



ISSUE BRIEF

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School Suspension: Effects and Alternatives

EXECUTIVE SUMMARY

Over the past ten years, the suspension rate of Maryland's public school students has steadily increased to the point where nearly 10% of students are suspended each year. The high and growing suspension rate raises juvenile justice, equality, health, and safety concerns. It also imposes an increasing financial drain on schools in administrative and instructional time. It may even exacerbate chronically disruptive behavior in school and in the community. In short, if high suspension rates are meant to help either the suspended student or his or her classmates, they are failing to do so.

Effective alternatives to suspension exist, including positive behavior supports, peer mediation, individual self-management plans for children with behavior problems, truancy courts and sportsmanship curriculum in physical education class. A common element of these alternatives is a focus on addressing the underlying causes of disruptive behavior, rather than merely seeking to punish it.

Positive Behavioral Interventions and Supports (PBIS) is a proactive school-wide approach to discipline which focuses on teaching and supporting positive behavior to the entire student body. By closely tracking disruptive behavior by class and student, PBIS

is able to identify quickly students who need more intensive interventions and teachers who can benefit from more classroom management tools. PBIS has successfully reduced suspension rates in schools across the country, including in Maryland. Studies have shown that PBIS, already a low-cost initiative, actually saves money, when factoring in staff time and increased instruction.

Other strategies to reduce suspensions include clearer disciplinary codes, with a separate code for younger students, limitations on the use of multiple short-term suspensions, and working directly with teachers on classroom management.

Currently, about 20% of Maryland schools are using PBIS. Only elementary schools with extremely high suspension rates are required to use PBIS. Legislative action can bring PBIS and other effective alternatives to suspension to more schools, including those with high but less extreme suspension rates, middle and high schools, and schools with particularly disproportionate suspension rates for low-income, minority or disabled students. The cost of these strategies is not high; the cost of doing nothing is even higher.

Over the past ten years, the suspension rate of Maryland's public school students has increased, raising a number of juvenile justice, equality, health, and safety concerns. Not only do suspensions impose a myriad of social costs on Maryland's youngest citizens, but the use of suspensions also imposes a financial drain on school in administrative and instructional time and may even exacerbate chronically disruptive behavior in school and in the community. In short, if suspensions are meant to help either the suspended student or his or her classmates, they are failing to do so.

Alternatives to suspension in different schools may also result in different rates of suspension. If a school has few other options when a severe offense occurs, then suspensions may be a more frequent response. Positive behavior interventions and supports,¹ peer mediation,² individual self-management plans for children with behavior problems, truancy courts,³ sportsmanship curriculum in physical education class,⁴ and similar methods of discipline are all effective alternatives to suspension.

SUSPENSIONS IN MARYLAND

During the 2004-05 academic year, 71,085 Maryland public school students were suspended in 124,610 suspension incidents.⁵ These students represent 8.4% of Maryland's public school population. Moreover, suspensions are being imposed on Maryland's youngest students: 9,307 of suspended students in Maryland were elementary school students, 520 of which were kindergartners.⁶ The trend is even spreading to pre-school students.⁷ When these students are excluded from school, alternative educational services are rarely provided. In Maryland, 79% of suspended students in the 2004-2005 school year received no educational services while out of school.⁸

JUVENILE JUSTICE CONCERNS

Evidence suggests that suspension is an ineffective tool for reducing misbehavior and that a history of suspension accelerates a child's path to delinquency. Early application of suspensions and expulsions on students can contribute to a pattern of antisocial behavior in these students that will continue into adolescence.⁹ The groups of children most frequently punished by schools are the same groups of people frequently targeted for incarceration as adults.¹⁰ Maryland's juvenile justice system is evident of this pattern. During the 2004-05 school year, 61% of suspensions incidents involved African-American students.¹¹ Similarly, from July 2004 through June 2005, 56% of juvenile intake cases were African-American youth.¹²

HEALTH AND SAFETY CONCERNS

In addition to the correlation between the use of suspension and delinquency, suspension rates raise similar health and safety concerns for children. According to the 2000 U.S. census, children who are suspended are often those children who are least likely to have supervision at home.¹³ Children in households near or below poverty level are more likely to be expelled than their more affluent classmates.¹⁴ Children with single parents are three times as likely to be suspended or expelled from school as are children with both parents at home.¹⁵

Moreover, these children are often in need of professional mental health assistance because of depression, abuse and mental illness.¹⁶ Among susceptible youth, suicidal ideation and behavior may be expected to occur at these times of isolation.¹⁷ For students with major home-life stresses, suspension adds yet another stress that, when compounded with what is already occurring in their lives, may predispose them to even higher risks of behavioral problems.¹⁸ Despite the obvious association of mental illness and home-life stresses with school disciplinary problems, students are not routinely referred to a mental health provider after being suspended or expelled.¹⁹

When children are not in school, they are far more likely to become involved in physical fights, commit crimes, carry a weapon, have sex, smoke cigarettes, and use alcohol and drugs.²⁰ Suspension also increases the risk that a student will permanently drop-out of school.²¹ If no intervention is given to students with behavior problems, these youth will often be rejected by their peers and begin to form friendships amongst themselves. For adolescents, once these youth identify with members of a deviant peer group, they have a 70% chance of a felony arrest within two years.²²

DISPROPORTIONATE IMPACT

Research shows that school discipline is inconsistent in its application and disproportionate to the severity of the offense.²³ Different perceptions of the severity of a particular offense may result in differing disciplinary measures for the offense. Further bias exists in the application of discipline, as a plethora of studies that show minorities, males, and disabled students are more frequently and severely punished.²⁴ These studies show that students who receive free or reduced lunch are more likely to be suspended than those students who do not; emotionally disabled students are more likely to be suspended than other students in both special and general education; students suffering from a learning disability or mild mental disability are suspended more often than general educa-

higher rate than females;²⁵ and in many regions, including Maryland, African American students are twice as likely to be disciplined than white students.²⁶

The heavy reliance on discipline for these groups suggests discriminatory treatment at one or more stages of the disciplinary process.²⁷ Typically, this disparity is not typically correlative to the student population.²⁸ There is no supporting evidence that these groups are more likely to misbehave than their less punished counterparts that justifies such significant disparity.²⁹ Schools typically punish children who are behind academically by depriving them of instructional time.³⁰ Because instructional time is directly related to academic achievement, the overrepresentation of minority and disabled students in suspension rates has the additional punishment of predisposing these students to underachieve academically.³¹

Suspension statistics in Maryland are illustrative of application bias. In Maryland public schools, suspensions are disproportionately imposed along racial and gender lines, and students with disabilities are disproportionately represented in suspension statistics. During the 2004-2005 school year, males were given 71% of all suspensions, compared with 29% of their female classmates.³² African-American students, making up 38.1% of the state's student body, received 61% of all suspensions, compared to white students, who comprise 48.6% of students, yet received only 33% of suspensions.³³

Students with disabilities, although they comprise only 13% of the student body, received 25% of suspensions during the 2004-05 school year.³⁴ African-American students make up 59% of those students labeled as disabled.³⁵ Students with disabilities were expelled for drug and weapon violations at a higher rate than non-disabled students committing the same violation.³⁶ Unlike in the 2003-2004 school year, these students received long-term suspension at a lower rate than non-disabled students: 7% of non-disabled suspended students were suspended for more than 10 days, while 5.4% of disabled suspended students faced long-term suspensions.³⁷ Moreover, the misbehavior of students with disabilities is rarely classified by school boards in such a way as to give those students the protections warranted by law. Of the 15,540 students with disabilities suspended during the 2004-05 school year, only 1,818 suspension incidents were determined to be a manifestation of their disability,³⁸ a determination that would prevent them from being punished in the same manner as their non-disabled classmates, who are better able to understand their actions and their consequences.

NO CHILD LEFT BEHIND

Yet another reason to avoid high suspension rates is a requirement under the federal No Child Left Behind (NCLB) Act that such schools be deemed "persistently dangerous." Not only does this label a school, but students are allowed to transfer to other schools.³⁹

FACTORS CONTRIBUTING TO SUSPENSION RATES AND JUSTIFICATIONS FOR PUNISHMENT

A substantial amount of the variability in school discipline may be attributable to multiple factors such as teacher attitudes, centralization of discipline, and school governance climate.⁴⁰ Accordingly, schools with high suspension rates typically have high student-teacher ratios, low academic quality ratings, administrative indifference to school climate, a disproportionate amount of time spent on reactive discipline, and ineffective school governance.⁴¹ Most disciplinary actions are initiated in the classroom.⁴² Different teachers give various levels of disciplinary referrals. In most cases, a small proportion of teachers give out a substantial percentage of suspensions.⁴³ For example, in a study of an urban middle school, almost half of disciplinary actions were taken by a small number of teachers exhibiting an abnormal frequency of discipline.⁴⁴ What separates those teachers who experience frequent behavior problems from those who do not is the teacher's ability to keep students focused on learning and intellectually engaged.⁴⁵

Although most critics cite the recent federal Gun and Drug Free School Zones acts and zero-tolerance policies as the causes for the spike in suspensions over the last decade,⁴⁶ suspension statistics do not support this argument.⁴⁷ In the 2004-05 school year, only 5.6% of suspensions in Maryland were for drugs and weapons.⁴⁸ Suspension data have consistently shown that the majority of disciplinary measures are for non-serious or non-violent offenses,⁴⁹ consistent with findings that noncompliance and defiance are among the least tolerated student misbehaviors by teachers.⁵⁰ In Maryland, the offense category of "Disrespect/Insubordination/Disruption" is the most frequent reason given for suspension, with 46,369 such incidents in the 2004-05 school year.⁵¹

The prevalence of such incidents is reasonable, considering that, the majority of suspensions are given to students over the age of twelve, and these students are, developmentally, dealing with issues of identity and authority. In Maryland, 86% of suspensions were given to middle and high school students.⁵² Instead of imposing a punishment on students exhibiting developmentally appropriate behavior, non-punitive methods for dealing with insubordination may substantially reduce disciplinary actions.

SUSPENSION: PUNISHMENT OR REWARD?

Following the rules of behavior analysis, if suspension was truly a punishment for a given student, his inappropriate behavior would decrease following the suspension. Suspension may be effective for some students at risk for behavior problems. However, as the term repeat offender implies, repeated suspension is not effective for changing the problem behaviors of all students, especially those with more intense behavior support needs. A study of a Midwestern inner-city public school showed that when detentions and suspensions were consistently used as punishments for one group of students over the school year, the overall number of such punishments for that group increased in the spring semester. These data prove that suspensions were acting as a reward misbehaving students in this group, who expected to be sent home as a consequence of their conduct.⁵³ For the group of students only given detentions and suspensions in the fall semester, the number of disciplinary referrals decreased in the spring semester, after the students realized suspension was no longer a consequence to misbehavior. In Maryland, 37.4% of suspended students (26,581 students) were "repeat offenders," suspended more than once during the school year.⁵⁴

POSITIVE BEHAVIORAL INTERVENTIONS & SUPPORTS (PBIS)

As a consequence of recent public attention on academic achievement and school safety, the amount of school time spent on positive reinforcement has decreased.⁵⁵ Positive Behavioral Interventions & Supports (PBIS)⁵⁶ provides an alternative approach to school disciplinary practices that has been proven to decrease the frequency of school discipline, thereby reducing the number of students suspended from school.⁵⁷ PBIS is a proactive school-wide approach to discipline which focuses on teaching and supporting positive behavior in the entire student body. The system reduces the frequency and intensity of misbehavior by providing students with examples of positive replacement behaviors.⁵⁸ After PBIS implementation, the majority of schools report a decrease in problem behavior, an increase in positive social skills, an increase in the overall academic achievement,⁵⁹ and an increase in classroom instruction time.⁶⁰ PBIS may also improve staff behavior by helping administration identify classroom management problems and improving teacher retention by reducing the rate of teacher burn-out due to student behavioral problems,⁶¹ the number-one reason cited for teacher burn-out.⁶²

PBIS uses a continuum of support levels to provide both systematic and individualized strategies for achieving positive outcomes and preventing problem behavior. This continuum is typically comprised of three

levels of support: universal, group, and individual.⁶³ Universal support, provided to all students, is generally effective in managing the 80-90% of students without serious behavior problems. In addition to participating in universal supports, group support is provided to students at risk for problem behavior, generally 5-15% of students. Individual support is also provided for the 5% of students with intense problem behavior. When school administration and staff is committed to the program, PBIS can be successfully implemented within one to two years.⁶⁴ In Maryland's PBIS initiative, 78% of participating schools successfully implemented PBIS by the end of the first year.⁶⁵ However, to increase the intensity of the impact of PBIS and its likelihood of success, teachers need support from principals, superintendents, and executive officials.⁶⁶

PBIS CASE STUDIES

The success of PBIS and alternative behavior management programs prove that a relatively simple, inexpensive intervention can have a dramatic impact on long-term child and adult behaviors.⁶⁷ PBIS has been successfully implemented in various states including Oregon, Illinois,⁶⁸ Pennsylvania, and Hawaii.⁶⁹

An illustrative case study is that of the Waukegan School District, an urban unit district in Northeastern Illinois comparable to many Maryland school districts. Waukegan has over 15,000 students, 87% minority, 57% from low-income households, and a history of budget shortfalls and safety concerns.⁷⁰ The district hired a behavior consultant to reduce incidents of behavior problems that led to detentions, suspensions, expulsions, and high rate of referrals to special education. North Elementary School, an urban elementary school with a suspension rate of 9.8%, was chosen as the pilot school.

The PBIS team created a standardized referral form with continuum of administrative responses to discipline and developed alternatives to suspension. Alternatives to suspension included administrator warnings, student meetings, parent teacher meeting, incident debriefing conferences, behavior contracts, behavior intervention plans, parent correspondence, and in-door lunch or recess. This standardized referral form helps administrators track both students with behavior problems and "hot spots," places, classrooms, and times of day students are most likely to misbehave. Although suspension is still an option and is sometimes mandated by district code, staff became more aware of and more comfortable with choosing alternatives.

To acknowledge appropriate behavior, the team developed "Gotchas," a slip which staff distributed to award to students seen following school-wide rules.

These slips were then placed in lottery for weekly prize and both the student and teacher were recognized. At the end of the week, secretary tracks how many "Gotchas" were given per classroom and the incidents of misbehavior. After one year of PBIS, NES experienced a 22% reduction in suspensions.

CASE STUDIES: MARYLAND

Currently, only 276, or 19.3% of Maryland's 1,429 public schools have implemented PBIS.⁷¹ Anne Arundel County has the largest number of participants, with 44 schools participating in PBIS.⁷² Data from this county shows that the rewards system has increased student instruction time and decreased the amount of time administrators spend on conduct problems.⁷³

PBIS in Maryland has proven to be successful: Jennifer Elementary School in Charles County has reduced referrals by 67% and suspensions by 25%; Washington Heights Middle School in Washington County has experienced a 53% decrease in referrals; North Dorchester High School in Dorchester County has reduced office referrals by 37% and suspensions by 43%;⁷⁴ Germantown Elementary School in Anne Arundel County has reduced referrals by 68% and suspensions by 74%; Murray Middle School in Howard County has reduced referrals by 43%; Lindale Middle in Anne Arundel county had a 73% reduction in both referrals and suspensions in their second year of implementation; and Marley Middle School in Anne Arundel County has reduced referrals by 75% and added faculty incentives including "Preferred Parking Spaces" and incentives for Interdisciplinary Teams.⁷⁵

PBIS has also succeeded in alternative programs. At Mary E. Moss Academy, an alternative program for 9-12 grades, PBIS has significantly decreased both office referral and suspensions.⁷⁶ The students employ a token economy, using MEMA bucks to reinforce student behaviors. Students may use their money at the MEMA store.

PBIS also has an impact on expulsions and long-term suspensions. Glen Burnie High had an 18% reduction in expulsions and long-term suspensions after one year of implementation and Bates Middle had a 32% reduction in expulsions and long-term suspensions after one year of implementation.⁷⁷

PBIS may also increase parent and staff satisfaction rates, as well as increasing the rate of parent involvement. At Dundalk Elementary School in Baltimore County, parent involvement has significantly increased after one year of PBIS implementation. In the 2004-05 school year, 49% of parents volunteered at the school, compared to only 12% the previous year; attendance at

Back to School Night has tripled, and attendance at parent teacher conferences has increased by 21%.⁷⁸ The 15 PBIS schools in Charles County report an increase in community and parent satisfaction, an increase in staff satisfaction, a reduction in staff absenteeism, a reduction in Teacher Transfer Requests and Turnover, increased administrative time spent in classrooms and assisting with academics, and increased administrative time for staff support.⁷⁹

PBIS v. SUSPENSION: A COST -BENEFIT ANALYSIS

PBIS is cost-effective. The system saves schools thousands of dollars annually by decreasing the amount of administrator time spent on discipline and increasing student instructional time.⁸⁰ Administrators spend an average of 45 minutes processing suspensions and 10 minutes processing disciplinary referrals.⁸¹

A case study of the cost benefits of PBIS was conducted at an urban Maryland elementary school.⁸² After two years of PBIS, the school experienced a 71% decrease in suspensions and a 92% decrease in office discipline referrals.⁸³ Based on an 8-hour work day, these decreases saved administrators 16.8 workdays of time.⁸⁴ When considering this time in terms of the administrator's daily salary, the school saved an average of \$6,478.77 per year after PBIS implementation.⁸⁵

PBIS implementation also increased the amount of student instructional time. For students, the loss of instructional time due to discipline results in lower academic achievement, which affects the school's overall standardized test scores. On average, students lose six hours of instructional time for each day they are suspended and 20 minutes of instructional time for every referral they receive.⁸⁶ In the two years following implementation, the school saved an average of 79.5 schooldays of instructional time per year, including 50 days saved by reducing suspensions.⁸⁷ When considering this time in terms of the yearly educational cost per student, the gained instructional time saved an average of \$3,442.57 per year.⁸⁸ Other Maryland PBIS schools have experienced similar time savings. Germantown Elementary School saved a total of 24.5 days of administrative time, 134 days of student time, and 8 days of staff time after PBIS implementation.⁸⁹

These savings are significant when compared to the minimal cost of PBIS implementation. The cost of implementation at the case study school included a one-time training cost of \$1,570 and an annual cost of \$750 for rewarding positive behavior.⁹⁰ The school realized a net savings of \$6,854.93 the first year and \$9,917.74 in the second year of implementation.⁹¹ The cost benefits of PBIS may be the most persuasive evidence for school

boards and legislators, who are typically more concerned with public indicators of school success, such as standardized test scores and budget concerns. At MacArthur Middle School, MSA Reading Scores increased from a 55.5% student proficiency rate to a 70.4% proficiency rate after just one year of PBIS implementation.⁹² The county average is 68%.⁹³ Similarly, Harman Elementary School experienced an increase in reading and math scores. Harman saw a 60% increase in 3rd grade reading scores; a 2% increase in 3rd grade math scores; a 96% increase in 5th grade reading scores; and a 115% increase in 5th grade math scores after PBIS implementation.⁹⁴

OTHER OPTIONS FOR REDUCING SUSPENSION

In addition to PBIS, Maryland's suspension rate and its impact on students can be addressed by revising disciplinary codes, classroom-level behavior management methods, and legislative action.

A. STUDENT DISCIPLINE CODES

By revising student disciplinary codes, local school systems can reduce the overall suspension rate, as well as addressing minority overrepresentation in the application of school discipline.⁹⁵ Because short-term suspensions are left to the discretion of public school principals, the overbroad language of district disciplinary codes may exacerbate the use of bias in school discipline. Delineating clear consequences for infractions and removing the unilateral authority of principals may eliminate some of the bias.

In Maryland, a public school principal has the discretion to implement a suspension for up to ten days (short-term suspension). For example, the Baltimore City discipline code lists 30 categories of policy violations, assigned to three levels of severity.⁹⁶ Despite the various levels, all 30 violations list suspension as a possible consequence, the only major difference being the possibility of expulsion for level III infractions.⁹⁷ Moreover, for repeated violations of level I infractions (disruptive behavior, insubordination, dress code violations), principals have the discretion to subject a student to more severe consequences than those listed in the code.⁹⁸

By eliminating suspension as an option for less severe offenses, and creating a separate code for elementary students, bias can be reduced along with the number of elementary school students suspended.

In response to the inconsistency in school discipline, the Anne Arundel school board revamped its discipline code for the 2004-2005 school year to provide school administration with more guidance in choosing consequences for misbehaving students.⁹⁹ The new code

assigns six levels of severity to offenses and includes specific penalties for each level of offense.¹⁰⁰ The code also provides a separate discipline code for elementary students.¹⁰¹ Although MSDE has not yet published suspension statistics for the 2004-2005 school year, a survey of Anne Arundel parents, students, teachers, and administrators revealed that 70% of participants felt that the code is clear and 81% felt safe at their school.¹⁰²

B. RESTRICTIONS ON MULTI-SHORT TERM SUSPENSIONS

Stricter limitations should be placed on a principal's ability to subject a student to multiple short-term suspensions. In addition to having the power to decide whether to impose a short-term suspension, the principal also has the discretion to determine the length of the short-term suspension. For example, in Baltimore City, a principal may place a student on multiple short term suspensions as long as the total number of short-term suspension days the student has received does not total more than ten days for the quarter.¹⁰³ While this provision seems like a limitation on a principal's authority, because the limitation only applies to the quarter, and not the entire school year, a principal has the unilateral authority to suspend a student for nine days each quarter, or 36 days per school year.¹⁰⁴ The 36 days the child has been suspended is the equivalent of a long-term suspension, however, it lacks the procedural safeguards which accompany a long-term suspension.¹⁰⁵ After a principal determines that he or she wishes to pursue a suspension for more than ten days, the CEO determines whether a long-term suspension or expulsion is warranted.¹⁰⁶ A parent or student has the right to appeal a long-term suspension or expulsion to the School Board.¹⁰⁷ The student lacks a right to appeal a short-term suspension.¹⁰⁸

Two thirds of Maryland's counties provide the minimum level of due process to students facing suspensions of 10 or fewer days. This minimal due process does not permit the student to produce evidence or witnesses on his or her behalf and, in general, does not require the involvement of a parent in the initial phase. In contrast to the effective due process required for suspensions of more than 10 days (in which a hearing with evidence and witnesses for both sides are allowed), short-term suspensions are entirely at the will of the principal or another school official.

As shown in the chart below, four counties have augmented the minimal due process required under the state regulations and provide the heightened level of due process when a suspension of more than 5 days is imposed. While this represents an improvement for students seeking effective due process within suspension

proceedings, it does not adequately address the ability of school principals to repeatedly exclude students for a significant number of days so long as none of the individual exclusions requires a hearing (regardless of whether the threshold for such a hearing is 5 or 10 days).

Counties with Modified Due Process Requirements for Short-Term Suspensions	
County	Policy, Procedure or Regulation
Baltimore Cecil Howard Wicomico	Students facing suspension for 5 days or more are afforded the additional due process rights that apply to long-term suspensions.
Montgomery	The student facing suspension, or the student's parent, may, if unsatisfied with the informal resolution with the principal, request a formal review by the principal. In the formal review procedure the student will have the opportunity to present witnesses and evidence in support of the student's complaint.
Prince George's	Although the intention of the parent conference within the suspension procedure is to maintain an informal setting, at all levels the student and the students parent have the right to be represented by legal counsel so long as notice of counsel is given to the Chief Executive Officer.

C. CLASSROOM OPTIONS

The suspension trend can also be reversed at the classroom level. Because the majority of disciplinary actions are initiated in the classroom, teachers can be critical in affecting change. One option for teachers is introducing a classroom-level behavior management system, such as the Good Behavior Game (GBG), a classroom management program for elementary school students.¹⁰⁹ To implement GBG, a classroom is randomly divided into three teams. At the beginning of the school year, the teacher prominently displays a short list of classroom rules. The teams are only rewarded for positive behavior. If a team member is disruptive, the team is not rewarded. Since the 1985-86 school year, three generations of GBG classrooms have been implemented in Baltimore City elementary schools.¹¹⁰ The first generation of GBG students, now ages 19-21, showed a marked decrease in drug and alcohol abuse and antisocial personality disorder (aggression), as well as a decrease in the use of services for behavioral and emotional problems, and drug or alcohol use.¹¹¹ These students also showed a marked increase in high school graduation rate.¹¹²

D. LEGISLATIVE ACTION

Although the legislature has begun to make some efforts to try to reduce the suspension rate of Maryland's students, more can be done to prevent its use. Currently, state law requires an elementary schools with suspension rates exceeding 18% of their student population to implement either PBIS or an alternative behavioral modification program.¹¹³ This law holds county boards of education accountable for implementing PBIS. The method for determining which elementary schools exceed a suspension rate of 18% was finalized in September 2005. At the time of its enactment, 25 elementary schools had suspension rates exceeding 18%, including 21 schools from Baltimore City and one each from Baltimore, Kent, Prince George's, and Wicomico counties.

The code should be amended to hold similarly situated middle and high schools accountable. Other possible amendments might include lowering the suspension rate or mandating PBIS for schools suspending a disproportionate amount of minorities or students with disabilities. Legislators might also revive their previous attempts to place a moratorium on elementary school suspensions.¹¹⁴ A moratorium on suspensions for this group of children would reduce the state's suspension rate by 13%.¹¹⁵

One major concern posed by the previous bills was the conflict between the moratorium on elementary school suspensions and the Gun Free Schools Act and the Safe and Drug-Free Schools program.¹¹⁶ Under the federal Gun Free Schools Act, public schools are required to expel students who carry guns to school.¹¹⁷ The moratorium might have endangered the \$8.8 million in federal funding from the Safe and Drug-Free Schools program for the 2005 fiscal year.¹¹⁸ However, the Fiscal and Policy note did not discuss part of the Gun Free Schools Act which allows the chief administering officer of a local educational agency to modify the required expulsion for a student at the official's discretion.¹¹⁹ Regardless of this provision, future legislative efforts should create an exception for disciplinary procedures mandated by the Gun Free Schools Act as a means of placating the fiscal concerns of the General Assembly.

RECOMMENDATIONS

- ◆ Because students have a property interest in their education,¹²⁰ law students and advocacy organizations can collaborate with school systems to assist parents and students in the suspension appeals process.
- ◆ Because suspension imposes an increase risk of health and safety concerns on children, parents

should contact their school boards and legislatures and urge them to revise school disciplinary codes and support bills geared towards reducing suspensions.

- ◆ Provide students with the same due process for multiple short-term suspensions as they have for long-term suspensions.
- ◆ Because MSDE publishes data that is only illustrative of the disparate impact of suspension after careful examination and because the State offers broad discretion to local school boards in creating discipline codes for nonviolent offenses, these state officials should do more to educate the public about its policies and actively involve parents, teachers, and students in revising disciplinary policies. State officials should require school boards with disproportionate suspension rates to revise their codes or monitor teachers displaying an abnormal frequency of suspension.¹²¹

Endnotes

- 1) See generally, OSEP Center on Positive Behavioral Interventions and Supports, www.pbis.org.
- 2) See *Conflict Resolution/Peer Mediation (CR/PM) Research Project*, University of Florida College of Education, www.coe.ufl.edu/CRPM/results.htm. Researchers instituted conflict resolution/peer mediation programs at three socio-economically and racially diverse middle schools in North Central Florida over a four-year period. *Id.* At one of the middle schools, the number of disciplinary incidents dramatically declined after CR/PM implementation. *Id.* The other middle schools showed decreases, although less dramatic. *Id.* Disputants reported high levels of satisfaction with the mediation process and adherence to the agreement reached. *Id.* Parents of peer mediators reported mediation as a positive experience for their child and indicated skills were generalized to the home environment. *Id.* Teachers were generally supportive of the mediation program if they felt sufficiently involved and informed during planning and implementation. *Id.*
- 3) Loh, Laura. *Trial by jury of classmates, A court of teenagers at School No. 426 sits in judgment of student offenders – an in the process helps reduce suspensions and expulsions in the city school.* Baltimore Sun, March 2, 2005. Student defendants submit to the court's authority to avoid being suspended or expelled from school and marring their academic record. *Id.* Students involved in running the court say the penalties they hand out are more effective than suspensions because they keep offenders in school. *Id.* For example, a punishment of community service has to be completed in school and can include cleaning classrooms or helping teachers. *Id.*
- 4) Sharpe, Tom, Marty Brown and Kim Crider, *The effects of a sportsmanship curriculum intervention on generalized positive social behavior of urban elementary school students*, Journal of Applied Behavior Analysis, Winter 1995 Vol. 28, No. 4. Page 401-416. A study evaluating the effects of an elementary physical education curriculum in two urban schools resulted in an increase of positive behavior. *Id.* The curriculum focused on leadership and conflict-resolution behaviors. *Id.* The skills learned in P.E. were generalized outside of the P.E. setting. *Id.* Specific effects included: an immediate increase in the participants leadership and independent conflict-resolution behaviors; an increase in class instructional time; and a decrease in the frequency of student misbehavior. *Id.*
- 5) For number of students, See *Suspensions, Expulsions, and Health Related Exclusions, Maryland Public Schools, 2004-2005*, Maryland State Department of Education, Division of Planning, Results, and Information Management (November 2005). For number of suspension incidents, see *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*, Maryland State Department of Education, Division of Planning, Results and Information Management (September 2005), www.marylandpublicschools.org/msde. Many of the statistics in this brief were obtained by calculating raw numbers published by MSDE.
- 6) See *Suspensions, Expulsions, and Health Related Exclusions, Maryland Public Schools, 2004-2005*.
- 7) See *Preschool misfits? The Baltimore Sun*, May 24, 2005. A study by Yale University's child study center, the first nationwide research on preschool expulsions, showed that the most frequent reason for preschool expulsion was because of antisocial behavior, particularly aggression toward other children such as biting and kicking. *Id.* Researchers concluded that the reason for preschool expulsions and their disproportionate application by race and gender may be caused by the lack of uniform, state-wide disciplinary rules for pre-school programs. *Id.* The lack uniform rules give individual teachers great leeway in the application of discipline, which leaves room for individual bias. *Id.* Because most teachers lack training in behavior and psychology, they may not be able to correctly determine whether aggressive behavior is normal or severe. *Id.* Some children may just need attention or minor adjustments to help them behave. *Id.* This is especially true for minority boys. *Id.* Yale researchers found that in states like Michigan, where behavioral experts were brought into classrooms to assess children and provide support for teachers, expulsion rates were much lower. *Id.*
- 8) *Suspensions, Expulsions, and Health Related Exclusions, Maryland Public Schools, 2004-2005*
- 9) Noguera, Pedro A., *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, In Motion Magazine, October 19, 2003.
Disciplinary Practices, In Motion Magazine, October 19, 2003.
- 10) *Id.*
- 11) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*. Maryland State Department of Education, Division of Planning, Results and Information Management (September 2005), www.marylandpublicschools.org/msde.
- 12) See Table 4, *Maryland Department of Juvenile Services, FY 2005 Annual Statistical Report*, http://www.djs.state.md.us/pdf/2005stat_report-section1.pdf.
- 13) *Out of School Suspension and Expulsion, American Academy of Pediatrics Committee on School Health Policy Statement*, Pediatrics Vol. 112 No. 5, November 2003.
- 14) *Id.*

15) *Id.*

16) *Id.*

17) *Id.*

18) *Id.*

19) *Id.*

20) *Id.*

21) *Id.*

22) Centers for Disease Control and Prevention. *Health risk behaviors among adolescents who do and do not attend school – United States, 1992.* MMWR Morb Mortal Wkly Rep. 1994;43:129-132.

23) Skiba, Russell J., Reece L. Peterson & Tara Williams. *Office Referrals and Suspension: Disciplinary Intervention in Middle Schools, Education and Treatment of Children* Vol. 20, No. 3 August 1997, pages 295-315.

24) See Skiba, supra note 23.

25) See Skiba, supra note 23.

26) Skiba, Russell J., *Children Left Behind: The Disproportionate Impact of school Discipline on Students of Color*, Indiana Disproportionality Project, Indiana University-Bloomington. Presentation, Open Society Institute –Baltimore, November 18, 2003. See also *Out of School Suspension and Expulsion, American Academy of Pediatrics Committee on School Health Policy Statement, Pediatrics* Vol. 112 No. 5, November 2003.

27) See Skiba, supra note 23.

28) See Skiba, supra note 23

29) See Skiba, supra note 23.

30) Noguera, Pedro A. *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices, In Motion Magazine*, October 19, 2003.

31) Fultz, Allison I. *Making Kids Toe the Line in the Old Line State: The Disparate Application of Public School Discipline Policies in Maryland*, 11 *American University Journal of Gender, Social Policy and the Law*, Vol. 11, page 175 (2002).

32) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*, Maryland State Department of Education, Division of Planning, Results and Information Management, (September 2005), www.marylandpublicschools.org/msde.

33) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*, Maryland State Department of Education, Division of Planning, Results and Information Management, (September 2005) and *Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools, September 30, 2005*, Maryland State Department of Education, Division of Accountability and Assessment (January 2006), www.marylandpublicschools.org/msde.

34) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*, Maryland State Department of Education, Division of Planning, Results and Information Management, (September 2005); and *Maryland Special Education/Early Intervention Services Census Data & Related Tables, October 29, 2004, (Revised November 2005)*, Maryland State Department of Education, Division of Planning, Results, and Information Management, (November 2005), www.marylandpublicschools.org/msde.

35) See *Suspensions, Expulsions, and Health Related Exclusions*.

36) *Id.*

37) *Id.*

38) *Id.*

- 39) See Maryland Code of Regulations, 13A.01.18-20. A persistently dangerous school is defined as a school in which each year for 3 consecutive school years, the total number of student suspensions for more than 10 days or expulsions for any of a list of offenses equals 2.5 percent or more of the total number of students enrolled in the school.
- 40) Wu, Pink, Crain, & Moles, *Student suspension: A critical reappraisal*. The Urban Review, 14, pages 245-303.
- 41) Skiba, Russell J. *Children Left Behind: The Disproportionate Impact of school Discipline on Students of Color*, Indiana Disproportionality Project, Indiana University-Bloomington. Presentation, Open Society Institute –Baltimore, November 18, 2003. See also, Christle, Nelson, and Jolivet. *School characteristics related to the use of suspension*. University of Kentucky, 2003, www.kysafeschools.org.
- 42) Skiba, Russell J., Reece L. Peterson & Tara Williams. *Office Referrals and Suspension: Disciplinary Intervention in Middle Schools*. Education and Treatment of Children Vol. 20, No. 3 August 1997, pages 295-315.
- 43) *Id.*
- 44) *Id.*
- 45) Noguera, Pedro A. Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices, In Motion Magazine, October 19, 2003.
- 46) See, e.g., Gordon, Jane. *In Schools, Bad Behavior is Shown the Door*, The New York Times, November 16, 2003.
- 47) See, e.g., Skiba, R.J. *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*. Bloomington: Indiana University Education Policy Center. (2003).
- 48) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*. Data represent suspensions for “weapons” and “dangerous substances,” which include alcohol and tobacco.
- 49) Skiba, supra note 23.
- 50) Skiba, supra note 23.
- 51) *Maryland Public School Suspensions by School and Major Offense Category, 2004-2005*.
- 52) *Suspensions, Expulsions and Health Related Exclusions, Maryland Public Schools, 2004-2005*.
- 53) Atkins, McKay, Frazier, Jakobsons, Arvanitis, Cunningham, Brown, Lambrecht. *Suspensions and Detentions in an Urban, Low-Income School: Punishment or Reward?*, Journal of Abnormal Child Psychology, Vol. 30, No. 4, August 2002, pages 361-371.
- 54) *Suspensions, Expulsions, and Health Related Exclusions, Maryland Public Schools, 2004-2005*.
- 55) Kay, Liz F. *Good Behavior Pays off. Education: County schools are finding success with a Maryland program that emphasizes positive reinforcement, rewarding pupils for positive conduct*. The Baltimore Sun, November 14, 2004.
- 56) See generally, *OSEP Center on Positive Behavioral Interventions and Supports*, www.pbis.org; and PBS TeacherSource, *The Issues: Behavioral Concerns*, Amy McCart, M.S. Ed. and Ann Turnbull, Ed.D, www.pbs.org/teachersource/prek2/issues/402issues.shtm. To prepare for PBIS implementation, the school creates a leadership team, typically comprised of an administrator, a general education teacher, a special education teacher, a parent, and a behavioral specialist or school psychologist. *Id.* This group creates and monitors PBIS for the school throughout the year. *Id.* Before the school year begins the team creates a statement of purpose and clearly defined behavioral expectations, and established procedures for teaching and encouraging behavior expectations; discouraging problem behaviors, and monitoring and recording behavior data. *Id.*
- 57) See generally, *OSEP Center on Positive Behavioral Interventions and Supports*, www.pbis.org.
- 58) Muscott, Howard S, et al, *Positive Behavioral Interventions and Supports in New Hampshire: Preliminary Results of a Statewide System for Implementing Schoolwide Discipline Practices*, Education and Treatment of Children Vol. 27, No.4, Nov. 2004. Although research suggests that younger students adapt more quickly to PBIS implementation, high school implementation may still be successful if teachers commit to the system and expectations and rewards are geared towards to older audience.
- 59) *Id.*

- 60) *PBIS Maryland*, page 3, (Spring 2005), www.pbismaryland.org.
- 61) See Kay, Liz F., *School program ensures good behavior pays off, Arundel program stresses positive reinforcement*, The Baltimore Sun, Nov. 14, 2004.
- 62) Podiska, Jeanne M. *The Good Behavior Game: A Classroom Management Program for Schools*. Center for Integrating Education and Prevention Research in Schools, American Institutes for Research. Presented at OSI-Baltimore, July 12, 2005. For example, 50% of Baltimore City elementary school teachers need classroom management tools. *Id.*
- 63) See generally, Turbull, et al., *A blueprint for school-wide positive behavior support: implementation of three components*. Exceptional Children, Spring 2002 volume 68, issue 3, page 377.
- 64) See Muscott, supra note 58.
- 65) See Muscott, supra note 58.
- 66) See Podiska, supra note 62.
- 67) See, e.g., Podiska, supra note 62.
- 68) Netzel, Dawn M & Eber, Lucille. *Shifting From Reactive to Proactive Discipline in an Urban School District: A Change of Focus Through PBIS Implementation*. Journal of Positive Behavior Interventions, Volume 5, Muber 2, Spring 2003, pages 71-79.
- 69) See, e.g. Nakasato 2000 – Data based decisionmaking in Hawaii’s Behavior Support efforts, Journal of Positive Behavioral Interventions, 2, 247-351.
- 70) Netzel, supra note 68. After PBIS implementation, Thomas Jefferson School in Milan, Illinois saw a 67% drop in office discipline referrals and an 84% reduction in suspensions while concurrently increasing scores on state standardized tests. *Id.*
- 71) See Kay, Liz F., *School program ensures good behavior pays off, Arundel program stresses positive reinforcement*. Baltimore Sun Nov. 14, 2004; and *Maryland Public School Enrollment by Race/Ethnicity and Grade and Number of Schools, September 30, 1995*, Maryland State Department of Education, Division of Accountability and Assessment (January 2006).
- 72) *Id.*
- 73) *Id.*
- 74) *Exemplar Schools*, *PBIS Maryland*, page 4 (Spring 2004), www.pbismaryland.org.
- 75) *PBIS Maryland*, page 4 (Spring 2005).
- 76) *PBIS Maryland*, page 4 (Spring 2005).
- 77) *PBIS Maryland*, page 4 (Spring 2005).
- 78) *PBIS in Baltimore County: Dundalk Elementary and Parent Involvement*, *PBIS Maryland*, page 8 (Spring 2005), www.pbismaryland.org.
- 79) *PBIS in Charles County*, *PBIS Maryland*, page 10 (Spring 2005), www.pbismaryland.org.
- 80) Scott, Terrance M. & Susan B. Barrett. *Using Staff and Student Time Engaged in Disciplinary Procedures to Evaluate the Impact of School-Wide PBS*. Journal of Positive Behavior Interventions, Winter 2004; Vol. 6, No. 1. pages 21-27. See also Netzel, supra note 68 (describing proactive behavior planning as reducing the amount of time and energy teachers spent on behavioral problems).
- 81) *Id.*
- 82) Scott & Barrett, supra note 80.
- 83) Scott & Barrett, supra note 80.
- 84) Scott & Barrett, supra note 80.

85) Scott & Barrett, supra note 80. The administrator's salary was divided by the number of workdays, resulting in a daily pay rate of \$412.66.

86) *Id.*

87) Scott & Barrett, supra note 80. See also *Reinvesting Resources: Reducing Discipline Problems Increases Time for Instruction*, *PBIS Maryland*, page 3 (Spring 2004), www.pbismaryland.org.

88) Scott & Barrett, supra note 80. The daily cost of student instructional time was determined by dividing the district's yearly educational cost per student by the number of school days, resulting in a daily cost of \$43.77. *Id.*

89) *Anne Arundel County Public Schools: Instructional Time Saved*, *PBIS Maryland* page 6 (Spring 2005), www.pbismaryland.org.

90) Scott & Barrett, supra note 80.

91) *Id.*

92) *Anne Arundel County Public Schools*, *PBIS Maryland*, page 7 (Spring 2005), www.pbismaryland.org.

93) *Anne Arundel County Public Schools*, *PBIS Maryland*, page 7 (Spring 2005), www.pbismaryland.org.

94) *Anne Arundel County Public Schools: Harman Elementary Improves Reading and Math Scores*, *PBIS Maryland*, page 7 (Spring 2005), www.pbismaryland.org.

95) Williams, J, *Reducing the disproportionately high frequency of disciplinary actions against minority students: An assessment-based policy approach*. *Equity and Excellence*, 24 (2), pages 31-37.

96) *The BCPSS Student Discipline Code, School Year 2004-2005*. Information Guide for Students and parents, 2004-2005.

97) *Id.*

98) *Id.*

99) Loh, Laura. *Board revising school code of conduct, Document would provide more penalties guidance*. *The Baltimore Sun*. May 9, 2004; and *Anne Arundel County Public Schools 2004-2005 Student Handbook*, www.aacps.prh/html/studt/default/asp.

100) *Anne Arundel County Public Schools 2004-2005 Student Handbook*, www.aacps.prh/html/studt/default/asp.

101) *Id.*

102) *Anne Arundel County Public Schools, New Code of Student Conduct Electronic Survey Results, Executive Summary*. www.aacps.prh/html/studt/surveyresults.htm.

103) *Rules of the Baltimore City School Commissioners 2004*, Article 5 –Students, Section 507 Suspensions and Expulsions. Revised policy adopted August 26, 2003. [www.bcps.k12.md.us/School Board/Board Rules](http://www.bcps.k12.md.us/School_Board/Board_Rules).

104) *Id.* One quarter equals 45 school days. *Id.*

105) *Id.* A suspension for a period greater than ten days but not more than 45 days constitutes a long-term suspension. *Id.*

106) *Id.* See Section 507.06 *Long-Term Suspension or Expulsion*. An expulsion is the removal for more than one quarter from the school by the direction of the CEO or Chief Officer. *Id.*

107) *Id.* See Section 507.06 *Appeals Procedures*.

108) *Id.*

109) Podiska, supra note 62. GBG was developed in the 1960's by Barrish, Saunders, and Wolfe at the University of Kansas. *Id.*

110) *Id.*

111) *Id.*

112) *Id.*

113) Maryland Code, Education, §7-304.1, *Behavioral Programs*. The bill, HB1288, was sponsored by Delegates Marriott, Cryor, Healey, Heller, Hubbard, Jones, Kind and Patterson. The bill was unanimously passed on in the house, with amendments decreasing the suspension rate from 20% to 18% and added the option of implementing an alternative program instead of PBIS. The Senate passed the bill and Governor Ehrlich signed the bill into law on April 27, 2004.

114) See, e.g. Maryland Fiscal and Policy Note, 2004 Session, Senate Bill 760 – *Education - Elementary Schools – Moratorium on Suspension of Students*, www.mlis.state.md.us. The bill, sponsored by Senator Conway, placed a two-year moratorium on student suspensions from public elementary schools. *Id.* The bill required each local board of education to develop and implement an in-school alternative to suspension by the beginning of the 2004-2005 school year. *Id.* The bill received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee and was not passed. *Id.* Three previous attempts to pass similar measures failed during the 2003 and 2002 sessions. *Id.*

116) See *Suspensions, Expulsions, and Health Related Exclusions*, supra note 6.
See supra note 114.

117) *Id.*

118) *Id.*

119) See, *Gun Free Schools Act*, 20 U.S.C.A. § 7151.

120) *Goss v. Lopez*, 419 U.S. 565, 581 (1975) (delineating a student's right to education as a property interest).

121) In order to provide effective due process to students excluded from school for more than 10 days per school year, Maryland Code, Education Article §7-305(c) should be amended to state: "Procedure for more than 10 day suspension, cumulative exclusion exceeding 10 days in one school year, or expulsion." §7-305(c)(1) should be amended to state: "If a principal finds that a suspension of more than 10 school days, a series of suspensions that exceed 10 school days in one school year, or expulsion is warranted, the principal immediately shall report the matter in writing to the county superintendent." Finally, §7-305(c)(1) should be amended to state: "If after the conference the county superintendent or the county superintendent's designated representative finds that a suspension of more than 10 cumulative or consecutive school days or expulsion is warranted, the student or the student's parent or guardian may...."