


TO: Members of the State Board of Education

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

DATE: January 28, 2025

SUBJECT: COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*
Permission to Adopt

Executive Summary

The purpose of this item is to request permission to adopt COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*. The Maryland State Department of Education (MSDE) reviewed the regulation, recently adopted by the State Board of Education (State Board) in July 2024, and recommended that the language within the regulation be amended to state that the Superintendent **shall** transmit the information obtained under the regulation as a confidential file to the local superintendent of another local education agency (LEA) 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. Given the possible seriousness of the reportable offenses, the amendment to the regulation was presented as an emergency regulation and approved by the State Board in October 2024. The Administrative, Executive, and Legislative Review (AELR) Committee of the Maryland General Assembly held a public hearing on the emergency adoption of the regulation on December 4, 2024, but declined to vote on the approval of the emergency regulation. However, the regulation continued through the standard publication process and is being presented to the State Board at the January 28, 2025, meeting requesting adoption. MSDE received comments from one entity regarding the regulation but does not recommend revision to the proposed amendment.

Background

Under Maryland law, when a student is arrested for certain offenses, the law enforcement agency making the arrest shall notify the student's local superintendent, the school principal, and for a school that has a school security officer, the school security officer of the arrest and the charges within 24 hours of the arrest, or as soon as practicable. The offenses which necessitate this notification are known as "reportable offenses." Reportable offenses are those offenses that occur off school premises, did not occur at an event sponsored by the school, and are serious criminal offenses. Reportable offenses are dictated by statute and include murder, arson, armed carjacking, sexual offenses, among other serious offenses. Offenses that are related to the student's membership in a criminal organization must also be reported. See Md. Code, Education § 7-303. The intent of the reportable offense law is not to "punish" the student, but instead to provide the LEA with information that may impact the safety dynamics within the school community. This is different from school discipline where the LEA is using positive and punitive measures to correct inappropriate behavior in school. The reportable offense law governs the exchange and use of arrest information regarding serious and criminal offenses for the purpose of educational programming and for the maintenance of a safe and secure school environment.

In the event that a student transfers to a school in another LEA or to a private school, COMAR 13A.08.01.17F presently states that “If the disposition of the reportable offense was a conviction or an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal **may** transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.”

If this information is not transmitted to the LEA/school in which the student transfers, the receiving LEA/school does not have the information that may impact the safety dynamics within the school community. LEAs must balance the educational rights and needs of the individual student charged with a reportable offense alongside the overall safety of the students and staff, often with very limited information about the circumstances of the offense.

The amendment to COMAR 13A.08.01.17F was presented to the State Board at the October 22, 2024, State Board Meeting. The State Board voted for permission to publish the amendment. The regulation was published in the Maryland Register from December 2, 2024, through January 2, 2025. Comments on the regulation were received from the Maryland Suspension Representation Project and the Maryland Coalition to Reform School Discipline. No other comments were received. All comments from the Maryland Suspension Representation Project and the Maryland Coalition to Reform School Discipline have been reviewed and are included in the attached Public Comment Summary document with MSDE’s responses and recommendations. A copy of the letter received regarding the regulation is also attached. MSDE does not recommend changes to the proposed amendment to the regulation.

Action

MSDE requests permission to adopt the proposed amendment to COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*.

Attachments

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

Public Comment Summary

Letter from the Maryland Suspension Representation Project and the Maryland Coalition to Reform School Discipline

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-101.1, 7-301, 7-301.1, 7-303—7-305, 7-305.1, 7-307, 7-308, and 8-404, Annotated Code of Maryland; Ch. 273, Acts of 2016; Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.17 School Use of Reportable Offenses.

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

- (1) "Appropriate educational programming" means a regular or alternative education program that allows a student the opportunity to continue the student's education within the public school system and, if in secondary school, the opportunity to receive credit.
- (2) "Criminal [gang] organization" has the meaning stated in Criminal Law Article, §9-801, Annotated Code of Maryland.
- (3) "Law enforcement agency" means the law enforcement agencies listed in Public Safety Article, §3-101(e), Annotated Code of Maryland.
- (4) "Local school system" means the schools and school programs under the supervision of the local superintendent.
- (5) "Local superintendent" means the county superintendent, for the county in which a student is enrolled, or a designee of the superintendent, who is an administrator.
- (6) "Regular school program" means the courses, classes, and related services the student is enrolled in by a local school system at the time of the student's reportable offense.
- (7) "Related services" means any supportive intervention that is available through the local school system.
- (8) "Reportable offense" means *an offense that*:
 - (a) Occurred off school premises;
 - (b) Did not occur at an event sponsored by the school; and
 - (c) Involved any of the following:
 - (i) A crime of violence, as defined in § 14-101 of the Criminal Law Article;
 - (ii) Any of the offenses enumerated in § 3-8A-03(e)(4) of the Courts Article;
 - (iii) A violation of § 4-101, § 4-102, § 4-203, or § 4-204 of the Criminal Law Article;
 - (iv) A violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-607, § 5-608, § 5-608.1, § 5-609, § 5-612, § 5-613, § 5-614, § 5-617, § 5-618, § 5-627, or § 5-628 of the Criminal Law Article;
 - (v) A violation of § 4-503, § 9-504, or § 9-505 of the Criminal Law Article;
 - (vi) A violation of § 6-102, § 6-103, § 6-104, or § 6-105 of the Criminal Law Article;
 - (vii) A violation of § 9-802 or § 9-803 of the Criminal Law Article;
 - (viii) A violation of § 3-203 of the Criminal Law Article;
 - (ix) A violation of § 6-301 of the Criminal Law Article;
 - (x) A violation of § 9-302, § 9-303, or § 9-305 of the Criminal Law Article;
 - (xi) A violation of § 7-105 of the Criminal Law Article;
 - (xii) A violation of § 6-202 of the Criminal Law Article; or
 - (xiii) A violation of § 10-606 of the Criminal Law Article.
- (9) "School principal" means the principal of the public or nonpublic school in which a student is enrolled, or a designee of the principal, who is an administrator.
- (10) "School security officer" means an individual designated to maintain the security and safety of a school.
 - (a) School security officer includes:
 - (i) A school principal or other school administrator;
 - (ii) A law enforcement officer; or
 - (iii) Other individual employed by a local school system or a local government who is designated by the [county] local superintendent or a school principal to help maintain the security and safety of a school.
 - (b) School security officer does not include:
 - (i) A teacher;
 - (ii) A school counselor;
 - (iii) A school psychologist; or
 - (iv) A school social worker.
- (11) "Student" means an individual enrolled in a public school system in the State who is 5 years old or older and younger than 22 years old.
- (12) "Student with a disability" means a student eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

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

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

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

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

C. Safety Determination Procedures and Plan.

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

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

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

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

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

- (a) Addresses appropriate educational programming and related services for the student; and
- (b) Maintains a safe and secure school environment for all students and staff.

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

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

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

D. Removal from regular school program.

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

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

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

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

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

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

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

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

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

- (a) This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and
- (b) This timeline shall also apply if the local board elects to use a hearing examiner.

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

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

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

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

(10) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the local board.

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

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

E. Review Procedures.

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

- (a) Immediately upon notification from the State's Attorney of the disposition of the reportable offense; or
- (b) Pending notification from the State's Attorney, at a minimum every 45 school days.

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

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

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

F. Confidentiality of Information and Retention of Documents.

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

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

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

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

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

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

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

(i) The student graduates;

(ii) The student otherwise permanently leaves school;

(iii) The student turns 22 years old;

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

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

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

G. Students with Disabilities

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

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

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

H. Reportable Offense Involving Rape or a Sexual Offense.

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

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

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

(a) A location other than a public or nonpublic elementary or secondary school, including by:

(i) Participating in the Home and Hospital Teaching Program for Students; or

(ii) Participating in or attending a program approved by a local board;

(b) A Regional Institute for Children and Adolescents; or

(c) A nonpublic educational program as provided by § 8-406 of the Education Article if:

(i) The registrant has notified an agent or employee of the nonpublic educational program that the registrant is required to register under this subtitle; and

(ii) The registrant has been given specific written permission by an agent or employee of the nonpublic educational program to attend the nonpublic educational program.

I. General Provisions

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

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

J. Data Collection.

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

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

DR. CAREY WRIGHT
State Superintendent of Schools

Public Comment Summary- January 28, 2025

COMAR 13A.08.01.17 – School Use of Reportable Offenses

Organization	Comment	MSDE Recommendation
<p>Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD)</p>	<ul style="list-style-type: none"> • <u>Comment</u>: Revising the current proposed regulation to require the transfer of records between districts <u>only</u> when the reportable offense charge is still “pending” is a more narrowly tailored response to safety concerns and will protect students from undue bias and unnecessary removals. • <u>Rationale</u>: Under the reportable offense statute, school systems do not have unending authority to remove a student from their regular school program due to a criminal or delinquency reportable offense charge that has been adjudicated or is no longer an open case. The proposed revision to the regulations, without any additional limitations or guardrails regarding previously adjudicated reportable offense cases, gives unfettered authority to school systems and creates a risk of harm to students. The inherent problem with the reportable offense regulations is that there is no time limitation as to when a previously adjudicated case can be used as a basis to remove a student from their regular school program. This gap in the regulations is problematic and is highlighted by the proposed regulatory action. Changing “may” to “shall” means that a student's juvenile or criminal record will follow them until they graduate from high school despite the fact that the student has completed their period of supervision and satisfied their court-ordered program of treatment and rehabilitation. This is an unacceptable collateral consequence. A criminal or juvenile record, when disclosed, ensures bias. It forms a cloud around the student—a child—that is difficult for decision-makers to get past and, as a result, for the student to escape. Moreover, under the proposed regulation, the record would be the first 	<p>While the regulations do not include any explicit time limitation as to when a previously adjudicated case can be used as the basis for removal, this limitation is inherent in the requirement that the local education agency (LEA) base any removal decision on a finding that the student poses an <i>imminent</i> threat of serious harm. This finding must be predicated on an individualized review of the circumstances related to the student. In the case where a student transfers from one LEA to another, the receiving LEA can review safety planning and student performance from the sending LEA. If the student has been successful in the previous school environment, then that provides useful, positive information regarding safety concerns for the receiving LEA.</p> <p>Under the regulation’s current language, LEAs are already permitted to share reportable offense information. Requiring rather than permitting the LEAs to do so closes an important communication gap that impacts the LEA’s ability to make crucial safety decisions based.</p> <p>Adequate safety planning is a responsibility of the school. Each school is required to review</p>

Organization	Comment	MSDE Recommendation
	<p>thing the new school system would learn about the student. The record will have an outsized impact on how the new school system sees the student and will place the student at risk of removal from their regular school placement. Indeed, the new school system will be primed to bar the student from their regular school setting or worse yet, to require the student's placement in a virtual program which more often than not does not provide the academic and social/emotional support or structure that students with a history of academic struggles need to be successful. Maryland State Department of Education data already reflects the negative impact of school removal based on a reportable offense charge, where 47% of the students removed in 2022-23 (the most current data available) failed.</p> <p>When a juvenile or criminal case involving a reportable offense charge has been adjudicated and any period of supervision has ended, a receiving school system should not be given the right to “re-adjudicate” the case with limited information and decide that the student poses “imminent threat.” In addition, the sending school district would have already made a safety determination regarding the reportable offense when they were first notified. We therefore recommend that reportable offense records only be required to be transferred when the reportable offense case is still pending. When a case has been adjudicated and where the student is no longer under the supervision of a court or the Department of Juvenile Services and the sending school system has already made a reportable offense determination, the sending school system should not be required to transfer that information to a new school system.</p> <p>The same holds for cases where there has been a disposition that permits the student to remain in the community. The court, having considered all of the evidence, public safety concerns, and needs of the child, has not imposed any limitation on attending in-person school. Once the court has</p>	<p>the student’s circumstances, follow the procedural requirements in the law, and ensure sound decisions are made regarding the education of the student and the safety of the students and staff of the school.</p>

Organization	Comment	MSDE Recommendation
	<p>rendered a disposition, the charge has been fully adjudicated and the reportable offense matter from the school system perspective should be closed. Indeed, the language from the statute implies that once the State’s Attorney’s office communicates the disposition of the charge, the student should be permitted to return to school. In fact, in most instances, the court views school as a protective factor necessary for the student’s educational and personal development and assumes that the student will be back in-person in their regular school program as soon as possible post-disposition or post-placement. In the MSBE’s decision, <i>F.W. v. Baltimore County Board of Education</i>, MSBE Op. 23-22 (2023), the juvenile case for a reportable offense was several years old when the new school system removed the youth from their regular school placement and placed them in a virtual school for 12 months before the appeal was resolved. Such an unnecessary interruption in a student’s education and impact on the right to attend school in person, absent a school discipline matter, should compel the State Board to consider this issue carefully and not pass a regulation simply in response to a “tough on crime” stance. At most, there should be additional study regarding this process before additional changes to the current regulations are pursued.</p>	

Organization	Comment	MSDE Recommendation
	<ul style="list-style-type: none"> <li data-bbox="604 277 1339 496">• <u>Comment:</u> If the State Board passes this proposed regulation without any limitations on a school system’s authority to remove a student based on a previously adjudicated case, the need for a definition of “imminent threat of serious harm” is critical to ensure that students are not inappropriately removed from their regular school program based on a reportable offense case. <li data-bbox="604 516 1339 898">• <u>Rationale:</u> Without providing a definition or guidance on what “imminent threat of serious harm” means, school systems, with limited information, will likely err on the side of removal regardless of whether the reportable offense case already has been adjudicated with a disposition or is a closed matter. We therefore continue to urge MSDE to define “imminent threat of serious harm” as it is a critical legal term that is the crux of the placement decisions for students with a reportable offense case. Without a uniform definition of “imminent threat of serious harm,” students will be subjected to different standards depending on their respective school system’s interpretations. 	<p data-bbox="1367 293 1883 448">As previously noted, MSDE will review all definitions of “imminent threat of serious harm” across the Department and recommend one common definition to be used in all contexts.</p>

Organization	Comment	MSDE Recommendation
	<ul style="list-style-type: none"> • <u>Comment:</u> Requiring school systems to transfer records for every reportable offense case will create an undue administrative burden on school systems. • <u>Rationale:</u> Requiring school systems to track every reportable offense case that is pending or has been adjudicated over multiple years involving many students who may be moving in and out of school districts is not realistic and would create an undue burden on districts with already limited resources. It would also impose a burden on the receiving school systems which may be compelled to hold safety meetings even for cases adjudicated several years prior. This proposed regulatory change was put forward in response to the media’s coverage of supposed widespread safety concerns about students with reportable offenses. However, a recent report by The Sentencing Project demonstrates how misleading and sensational media coverage of juvenile crime shapes policy, which appears to be the case here. Rather, any concerns about public and student safety would be better addressed with a more narrowly tailored regulatory action that requires the transfer of records of reportable offenses between districts only for “pending” cases, meaning an adjudication has not yet occurred in the case. In addition, focusing more directly on public safety concerns, requiring the transfer of records only in pending reportable offense cases would be more reasonable and manageable for school systems. 	<p>While it is possible that this amendment could create an additional burden for the LEAs, such a burden would not be undue, as concerns around the safety of the educational environment outweigh concerns regarding administrative workload. Moreover, LEAs are already required to track reportable offenses and, in the cases where the student is removed from the regular school program, the status of the legal case in order to review the safety plan upon adjudication.</p>

January 2, 2025

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

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

Dear Ms. Gable,

The Maryland Suspension Representation Project (MSRP) and the Maryland Coalition to Reform School Discipline (CRSD) appreciate the opportunity to submit comments regarding the most recent proposed revision to Regulation .17 under COMAR 13A.08.01 being considered by the Maryland State Board of Education. As with our prior comments submitted in November 2023 and July 2024 on this topic, the comments below reflect our continued concerns regarding the implementation and the resulting impact on students of House Bill 146, which amended Md. Code, Educ. §§ 7-303 and 7-305 during the 2022 Legislative Session, and its companion regulations.

The latest proposed regulation before the State Board would alter the provision found in COMAR 13A.08.01.17(F)(2) by changing the word “may” to “shall” regarding the transfer of reportable offense records to a receiving school system when a student transfers between districts.

Specifically, the proposed regulation at COMAR 13A.08.01.17(F)(2) states:

.17 School Use of Reportable Offenses.

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

This proposed change is significant and consequential. It raises a host of issues and concerns that perhaps are not readily apparent. However, those with experience handling these cases and working through their various complexities understand that this proposed change, if implemented, would be deeply impactful. It is with an understanding of real case experience that we bring our comments and concerns to the State Board. Members of these coalitions represent and support students in these cases on a regular basis.

Comment: Revising the current proposed regulation to require the transfer of records between districts only when the reportable offense charge is still “pending” is a more narrowly tailored response to safety concerns and will protect students from undue bias and unnecessary removals.

Rationale: Under the reportable offense statute, school systems do not have unending authority to remove a student from their regular school program due to a criminal or delinquency reportable offense charge that has been adjudicated or is no longer an open case. The proposed revision to the regulations, without any additional limitations or guardrails regarding previously adjudicated reportable offense cases, gives unfettered authority to school systems and creates a risk of harm to students.

The inherent problem with the reportable offense regulations is that there is no time limitation as to when a previously adjudicated case can be used as a basis to remove a student from their regular school program. This gap in the regulations is problematic and is highlighted by the proposed regulatory action. Changing “may” to “shall” means that a student’s juvenile or criminal record will follow them until they graduate from high school despite the fact that the student has completed their period of supervision and satisfied their court-ordered program of treatment and rehabilitation. This is an unacceptable collateral consequence. A criminal or juvenile record, when disclosed, ensures bias. It forms a cloud around the student—a child—that is difficult for decision-makers to get past and, as a result, for the student to escape. Moreover, under the proposed regulation, the record would be the *first* thing the new school system would learn about the student. The record will have an outsized impact on how the new school system *sees* the student and will place the student at risk of removal from their regular school placement. Indeed, the new school system will be primed to bar the student from their regular school setting or worse yet, to require the student’s placement in a virtual program which more often than not does not provide the academic and social/emotional support or structure that students with a history of academic struggles need to be successful.¹ Maryland State Department of Education data already reflects the negative impact of school removal based on a reportable offense charge, where 47% of the students removed in 2022-23 (the most current data available) failed.²

When a juvenile or criminal case involving a reportable offense charge has been adjudicated and any period of supervision has ended, a receiving school system should not be given the right to “re-adjudicate” the case with limited information and decide that the student poses “imminent threat.” In addition, the sending school district would have already made a safety determination regarding the reportable offense when they were first notified. We therefore recommend that reportable offense records only be required to be transferred when the reportable offense case is still pending. When a case has been adjudicated and where the student is no longer under the supervision of a court or the Department of Juvenile Services and the sending school system has already made a reportable offense determination, the sending school system should not be required to transfer that information to a new school system.

¹ The pandemic demonstrated the failures of virtual instruction for most students and families. Based on our experience, students who are involuntarily placed in a virtual program do not do well. Many students involved in the youth legal system have a history of academic struggles and need more supportive services, not less. In addition, economic disparities can impact a student’s access to reliable internet service, as well as technology assistance. Virtual programs can leave students isolated with little direct academic and social/emotional support.

² See Reportable Offenses Data: Maryland Public Schools School Year 2022-2023, at 27, [https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303\(j\)_2023.pdf](https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303(j)_2023.pdf).

The same holds for cases where there has been a disposition that permits the student to remain in the community. The court, having considered all of the evidence, public safety concerns, and needs of the child, has not imposed any limitation on attending in-person school. Once the court has rendered a disposition, the charge has been fully adjudicated and the reportable offense matter from the school system perspective should be closed. Indeed, the language from the statute implies that once the State's Attorney's office communicates the disposition of the charge, the student should be permitted to return to school. In fact, in most instances, the court views school as a protective factor necessary for the student's educational and personal development and assumes that the student will be back in-person in their regular school program as soon as possible post-disposition or post-placement.

In the MSBE's decision, *F.W. v. Baltimore County Board of Education*, MSBE Op. 23-22 (2023), the juvenile case for a reportable offense was several years old when the new school system removed the youth from their regular school placement and placed them in a virtual school for 12 months before the appeal was resolved. Such an unnecessary interruption in a student's education and impact on the right to attend school in person, absent a school discipline matter, should compel the State Board to consider this issue carefully and not pass a regulation simply in response to a "tough on crime" stance. At most, there should be additional study regarding this process before additional changes to the current regulations are pursued.

Comment: If the State Board passes this proposed regulation without any limitations on a school system's authority to remove a student based on a previously adjudicated case, the need for a definition of "imminent threat of serious harm" is critical to ensure that students are not inappropriately removed from their regular school program based on a reportable offense case.

Rationale: Without providing a definition or guidance on what "imminent threat of serious harm" means, school systems, with limited information, will likely err on the side of removal regardless of whether the reportable offense case already has been adjudicated with a disposition or is a closed matter. We therefore continue to urge MSDE to define "imminent threat of serious harm" as it is a critical legal term that is the crux of the placement decisions for students with a reportable offense case. Without a uniform definition of "imminent threat of serious harm," students will be subjected to different standards depending on their respective school system's interpretations.

Comment: Requiring school systems to transfer records for every reportable offense case will create an undue administrative burden on school systems.

Rationale: Requiring school systems to track every reportable offense case that is pending or has been adjudicated over multiple years involving many students who may be moving in and out of school districts is not realistic and would create an undue burden on districts with already limited resources. It would also impose a burden on the receiving school systems which may be compelled to hold safety meetings even for cases adjudicated several years prior. This proposed regulatory change was put forward in response to the media's coverage of supposed widespread safety concerns about students with reportable offenses. However, a recent report by The Sentencing Project demonstrates how misleading and sensational media coverage of juvenile crime shapes policy, which appears to be the case here.³ Rather, any concerns about public and

³ See R. Mendel, *The Real Cost of 'Bad News': How Misinformation is Undermining Youth Justice Policy in Baltimore*, The Sentencing Project, December 11, 2024, available at <https://www.sentencingproject.org/reports/the-real-cost-of-bad-news-how-misinformation-is-undermining-youth-justice-policy-in-baltimore/>.

student safety would be better addressed with a more narrowly tailored regulatory action that requires the transfer of records of reportable offenses between districts only for “pending” cases, meaning an adjudication has not yet occurred in the case. In addition, focusing more directly on public safety concerns, requiring the transfer of records only in pending reportable offense cases would be more reasonable and manageable for school systems.

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

Regards,

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