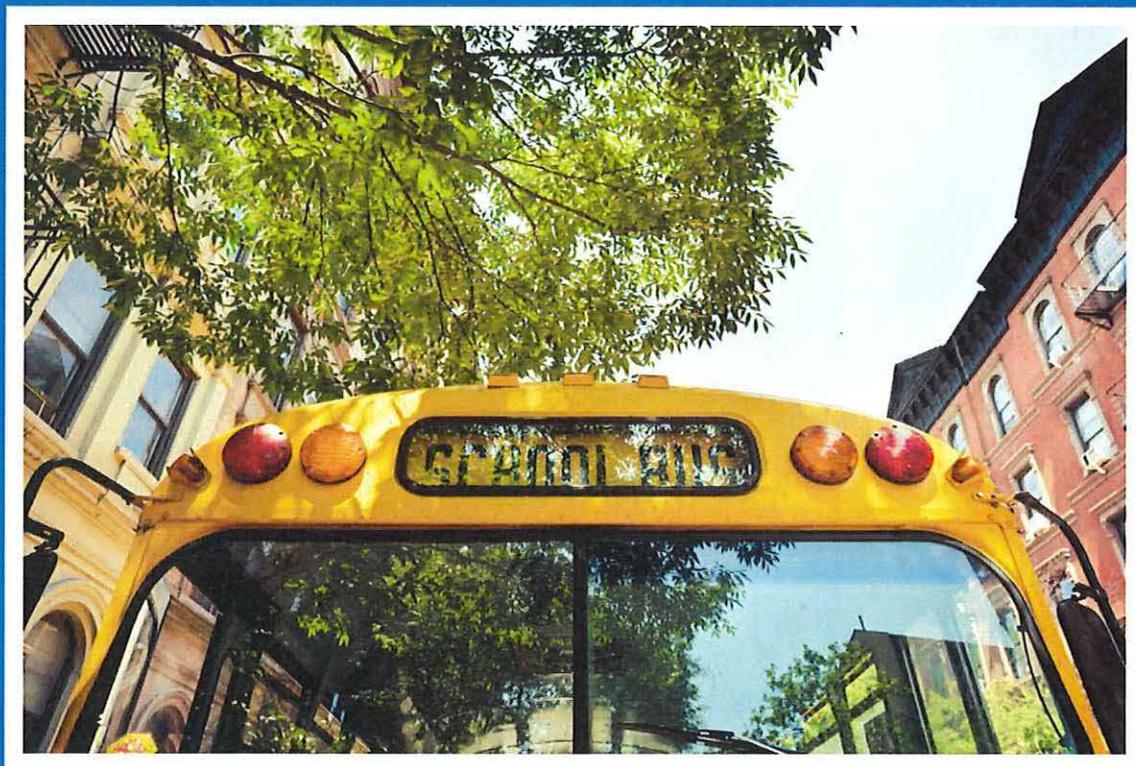


# The School Discipline Process

A Handbook for Maryland Families and Professionals



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DISABILITY LAW  
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Maryland Disability Law Center (MDLC) is a private, non-profit law firm. MDLC is designated by Congress as the Protection and Advocacy System for individuals with disabilities in Maryland. Our mission is to advance the rights of Marylanders with disabilities. MDLC uses an array of advocacy strategies including information and referral, direct representation, abuse and neglect investigations, technical assistance, community outreach and advocacy training.



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## Purpose of this Handbook

Every year Maryland school systems suspend thousands of students, many of whom have disabilities. When students are suspended they lose instructional time and their learning is interrupted. The shared goal of educators and families should be to keep students in school and learning. For students with disabilities, challenging behavior may interfere with that goal. How a school chooses to respond to behavior is critical, since responses such as suspension, expulsion, exclusion, seclusion and restraint are severe disciplinary consequences that can have a lasting impact on a student.

This handbook is intended to provide parents,<sup>1</sup> guardians, caregivers and advocates with basic information about the disciplinary procedures in Maryland's public schools, the rights of students facing disciplinary removal, and the special protections under the law for students with disabilities who are disciplined.

This handbook also includes information on seclusion, exclusion and restraint in schools. Further, it discusses some of the preventative measures that schools can use instead of suspensions, expulsions, restraint or seclusion. Finally, this handbook addresses some basic information about school-based referrals to the juvenile justice system and exclusion from school due to certain arrests that occur in the community, sometimes referred to as "reportable offenses."

It is important that you obtain and review your local school system policies, as each school district may implement disciplinary procedures in a slightly different way. These policies can be found on a school system's website. If you do not have access to a computer, ask your school for a copy of discipline policies and procedures and the student handbook.

We hope that this handbook will assist you in preparing for meetings and conferences with the school system and in advocating effectively for your child.

***This handbook is not a substitute for the advice of a competent attorney or advocate.***

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<sup>1</sup> Throughout the sections of this handbook, the use of the term "parent" is used broadly and is intended to include guardians and caregivers.

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# Why Does School Discipline Matter?

The decision by school systems or individual school administrators to use out-of-school disciplinary measures is serious, since these responses can impact the well-being of a student. Students who face out-of-school discipline, such as suspension and expulsion, are at-risk for poor academic performance, being held back, and school drop-out. Students who spend more time out of school also have an increased likelihood of becoming involved with the juvenile justice system,<sup>2</sup> which can result in an increased likelihood of involvement in the adult criminal system, among other negative outcomes.<sup>3</sup> Unfortunately, students with disabilities and minority students are more likely to be suspended and expelled.<sup>4</sup>

The Maryland State Board of Education recognizes that students need access to teachers, peers and instruction in order to develop and learn, and that the use of out-of-school discipline practices can be harmful to a student. In 2014, in an effort to address concerns about disciplinary practices that exclude students, the Board implemented changes to the State's discipline regulations. The changes to the regulations reflect a focus on discipline policies that encourage and teach positive behavior and keep students in school whenever possible. The Board stated that policies that automatically result in suspension and expulsion without discretion, such as "zero tolerance" policies, are inappropriate, and that exclusionary discipline practices should only be used as a last resort.<sup>5</sup> The 2014 discipline regulations are an important step towards creating a more positive school environment and keeping students in school and learning.<sup>6</sup>

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<sup>2</sup> Advancement Project, *Test, Punish, and Pushout: How "Zero-Tolerance" and High-Stakes Testing Funnel Youth into the "School-to-Prison Pipeline,"* 2010; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, American Psychologist Dec. 2008.

<sup>3</sup> Uberto Gatti, et al., *Latrogenic Effect of Juvenile Justice*, Journal of Child Psychology and Psychiatry 50:8, 2009.

<sup>4</sup> Center for Civil Rights Remedies, *A Summary of New Research, Closing the School Discipline Gap: Research to Practice*, 2013, [http://civilrightsproject.ucla.edu/events/2013/summary-of-new-research-closing-the-school-discipline-gap-research-to-policy/Research\\_Summary\\_Closing\\_the\\_School\\_Discipline\\_Gap.pdf](http://civilrightsproject.ucla.edu/events/2013/summary-of-new-research-closing-the-school-discipline-gap-research-to-policy/Research_Summary_Closing_the_School_Discipline_Gap.pdf).

<sup>5</sup> *School Discipline and Academic Success: Related Parts of Maryland's Education Reform*, Report of the Maryland State Board of Education, July 2012, <http://marylandpublicschools.org/NR/rdonlyres/42ED8EDA-AF34-4058-B275-03189163882D/32853/SchoolDisciplineandAcademicSuccessReportFinalJuly2.pdf>.

<sup>6</sup> The state discipline regulations, and other state education regulations, are found in the Code of Maryland Regulations (COMAR). A copy of the discipline regulations can be found on page 32.

# Suspension and Expulsion

A school administrator should only recommend removing a student from school as a last resort. In most instances in which the behavior was not violent or dangerous, out-of-school suspension should not be used. Only the most serious behaviors that either create a safety risk or significantly disrupt the learning environment may warrant a referral for out-of-school suspension or expulsion. It is important to know that out-of-school suspension **cannot** be used for attendance-related behavior such as cutting class, truancy or lateness.<sup>7</sup> In addition, a student can only be removed from his regular school program by formal “suspension” or “expulsion.” It is illegal to send a student home or ask a parent to pick the student up for disciplinary reasons without following the formal disciplinary procedures. Most school systems now have a level system of responses to behavior that is based on the seriousness of the behavior. It is important to review your school system’s student code of conduct to understand the different category of offenses and to understand your child’s rights. If you do not have a copy of the student handbook, it can be found on the school system’s website or you can request a copy.

Students with disabilities may be subjected to in-school and out-of-school suspensions just like non-disabled students; however, special rules apply when students with disabilities are removed for more than 10 school days. See “Special Protections for Students with Disabilities” on page 11 for more information.

## In-School Suspension

An “in-school suspension” is the removal of a student from his regular education program for 10 or fewer school days in a school year, while the student remains within the school building. In-school suspension is different from a short-term or long-term suspension because the student is not removed from the school building.

A removal from the classroom is not always considered an in-school suspension. A removal will not constitute a day of suspension if the student is afforded the opportunity to:

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<sup>7</sup> See Md. Code Ann, Educ. § 7-305(b)(1).

- Progress in the curriculum;
- Receive instruction similar to what is provided in the regular classroom; and
- Participate with peers as the student would in his current education program.

Before an in-school suspension takes place, the student must be informed of the reasons for the suspension and be given an opportunity to respond. The principal should provide the student's parents with written notification of the in-school suspension. If a student receives 10 days of in-school suspension within one school year, the principal should meet with the parents and the student.

## **Out-of-school Suspensions for 10 School Days or Fewer**

### *What Is a Short-term Suspension?*

A "short-term suspension" is the removal of a student from school by the principal for **1-3 school days** for disciplinary reasons.

### *What Is a Long-term Suspension?*

A "long-term suspension" means the removal of a student from school by the principal for **4-10 school days** for disciplinary reasons.

### *Procedures for Suspensions that Are 10 School Days or Fewer*

When a school administrator suspends a student for 10 school days or fewer, the student and the student's parent must promptly be given a conference with the principal and any other appropriate personnel during the suspension period. The principal must make every effort to schedule the conference promptly.

Either before or at the conference, the student should be told orally or in writing what the charges are against him. If the student denies the charges, the principal or vice-principal must provide an explanation of the school's supporting evidence and allow the student an opportunity to present his side of the story.

A student may be removed from school immediately (without a conference) if he poses a continuing danger to persons or property or an ongoing threat of disruption. In that situation, the notice and conference must be provided as soon as possible.

Often the principal or vice-principal asks the student to write a statement about the incident. This statement will be used as evidence against the student at the parent conference and other suspension hearings. Statements made by the student to school personnel could also be used in criminal or delinquency proceedings.

### *Preparing for a Suspension Conference*

It is very important for you and your child to attend the suspension conference with the school administrator. To prepare for the conference, you should take with you any evidence or information that supports a determination that your child should not be suspended for additional days, including any evidence that may exist that he did not do the behavior he is accused of doing. In order to make your arguments as to why your child should not be suspended for additional days, it may be helpful to consider the following questions when preparing for this conference:

- Is this your child's first incident?
- How old is your child? Is he old enough or mature enough to understand what he did wrong and the consequence?
- How are your child's grades? Are the grades strong or is he struggling?
- Is your child receiving services outside of the school system, such as counseling or mentoring to address behavior issues or concerns?
- Does your child have a disability or do you suspect that your child has a disability that is impacting his behavior in school?
- What does the student code of conduct say about the behavior? Were any interventions or strategies, other than suspension, tried to address the behavior?

These questions are important to consider so that you can determine whether suspension was an appropriate response to the behavior and whether the school should consider other strategies and supports to address the behavior. For example, a kindergartener who was having a temper tantrum should not be suspended out-of-school in response to the behavior. Instead the school system needs to consider other more effective and age-appropriate ways to support the student.

### *Appealing a Suspension of 10 School Days or Fewer*

State law does not require that a school system provide the right to appeal a suspension of 10 days or fewer. However, if you believe that such a suspension was unwarranted or that there were factors that were not considered, your school system may have a procedure in place to appeal. If the district does not have a procedure in place, you can send a letter to the principal stating your objections and that you wish to appeal. Include reasons for your appeal, such as that your child denies the allegations, or that there are other circumstances that should be considered, such as your child's disability.

### *A Student's Rights During a Short-term or Long-term Suspension*

During a suspension, a student may not be on school property or attend school-related or school-sponsored activities.

However, during a short-term suspension (1-3 school days), the student will have the opportunity to complete the schoolwork he missed while out without any penalty. The school must provide the student and his parent with the name of a school employee who will ensure the student has access to the academic work.

Students suspended for four school days or more, including a "long-term" suspension, are entitled to receive daily schoolwork and assignments from each of his teachers, which must be reviewed and corrected on a weekly basis. The principal is required to assign a school staff person to communicate weekly with the student and his parents via phone or email about the school work.

Students with disabilities suspended for 10 school days or fewer are treated the same as other students. They are entitled to the same opportunity to make up assignments and receive daily schoolwork.

## School Removals for More than 10 School Days

### *What Is an Extended Suspension?*

An “extended suspension” is the exclusion of a student from school for a time period between **11 and 45 school days**. An extended suspension may only be implemented when the school principal recommends it, and the superintendent, or the superintendent’s designee, determines one of the following:

- (1) 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
- (2) 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.<sup>8</sup>

It is important to note that this new definition of extended suspension sets a very high standard for justifying an out-of-school suspension of 11 to 45 school days. This means that the school system cannot exclude a student unless the facts support a finding that (1) an imminent threat of serious harm would exist if the student returned to school; or (2) there was chronic and extreme disruption that impacted the learning environment. It is important for parents to understand this new standard and to argue the facts of the incident as it relates to these requirements.

For example, was the student engaged in dangerous behavior? Is there reason to believe that returning him to school would pose “an imminent threat of harm”? Has the student’s behavior been chronic or ongoing? Did the behavior create “extreme disruption”? If the answer is no to these questions then the student cannot be subjected to an extended suspension and removed from his regular

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<sup>8</sup> See COMAR 13A.08.01.11 (B)(3).

academic program for more than 10 school days. However, the behavior may justify other consequences and require other appropriate responses.

### *What Is an Expulsion?*

An “expulsion” is the exclusion of the student from the student’s regular school program for **45 school days or longer**, which may occur only under the following circumstances:

- (1) 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;
- (2) The superintendent or designated representative limits the duration of the exclusion to the **shortest period practicable**; and
- (3) 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.<sup>9</sup>

This new definition of “expulsion” likewise sets a very high bar for excluding a student for 45 school days or longer. Such an exclusion can only take place if returning the student to school would “pose an imminent threat of serious harm.” Under this new definition of expulsion, behavior such as “chronic disruption” does not rise to the level of an expulsion. Parents should carefully note the charges discussed at the expulsion conference. If the school administrator is saying that the student is consistently disrupting the classroom, but does not list safety concerns for other students and staff, then an expulsion is not appropriate.

### *Process for Removal for More than 10 School Days*

A school cannot make the decision to suspend or expel a student for more than 10 school days without the approval of a school system superintendent or the superintendent’s representative or designee. The principal of the school may send a request to the superintendent to suspend for more than 10 school days. The superintendent’s designee is required to conduct a thorough investigation of the

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<sup>9</sup> See COMAR 13A.08.01.11 (B)(2).

matter. If the designee finds that the suspension or expulsion may be warranted, he will hold a conference with the student, parents, and school representatives.

The investigation and the conference with the superintendent's designee must be completed by the 10<sup>th</sup> school day of the initial suspension. **If the designee needs additional time, he must inform the parents and return the student to school on the 11<sup>th</sup> day.** The only time that a student is not allowed to return on the 11<sup>th</sup> day following the initial suspension is if the designee determines that the student's return to school would pose an imminent threat of serious harm to other students and staff.

At the conference, the designee will review all the evidence, including the school's statement of the incident and any witness statements. The parent or student may present any relevant evidence to the designee, including letters or statements from other students or teachers who observed the incident and letters about the student from community members, religious leaders or mental health workers. Parents can present information and facts to support a determination that the student should not be excluded from school. The student should also be given an opportunity to tell his side of the story. Based on the facts, it may be appropriate to argue that the behavior does not meet the very high standard set forth in the new regulations (the imminent danger standard or chronic disruption standard), and therefore the student should be returned to school.

After the presentation of all the evidence, the designee will decide whether an extended suspension or expulsion is warranted and the length of time the student will be out of school. Sometimes the designee will decide that the student must meet certain requirements prior to returning to school.

### *Preparing for the Conference with the Superintendent's Designee*

It is very important that you prepare for the meeting with the superintendent's designee because this person will decide if your child will be excluded from his school program and for how long. You may bring legal representation or an advocate to this conference in order to ensure that your child's rights are protected and that the best argument is made as to why your child should not be suspended or expelled.

Before the conference, the school will provide a packet of information (sometimes called the “suspension packet”) to the superintendent. You are entitled to review this packet. It is a good idea to request a copy of the “suspension packet” before the conference. If you are unable to obtain a copy before the conference, you should advise the office of the designee that you plan to arrive early to review it before the conference. Prior to the meeting, you can also request copies of all school policies that apply to suspension procedures and about the particular offense. This information may also be found in the student code of conduct.

It may be helpful to try and obtain statements from witnesses, teachers, mental health workers, or your child’s employer attesting to either the facts of the incident or your child’s good character. Take copies of these statements to the conference. Make sure to keep copies for your records.

The designee will lead the conference, and a representative of your child’s school, will most likely present a case supporting the request for an extended suspension or expulsion.

### *Appealing an Extended Suspension or Expulsion*

To appeal an extended suspension or expulsion, you must write a letter to the local school board or to the person who held the “designee’s conference” within 10 calendar days of the extended suspension or expulsion determination. This letter of appeal must be either mailed or hand delivered. Check your local school system policies and procedures for the exact process and address. Keep a copy of your appeal letter.

The school board has 45 calendar days from the date the appeal was received to hold a hearing and issue a decision. You may ask for additional time to prepare for the hearing. If the local school board believes it needs additional time to hold the hearing, it must ask the State Superintendent for permission for an extension.

Unless you ask for a public hearing, the hearing will be private. Only people who the school board considers necessary or desirable to have at the hearing will be allowed to attend.

You and your child will be provided with a list of the witnesses the school system will call to testify at the hearing, as well as any documents the school system intends to use. You also have the right to bring witnesses. You may be represented by an attorney. The school system will not provide an attorney for you. You should consider having an attorney if you are appealing a longer suspension or expulsion. See “Legal Resources” on page 30 for possible attorney resources.

It is important to know that during the appeals process, the decision about the student’s suspension or expulsion status stands. For example, a student who has been expelled will remain expelled until the board has issued its decision.

### *A Student’s Rights During Removals Greater than 10 School Days*

During long term suspensions, extended suspensions, and expulsions, a student should receive daily schoolwork from each of his teachers, which must be reviewed and corrected on a weekly basis. Principals are required to assign a school staff person to stay in contact with the family and communicate weekly with the student and his parents via phone or email about the school work. This is a new provision from regulations adopted in 2014.<sup>10</sup> The goal is to ensure that students are not falling behind and at risk of failing due to the disciplinary removal. There are additional rights to educational services for students with disabilities who are suspended or expelled. See “Special Protections for Students with Disabilities” on page 11 for more information.

## **When Students Are Sent Home without a Formal Suspension**

Sometimes school administrators will send a student home before the school day ends or ask the student’s parent to keep the student home because of challenging behavior in school. Unless there is a formal suspension, this is an **illegal exclusion** from school. Under no circumstances is this allowed.

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<sup>10</sup> See COMAR 13A.08.01.11(F).

When an administrator asks a parent to pick a child up from school or keep her home because of a behavior, it is a suspension. The school must send home formal suspension papers that tell the parent why the student was suspended and for how long. Parents often think that it is better to have an informal or undocumented suspension because it does not show up on the student's record. However, insisting on formal suspension paperwork protects a student's due process rights and documents the number of days that student has missed instruction for behavior-related incidents. This is especially important for students with disabilities, who have additional rights after the 10<sup>th</sup> day of suspension.

If a school administrator sends your child home without formal paperwork, contact the school and ask if your child has been suspended. Request that formal suspension paperwork be sent home to you. If the school is regularly sending your child home, you may request a meeting with a school administrator. If your child has an IEP or Section 504 plan, you should request a meeting with the IEP or Section 504 team to discuss the behavior concerns and consider additional supports for your child.

## **Special Protections for Students with Disabilities**

There are two federal laws that provide protections and rights to students with disabilities: the Individuals with Disabilities Education Act (IDEA)<sup>11</sup> and Section 504 of the Rehabilitation Act (Section 504).<sup>12</sup> Under these laws, students with disabilities may qualify for certain services, supports and protections to help them be successful. Some students with a disability may qualify for special education and related services under the IDEA. These services are outlined in a document called an IEP. Other students with disabilities may need accommodations and supports which are described in a document called a Section 504 plan. Although this handbook does not go into detail about the special education and Section 504 procedures and due process rights, it is important to understand that students with disabilities have special protections when they exhibit behavior related to their disabilities.<sup>13</sup>

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<sup>11</sup> The federal special education law is called the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., 34 C.F.R. Part 300. The regulations for Maryland's special education laws can be found in the Code of Maryland Regulations (COMAR), Title 13A.05 and 13A.08.

<sup>12</sup> Section 504 of the Rehabilitation Act of 1973, 34 C.F.R. Part 104.

<sup>13</sup> For more information about IEPs and Section 504 plans, see the publications page on MDLC's website: <http://www.mdclaw.org/links-and-resources/publications/>.

Both federal and state law recognize that a student's behavior can be caused by, or have a direct relationship to, a student's disability. A student's disability may impact communication, decision-making, emotional regulation, social skills, and many other areas of functioning. A student's disability can impact how he navigates the school environment, including academic demands and social interactions.

Although the focus should be on supporting students with disabilities and providing positive behavior interventions and supports, there are times when the school system may seek to suspend a student for more than 10 school days due to alleged misconduct.

## Determining "Manifestation"

When a school system suspends a student with an IEP or a Section 504 plan (or a student who is "thought to be eligible"<sup>14</sup> for an IEP or Section 504 plan) for more than 10 consecutive school days, the IEP or Section 504 team **must** meet within 10 school days from the date of the suspension for a "manifestation meeting." This meeting must take place before the conference with the superintendent's designee as described above. At the manifestation meeting, the IEP or Section 504 team will determine whether the student's conduct for which he is being proposed for an extended suspension or expulsion was a "manifestation" of his disability—in other words, whether the behavior was related to the student's disability. If the behavior was related to the disability, the student will be permitted to return to school, unless the incident involved guns, drugs or serious bodily injury.

When there is a series of suspensions that add up to more than 10 school days in a school year, the IEP or Section 504 team must meet to determine whether the suspensions constitute a "change in placement." The team will consider whether each removal is for similar behavior, the length of each removal, the total amount

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<sup>14</sup> Students are "thought to be eligible" if they have not yet been identified as a student with a disability but 1) a parent has expressed concern about the need for special education or related services in writing to school staff; or 2) the parent has requested an evaluation to determine eligibility; or 3) school staff have expressed concerns about a pattern of behavior to the director of special education or other supervisory staff. See COMAR 13A.08.03.10.

of time the student is removed, and the amount of time between each suspension.<sup>15</sup> If the team finds that the series of suspensions is a change in placement, it must make a manifestation determination as described above. In practice, most Maryland districts will hold a manifestation meeting after 10 cumulative days of suspension in one school year.

### *What Happens at the Manifestation Meeting?*

As with all IEP or Section 504 team meetings, parents have the right to, and should, participate in the manifestation meeting. Parents may not receive much notice about the meeting, but they should work with their school to find a mutually agreeable time.

In order to determine whether a student's behavior was a "manifestation" of his disability, the team *must* consider information the parents provide, teacher observations of the child, the behavior intervention plan (if there is one), and the IEP or Section 504 plan, as well as any other relevant information. If the student has professionals who work with him outside of school, such as a psychologist or social worker, parents may bring them to this meeting, ask that they participate by phone, or have them write a statement to be brought to the meeting. Parents should be sure to speak up and offer their opinion and perspective. A parent's opinion should be recorded in the meeting minutes, especially if they disagree with the team.

The IEP team must find that a student's behavior was related to her disability if either:

- (1) The student's conduct was caused by, or had a direct and substantial relationship to his disability; **or**
- (2) The student's conduct was the direct result of the school system's failure to implement his IEP.

If the student has a behavior intervention plan (BIP), that is part of the IEP and should be considered when determining manifestation.

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<sup>15</sup> See COMAR 13A.08.03.05(B).

## *What if the IEP Team Finds Manifestation?*

If the IEP team decides that a student's behavior is related to his disability, he must be reinstated to his regular school program immediately.

**Exceptions:** If the incident involved drugs, weapons, or serious bodily injury the school system can place your child in an interim alternative education setting for up to 45 school days even if the team found “manifestation.” See the Glossary for federal definitions of “drugs, weapons and serious bodily injury.”

There is also an exception for students with a Section 504 plan who engage in illegal use of alcohol or drugs and are current users. Section 504 does not consider current users of drugs and alcohol to be a protected “individual with a disability,” and therefore can be disciplined for an alcohol or drug related offense. See 29 U.S.C. § 705(20)(C)(iv).

Additionally, if the IEP team finds manifestation, it must complete a functional behavior assessment and develop a behavior intervention plan or determine whether an existing plan needs to be modified in order to address the behavior and support the student. See “Positive Behavioral Supports and Intervention Strategies” on page 20 for more information.

Whenever there is a suspension, the IEP team should consider whether the student's program is still appropriate or if it should be changed. This may mean adding services or behavioral goals, or conducting a new functional behavior assessment and developing a behavior intervention plan. Such changes should be included in the IEP or Section 504 plan. If the team does not schedule a meeting, parents should ask for one to discuss these possibilities.

## *What if the Team Finds No Manifestation?*

If the team finds that the behavior was not related to the student’s disability, the student is treated as a student without a disability and can be suspended for more than 10 days or even expelled.

If the IEP team decides that your child's behavior is not related to his disability and you disagree, you have the right to appeal and/or file for mediation. You can ask at the manifestation meeting what the process is to appeal the decision. If a parent challenges the manifestation determination, the student remains in alternative placement/suspension until the appeal is resolved or until the end of the suspension period, whichever comes first.

## **Educational Services for Students with Disabilities on Extended Suspension or Expulsion**

The school system must continue providing special education and related services to a student with a disability who has an IEP and is on an extended suspension or is expelled for conduct not related to his disability. While excluded from the school building, the student must continue to receive services that permit him to participate in the general curriculum, although in a different setting, and make progress toward meeting the goals set forth in the IEP.<sup>16</sup> The student must be provided an appropriate level of services that meets the legal standard. The law entitles every eligible student with a “free appropriate public education” (FAPE).

Home and Hospital instruction during which the student receives instruction in the home by a teacher for a limited number of hours per week is not an appropriate special education placement while a student with an IEP is on extended suspension or expulsion. Likewise, a few hours of instruction per week provided at the school or in a community library also does not meet the legal obligation to provide FAPE. E-learning or instruction via the computer may also not be appropriate for a student with an IEP. If your child is on extended suspension or expulsion, you will need to advocate for appropriate services that keep your child accessing the curriculum, earning credits and working towards his IEP goals.

Under federal and state special education law, when a student with an IEP is excluded for more than 10 cumulative days of suspension, the student is entitled to services on the 11<sup>th</sup> day.<sup>17</sup> This service requirement ensures that students

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<sup>16</sup> Students with a Section 504 plan receive the same level of services as nondisabled students during extended suspensions and expulsions.

<sup>17</sup> See COMAR 13A.08.03.03(B)(5).

continue to receive appropriate special education and related services. It is therefore important for parents to keep their own record of when their child has been suspended or excluded from school to ensure that the school system accurately counts days of suspension and provides services on the 11<sup>th</sup> day.

## **Protections for Students with a Suspected Disability**

Sometimes there is reason to believe that a student may have a disability even though the he has not yet been identified. In fact, many children are identified as having a disability and in need of special education services only after a disciplinary incident at school.

If the school system had “knowledge” that a student may have been eligible for special education before the disciplinary action, then the student is “thought to be eligible” and the discipline protections for students with disabilities will apply. A school system is deemed to have “knowledge” if:

- (1) A parent has expressed concern about the need for special education or related services in writing to school staff; or
- (2) The parent has requested an evaluation to determine eligibility; or
- (3) School staff have expressed concerns about a pattern of behavior to the director of special education or other supervisory staff.<sup>18</sup>

If you think that your child may have a disability that is related to the behavior that led to the disciplinary action against him, you should immediately ask for an IEP team meeting and provide the team with any medical reports or other information you have in support of your position. If the school system keeps your child out of school while he is being assessed, it must expedite the assessment process.

## **Filing a State Special Education Complaint**

If you believe that the special protections and rights of a child with an IEP have been violated, you may file a formal complaint with the Maryland State

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<sup>18</sup> See COMAR 13A.08.03.10.

Department of Education (MSDE). This complaint must be made in writing to MSDE. When you file a complaint, you should include as much detail as possible about what rights you believe were violated. MSDE has 60 days to investigate your complaint and issue a “Letter of Finding.” If MSDE finds that a violation did occur, it may order compensatory services to make up for the violation. Compensatory services may include paying for tutoring or other services that address the needs of your child under the IEP.<sup>19</sup>

## Exclusion, Restraint and Seclusion

### What Is Exclusion?

Exclusion is the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.<sup>20</sup>

School personnel are permitted to use exclusion in the following situations:

- When a student’s behavior unreasonably interferes with the student’s learning or that of others;
- When a student’s behavior constitutes an emergency and exclusion is necessary to protect a student or other persons from imminent, serious, physical harm and other less intrusive, nonphysical interventions have been attempted and failed or determined inappropriate;
- When exclusion is requested by the student; or
- When exclusion is supported by the student’s behavior intervention plan.<sup>21</sup>

Exclusion must take place in a room with adequate lighting, ventilation, and furnishings and should be in an area **free of locks or other barriers to prevent exit**. School personnel must be able to see the child at all times during exclusion.

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<sup>19</sup> For more information on the complaint process see the Maryland State Department of Education website: [http://marylandpublicschools.org/MSDE/divisions/earlyinterv/complaint\\_investigation/FSDR\\_Branch.html](http://marylandpublicschools.org/MSDE/divisions/earlyinterv/complaint_investigation/FSDR_Branch.html)

<sup>20</sup> See COMAR 13A.08.04.02(B)(4).

<sup>21</sup> See COMAR 13A.08.04.04(A).

School personnel must ensure that the duration of the exclusion is appropriate to the developmental level of the student and the severity of the behavior. Exclusion should not exceed 30 minutes. If exclusions occur frequently and accumulate to 10 school days, the procedures governing the removal of students for 10 or more days apply.

Exclusion cannot be used as punishment, discipline or for retaliatory purposes. Whenever exclusion takes place, school personnel must provide the student with an explanation of what behavior resulted in her exclusion and instructions on what behavior is required to return to the learning environment.

## What Are Restraint and Seclusion?

Restraint is the use of physical force that restricts the movement of a student. Seclusion is the placement of a student alone in a room from which she is prevented from leaving. If a student is prevented from leaving the area, it is seclusion, not “exclusion” as described above, and all the requirements discussed below for imposing and documenting “seclusion” apply. Restraint or seclusion can only be used in the following situations:

- (1) There is an emergency situation and restraint or seclusion is necessary to protect the student and others from **imminent, serious, physical harm after less intrusive interventions have been attempted or deemed inappropriate;**
- (2) The student’s IEP or behavior plan describes the specific behaviors and circumstances in which restraint or seclusion can be used; or
- (3) A parent of a student without disabilities has provided written consent while a behavior plan is being developed.

Generally speaking, because restraint and seclusion can always be used in emergency situations, it is usually not necessary to include them as a behavior intervention on an IEP or behavior intervention plan, particularly since these interventions can have a lasting negative impact on a student. However, if the IEP team determines that restraint or seclusion is going to be used as a planned behavioral intervention, it must be included on the IEP or behavioral intervention plan.

Restraint can only be done by trained staff and only reasonable force can be used. Mechanical restraint, which is a device or material used to restrict a student's movement, is prohibited in all public schools.

Seclusion must take place in a room where the child will be safe and can be viewed at all times. Seclusion can only to be applied by trained staff and the child must be reassessed, at a minimum, every 30 minutes.

School staff must document each incident of restraint or seclusion and include the following:

- Other less intrusive interventions that failed or were deemed inappropriate;
- The precipitating event that took place before the use of restraint or seclusion;
- The behavior that prompted the intervention;
- The names and signatures of the school personnel who observed the behavior that prompted the use of the restraint;
- The names of the staff members who implemented and monitored the use of the restraint or seclusion;
- If restraint was used, the type of restraint;
- If seclusion was used, the justification for initiating the use of seclusion;
- The length of the restraint or seclusion;
- The student's behavior and reaction during the intervention; and
- The administrator who was informed of the use of restraint or seclusion.

In addition, the parents or guardians must be notified in writing or orally within 24 hours of the use of the restraint or seclusion.

If school staff use restraint or seclusion for a student and the IEP or behavioral intervention plan **does not** include these interventions, the IEP team must meet within 10 business days to consider the need for the creation or revision of a functional behavior assessment and a behavioral intervention plan. If restraint or

seclusion is included on a student's IEP, the IEP must describe how often the IEP team will meet to review and revise the IEP and/or behavioral intervention plan.

If restraint or seclusion is used for a student who is not identified as having a disability, the student shall immediately be referred to the school's student support team or IEP team.

## **Positive Behavioral Supports and Intervention Strategies**

Positive behavior supports and interventions are proactive strategies to address challenging student behavior. They help students learn appropriate skills and coping strategies in order to eliminate behavior that interferes with learning. These strategies should be used instead of out-of-school disciplinary responses. Some examples of positive behavior supports and interventions include teaching "replacement" behaviors and how to manage emotions, providing verbal reinforcement for positive behavior, increasing choice-making, creating a reward system, and modifying the classroom environment.

The use of positive intervention and supports are encouraged, and mandated in certain circumstances by federal and state law. IEP teams must consider positive behavior interventions, strategies, and supports to address behavior whenever the behavior impedes the student's learning or the learning of others.

## **Functional Behavior Assessments**

A functional behavior assessment (FBA) is a collaborative, student-centered process used to identify challenging individual behavior resulting in learning or behavior issues, and to recommend possible interventions for addressing the behavior. An FBA is important because it helps figure out the reasons why a behavior is or is not occurring. For example, an FBA will look at what classroom, social or personal factors are triggering the behavior. Once the team identifies when, where and why a behavior occurs, it can develop effective and positive ways to address the behaviors identified.

An FBA takes time to develop, and involves collecting data throughout the school day and over a period that could last several weeks. You may work with the team to identify the behaviors to be monitored.

Once the team has identified the behavior to be observed, it should then use specific strategies for collecting data about the behavior. This data should document when the behavior occurs, including what was happening leading up to the behavior, how the behavior was addressed, and the success of the response. For example, if the student's behavior is failing to follow verbal directions in class, then data collection may reveal that this only happens when the student is assigned independent work. If the student does not understand the classwork, he may become overwhelmed, refuse to attempt the assignment, and instead act out. This information would allow the team to discuss, for example, whether the student needs regular contact with the classroom teacher to check for understanding, or additional academic support in order to complete assignments.

While you may request that your child's school conduct an FBA, there are certain situations when an FBA is required for students with disabilities. See "When Must an FBA and BIP be Implemented or Amended?" on page 22. It is best practice to conduct an FBA prior to developing any behavior intervention plan.

## **Behavior Intervention Plans**

A behavior intervention plan (BIP) is an individualized plan designed to assist a student in replacing challenging behavior with appropriate behavior. Developed using data and a thorough FBA, the BIP describes appropriate responses to the problematic behaviors. These responses should include positive interventions, strategies and supports. The strategies can be used to prevent the behavior, such as providing choices or an incentive program. The strategies can also address the function of the behavior. If the student is overwhelmed and tries to avoid academic work, then one strategy might be to break up the assignment into smaller assignments. The BIP should also be reviewed and updated regularly, particularly if a student continues to have challenging behavior. A BIP is not just for students with an IEP or Section 504 plan; it can be used for any student who is having challenging behavior.

## When Must an FBA and BIP be Implemented or Amended?

An FBA and BIP can be developed any time a student's behavior is impacting his education. If you are concerned about your child's behavior, ask the IEP team about ordering an FBA. However, there are certain times during the manifestation process for students with disabilities when an FBA and BIP are required:

- If at a manifestation meeting, the IEP team decides that the behavior is a manifestation of the student's disability, then an FBA must be conducted and BIP developed if one does not exist. If a BIP is already in place, the team must review it and make any necessary changes.
- If manifestation is not found, the IEP team may still order an FBA and BIP, if appropriate.
- If restraint or seclusion is used for a student with a disability, and the student's IEP or behavior intervention plan **does not** include the use of restraint or seclusion, IEP team must meet within 10 business days of the incident to consider the need for an FBA and BIP.

All BIPs should be reviewed and updated regularly, particularly if the student is continuing to have behavioral difficulties.

## Additional Strategies for Addressing Challenging Behavior

There are many positive ways that schools may choose to address challenging behavior that do not involve punitive measures. These strategies may be implemented at both the individual student and school-wide levels. In July 2014, MSDE adopted the Maryland Guidelines for a State Code of Discipline, which provides an expansive list of responses and interventions school systems may use. Below is a list of some possible strategies, but there are many more that schools can implement. School administrators may not always consider non-disciplinary interventions, so parents should consider asking about some of the following alternatives:

- **Community Conferencing:** A trained facilitator brings students, school staff and others together to work through a school conflict, reach a resolution and repair the harm. It is an evidence based practice that focuses on communication and accountability.
- **Mentoring Programs:** Schools can assist in identifying outside programs or can create mentorship opportunities for students with school staff or other individuals.
- **Peer Mediation:** This is a form of conflict resolution where students assist other students to work through disputes.
- **Referral to Community Programs:** Communities often have programs geared towards youth development and leadership, which schools can utilize to support students with behavioral needs.
- **Referral to the Student Support Team:** Schools can utilize Student Support Teams to discuss a student's needs and identify interventions for addressing inappropriate behavior. A case manager will lead the team, which may be composed of the school principal, teachers, social workers, the school psychologist, and/or outside agency representatives. A referral to the Student Support Team would be appropriate for a student who is not receiving special education services but is exhibiting challenging behavior.
- **Restorative Justice Practices:** These practices are aimed at allowing individuals involved in an incident or conflict to come together to discuss their grievances and formulate a plan for resolution.
- **School-wide Positive Behavior Interventions and Supports (PBIS):** PBIS is a school-wide system of support that utilizes proactive strategies to create a positive school environment. PBIS allows schools to choose programming specific to their student body and individual students that is geared towards reducing disruptive behavior while eliminating the need for harsh, reactive disciplinary practices. Ask your school principal if your child's school is a PBIS school.<sup>22</sup>

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<sup>22</sup> See [www.PBISmaryland.org](http://www.PBISmaryland.org).

# The Juvenile Justice System and School-Based Arrests

Many schools in Maryland have school resource officers or police assigned to a building. This means that students may be subject to a school-based arrest if they engage in delinquent behavior on school grounds. The presence of school resource officers or police in schools increases the risk of students being arrested for behavior that should be handled by the school administrators. Under the new discipline regulations, school system administrators are encouraged to handle non-violent or less serious behaviors, such as minor fights or disrespect, and not involve police or school resource officers.

If your child is arrested at school or referred to the Department of Juvenile Services (DJS), you will have an interview with a DJS intake officer. This is not a court proceeding. At the intake interview, the DJS intake officer will review the incident, discuss what you, as the parent, have done to address your child's behavior, what your child has done to change or make amends for his behavior, and review your child's school and DJS record. Based on this information, the DJS intake officer may recommend dismissal of the charge, informal supervision, or that the case be sent on to the State's Attorney's office.

If your child has a disability and has an IEP, Section 504 plan or behavior intervention plan, it is important for you to tell the DJS intake officer this information. If there was a manifestation determination, it is critical that you inform the DJS intake officer if the behavior was found to be a manifestation of your child's disability. It will be helpful for the DJS intake officer to hear what steps the school system is taking to address the behavior—in particular, changes to your child's IEP or Section 504 plan. Sharing this information with the DJS intake officer may impact the outcome, particularly if it is explained that the behavior was related to a disability and is being addressed by the special education or Section 504 team.

If your child has been arrested or referred to DJS, and you suspect that your child has a disability, immediately request an evaluation from the school system. Advise the DJS intake officer that you are advocating for additional services for your child at school.

## Community-Based Arrests and the Impact on Educational Programming

Sometimes students engage in behavior outside of school that leads to an arrest. Under state law, certain community-based arrests are made known to the district school superintendent. These arrests are known as “reportable offenses.”<sup>23</sup> While state law allows local law enforcement agencies to communicate this information to the local school system, there are procedures in place to ensure that the student’s privacy is maintained.

The superintendent may share the arrest information with the student’s school principal, even if the student has a disability and attends a non-public school. The principal must assemble a team of appropriate school personnel to determine whether the student presents a safety issue to the school environment. If the team determines that the student poses a significant threat to the safety of other students or staff, the student’s education plan may be changed. This may include restricting the student’s movements within the school building, changing the student’s schedule, transferring the student to an alternative school, or providing direct instruction to the student. A significant risk of safety is the only basis of modifying or changing a student’s school program.

Parents may be invited to participate in this team meeting or to provide additional information that would assist in developing the educational plan if one is required. If the student’s placement is to be changed, the principal must schedule a conference with the parent.

In addition, school systems must continue to comply with a student’s IEP or Section 504 plan. A school system cannot unilaterally alter the IEP and the services the student is to receive based on a “reportable offense.” Additionally, if the student has an IEP or Section 504 plan then the appropriate team should meet to determine whether the IEP or Section 504 plan needs to be revised.

Any plan that changes the educational programming of the student has to be put into place no later than 5 days after the receipt of the arrest information. It is the

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<sup>23</sup> See COMAR 13A.08.01.17.

responsibility of the principal and other appropriate school staff to review the plan periodically. The Maryland State Department of Education recommends the plan be reviewed every 30 days until the criminal matter is resolved.

**A school system may not suspend or expel a student based solely on the notice of arrest.** Furthermore, notice of the arrest must be kept as confidential as possible. The arrest information should not be included in the student’s permanent file, and should be destroyed when the student graduates, permanently leaves school, or turns 22—whichever occurs first.

The parent has the right to appeal any decision made by the school team to change the student’s educational program. The appeals process is created by the school system. Check the student handbook or ask your local school system for appeal procedures.

## Student Searches and Questioning by Police

### Searches

School administrators may search a student’s locker, backpack and personal belongings if they have a **reasonable belief** that it contains weapons, drugs or other contraband. Police officers may search students and lockers only upon the authority of a search warrant, unless the search is essential to prevent imminent danger to the safety of the student, school personnel or school property.<sup>24</sup>

### Questioning by Police

The police may not question students on school premises, unless it is in connection with a crime committed on school grounds or one that would endanger the lives or safety of students or school personnel. A school official must be present during the questioning.<sup>25</sup> Students who are questioned by police at school are generally considered to be “in custody” in the sense that they do not feel free to leave and should receive their “Miranda” warnings, including being advised of their right to remain silent.

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<sup>24</sup> See COMAR 13A.08.01.14.

<sup>25</sup> See COMAR 13A.08.01.13.

# Glossary

**Behavioral Intervention Plan (BIP):** A proactive plan based on an assessment of behavior that is individualized for the student and the settings where the behavior occurs. See COMAR 13A.08.04.02(B)(1).

**COMAR:** Code of Maryland Regulations. Regulations developed by the State to regulate administrative procedures. It is found in some public libraries or online.

**Exclusion:** The removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support. See COMAR 13A.08.04.02(B)(4).

**Expulsion:** The exclusion of the student from the student's regular school program for 45 days or longer under limited circumstances. See COMAR 13A.08.01.11(B)(2).

**Extended suspension:** The exclusion of a student from school for a time period between 11 and 45 school days under limited circumstances. See COMAR 13A.08.01.11(B)(3).

**Free Appropriate Public Education (FAPE):** FAPE refers to a public school system's legal obligation to provide educational services designed to meet the specific needs of a student with a disability. School systems cannot charge additional fees for these services.

**Functional Behavioral Assessment (FBA):** A comprehensive and systematic student-centered evaluation of information used to reliably predict the conditions and/or circumstances triggering a student's problem behaviors. The assessment is used to help determine what supports a student may need. See COMAR 13A.08.04.02(B)(5)(a).

**Illegal Drug:** Illegal drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under the Act of any other provision of federal law. See 34 C.F.R. §300.530(i).

**Individualized Education Program (IEP):** A written legal document that describes the special education and related services an eligible student with a disability will receive through the public school system. It is reviewed, and revised annually. See COMAR 13A.05.01.03(B)(34).

**In-school suspension:** 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. See COMAR 13A.08.01.11(B)(4).

**Long-term suspension:** The removal of a student from school for 4-10 school days for disciplinary reasons by the principal. See COMAR 13A.08.01.11(B)(5).

**Mechanical restraint:** 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. *See* COMAR 13A.08.04.02(B)(8).

**Physical restraint:** 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. Physical Restraint does not include briefly holding a student to calm or comfort the student; holding a student's hand or arm to escort the student safely from one area to another; moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or intervening in a fight in accordance with Education Article §7-307, Annotated Code of Maryland. *See* COMAR 13A.08.04.02(B)(11).

**Protective or stabilizing device:** 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 for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning of a person. *See* COMAR 13A.08.04.02(B)(13).

**Seclusion:** Seclusion is the confinement of a student alone in a room from which the student is physically prevented from leaving. *See* COMAR 13A.08.04.02(B)(17).

**Section 504 Plan:** A plan developed for a qualified student with a disability that documents the accommodations, program modifications and/or supplementary services needed to provide the student with a free appropriate public education.

**Serious Bodily Injury:** The term "serious bodily injury" as used in the IDEA means bodily injury which involved—

- (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. *See* 18 U.S.C. § 1365(h)(3).

**Short-term suspension:** The removal of a student from school for 1-3 school days for disciplinary reasons by the principal. *See* COMAR 13A.08.01.11(B)(7).

**Superintendent's Designee:** Refers to a person the school system employs to determine whether a student should be suspended over 10 days or be recommended for expulsion. Note: The law requires that the Superintendent of Schools review every expulsion recommendation and make an independent decision.

**Weapon:** The term "weapon" as used in the IDEA is defined as a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length. *See* 18 U.S.C. §930(g)(2).

# Informational Resources

## Maryland State Department of Education

- **Maryland State Department of Education: The Maryland Guidelines for a State Code of Discipline**  
[http://www.marylandpublicschools.org/msde/divisions/studentschoolsvcs/student\\_services\\_alt/docs/MDGuidelinesforStateCodeDiscipline\\_08072014.pdf](http://www.marylandpublicschools.org/msde/divisions/studentschoolsvcs/student_services_alt/docs/MDGuidelinesforStateCodeDiscipline_08072014.pdf)
- **Maryland State Department of Education: Discipline of Students with Disabilities**  
[http://marylandpublicschools.org/MSDE/divisions/earlyinterv/Special\\_Ed\\_Info.html](http://marylandpublicschools.org/MSDE/divisions/earlyinterv/Special_Ed_Info.html)
- **Maryland State Department of Education: Model Policy Bulletin on School Use of Reportable Offenses**  
[http://marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student\\_services\\_alt/docs/ReportableOffensesModelPolicy.pdf](http://marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/docs/ReportableOffensesModelPolicy.pdf)

## General School Discipline Resources

- **Advocates for Children and Youth**  
<http://www.acy.org>
- **Circle of Restorative Initiatives for Maryland**  
<http://www.crimaryland.org/>
- **Community Conferencing Center**  
<http://www.communityconferencing.org/>
- **PBIS Maryland**  
<http://www.pbismaryland.org/>
- **U.S. Department of Education: School Climate and Discipline**  
<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

## Special Education Resources

- **Maryland Disability Law Center: *Special Education Rights Handbook***  
<http://www.mdclaw.org/links-and-resources/publications/>
- **Wrights Law: an Online Resource for Special Education Law and Advocacy**  
<http://www.wrightslaw.com/>

# Legal Resources

## **Bar Association Lawyer Referral Services**

Many counties in Maryland provide lawyer referral services for individuals looking for an attorney.

<http://www.msba.org/public/lawyer-referral.aspx>

## **Maryland Disability Law Center**

Provides technical assistance and representation for students with disabilities statewide facing school discipline issues, including suspension, expulsion, restraint and seclusion.

(800)233-7201; (410)727-6352

<http://www.mdclaw.org>

## **Maryland Office of the Public Defender**

Provides representation for low-income youth involved in the juvenile justice system.

(877) 430- 5187

<http://www.opd.state.md.us/>

## **Maryland Volunteer Lawyers Service**

Provides pro bono legal representation for low-income students without disabilities facing suspension, expulsion or other discipline issues.

(410) 547-6537 (Baltimore metro area); (800) 510-0050

<http://mvlslaw.org/>

# Maryland State Discipline Regulations

## COMAR 13A.08.01.11 Disciplinary Action<sup>26</sup>

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

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<sup>26</sup> Please check <http://www.dsd.state.md.us/COMAR/ComarHome.html> for the most up-to-date version of the regulations.

(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.

(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.

(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.

(l) 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.

# Maryland State Manifestation Determination Regulations

## COMAR 13A.08.03.08 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:

(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.





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