



Discipline Related Code of Maryland Regulations (COMAR)

At the June 20, 2018 State Board Meeting, Board Members requested a review of all COMAR regulations related to student discipline. Upon review of COMAR, the following regulations are provided for your information and consideration:

13A.08.01.11-.21	General Regulations
13A.08.03	Discipline of Students with Disabilities
13A.08.04	Student Behavior Interventions
13A.08.06	Positive Behavioral Interventions and Support Programs

STATE BOARD OF EDUCATION

13A.08.01.09

(d) Adopt standard operating procedures regarding the investigation of activity related to alcohol and other drug abuse on school premises; and

(e) Adopt standard operating procedures regarding the seizure and storage of contraband.

.09 Student Organizations.

A. All student organizations desiring to conduct activities in public school buildings or on public school grounds shall be permitted to conduct these activities only if authorized to do so and shall thereafter be subject to the supervision of the administration and faculty of the school.

B. Any secret, exclusive, or self-perpetuating organization which seeks to organize and perpetuate itself by taking in members from among the students enrolled in the public schools in which they are students, upon the basis of decision of the membership of the organization, rather than from the free choice of any students in the school who are qualified to fill the special aims of the organization, shall be prohibited from conducting its activities in public school buildings or on public school grounds.

.10 Guidelines for Students' Responsibilities and Rights.

A. Each local board of education shall have a document on students' responsibilities and rights.

B. This document shall conform to guidelines established by the State Board of Education.

C. The local document shall be disseminated periodically to all members of the school community, including students, teachers, administrators, and parents or guardians.

D. There shall be broad involvement of representatives of the school community in the review of the document

.11 Disciplinary Action.

A. Local Board Authority. Each local board of education has both the responsibility and authority to adopt policies designed to create safe schools. In the context of school discipline, by the beginning of school year 2014—2015, each local board shall review and revise its student discipline policies and regulations with the goal of maintaining an environment of order, safety, and discipline necessary for effective learning. The policies and regulations at minimum shall:

- (1) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;
- (2) Be designed to keep students connected to school so that they may graduate college and career ready;
- (3) Describe the conduct that may lead to in-school and out-of-school suspension or expulsion;
- (4) Allow for discretion in imposing discipline;
- (5) Address the ways the educational and counseling needs of suspended students will be met; and
- (6) Explain why and how long-term suspensions or expulsions are last-resort options.

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

(1) "Confer" means a discussion or dialogue by any means, for example, telephone, electronic mail, or face-to-face meeting, where the views of the teacher are communicated and considered.

(2) "Expulsion" means the exclusion of the student from the student's regular school program for 45 school days or longer, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable.

and

(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 regular academic program.

STUDENTS

13A.08.01.11

(3) "Extended suspension" means 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 for 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; and

(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 regular academic program.

(4) "In-school suspension" means the removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.

(5) "Long-term suspension" means the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.

(6) "Principal" means the principal of a school or the principal's designee.

(7) "Short-term suspension" means the removal of a student from school for up to but not more than 3 school days for disciplinary reasons by the principal.

(8) "Suspension" means the application of extended suspension, in-school suspension, short-term suspension, or long-term suspension.

C. Suspension and Expulsion.

(1) In-School Suspension.

(a) An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

(i) Appropriately progress in the general curriculum;

(ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;

(iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and

(iv) Participate with peers as they would in their current education program to the extent appropriate.

(b) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(c) The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school.

(d) After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.

(e) The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.

(f) Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension.

(g) Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

(2) Suspension for Not More Than 10 Days.

STATE BOARD OF EDUCATION

13A.08.01.11

(a) In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal.

(b) The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(c) At or before the conference, the student shall receive oral or written notice of the charges against him or her. If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story.

(d) A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.

(e) If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the local superintendent.

(3) Suspension for More than 10 Days or Expulsion.

(a) At the request of a principal, a local superintendent or the designated representative may suspend a student for more than 10 school days or expel the student.

(b) Upon receipt of a written report from a principal requesting an extended suspension or expulsion, the local superintendent or designated representative promptly shall make a thorough investigation of the matter.

(c) If after the investigation the local superintendent or designated representative finds that an extended suspension or an expulsion is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) The process described in §C(3)(a)—(c) of this regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, either because of delays due to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the student's return to school would pose an imminent threat of serious harm to other students or staff.

(e) If the student is not allowed to return to school after the 10th day, the superintendent or designee shall notify the student and the parent or guardian within 24 hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools;

(f) If after the conference the local superintendent or designated representative finds that an extended suspension or an expulsion is warranted, the student or the student's parent or guardian may appeal to the local board within 10 days after the determination.

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

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

(ii) This timeline shall also apply in the event that the local board elects to use a hearing examiner.

(h) 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 days, it may petition the State Superintendent for an extension of time.

(i) The student or the student's parent or guardian or representative:

(i) Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing; and

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

(j) 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 board.

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

STUDENTS

13A.08.01

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

(4) A student expelled or suspended from school shall remain away from the school premises during those hours each school day when the school the student attends is in session, and may not participate in school-sponsored activities. The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by the student's parent or guardian.

(5) A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.

(6) If a student has been suspended or expelled, the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student's parent or guardian.

(7) If a student's disruptive behavior results in action less than suspension, the principal shall confer with the teacher who referred the student to the principal before returning the student to that teacher's classroom. The principal may satisfy this requirement by consulting with the teacher before returning the student to the classroom.

(8) A local superintendent may deny attendance to a student who is currently expelled or on extended suspension from another school system for a length of time equal to that expulsion or extended suspension. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion or extended suspension of the student, on receipt of the request for information.

D. Restitution. Unless the student is referred to the Department of Juvenile Services, if a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian, and other appropriate individual, the principal shall require the student or the student's parent or guardian to make restitution. The restitution may be made in the form of monetary restitution not to exceed the lesser of the fair market value of the property, or \$2,500, or by the student's assignment to a school work project, or both.

E. Corporal Punishment. Corporal punishment may not be used to discipline a student in a public school in the State.

F. Minimum Education Services. In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at a minimum provide that:

(1) Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and

(2) Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.

G. Education Services During Short-Term Suspensions.

(1) For short-term suspensions, the local board of education shall inform all schools under their jurisdiction:

(a) To provide all students who receive short-term suspensions with the opportunity to complete the academic work they miss during the suspension period without penalty; and

(b) To provide all students who receive short-term suspensions, and their parents or guardians, with the contact information for a school employee who will be responsible for ensuring that the requirement described in §G(1)(a) is met.

(2) All other aspects of the process for suspended students receiving missed assignments, completing missed assignments, and making up tests shall be identical with each school's established policy and practice for makeup work in the event of any other excused absence.

STATE BOARD OF EDUCATION

13A.08.01.12

.12 Arrests on School Premises.

A. When possible and appropriate, arrest by police should be made during nonschool hours and away from the school premises.

B. When an arrest on school premises during the school hours is necessary, the responsible school official shall ascertain the facts from the arresting officer which will enable the school official to fully advise the parent or guardians and other school officials of the nature of the charge, the identity of the arresting officer, and the location of the student.

C. When an arrest has taken place on school premises or during school hours, every effort shall be made by school officials to inform the parent or guardians immediately and thereafter promptly to advise the local superintendent of schools.

D. Arrest on school premises during school hours shall be effectuated in such a manner as to avoid both embarrassment to the student being arrested and jeopardizing the safety and welfare of other students.

E. School officials may not permit questioning of a student under arrest on the school premises and shall request the arresting officer to remove the student from the premises as soon as practicable after the arrest is made.

F. Beginning in the 2015—2016 school year, data on school arrests shall be reported in a manner and format developed by the Department, in consultation with local school systems, and approved by the State Board.

.12-1 Bringing or Possessing a Firearm on School Property.

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

(1) "Alternative educational setting" means an alternative education program that allows the student to continue the student's education within the public school system and, if in a secondary school, the opportunity to earn credit.

(2) "Expulsion" means at a minimum the removal of a student from the student's regular school program.

(3) "Firearm" means a weapon as defined in 18 U.S.C. §921.

(4) "School property" means buildings, land that surrounds the buildings, and vehicles, that are owned or leased by a local school system.

(5) "Year" means a calendar year of 12 months.

B. General Provisions.

(1) Except as provided in §B(2) of this regulation, if the local superintendent or designee finds that a student has brought a firearm onto school property or to a school-sponsored activity or has possessed a firearm on school property or at a school-sponsored activity, the student shall be expelled for a minimum of 1 year.

(2) The local superintendent may specify in writing, on a case-by-case basis, a shorter period of expulsion or an alternative educational setting, if alternative educational settings have been approved by the local board, for a student who has brought a firearm onto school property or to a school-sponsored activity or has possessed a firearm on school property or at a school-sponsored activity.

(3) Nothing in this regulation applies to a firearm:

(a) That is lawfully stored inside a locked vehicle on school property; or

(b) For activities approved and authorized by the local school system, if the local school system adopts appropriate safeguards to ensure student safety.

C. Students with Disabilities. An identified student with disabilities who brings a firearm onto school property or to a school-sponsored activity or who possesses a firearm on school property or at a school-sponsored activity may be suspended or expelled in accordance with the procedures set out in Education Article, §7-305, Annotated Code of Maryland, and COMAR 13A.08.03.

D. Administrative Procedures.

(1) Annually by August 1, each local school system shall provide the State Board of Education with a report that includes:

(a) Written certification that the local school system is in compliance with the requirements of this regulation;

(b) A description of the circumstances surrounding any expulsions imposed under State law as required by §B(1) of this regulation;

STUDENTS

13A.08.01.13

- (c) The number of incidents in which a student brought a firearm onto school property or to a school-sponsored activity or possessed a firearm on school property or at a school-sponsored activity;
- (d) The name of the school where each incident took place;
- (e) The type of firearm involved;
- (f) The disposition of each case, including the number of students:
 - (i) Expelled from each school, and
 - (ii) Placed in alternative educational settings; and
- (g) A description of alternative educational settings used in compliance with this regulation.

(2) Each local school system shall report each incident in which a student brings a firearm onto school property or to a school-sponsored activity or possesses a firearm on school property or at a school-sponsored activity to the appropriate juvenile justice or criminal enforcement agency.

E. Nothing in this regulation precludes a local school system from developing or applying more stringent regulations and procedures.

.13 Questioning on School Premises.

A. Police investigations involving the questioning of students may not be permitted on school premises unless in connection with a crime committed on the premises or in connection with an investigation which, if not immediately permitted, would compromise the success of that investigation or endanger the lives or safety of the students or other persons, provided, however, that a school official should be present throughout that questioning.

B. A local school system shall permit personnel from a local department of social services or a police officer to question a student on school premises during the school day in an investigation involving suspected child neglect or suspected child abuse under Family Law Article, Title 5, Subtitle 7, Annotated Code of Maryland. The following apply:

(1) The local superintendent or the superintendent's designee shall determine, after consultation with the individual from the local department of social services or the police officer, whether a school official shall be present during the questioning of a student pursuant to this section.

(2) Records and reports concerning child abuse or neglect are confidential, and unauthorized disclosure is a criminal offense under Article 88A, §6(b), Annotated Code of Maryland.

C. Except as provided in §D of this regulation, whenever investigative questioning of students is permitted on the premises, the school official shall promptly advise the parent or guardians and the local superintendent's office of the nature of the investigation and such other details as may be required.

D. School officials are not required to notify parents or guardians of investigations on school premises involving suspected child neglect and suspected child abuse under Family Law Article, Title 5, Subtitle 7, Annotated Code of Maryland.

E. In the absence of an arrest, school officials may not authorize the removal of a student from school for the purpose of investigative questioning without the consent of the parent or guardians, except as provided below:

(1) A student may be removed from school premises if that student is a suspected victim of child abuse or neglect and the local department of social services has guardianship of the child or a court order to remove the child;

(2) The Superintendent or the Superintendent's designee shall ensure that prompt notification of a student's removal from school under this section is made to the student's parent or guardians.

.14 Searches.

A. Search of Student by Principal, Assistant Principal, or School Security Guard.

(1) A principal, assistant principal, or school security guard of a public school may make a reasonable search of a student on the school premises or on a school-sponsored trip if the searcher has a reasonable belief that the student has in the student's possession an item, the possession of which is:

- (a) A criminal offense under the laws of this State; or

STATE BOARD OF EDUCATION

13A.08.01.15

(b) A violation of:

(i) Any other State law; or

(ii) A rule or regulation of the local board.

(2) A search under §A(1) of this regulation shall be made in the presence of a third party.

B. Search of School by Principal, Assistant Principal, or School Security Guard.

(1) A principal, assistant principal, or school security guard of a public school may make a search of the physical plant of the school and its appurtenances, including the lockers of students.

(2) The right of a principal, assistant principal, or school security guard to search lockers of students under §B(1) of this regulation shall be announced or published previously in the school.

C. Search of Student on School-Sponsored Trip by Teacher.

(1) A local board may authorize a teacher of a public school to make a reasonable search of a student on a school-sponsored trip if the teacher has a reasonable belief that the student has in the student's possession an item, the possession of which is:

(a) A criminal offense under the laws of this State; or

(b) A violation of:

(i) Any other State law; or

(ii) A rule or regulation of the local board.

(2) To qualify to conduct a search under §C(1) of this regulation, a teacher shall:

(a) Be designated in writing by a principal; and

(b) Receive training to conduct a search commensurate with the training received by a principal.

(3) A search under §C(1) of this regulation shall be made in the presence of a third party.

D. Police officers shall conduct searches of students and the school premises in accordance with their established policies and procedures.

E. A school official may not conduct a search of the person of a student at the request of a police officer unless a search warrant has been issued authorizing the search.

F. Every effort shall be made to conduct searches in a manner which will minimize disruption of the normal school routine and minimize embarrassment to students affected.

.15 Reporting Delinquent Acts.

A. Delinquent acts are offenses committed by a person who is under 18 years old which would be crimes if committed by an adult. School officials shall promptly report to the responsible law enforcement agencies all delinquent acts coming to their attention whether occurring on or away from the school premises which involve students attending the particular school.

B. Delinquent acts do not include conduct which has been traditionally treated as a matter of discipline to be handled administratively by the particular school, except that all conduct of a serious nature should be promptly reported to the parent or guardians concerned.

C. Beginning in the 2015—2016 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department, in consultation with local school systems, and approved by the State Board.

.16 Integration.

The local boards of education shall be informed by the State Department of Education as to the legal requirements concerning the integration of schools. The State Department of Education shall check on compliance with these requirements and shall report all suspected violations to the State Board of Education. The organization of school activities shall provide for the involvement of students regardless of sex, race, creed, or national origin.

.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" 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(c), 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) "Related services" means any supportive intervention that is available through the local school system.

(7) "Reportable offense" means:

(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.

(8) "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) "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 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.

STATE BOARD OF EDUCATION

13A.08.01.17

(10) "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.

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.

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

STUDENTS

13A.08.01.18

(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.

.18 Definitions for Regulations .19— .20.

A. In Regulations .19 and .20 of this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Conviction of or adjudication of" means that the perpetrator has been convicted of, adjudicated delinquent of, pleads guilty or nolo contendere with respect to, or receives probation before judgment with respect to, a violent criminal offense.

(2) "Corrective action plan" means a plan that includes information concerning conditions in the school that may have contributed to the commission of the offenses set forth in §B(4) of this regulation. A corrective action plan shall describe any behavioral interventions that will be used to address problems in the school.

(3) "Local school system" means any of the 24 local public school systems in the State.

(4) "Persistently dangerous school" means a school in which each year for 3 consecutive school years, the total number of student suspensions for more than 10 days or expulsions for any of the following offenses equals 2-1/2 percent or more of the total number of students enrolled in the school:

- (a) Arson or fire;
- (b) Drugs;
- (c) Explosives;
- (d) Firearms;
- (e) Other guns;
- (f) Other weapons;
- (g) Physical attack on a student;
- (h) Physical attack on a school system employee or other adult; and
- (i) Sexual assault.

(5) "Safe school" means a school that has not been placed on probationary status or designated as persistently dangerous pursuant to Regulation .19 of this chapter.

STATE BOARD OF EDUCATION

13A.08.01.19

(6) "School grounds" means a local school system owned or leased building and land that surrounds a school building and also includes school vehicles.

(7) "Violent criminal offense" means a crime of violence as defined in Criminal Law Article, §14-101, Annotated Code of Maryland.

.19 Probationary and Persistently Dangerous School Designation.

A. Probationary Status.

(1) The State Board of Education shall place on probationary status any school having each year for a period of 2 consecutive school years, the total number of student suspensions for more than 10 days or expulsions for any of the offenses set forth in Regulation .18B(4) of this chapter equal to 2-1/2 percent or more of the total number of students enrolled in the school.

(2) The local school system shall notify in a timely manner the parents of each student attending the school that the State has placed the school on probationary status.

(3) The local superintendent shall submit a corrective action plan to the State Superintendent of Schools within 30 days of being notified by the State Board of Education that a school in the jurisdiction of the school system is on probationary status.

(4) During the probationary status the school shall implement in a timely manner strategies to reduce the commission of offenses set forth in Regulation .18B(4) of this chapter.

B. Persistently Dangerous Designation.

(1) After placing a school on probationary status, the State Board of Education shall designate that school as persistently dangerous if during the next consecutive school year the total number of student suspensions for more than 10 days or expulsions for any of the offenses set forth in Regulation .18B(4) of this chapter equals 2-1/2 percent or more of the total number of students enrolled in the school.

(2) The local school system shall notify in a timely manner the parents of each student attending the school:

(a) That the State has identified the school as persistently dangerous; and

(b) Of the opportunity for school transfer as set forth in Regulation .20A(1) of this chapter.

(3) If a school has been designated a persistently dangerous school, the school shall retain that designation for at least 1 full school year.

(4) Each year that a school remains identified as persistently dangerous, the local school superintendent shall submit a corrective action plan to the State Superintendent of Schools within 30 days of being notified by the State that the status of the school as persistently dangerous has not changed.

(5) The State Board of Education shall remove a school's designation as a persistently dangerous school if the school no longer meets the requirements set forth in Regulation .18B(4) of this chapter.

.20 Unsafe School Transfer Policy.

A. Each local school system shall allow a student attending a public elementary or secondary school to attend a safe public elementary or secondary school within the school system if the student:

(1) Attends a persistently dangerous public elementary or secondary school; or

(2) Is a victim of a violent criminal offense as defined in Criminal Law Article, §14-101, Annotated Code of Maryland:

(a) During the regular school day; or

(b) While attending a school sponsored event in or on the grounds of a public elementary or secondary school that the student attends.

B. The local school system shall effectuate a transfer pursuant to §A of this regulation in a timely manner following either the:

(1) Designation of a school as persistently dangerous; or

(2) Conviction of or adjudication of delinquency of the perpetrator of a violent criminal offense.

C. To the extent possible, the local school system shall allow a student to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action, or restructuring.

STUDENTS

13A.08.01.21

D. Each local superintendent of schools shall certify annually in writing to the State Superintendent of Schools that Regulations .18—20 of this chapter are implemented.

E. The State Department of Education shall:

- (1) Maintain a list of schools determined to be persistently dangerous; and
- (2) Revise the list annually.

.21 Reducing and Eliminating Disproportionate/Discrepant Impact.

A. The Department shall develop a method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students.

B. The Department may use the discrepancy model to assess the impact of discipline on special education students.

C. If the Department identifies a school's discipline process as having a disproportionate impact on minority students or a discrepant impact on special education students, the local school system shall prepare and present to the State Board a plan to reduce the impact within 1 year and eliminate it within 3 years.

D. The local school system will report its progress annually to the State Board.

Administrative History

Effective date July 26, 1967

Regulation 01A amended effective May 25, 1977 (4 11 Md R 868)

Regulation 02 amended effective August 22, 1980 (7 17 Md R 1673)

Regulation 02A amended effective November 4, 1977 (4 23 Md R 1736)

Regulation 02F amended effective December 1, 1986 (13 24 Md R 2561)

Regulation 03C amended effective December 1, 1986 (13 24 Md R 2561)

Regulation 06A amended effective October 1, 1975 (2 22 Md R 1372)

Regulation 06F adopted effective December 31, 1984 (11 26 Md R 2280)

Regulation 07 amended effective December 2, 1985 (12 24 Md R 2351)

Chapter revised effective July 1, 1987 (14 9 Md R 1082)

Chapter revised effective January 15, 1989 (15 27 Md R 3136)

Chapter revised effective July 1, 1990 (16 20 Md R 2182)

Regulation 01 amended effective June 22, 1992 (19 12 Md R 1135); October 2, 2000 (27 19 Md R 1726); January 20, 2003 (30 1 Md R 26); July 4, 2005 (32 13 Md R 1116)

Regulation 01C amended effective August 11, 2008 (35 16 Md R 1391)

Regulation 01D amended effective September 12, 1994 (21 18 Md R 1512); October 1, 2001 (28 19 Md R 1687); May 23, 2005 (32 10 Md R 925)

Regulation 01E amended effective September 11, 2006 (33 18 Md R 1506); April 23, 2007 (34 8 Md R 767); January 12, 2009 (36 1 Md R 23); January 9, 2012 (38 27 Md R 1765); May 23, 2016 (43 10 Md R 589)

Regulation 02 repealed and new Regulations 02, 02-1—02-4 adopted effective June 22, 1992 (19 12 Md R 1135)

Regulation 02 repealed and new Regulation 02 adopted effective June 24, 2002 (29 12 Md R 929)

Regulation 02 amended effective January 31, 2006 (32 13 Md R 1116)

Regulation 02A amended effective March 3, 2003 (30 4 Md R 317)

Regulation 02B amended effective May 31, 1999 (26 11 Md R 856)

Regulation 02-2A amended effective June 7, 1993 (20 11 Md R 915)

Regulation 02-2C amended effective July 4, 2005 (32 13 Md R 1116)

Regulations 02-3 and 02-4 repealed effective June 26, 2000 (27 12 Md R 1141)

Regulation 02-3 adopted effective October 30, 2000 (27 21 Md R 1976)

Regulation 02-3 amended as an emergency provision effective August 26, 2016 (43 19 Md R 1070) amended permanently effective November 24, 2016 (43 23 Md R 1280)

Regulation 03B amended effective January 20, 2003 (30 1 Md R 26)

Regulation 07C amended effective November 8, 2004 (31 22 Md R 1596)

Regulation 08 repealed and new Regulation 08 adopted effective October 15, 1990 (17 20 Md R 2430)

Regulation 08B, D amended effective January 20, 2003 (30 1 Md R 26)

Regulation 08C amended effective September 12, 1994 (21 18 Md R 1512)

Regulation 11 amended effective September 2, 1991 (18 17 Md R 1920); September 12, 1994 (21 18 Md R 1512); March 24, 1997 (24 6 Md R 486); February 17, 2014 (41 3 Md R 202)

Regulation 11B, C amended effective October 5, 2009 (36 20 Md R 1531)

Regulation 11C amended effective January 20, 2003 (30 1 Md R 26)

STATE BOARD OF EDUCATION

13A.08.01.21

Regulation 12F adopted effective February 17, 2014 (41 3 Md R 202)
Regulation 12-I adopted effective March 11, 1996 (23 5 Md R 380)
Regulation 12-I amended effective January 6, 2005 (31 26 Md R 1864)
Regulation 12-IC amended effective January 20, 2003 (30 1 Md R 26)
Regulation 14E amended effective March 24, 1997 (24 6 Md R 486)
Regulation 14F adopted effective March 24, 1997 (24 6 Md R 486)
Regulation 14 repealed and new Regulation 14 adopted effective March 13, 2006 (33 5 Md R 522)
Regulation 15C adopted effective February 17, 2014 (41 3 Md R 202)
Regulation 17 adopted effective March 11, 1996 (23 5 Md R 380)
Regulation 17 amended effective January 9, 2012 (38 27 Md R 1765)
Regulation 17A, C amended effective January 20, 2003 (30 1 Md R 26), March 13, 2006 (33 5 Md R 522)
Regulations 18—20 adopted effective July 21, 2003 (30 14 Md R 937)
Regulation 21 adopted effective February 17, 2014 (41 3 Md R 202)

**Title 13A
STATE BOARD OF EDUCATION**

Subtitle 08 STUDENTS

Chapter 03 Discipline of Students with Disabilities

Authority: Education Article, §§2-205, 7-305, 8-404, and 8-407,
Annotated Code of Maryland

.01 General.

In addition to the procedures set forth in COMAR 13A.08.01.11, the procedures set forth in this chapter apply to students with disabilities identified in accordance with COMAR 13A.05.01.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" means an impartial hearing officer as defined in COMAR 13A.05.01.03B(31).

(2) "Business day" has the meaning stated in COMAR 13A.05.01.03B(9).

(3) "Controlled substance" means a drug or other substance identified under the Controlled Substance Act, 21 U.S.C. §812(c), section 202(c), schedules I-V.

(4) "FAPE" means a free appropriate public education as defined in COMAR 13A.05.01.03B(27) and implemented in accordance with COMAR 13A.05.01.

(5) "IEP" means an individualized education program as defined in COMAR 13A.05.01.03B(34) and developed in accordance with COMAR 13A.05.01.

(6) "IEP team" has the meaning stated in COMAR 13A.05.01.03B(35).

(7) Illegal Drug.

(a) "Illegal drug" means a controlled substance.

(b) "Illegal drug" does not include:

(i) A substance that is legally possessed or used under the supervision of a licensed health-care professional; or

(ii) A substance that is legally possessed or used under any other authority under the Controlled Substance Act or any other provision of federal law.

(8) "Public agency" has the meaning stated in COMAR 13A.05.01.03B(59).

(9) "School day" has the meaning stated in COMAR 13A.05.01.03B(66).

(10) "Serious bodily injury" means an injury inflicted on another individual that results in:

(a) A substantial risk of death;

(b) Extreme physical pain;

(c) Protracted and obvious disfigurement; or

(d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty in accordance with 18 U.S.C. §1365(h)(3).

(11) "Student with a disability" has the meaning stated in COMAR 13A.05.01.03B(78).

(12) "Weapon" means a dangerous weapon as defined under §18 U.S.C. 930(g)(2).

.03 Authority of School Personnel — Removal of a Student with a Disability.

A. Removal of a Student with a Disability for not More than 10 Consecutive School Days.

(1) A student with a disability may be removed from the student's current placement for not more than 10 consecutive school days for any violation of school rules to the same extent that removal is applied to students without disabilities.

STATE BOARD OF EDUCATION

13A.08.03.04

(2) Unless it is determined that the removal constitutes a change of placement as described in Regulation .05 of this chapter, a student with a disability may be removed:

- (a) To an alternative educational setting;
- (b) To another setting; or
- (c) By suspension.

(3) A public agency is not required to provide services to a student with a disability if services are not provided to students without disabilities.

B. Removal of a Student with a Disability for More than 10 School Days.

(1) A student with a disability may be removed from the student's current placement for up to 10 consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change of placement in accordance with Regulation .05 of this chapter.

(2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement as described in Regulation .05 of this chapter is appropriate for a student with a disability who violates a code of student conduct, consistent with 20 U.S.C. §1415(k)(1)(a) and 34 CFR §300.530.

(3) For each period of removal after a student with a disability has been removed for the cumulative equivalent of 10 school days in a school year, school personnel shall consult with at least one of the student's teachers to determine what services to provide to enable the student to appropriately:

- (a) Progress in the general curriculum; and
- (b) Advance toward achieving the goals of the student's IEP.

(4) A student with a disability may be removed for more than 10 consecutive school days for a violation of school rules to the same extent removal is applied to students without disabilities if the student's IEP team determines that the behavior subject to the removal is not a manifestation of the student's disability, in accordance with Regulation .08 of this chapter.

(5) A student with a disability removed consistent with §B(4) of this regulation shall:

- (a) Continue to receive educational services in another setting, so as to enable the student to continue to participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP; and
- (b) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation to prevent its recurrence.

.04 Parental Notification.

On the date a student with a disability is removed from the student's current placement for a violation of a code of student conduct in accordance with Regulation .03B or .05 of this chapter, school personnel shall:

- A. Notify the parents of the decision; and
- B. Provide the parents with the procedural safeguards notice in accordance with COMAR 13A.05.01.11A.

.05 Change of Placement.

A. Removal constitutes a change of placement if a student with a disability is:

- (1) Removed from the student's current placement for more than 10 consecutive school days; or
- (2) Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than 10 school days in a school year.

B. To determine if the removal constitutes a pattern of removals, the IEP team shall consider the:

- (1) Length of each removal;
- (2) Total amount of time the student is removed; and
- (3) Proximity of the removals to one another.

C. During any period of removal beyond 10 school days or its cumulative equivalent, the public agency shall provide services to the extent necessary in accordance with Regulation .03B(3) of this chapter.

STUDENTS

13A.08.03.06

.06 Interim Alternative Educational Setting.

A. A public agency may remove a student with a disability for up to 45 school days to an interim alternative educational setting if, while at school, on school premises, or at a school function under the jurisdiction of the State or a public agency, the student:

- (1) Carries or possesses a weapon;
- (2) Knowingly possesses or uses an illegal drug;
- (3) Sells or solicits the sale of a controlled substance; or
- (4) Inflicts serious bodily injury on another person.

B. The IEP team shall determine the interim alternative educational setting.

C. An interim alternative educational setting shall enable the student with a disability to:

- (1) Progress in the general curriculum;
- (2) Receive the services and modifications included in the student's IEP;
- (3) Meet the goals of the student's IEP; and
- (4) Receive services and modifications designed to address the behavior to prevent its recurrence.

D. A student with a disability removed from the student's current placement consistent with §A of this regulation shall:

- (1) Continue to receive educational services in another setting, so as to enable the student to continue to participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP; and
- (2) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation to prevent its recurrence.

E. If a public agency believes the behavior of a student with a disability is likely to result in injury to the student or others, a public agency may request a due process hearing to seek the removal of the student to an interim alternative educational setting.

F. If a public agency maintains that it is dangerous for the student with a disability to be in the current placement during the pendency of the due process hearing, the public agency may request that the due process hearing be expedited.

G. An administrative law judge may order a change in placement to an interim alternative educational setting for not more than 45 school days if the administrative law judge determines that the public agency has demonstrated, beyond a preponderance of the evidence, that maintaining the current placement of the student with a disability is substantially likely to result in injury to the student or others.

H. In making the determination in accordance with §G of this regulation, an administrative law judge shall consider whether:

- (1) The student's current placement is appropriate;
- (2) The public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- (3) The interim alternative educational setting proposed by the public agency, in consultation with the student's special education teacher, meets the requirements of §C of this regulation.

I. A student with a disability may be removed to an interim alternative educational setting in accordance with §A of this regulation without regard to whether the behavior is determined to be a manifestation of the student's disability.

.07 Responsibilities of the IEP Team.

A. The IEP team shall meet within 10 business days of the removal of a student with a disability to develop an assessment plan if the IEP team has not:

- (1) Conducted a functional behavioral assessment; and
- (2) Implemented a behavioral intervention plan to address the behavior before the behavior occurred that resulted in the student's removal as set forth in Regulation .03B or .05 of this chapter.

STATE BOARD OF EDUCATION

13A.08.03.08

B. As soon as possible after the completion of the assessments determined appropriate by the IEP team as set forth in §A of this regulation, the IEP team shall meet to:

- (1) Develop appropriate behavioral interventions to address the behavior; and
- (2) Implement the behavioral intervention plan.

C. If the student with a disability has a behavioral intervention plan, the IEP team shall meet within 10 business days of the removal to review the plan to address the behavior that resulted in the removal, and determine if:

- (1) The behavioral intervention plan needs to be modified; or
- (2) The implementation of the behavioral intervention plan needs to be modified to address the behavior.

D. For subsequent disciplinary removals of the student beyond the first 10 school days the student is removed during the school year, the IEP team shall meet to review the student's behavioral intervention plan as set forth in §C of this regulation.

E. The IEP team shall modify the behavioral implementation plan and its implementation to the extent the IEP team determines necessary.

F. Meetings of the IEP team as set forth in §A of this regulation and in Regulation .08B of this chapter may be conducted at the same IEP team meeting.

.08 Manifestation Determination.

A. The IEP team shall meet to determine whether a student's behavior that resulted in a disciplinary removal is a manifestation of the student's disability each time the student is subject to a removal:

- (1) As set forth in Regulation .03B of this chapter;
- (2) That constitutes a change of placement in accordance with Regulation .05 of this chapter; or
- (3) To an interim alternative educational setting in accordance with Regulation .06 of this chapter.

B. The IEP team shall meet within 10 school days of the date when school personnel take disciplinary action for the removal of a student with a disability as set forth in §A of this regulation to determine:

- (1) Whether the student's behavior that resulted in disciplinary removal is a manifestation of the student's disability; and
- (2) The services to be provided during the removal in accordance with Regulation .06C of this chapter to ensure the provision of FAPE.

C. In determining whether the student's behavior was a manifestation of the student's disability, the IEP team shall review:

- (1) All relevant information in the student's file;
- (2) Any teacher observations;
- (3) Any relevant information supplied by the parents; and
- (4) The student's IEP.

D. To determine that the behavior subject to the disciplinary action is a manifestation of the student's disability, the IEP team and other qualified personnel must make the determination that the student's behavior was:

- (1) Caused by or had a direct and substantial relationship to the student's disability; or
- (2) The direct result of the public agency's failure to implement the student's IEP.

E. If the IEP team determines the student's conduct was the direct result of the public agency's failure to implement the student's IEP, the public agency shall take immediate steps to remedy those deficiencies in accordance with 34 CFR §300.530(e)(3).

F. If any of the determinations set forth in §D of this regulation are made, the IEP team shall consider the behavior a manifestation of the student's disability.

G. If the IEP team determines that the student's behavior is a manifestation of the student's disability, the IEP team shall, as appropriate:

STUDENTS

13A.08.03.09

- (1) Conduct a functional behavioral assessment and implement a behavioral intervention plan if the public agency had not conducted such assessments prior to a disciplinary removal in accordance with Regulation .03B or .05 of this chapter;
- (2) Review the student's behavioral intervention plan and modify it, if necessary, to address the behavior; and
- (3) Return the student to the student's placement from which the student was removed unless the parent and the public agency agree to a change of placement as part of a modification of the student's behavioral intervention plan.

H. If the IEP team determines that the behavior is not a manifestation of the student's disability:

- (1) The student may be disciplined in the same manner as students without disabilities, including a period of suspension or expulsion, as set forth in COMAR 13A.08.01.11C; and
- (2) The IEP team shall determine the extent to which services are necessary during the period of suspension or expulsion to enable the student to appropriately:
 - (a) Progress in the general curriculum; and
 - (b) Advance toward achieving the goals of the student's IEP.

I. On initiation of disciplinary actions as set forth in §H of this regulation, the principal shall transmit the student's special education and disciplinary records to the local school superintendent.

.09 Parents' Right to Appeal and Student Placement.

A. The parents of the student may file a due process complaint as set forth in COMAR 13A.05.01.15C if the parents disagree with the public agency regarding:

- (1) Disciplinary removals, as set forth in Regulation .03B and Regulation .05 of this chapter;
- (2) The determination of whether the student's behavior is a manifestation of the student's disability, as set forth in Regulation .08 of this chapter; or
- (3) The interim alternative educational setting, as set forth in Regulation .06 of this chapter.

B. If the parents file a due process complaint in accordance with §A of this regulation, the Office of Administrative Hearings shall schedule an expedited due process hearing as set forth in Education Article, §8-413, Annotated Code of Maryland.

C. The student shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the interim alternative educational setting, whichever occurs first, unless the parents and the public agency agree on another course of action.

D. If the public agency proposes to change the student's current educational placement after the expiration of the student's placement in an interim alternative educational setting, and the parents file a due process complaint to challenge the proposed change of placement, the student shall return to the student's educational placement before removal to an interim alternative educational setting.

E. At an expedited due process hearing on disciplinary actions as set forth in §B of this regulation, the administrative law judge may:

- (1) Return the student with a disability to the placement from which the student was removed; or
- (2) Order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement is substantially likely to result in injury to the student or others.

F. The public agency may repeat the procedures set forth in Regulation .06D of this chapter as necessary if a public agency believes that:

- (1) The student continues to be dangerous;
- (2) Returning the student to the student's placement before placement in an interim alternative educational setting is substantially likely to result in injury to the student or others; and
- (3) The student should remain in an interim alternative educational setting as set forth in Regulation .06A and F of this chapter.

STATE BOARD OF EDUCATION

13A.08.03.10

.10 Students Not Yet Eligible for Special Education and Related Services.

A. If a student who has not been identified as a student with a disability engages in behavior that violates any rule or code of conduct of the public agency, the student may assert protection under this chapter if the public agency had knowledge that the student was a student with a disability before the student engaged in the behavior that precipitated the disciplinary action.

B. A public agency shall be deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student that the student is in need of special education and related services;

(2) The parents have requested an evaluation as set forth in COMAR 13A.05.01.04A(1); or

(3) The student's teacher or other personnel of the public agency have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the public agency director of special education or other public agency supervisory personnel in accordance with COMAR 13A.05.01.04A(1) or local child-find procedures.

C. A public agency is not deemed to have knowledge in accordance with §B of this regulation if:

(1) The parent of the student:

(a) Did not allow the public agency to conduct assessments in accordance with COMAR 13A.05.01.05; or

(b) Refused or revoked consent for services in accordance with COMAR 13A.05.13; or

(2) The public agency:

(a) Conducted an evaluation in accordance with COMAR 13A.05.01.06B and determined that the student was not a student with a disability, or determined that an evaluation was not necessary in accordance with COMAR 13A.05.01.04B(4); and

(b) Provided the student's parents with a written notice of the decision in accordance with COMAR 13A.05.01.12.

D. If a public agency does not have knowledge that a student is a student with a disability before taking disciplinary action, the student may be subject to the same disciplinary measures applied to students without disabilities who engage in comparable behavior.

E. If the public agency receives a written referral, in accordance with COMAR 13A.05.01.04A, during the time period that the student is subject to disciplinary measures, the public agency shall evaluate the student in accordance with COMAR 13A.05.01.04—06, in an expedited manner.

F. The student shall remain in the educational placement determined appropriate by public agency personnel, including suspension or expulsion without educational services, until the evaluation is completed.

G. If, as a result of the evaluation, as set forth in COMAR 13A.05.01.06B, the IEP team determines that the student is a student with a disability, the public agency shall provide special education and related services.

.11 Referral to Law Enforcement.

A. A public agency may report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law and 34 CFR §300.535.

B. The public agency shall ensure that copies of the student's special education and disciplinary records are transmitted to the appropriate authorities to whom the public agency reported the crime, to the extent permitted, in accordance with COMAR 13A.08.02.

Administrative History

Effective date: October 2, 2000 (27:19 Md. R. 1726)

Regulation .02B amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .03 amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .04 amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .05C amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .06 amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .06A amended effective January 21, 2002 (29:1 Md. R. 25)

Regulation .07A amended effective January 21, 2002 (29:1 Md. R. 25)

Regulation .08 amended effective May 7, 2007 (34:9 Md. R. 826)

Regulation .09 amended effective May 7, 2007 (34:9 Md. R. 826)

STUDENTS

13A.08.03.11

Regulation .10 amended effective May 7, 2007 (34.9 Md. R. 826)

Regulation .10C amended effective October 5, 2009 (36.20 Md. R. 1531)

Regulation .11A amended effective May 7, 2007 (34.9 Md. R. 826)

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(5) [An employee or an applicant for employment] *A school vehicle driver or trainee is determined as having refused to take an alcohol test if the [employee] school vehicle driver or trainee:*

(a) *Fails to appear for a test, except a pre-employment test as set forth in §B(6) of this regulation, within a reasonable time as determined by the employer or supervisor and consistent with regulations, after being directed to report for a test;*

(b) *In the case of [an employee] a school vehicle driver or trainee who is an owner-operator or self-employed [individual] school vehicle driver or trainee, fails to appear for a test when notified to do so by an employer or supervisor;*

(c)—(g) (text unchanged)

(6) [An applicant] *A school vehicle driver or trainee reporting for a pre-employment test who does not provide a saliva or breath specimen under §B(2)(g) of this regulation because the applicant left the testing site before the testing commences, is not considered to have refused to test.*

C. Reporting Disqualified Drivers.

(1)—(2) (text unchanged)

(3) *The Office of Pupil Transportation of the Department shall maintain a confidential computer database of the disqualified school vehicle driver's or trainee's information reported by the local school systems under §C(1) of this regulation.*

(4) (text unchanged)

(5) *Upon receipt of the current list of active school vehicle drivers, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active [driver] school vehicle driver or trainee is listed on the Department's computer database.*

D.—F. (text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

Subtitle 08 STUDENTS

13A.08.04 Student Behavior Interventions

Authority: Education Article, §§2-205, 7-301, 7-303—7-305, 7-307, 7-308, and 7-1101—7-1104, Annotated Code of Maryland

Notice of Proposed Action

[18-049-P]

The Maryland State Board of Education proposes to amend Regulations .02, .05, and .06 under COMAR 13A.08.04 Student Behavior Interventions. This action was considered at the State Board of Education meeting held on December 5, 2017.

Statement of Purpose

The purpose of this action is to add and clarify definitions, and strengthen provisions which require a continuum of behavior interventions to be a part of a student's behavior intervention plan (BIP) or individualized education program (IEP). The proposed regulations retain the requirement that restraint and seclusion are to be utilized in emergency situations and add a requirement to ensure that any contraindications based on medical history or past trauma are considered. If restraint or seclusion are included in an IEP or BIP, parental consent is required consistent with Education Article, §8-405, Annotated Code of Maryland.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Walter J. Sallee, Director, Student Services and Strategic Planning, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0417 (TTY 410-333-6442), or email to walter.sallee@maryland.gov, or fax to 410-333-0880. Comments will be accepted through April 30, 2018. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on May 22, 2018, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) *"Behavior intervention plan" means a [proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports] proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student's challenging behaviors and to support the development of appropriate behaviors and responses.*

(2)—(7) (text unchanged)

(8) **Mechanical Restraint.**

(a) *"Mechanical restraint" means [any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove] the use of any device or equipment to restrict a student's freedom of movement.*

(b) *"Mechanical restraint" does not include [a protective or stabilizing device.] devices implemented by trained school personnel, or used by a student, that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, including:*

(i) *Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;*

(ii) *Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;*

(iii) *Restraints for medical immobilization; or*

(iv) *Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.*

(9)—(10) (text unchanged)

(11) **Physical Restraint.**

(a) *"Physical restraint" means [the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body] a personal restriction that immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely.*

(b) *"Physical restraint" does not include:*

(i) (text unchanged)

(ii) *[Holding a student's hand or arm to escort the student safely from one area to another] A physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or*

PROPOSED ACTION ON REGULATIONS

back for the purposes of inducing a student who is acting out to walk to a safe location:

(iii)—(iv) (text unchanged)

(12) "Positive behavior interventions, strategies, and supports" means the [application of affirmative school-wide and individual student specific actions, instruction, and assistance to encourage educational success] school-wide and individual application of data-driven, trauma-informed actions, instruction, and assistance to promote positive social and emotional growth while preventing or reducing challenging behaviors in an effort to encourage educational and social emotional success.

(13)—(16) (text unchanged)

[(17) "Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving.]

(17) Seclusion.

(a) "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

(b) "Seclusion" does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

(18) (text unchanged)

(19) "Trauma-informed intervention" means an approach that is informed by the recognition of the impact that trauma, including violence, abuse, neglect, disaster, terrorism, and war, may have on a student's physical and emotional health and ability to function effectively in an educational setting.

.05 General Requirements for the Use of Restraint or Seclusion.

A. Use of Restraint.

(1) Physical Restraint.

(a) [The] Except as provided in §A(1)(b) of this regulation, the use of physical restraint is prohibited in public agencies and nonpublic schools[, unless:] until there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate.

[(i) There is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;

(ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or

(iii) The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.]

(b) Once physical restraint has been used or school personnel have made a student-specific determination that it may need to be used consistent with §A(1)(a) of this regulation, physical restraint may be included in a student's behavioral intervention plan or IEP to address the student's behavior in an emergency situation, provided that school personnel:

(i) Review available data to identify any contraindications to the use of physical restraint based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate;

(ii) Identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until physical restraint is used in an emergency situation; and

(iii) Obtain written consent from the parent, consistent with Education Article, §8-405, Annotated Code of Maryland.

[(b)] (c)—[(e)] (f) (text unchanged)

(2) (text unchanged)

(3) Documentation of the Use of Restraint.

(a) Each time a student is in a restraint, school personnel involved in the restraint shall debrief and document:

(i)—(v) (text unchanged)

(b) (text unchanged)

(4)—(5) (text unchanged)

B. Use of Seclusion.

(1) [The] Except as provided in §B(2) of this regulation, the use of seclusion is prohibited in public agencies and nonpublic schools [unless:] until there is an emergency situation and seclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate.

[(a) There is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate;

(b) The student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or

(c) The parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.]

(2) Once seclusion has been used or school personnel have made a student-specific determination that it may need to be used consistent with §B(1) of this regulation, seclusion may be included in a student's behavioral intervention plan or IEP to address the student's behavior in an emergency situation, provided that school personnel:

(a) Review available data to identify any contraindications to the use of seclusion based on medical history or past trauma, including consultation with medical or mental health professionals as appropriate;

(b) Identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until seclusion is used in an emergency situation; and

(c) Obtain written consent from the parent, consistent with Education Article, §8-405, Annotated Code of Maryland.

[(2)] (3) Seclusion Room.

(a) At a minimum, a room used for seclusion shall:

(i) (text unchanged)

(ii) Provide school personnel an adequate view of the student from [an adjacent area] all angles; and

(iii) (text unchanged)

(b) The door of a seclusion room shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by school personnel on the outside of the door.

[(3)] (4) School personnel shall:

(a) Remain in close proximity to the door of a seclusion room at all times;

[(a)] (b)[View] Actively observe a student placed in seclusion at all times; and

[(b)] (c)(text unchanged)

[(4)] (5)—[(5)] (6)(text unchanged)

[(6)] (7) Documentation of Seclusion.

(a) Each time a student is placed in seclusion, school personnel involved in the seclusion event shall debrief and document:

(i)—(iv) (text unchanged)

(b) The documentation under [§B(6)] §B(7) of this regulation shall include a description of the seclusion event, including:

(i)—(iv) (text unchanged)

[(7)] (8) The documentation described in [§B(6)] §B(7) of this regulation shall be maintained in the student's educational record and

available for inspection by the student's parent or legal guardian in accordance with COMAR 13A.08.02.

[(8)] (9)(text unchanged)

C. Referral to a Pupil Services or IEP Team.

(1)—(3) (text unchanged)

(4) When an IEP team meets to review or revise a student's IEP or behavior intervention plan, as specified in §C(3) of this regulation, the IEP team shall consider:

(a) Existing health, physical, psychological, and psychosocial information, including any contraindications to the use of restraint or seclusion based on medical history or past trauma;

(b) (text unchanged)

(c) Observations by teachers and related service providers;

[and]

(d) The student's current placement[.]; and

(e) The frequency and duration of restraints or seclusion events that occurred since the IEP team last met.

(5) The local school system or nonpublic school shall provide the parent of the student with written notice in accordance with COMAR 13A.05.01.12A when an IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion[.].

[(6) A parent may request mediation in accordance with COMAR 13A.05.01.15B or a due process hearing in accordance with COMAR 13A.05.01.15C if the parent disagrees with the IEP team decision to propose or refuse to initiate or change:

(a) The student's IEP;

(b) The student's behavior intervention plan to use restraint or seclusion; or

(c) The student's placement.]

(6) Parental Consent

(a) The IEP team shall obtain the written consent of the parent if the team proposes to include restraint or seclusion in the behavior intervention plan or IEP to address the student's behavior.

(b) If the parent does not provide written consent, the IEP team shall send the parent written notice within 3 business days of the IEP team meeting that states:

(i) The parent has the right to either consent or refuse to consent to the use of restraint or seclusion; and

(ii) If the parent does not provide written consent or a written refusal within 15 business days of the IEP team meeting, the IEP team may implement the proposed use of restraint or seclusion.

(c) If the parent provides written refusal, the IEP team may use the dispute resolution options listed in Education Article, §8-413, Annotated Code of Maryland, to resolve the matter.

.06 Administrative Procedures.

A.—B. (text unchanged)

C. Professional Development.

(1) Each public agency and nonpublic school shall provide professional development to [designated] school personnel designated by a school administrator to use restraint or seclusion on this chapter and the appropriate implementation of policies and procedures developed in accordance with §A of this regulation.

(2) (text unchanged)

(3) The school personnel described in §C(1) and §C(2) of this regulation shall receive training in current professionally accepted practices and standards regarding:

(a) (text unchanged)

(b) Trauma-informed intervention;

[(b)] (c)—[(d)] (e)(text unchanged)

[(e)] (f) Seclusion; [and]

[(f)] (g) Symptoms of physical distress and positional asphyxia[.].

(h) First aid and cardiopulmonary resuscitation (CPR); and
(i) Individualized behavior interventions based on student characteristics, including disability, medical history, and past trauma.

(4) (text unchanged)

D. (text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

Title 13B MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 08 FINANCIAL AID

13B.08.18 Maryland Loan Assistance Repayment Program for Foster Care Recipients

Authority: Education Article, §§11-105(w) and 18-3206, Annotated Code of Maryland

Notice of Proposed Action

[18-061-P]

The Maryland Higher Education Commission proposes to adopt new Regulations .01—.14 under a new chapter, COMAR 13B.08.18 Maryland Loan Assistance Repayment Program for Foster Care Recipients. This action was considered at a public meeting of the Maryland Higher Education Commission held on November 15, 2017.

Statement of Purpose

The purpose of this action is to provide for the administration of the Maryland Loan Assistance Repayment Program for Foster Care Recipients.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. \$100,000 annually of general fund expenditures.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$100,000 annually
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	

**Title 13A
STATE BOARD OF EDUCATION**

Subtitle 08 STUDENTS

Chapter 06 Positive Behavioral Interventions and Support Program

Authority: Education Article, §§2-205 and 7-304.1, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Alternative behavior modification program" means a research-based, positive and effective school-wide program that includes the following:

(a) Systems and practices that:

(i) Enhance the capacity for all children to be successful; and

(ii) Recognize appropriate behaviors and respond to behavioral violations; and

(b) A continuous assessment of school discipline data to facilitate appropriate decisions about implementation of research based practices.

(2) "Elementary school" means any comprehensive public school, excluding alternative settings or special schools, in which the school population includes any combination of students in prekindergarten through grade 5.

(3) "Habitually truant" means a student that meets all of the following criteria:

(a) The student was age 5 through 20 during the school year;

(b) The student was in membership in a school for 91 or more days; and

(c) The student was unlawfully absent from school for more than 20 percent of the days in membership.

(4) "Local school system" means any of the 24 local school systems in the State.

(5) "Positive behavioral interventions and support program (PBIS)" means the research-based, systems approach method adopted by the State Board to:

(a) Build capacity among school staff to adopt and sustain the use of positive, effective practices to create learning environments where teachers can teach and students can learn; and

(b) Improve the link between research-validated practices and the environments in which teaching and learning occur.

(6) "School" means any comprehensive public school in which the school population includes any combination of students in prekindergarten through grade 12, excluding alternative settings or special schools, in which the school population includes any combination of students in prekindergarten through grade 12.

(7) "Suspension rate" means the unduplicated count of students who receive out-of-school suspension as a disciplinary action during a year divided by the September 30 enrollment count.

(8) "Truancy rate" means the unduplicated count of students who are "habitually truant" from school during a school year divided by the September 30 enrollment count.

.02 Administrative Procedures — Suspension Rates.

A. Upon receipt of notification from the Department that an elementary school's out-of-school suspension rate exceeds the standard specified in §B of this regulation, the local school superintendent or the superintendent's designee shall direct the principal of the school to implement:

(1) A PBIS; or

(2) An alternative behavioral modification program developed in collaboration with the Department.

B. An elementary school is subject to this regulation if it has an out-of-school suspension rate that exceeds:

(1) 18 percent of its enrollment for the 2005—2006 school year;

STATE BOARD OF EDUCATION

13A.08.06 03

- (2) 16 percent of its enrollment for the 2006—2007 school year;
 - (3) 14 percent of its enrollment for the 2007—2008 school year;
 - (4) 12 percent of its enrollment for the 2008—2009 school year; and
 - (5) 10 percent of its enrollment for the 2009—2010 school year and each school year thereafter.
- C. The school principal or the principal's designee and appropriate staff members shall:
- (1) Develop a plan for implementing a program as set forth in §A of this regulation;
 - (2) Attend PBIS or alternative behavior modification training program approved by the Department; and
 - (3) Follow implementation guidelines and practices for PBIS or the alternative behavior modification training program.
- D. The following apply to an elementary school that has at least one grade beyond grade 5:
- (1) The suspension rates in §B of this regulation shall apply to students in prekindergarten through grade 5; and
 - (2) PBIS or the alternative behavioral modification program shall focus on students in prekindergarten through grade 5.
- E. Nothing in this regulation precludes a school system from implementing PBIS or an alternative behavioral modification program either in specific schools or system-wide.
- F. An elementary school shall expand its existing PBIS or alternative behavior modification program by providing more intensive interventions to targeted students in need of such interventions if:
- (1) The elementary school has already implemented a PBIS or an alternative behavior modification program; and
 - (2) The elementary school has a suspension rate that exceeds the standard specified in §B of this regulation.

.03 Administrative Procedures — Truancy Rates.

- A. Upon receipt of notification from the Department that a school's habitual truancy rate exceeds the standard specified in §B of this regulation, the local school superintendent or the superintendent's designee shall direct the principal of the school to implement:
- (1) A PBIS; or
 - (2) An alternative behavior modification program developed in collaboration with the Department.
- B. A school is subject to this regulation if it has a truancy rate that exceeds:
- (1) 8 percent of its enrollment for the 2008—2009 school year;
 - (2) 6 percent of its enrollment for the 2009—2010 school year;
 - (3) 4 percent of its enrollment for the 2010—2011 school year;
 - (4) 2 percent of its enrollment for the 2011—2012 school year; and
 - (5) 1 percent of its enrollment for the 2012—2013 school year and each school year thereafter.
- C. The school principal or the principal's designee and appropriate staff members shall:
- (1) Develop a plan for implementing a program as set forth in §A of this regulation;
 - (2) Attend PBIS or alternative behavior modification training program approved by the Department; and
 - (3) Follow implementation guidelines and practices for PBIS or the alternative behavior modification training program.
- D. A school shall expand its existing PBIS or alternative behavior modification program by providing more intensive interventions to targeted students in need of such interventions if:
- (1) The school has already implemented a PBIS or an alternative behavior modification program; and
 - (2) The school has a truancy rate that exceeds the standard specified in §B of this regulation.
- E. Nothing in this regulation precludes a school system from implementing PBIS or an alternative behavioral modification program either in specific schools or system-wide.

STUDENTS

13A.08.06.03

Administrative History

Effective date: March 13, 2006 (33:5 Md. R. 522)

Regulation .01B amended effective June 30, 2008 (35:13 Md. R. 1181); May 31, 2010 (37:11 Md. R. 766)

Regulation .02 amended effective June 30, 2008 (35:13 Md. R. 1181); May 31, 2010 (37:11 Md. R. 766)

Regulation .03 adopted effective May 31, 2010 (37:11 Md. R. 766)

