations further define each of those types of suspensions, all of which have one common denominator—the removal of a student from the school itself or removal from the student's educational program. The regulations define "in-school suspension" as the removal within the school building of a student from the student's current educational program for up to but not more than 10 days. COMAR 13A.08.01.11B(4). "Short-term suspension means removal of a student from school" for not more than 3 days. COMAR 13A.08.01.11B(9). "Long-term suspension means the removal of a student from school....for 4 to 10 days...." COMAR 13A.08.01.11B(5). "Extended suspension" is

the exclusion of a student from a student's regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:

- (a) The superintendent or designated representative has determined that:
 - (i) The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or
 - (ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning from other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.
- (b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable;
- (c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's academic program.

COMAR 13A.08.01.11B(3). Placement in the FSA results in the removal of a student from the student's home school and from the student's current or regular education program. In that regard, the placement meets the definition of each of the four kinds of suspension.

The State Board regulations also provide that if a removal is an "in-school removal" it is "not considered a day of suspension so long as the student is afforded" certain specified opportunities. COMAR 13A.08.01.11C(2). It is my understanding that CCPS believes that the placement in the FSA is akin to an in-school suspension. The

The Honorable Erek L. Barron
The Honorable Susie Proctor
May 31, 2019
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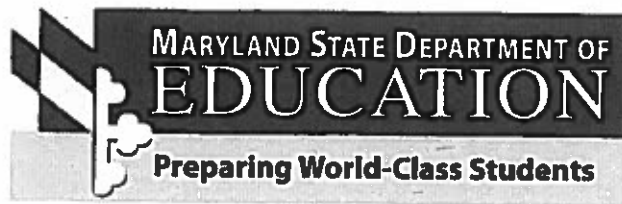
regulations provide, however, that an in-school suspension occurs "within the school building" and can last only 10 days. COMAR 13A.08.01.11B(4). Placement at the FSA is a 45-day placement outside of the building and comes closer to the definition of an "extended suspension." COMAR 13A.08.01.11B(3). For example, if a student is suspended for up to 45 days, the superintendent must decide that the student poses an imminent threat of serious harm or is chronically and extremely disruptive. According to CCPS's information, a similar determination will be made for placement in the FSA. Likewise, if an extended suspension is imposed, the school system must provide the student with "comparable educational services and appropriate behavioral support services to promote successful return to the student's academic program." COMAR 13A.08.01.11B(3)(c). The FSA seems to be designed to provide those same types of services.

For the foregoing reasons, it is my view that placement in the FSA would be a "suspension." As a result, I believe that a 45-day placement would violate the 5-day limitation for suspensions in ED § 7-305.1(b)(2) for public prekindergarten, kindergarten, first grade, or second grade students.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Benson Brantley", written over a faint circular stamp or watermark.

Sandra Benson Brantley
Counsel to the General Assembly



**Model Policy Bulletin on
School Use of Reportable Offenses**

**Maryland State Department of Education
Division of Student, Family, and School Support**

December 2013

Lillian M. Lowery, Ed.D.
State Superintendent of Schools

Charlene M. Dukes, Ed.D
President, Maryland State Board of Education

Martin O'Malley
Governor

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Technical Assistance Bulletin on School Use of Reportable Offenses

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Technical Assistance Bulletin on School Use of Reportable Offenses

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Technical Assistance Bulletin on School Use of Reportable Offenses

Background

To address situations that could compromise school security, the 1995 Maryland General Assembly added Section 7-303, *Arrest for Reportable Offense*, to the Education Article, Annotated Code of Maryland. The law deals with the exchange and use of information regarding serious and criminal offenses committed by students off school grounds. For the full text of the law, see Section 7-303, *Arrest for Reportable Offense*, of the Annotated Code of Maryland. The law is very clear in requiring that this information be:

- (1) Released only to provide educational programming and services to the alleged perpetrator of the offense and to maintain a safe and secure learning environment;
- (2) Transmitted only to personnel in the school in which the student is enrolled; and
- (3) Destroyed when a student graduates, permanently leaves school, or reaches age twenty two.

The State Board adopted Code of Maryland Regulation (COMAR) 13A.08.01.17, *School Use of Reportable Offenses*, on March 11, 1996 to implement the provisions of the law. Subsequent sessions of the Maryland General Assembly added additional offenses and transmittal to other school officials when a student seeks to enroll in a different school and additional requirements when a student has been convicted and/or adjudicated of the offense.

Purpose

To assist local school systems (LSSs) and schools in:

- (1) Meeting the requirements of the law and the implementing regulations;
- (2) Ensuring that the rights of students who have been charged with a reportable offense in the community are protected;
- (3) Determining whether the presence of the student poses a threat to the safety of the school and cannot be the basis for suspension/expulsion; and
- (4) Ensuring the provision of appropriate educational programming and services and that educational environments are safe and conducive to learning (COMAR 13A.08.01.17(C)).

The Maryland State Department of Education (MSDE) is committed to helping LSSs address the educational needs of all students. We believe that students are best served by being in school but also recognize that the presence of a student who has been charged with a reportable offense could pose a threat to the safety and welfare of others in the school community and disrupt the educational process.

MSDE recommends that LSSs and schools take a team approach in deciding if the student poses a threat to school safety. A team may include, but is not limited to, the superintendent's designee or school administrator meeting with the coordinated student services team (SST) consisting of a school psychologist, school counselor, pupil personnel worker, and health services staff) to determine if the student charged with the offense poses a threat to self, others, or the educational process. The use of risk/lethality assessments by school staff for such offenses is not recommended as these are normally outside of their scope and expertise.

LSSs and schools are encouraged to consider options that keep students in their home schools such as restrictions within the building or increased supervision. However, if the principal determines that the presence of a student charged with a reportable offense poses a threat to the student or others, the student's educational programming may be modified, to include assignment to an alternative educational program as a temporary measure to ensure school safety [Education Article §7-303 (g)]. Alternative educational programs include, but are not limited to: restrictions within the school building; a modified schedule; administrative transfer to a comprehensive high school; administrative transfer to an alternative school; evening high school; online courses; or direct instruction to the student.

Model Procedures for Handling Reportable Offenses

- (1) Upon receipt of information that a student enrolled in a school has been arrested and charged with a reportable offense in the community, a decision must be made to determine whether the in-school presence of the student poses a threat to the student, others, or the educational process. An emergency meeting of the school's coordinated student services team (SST) should be called to gain a complete picture of the student, his/her needs, and the best course of action for the student and the school. A team approach is the recommended model to follow in these cases. Throughout this process, the team should remain cognizant of the student's presumption of innocence and ongoing right to legal counsel. If the student participates in the meeting, the team should not question the student about the alleged offense.
- (2) If the team decides that such a threat exists, a plan will be immediately developed that addresses appropriate educational programming and related services for the student. The parents/guardians shall be notified in writing of the educational planning meeting and invited to participate. A copy of the appeal procedures shall be included in the written notice.
- (3) If the plan results in a change to the student's educational program, a conference will be promptly scheduled to inform the parent/guardian of the plan. If the student has a disability, the conference should include appropriate staff to convene an IEP/504 meeting simultaneously or subsequently, to determine if the IEP/504 plan needs to be revised to reflect additional services or a change in placement. The plan should be implemented no later than five school days after receipt of the arrest information.

- (4) While not required by law, the LSS's central office administration will be informed of the plan and its contents. The central office administration may develop a process by which their expertise and oversight are included in the process. Some steps to be considered are:
- Having the plan reviewed for legal form and sufficiency;
 - Having the plan approved by the superintendent or the superintendent's designee;
 - Developing procedures for notifying parents/guardians in writing and in person of changes to the plan; and
 - Developing a review process for appeals and/or disagreements concerning the plan.
-
- (5) The LSS will establish appeal procedures that are timely and provide the student with due process. Appeals should be made to the local superintendent/designee. Some LSSs require a student and his/her guardian to appeal the decision in writing to the superintendent of schools/designee within ten days of receipt of the notice of change(s) to the student's educational programming.
- (6) The student will remain in the alternative program until the matter has been resolved or the superintendent/superintendent's designee determines that the threat to the school community has passed. The superintendent or superintendent's designee should review the plan and the student's status at least every 30 days until the matter is resolved and at least quarterly after it is resolved, and makes adjustments as appropriate. The parent or guardian shall be informed of all such reviews as well as any adjustments to the plan.
- (7) All information concerning a student's reportable offense shall be maintained in a confidential file in the principal's office, shall not be filed in the student's permanent educational record, and shall be destroyed when the student graduates, or permanently leaves school, or turns twenty-two, whichever occurs first.

Reporting/Monitoring:

To identify technical assistance needs, MSDE will develop a system to collect data on the number of reportable offenses in each LSS. Some data points for consideration include, but are not limited, to the following:

- (1) Offense;
- (2) Verification that the incident occurred off school campus;
- (3) Placement, e.g., remained in regular school setting, school setting with restrictions; transferred to alternative high school, etc.;
- (4) Grade;
- (5) Gender;

- (6) Age;
- (7) Ethnicity;
- (8) Disability;
- (9) School; and
- (10) Incarceration/Detention.

Authority:

Annotated Code of Maryland §7-303, Education Article, *Arrest for Reportable Offense*

<http://www.lexisnexis.com/hottopic/mdcode/> (Click on this link which takes you to the Annotated Code of Maryland. Go to **SEARCH** and paste - § 7-303 Arrest for Reportable Offense. It will take you to the law).

Code of Maryland Regulation (COMAR) 13A.08.01.17
13A.08.01.17.htm
13A.08.01.17(C)

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November 6, 2023

Ms. Mary L. Gable
Assistant State Superintendent
Maryland State Department of Education
200 West Baltimore Street
Baltimore, MD 21201

Dear Ms. Gable:

On behalf of Anne Arundel County Public Schools (AACPS), I am submitting this public comment regarding the amendments proposed by the State Board of Education (State Board) to the Code of Maryland Regulations (COMAR) 13A.08.01.17 *School Use of Reportable Offenses*. AACPS appreciates the amendments proposed by the State Board to align state regulation with Sections 7-303 and 7-305 of the Education Article as amended by House Bill 146, Education – Reportable Offenses, Student Discipline, and School Disruptions – Presence of an Attorney and Reporting, of 2022. However, AACPS respectfully requests the State Board consider additional amendments to COMAR 13A.08.01.17 to address the concerns outlined below.

COMAR 13A.08.01.17.D. *Removal from Regular School Program* establishes a new standard for removing a student from their regular school program due to a charge of a reportable offense in the community. Under the new regulatory language proposed by the State Board, a student may not be removed from their regular school program as the result of a charge of a reportable offense unless the principal determines that the student presents an “imminent threat of serious harm to other students or staff.” “Imminent threat of serious harm” is not only an extremely high standard for removal, but also a subjective standard that could be interpreted differently from school-to-school or school system-to-school system. AACPS believes that the standard of an “imminent threat of serious harm” is too high of a threshold to meet in order to change a student’s regular school programming and that such a high standard may result in decreased safety for students and staff. AACPS requests that this standard be changed to permit a student’s regular school programming to be changed if the principal determines the student poses a threat of serious harm to other students or staff, whether or not the threat of such serious harm is imminent. AACPS believes that school administrators should have the ability to remove any student who poses a risk of serious harm to students or staff members in order to preserve the safety of the educational environment for all students and staff. This alternate standard ensures that students charged with reportable offenses in the community are not unreasonably excluded from their regular school program, and that local school systems have the tools they need to ensure the safety of the school environment for all students and staff. At the very least, AACPS requests that the State Board provide a definition or specific guidance to local education agencies regarding what constitutes an “imminent threat of serious harm,” so that local school systems can accurately implement this aspect of the regulation. This additional guidance will ensure that this regulatory standard is implemented consistently across school districts and across the State of Maryland.

Additionally, COMAR 13A.08.01.17.D. *Removal from Regular School Program* establishes new procedures for appealing the decision of a principal to remove a student from their regular school program as the result

of a charge of a reportable offense. AACPS requests additional State guidance in regulation on the requirement that a student's attorney be invited to participate in any conference with the student and student's parents/guardians regarding the removal of the student from their regular school programming as the result of the student's charge with a reportable offense. AACPS is supportive of the requirement that a student's legal representative participate in any meeting regarding the student's removal from their regular school programming, but is concerned that a lack of guidance may result in unnecessary delays in the due process protections provided by the revised regulations. AACPS respectfully requests guidance that clarifies the obligation of a school or school system to contact and schedule a meeting including the student's attorney under this regulation. AACPS would like to ensure that if a school or school system makes a reasonable effort to include the student's attorney in any meeting to discuss a change in the student's regular school program such efforts are not hampered by delays caused by the attorney's failure to make a good faith effort to participate in these meetings with their clients in a timely fashion. AACPS proposes the promulgation of specific guidance regarding efforts that must be made to notify a student's attorney of a meeting request and a limit on the amount of time a meeting may be delayed in order to accommodate the availability of the student's attorney.

Furthermore, AACPS recommends the 45-day timeline for reviewing appeals proposed by the State Board in this regulation be extended to 60 days to permit local education agencies sufficient time to review appeals under this regulation. The requirement that appeals under this regulation be heard and a decision issued within a 45-day period poses a significant burden to staff. AACPS believes that a 60-day timeframe for the hearing and disposition of appeals alleviates this burden on staff, while also ensuring the timely disposition of appeals under this regulation.

AACPS also requests that the State Board rescind the requirement proposed in COMAR 13A.08.01.17.G. *Students with Disabilities* that a manifestation determination regarding the student's alleged reportable offense be conducted before a student with disabilities may be removed from their regular school program. When school systems are notified that a student was charged with a reportable offense in the community, local law enforcement does not typically provide information beyond the name of the student and the reportable offense they were charged with. While AACPS supports the intent of this regulatory language to protect the educational rights of students with disabilities, local school systems simply do not have the requisite information or skills to make a manifestation determination as it relates to the alleged criminal conduct of a student with disabilities that occurred in the community. As such, such a manifestation determination does not provide accurate nor helpful information in determining whether a student with disabilities should be removed from their regular school program. Moreover, AACPS requests that this provision of the regulations be amended to provide clarification as to whether this regulatory language applies to students receiving accommodations and/or related services under Section 504 of the Rehabilitation Act of 1973, in addition to students receiving special education services under the Individuals with Disabilities Education Act.

Finally, AACPS recommends that COMAR 13A.08.01.17.J. *Data Collection* be updated to reflect all data that is required to be reported by local education agencies to the Maryland State Department of Education (MSDE) regarding school use of reportable offenses. MSDE has required that local school systems report the following data points regarding school use of reportable offenses in addition to the data points outlined in this section of COMAR: date of birth of the student charged with a reportable offense; State and local student identification numbers; English language learner designation of the student; the date of the reportable offense; date of school notification of the reportable offense; certification that the superintendent notified the principal the student was charged with a reportable offense; certification that the principal met with the student and the student's parents/guardians; information regarding the participation of a student's attorney in the meeting required under the law/regulation; certification of the development for a safety plan, if necessary, for a student charged with a reportable offense; certification that the superintendent met with the

student, student's parents/guardians and attorney as necessary; and the principal's decision regarding removal. AACPS believes that State regulation should reflect all of the data required to be reported by local school systems.

Thank you for your time and consideration of our comments.

Sincerely,



Grace Wilson
Legislative & Policy Specialist

cc: Dr. Mark Bedell, *Superintendent of Schools*
Ms. Keisha Butler, *Program Manager, Section 504, Department of Special Education*
Mr. Mychael Dickerson, *Chief of Staff*
Mrs. Monique Jackson, *Deputy Superintendent*
Ms. Lori Kane, *Manager ESY and Emotional Support, Department of Special Education*
Ms. Diane McGowan, *Director of Specially Designed Instruction and Compliance, Department of Special Education*
Ms. Laurie Pritchard, Esq., *Director of Legal Services*
Dr. Alice Swift, *Director of Safe and Orderly Schools*