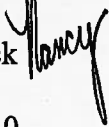




Nancy S. Grasmick
State Superintendent of Schools

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TO: Members of the State Board of Education

FROM: Nancy S. Grasmick 

DATE: December 14, 2010

SUBJECT: COMAR 13A.05.01 Provision of a Free Appropriate Public Education (Amend)
COMAR 13A.05.02 Administration of Services for Students with Disabilities (Amend)
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request permission to amend 13A.05.01 and 13A.05.02 concerning the provision of services for students with disabilities and administration of services to students with disabilities.

HISTORICAL BACKGROUND:

On June 22, 2009, the United States Supreme Court issued a decision in *Forest Grove School District v. T.A.*, hereafter referred to as *Forest Grove*, a case about tuition reimbursement for a child who was never found eligible and never received special education services from the public school. Currently, COMAR 13A.05.01.16C(4)(a) is inconsistent with *Forest Grove* and allows tuition reimbursement only if the child had previously received special education or related services from a local school system. The proposed amendment is consistent with *Forest Grove* as it allows a judge to order tuition reimbursement for a student without regard to whether the child previously received special education and related services.

The 2010 Maryland General Assembly passed House Bill 269 (HB 269) and Senate Bill 540 (SB 540). These bills amended Education Article §8-405, Annotated Code of Maryland requiring school personnel to provide parent(s) with an accessible copy of each assessment, report, data chart(s), draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting. The 2010 Maryland General Assembly also passed HB 1558, the Student Stigma Act, which changes references to emotional disturbance to “emotional disability.”



Additionally, following a review of data from the local school systems and public agencies in regards to identification of students with a developmental delay, a majority of children are identified as having a specific disability by age 7. Finally, at the recommendation of the Special Education State Advisory Committee (SESAC), a representative of the federally funded Parent Training and Information Center, known as Parents' Place of Maryland, become a permanent member of the SESAC to ensure that the concerns of parents of students with disabilities identified by Parents' Place of Maryland are brought to the attention of the SESAC.

EXECUTIVE SUMMARY:

The purposes of the amendments proposed to COMAR 13A.05.01 and 13A.05.02 make revisions as a result of State legislation, and make technical revisions.

ACTION:

Request permission to publish the proposed amendments to COMAR 13A.05.01 and 13A.05.02 in the **Maryland Register** using the following **TENTATIVE** timeline:

Maryland Register Issue Date	February 25, 2011
Hearing	N/A
30-Day Open Comment	February 25, 2011 - March 25, 2011
Adoption	April 26-27, 2011

NSG/CAH:alp

Attachments

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 01 Provision of a Free Appropriate Public Education

Authority: Education Article, §§2-205, 8-301—8-307 and 8-401—8-416; Article 49D;
Annotated Code of Maryland Federal Statutory Reference: 20 U.S.C. §1400 et seq.;
Federal Regulatory References: 34 CFR 300, 301, 303, and 99

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (7) (text unchanged)

(8) "Autism" means a developmental disability that:

(a) Does not include emotional [disturbance] *disability* as defined in §B (23) of this regulation;

(b) – (e) (text unchanged)

(9) – (22) (text unchanged)

(23) Emotional [Disturbance] *Disability*.

(a) "Emotional [disturbance] *disability*" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a student's educational performance:

(i) – (v) (text unchanged)

(b) "Emotional [disturbance] *disability*" includes schizophrenia.

(c) "Emotional [disturbance] *disability*" does not include a student who is socially maladjusted, unless it is determined that the student has an emotional [disturbance] *disability*.

COMAR 13A.05.01
9.17.10

KEY:
Italics = new material
Bold Brackets = deletion

(24) – (76) (text unchanged)

(77) "Student with a developmental delay" means a student within the age range of 3 years old through [9] 7 years old assessed and evaluated in accordance with Regulations .05 and .06 of this chapter as having:

(a) – (c) (text unchanged)

(78) "Student with a disability" means a student, 3 years old through the end of the school year in which the student turns 21 years old:

(a) Evaluated in accordance with Regulation .06 of this chapter as having:

(i) – (ii) (text unchanged)

(iii) Emotional [disturbance] *disability*,

(iv) – (xii) (text unchanged)

.06 Evaluation, Reevaluation, and Eligibility.

A. – C. (text unchanged)

D. Determination of an SLD.

(1) (text unchanged)

(2) The IEP team shall determine that a student has an SLD if:

(a) (text unchanged)

(b) The student's lack of achievement described in §D (2) of this regulation is not primarily the result of:

(i) – (ii) (text unchanged)

(iii) Emotional [disturbance] *disability*;

(iv) – (vi) (text unchanged)

(3) – (4) (text unchanged)

COMAR 13A.05.01
9.17.10

KEY:
Italics = new material
Bold Brackets = deletion

(5) When a student is suspected of having an SLD, the IEP team shall prepare a written report that includes:

(a) – (e) (text unchanged)

(f) The determination of the IEP team concerning the effects of visual, hearing, or motor disability, intellectual disability, emotional [disturbance] *disability*, cultural factors, environmental or economic disadvantage, or limited English proficiency on the student's achievement level;

(g) – (h) (text unchanged)

(6) – (7) (text unchanged)

.07 Individualized Education Program (IEP) Team.

A. – C. (text unchanged)

D. Parent Participation.

(1) – (2) (text unchanged)

(3) Consistent with Education Article §8-405(c), Annotated Code of Maryland, appropriate school personnel shall provide the parent of a student with a disability an accessible copy of:

(a) Each assessment, report, data chart(s), draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting; and

(b) The completed IEP not later than five (5) business days after a scheduled IEP or other multidisciplinary team meeting.

[(3)] (4)—[(9)] (10) (text unchanged)

.16 Students in Nonpublic Schools.

A. – B. (text unchanged)

C. Unilateral Placement in a Nonpublic School by a Parent when FAPE is at Issue.

(1) – (3) (text unchanged)

COMAR 13A.05.01
9.17.10

KEY:
Italics = new material
Bold Brackets = deletion

(4) If the parent decides to enroll the student in a nonpublic school without the consent or referral of the local school system, an impartial hearing officer or a court may require the local school system to reimburse the parent for the reasonable costs of the placement if the:

[(a) Student had previously received special education and related services under the authority of the local school system; and

(b) Impartial hearing officer or court determines that the] local school system had not made FAPE available to the student in a timely manner before the parent enrolled the student in the nonpublic school, *consistent with 34 CFR §300.148(c)*.

(5) – (9) (text unchanged)

COMAR 13A.05.01
9.17.10

KEY:
Italics = new material
Bold Brackets = deletion

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 02 Administration of Services for Students with Disabilities

Authority: Education Article, §§2-205, 8-301—8-307 and 8-401—8-416; Human Services Article, §§8-401—8-409; Labor and Employment Article, §§11-801 and 11-901 et seq.; Annotated Code of Maryland Federal Statutory Reference: 20 U.S.C. §§1408, 1412, 1413, and 1437; Federal Regulatory References: 34 CFR 300 and 301

.05 State Advisory Committee.

A. – C. (text unchanged)

D. The State Advisory Committee shall include:

(1) – (11) (text unchanged)

(12) Representative of the State Parent Training and Information Center

E. – I. (text unchanged)

COMAR 13A.05.02
9.17.10

KEY:
Italics = new material
Bold Brackets = deletion

IMPACT STATEMENTS

Part A
(check one option)

Estimate of Economic Impact

The proposed action has no economic impact.

or

The proposed action has an economic impact. Complete the following form in its entirety.

I. Summary of Economic Impact.

The Maryland State Department of Education (MSDE), local school systems, and public agencies will need to expend existing federal, State, and local funds to provide professional development on the implementation of these regulations and revisions to policies and procedures. For the implementation of professional development, the MSDE has allocated funds to local school systems, and public agencies to offset the cost of developing professional development materials and conducting professional development activities for administrators, general educators, special educators, related service personnel, parents, and advocates.

II. Types of Economic Impacts.

Revenue (R+/R-)
Expenditure (E+/E-) Magnitude

A. On issuing agency:

Professional development	(E+)	\$150,000
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B. On other State agencies:

Professional development	(E+)	\$50,000
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C. On local governments:

Professional development	(E+)	\$50,000
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Benefit (+)
Cost (-) Magnitude

- D. On regulated industries or trade groups: NONE
- E. On other industries or trade groups: NONE
- F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Funds are needed to revise policies and procedures, develop professional development materials for local school systems, public agencies, Preschool Partners, Partners for Success Centers, families, and advocates. It is expected that the State, local school systems, and public agencies will fund this professional development with existing funding sources.

B. Funds are needed to revise interagency agreements, policies, and procedures and to conduct professional development for agency personnel in public agencies, for the implementation of regulations. It is expected that the State, local school systems, and public agencies will fund this professional development with existing funding sources.

C. Funds are needed by local school systems, and public agencies for the revision and distribution of local policies and procedures for the implementation of these regulations and professional development for school personnel and parents. It is expected that the State, local school systems, and public agencies will fund this professional development with existing funding sources.

Part B
(check one option)

Economic Impact on Small Businesses

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

or

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Impact on Individuals with Disabilities
(Check one option)

The proposed action has no impact on individuals with disabilities.

or

The proposed action has an impact on individuals with disabilities as follows:

The proposed actions implement the Individuals with Disabilities Education Act of 2004 for students with disabilities to ensure the provision of a free appropriate public education (FAPE).

Part C

(For legislative use only; not for publication.)

A. Fiscal Year in which regulations will become effective: **FY 2011**

B. Does the budget for fiscal year in which regulations become effective contain funds to implement the regulations?



Yes



No

C. If "yes," state whether general, special (exact name), or federal funds will be used:

Individuals with Disabilities Education Act (IDEA) Part B funds will be used to provide professional development.

D. If "no," identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Comparison to Federal Standards

(Check one option)

- There is no corresponding federal standard to this proposed regulation.

or

- There is a corresponding federal standard to this proposed regulation. Please give corresponding federal standard and if the regulation is not more restrictive or stringent give justification.

34 C.F.R. § 300.148 is the federal standard which corresponds to the proposed revision to COMAR 13A.05.01.16C(4). However, the COMAR citation referenced is in need of revision as per the precedent established by the decision in *Forest Grove School District v. T.A.*

On June 22, 2009, the United States Supreme Court issued a decision in *Forest Grove School District v. T.A.*, a case about tuition reimbursement for a child who was never found eligible and never received special education services from the public school. The revision to COMAR would ensure that state regulation is consistent with the court's decision.

Additionally, 34 C.F.R. § 300.8(b) and 34 C.F.R. § 300.111(b) reference specific age ranges of 3 – 9 or any subset of that range. Thus, following a review of data from the local school systems and public agencies in regards to identification of students with a developmental delay, a majority of children are identified as having a specific disability by age 7.

or

- In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:
- (1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:
 - (2) Benefit to the public health, safety or welfare, or the environment:
 - (3) Analysis of additional burden or cost on the regulated person:
 - (4) Justification for the need for more restrictive standards:

IMPACT STATEMENTS

Part A
(check one option)

Estimate of Economic Impact

The proposed action has no economic impact.

or

The proposed action has an economic impact. Complete the following form in its entirety.

I. Summary of Economic Impact.

II. Types of Economic Impacts.	<u>Revenue (R+/R-)</u> <u>Expenditure (E+/E-) Magnitude</u>
A. On issuing agency:	NONE
B. On other State agencies:	NONE
C. On local governments:	NONE
D. On regulated industries or trade groups:	NONE
E. On other industries or trade groups:	NONE
F. Direct and indirect effects on public:	NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

Part B
(check one option)

Economic Impact on Small Businesses

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

or

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Impact on Individuals with Disabilities
(Check one option)

The proposed action has no impact on individuals with disabilities.

or

The proposed action has an impact on individuals with disabilities as follows:

The proposed actions implement the Individuals with Disabilities Education Act of 2004 for students with disabilities to ensure the provision of a free appropriate public education (FAPE). The proposed action also adds a representative of Parents' Place of Maryland to the membership of the Special Education State Advisory Committee (SESAC).

Part C

(For legislative use only; not for publication.)

- A. Fiscal Year in which regulations will become effective: **FY 2011**
- B. Does the budget for fiscal year in which regulations become effective contain funds to implement the regulations?



Yes



No

- C. If "yes," state whether general, special (exact name), or federal funds will be used:

Individuals with Disabilities Education Act (IDEA) Part B funds will be used to reimbursement of travel expenses, if appropriate.

- D. If "no," identify the source(s) of funds necessary for implementation of these regulations:

- E. If these regulations have no economic impact under Part A, indicate reason briefly:

The addition of a single new member to the Special Education State Advisory Committee (SESAC) does not impact the funds allocated for use to operate the SESAC.

If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Comparison to Federal Standards
(Check one option)

There is no corresponding federal standard to this proposed regulation.

or

There is a corresponding federal standard to this proposed regulation. Please give corresponding federal standard and if the regulation is not more restrictive or stringent give justification.

34 C.F.R. § 300.168 provides a list of the required membership of the state advisory panel. The standard does not require a representative of the State Parent Training and Information Center known as Parents' Place of Maryland.

or

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

- (1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

- (2) Benefit to the public health, safety or welfare, or the environment:

- (3) Analysis of additional burden or cost on the regulated person:

- (4) Justification for the need for more restrictive standards: