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State Superintendent of Schools

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**TO:** Members of the State Board of Education  
**FROM:** Nancy S. Grasmick <sup>Nancy</sup> State Superintendent of Schools  
**DATE:** December 10-11, 2009  
**SUBJECT:** COMAR 13A.03.02.09-1 (Re-Propose)  
*Appeal of Denial of Diploma for Failure to Meet HSA Requirement*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

To authorize the publication of COMAR 13A.03.02.09-1 to continue the appeal process for students who may be denied the Maryland High School Diploma for failure to meet the High School Assessment (HSA) graduation requirement. The regulation, as rewritten, will continue to address the needs of certain students, particularly special education and English Language Learners.

See Attachment for proposed COMAR changes.

**BACKGROUND:**

The State Board of Education approved COMAR 13A.03.02.09 in December 2008 as emergency regulations establishing a limited waiver process for certain eligible seniors in the Class of 2009 who had not met the HSA requirement for the Maryland High School Diploma. The regulation included a provision for terminating after July 22, 2009, but also contained a provision allowing the State Board of Education to consider re-promulgation of the regulation or some variation of it for the 2009-2010 school year.

Information presented to the State Board in September following an analysis of the use of the waiver by students graduating in the Class of 2009 showed the waiver proved to be most beneficial to special education students and English Language Learners. While some students were affected by local school system issues related to the scheduling or sequencing of courses or intervention opportunities, these numbers are expected to decrease as local school systems address these areas of concern.

**EXECUTIVE SUMMARY:**

The proposed changes to COMAR 13A.03.02.09-1 will continue to address the needs of special education students and English Language Learners. The changes also include a provision to allow a waiver for a student who moved to Maryland in his or her senior year, has passed all HSA courses, but has failed the government HSA, and has had no adequate opportunity for intervention. This provision is expected to be particularly beneficial to students who transfer into the state as a result of the federal Base Realignment and Closure (BRAC). The HSA in government is the only HSA not required by NCLB.



The proposed changes include two sunset provisions for students affected by local school system issues, giving local school systems adequate time to implement changes required to address these issues.

- Waivers for students who do not meet the HSA requirement because of local school system scheduling or sequencing of courses and test taking will sunset at the close of the 2009-2010 school year.
- Waivers for students who do not meet the HSA requirement because the local school system did not provide adequate intervention opportunities will sunset June 30, 2015.

**ACTION:**

Permission to publish the proposed changes to COMAR 13A.03.02.09-1 in accordance with the following TENTATIVE timeline:

Maryland Register Issue Date	January 29, 2010
Hearing	N/A
30-Day Open Comment Ends	March 2, 2010
Adoption	March 23-24, 2010

NSG:sks  
Attachment

**.09-1 Appeal of Denial of Diploma for Failure to Meet HSA Requirement.**

A. A school system shall notify each senior and the senior's parents or guardians on or before the end of February of the senior year if a student may not graduate. The notice shall explain:

- (1) The reasons the student may not graduate;
- (2) The options available to meet all graduation requirements;
- (3) That a waiver of the High School Assessment (HSA) graduation requirement may be one of the options, if the student meets the criteria set forth in §§C and E of this regulation;
- (4) The waiver process and timeline; and
- (5) That parents or guardians may submit information in writing to the principal concerning eligibility of their child for the waiver.

B. On or before the end of February, the principal shall report to the local superintendent the name and student identification number of each student identified in the February notice .

C. On or before April 1, the school system shall identify each student who may fail to graduate because:

- (1) The student has taken none of the required HSAs; or
- (2) The student has taken some or all of the HSAs and failed some or all of them.

D. On or before April 1, the principal shall report to the local superintendent the name and student identification number of each student identified as meeting the criteria in §C of this regulation..

E. By April 1, for each senior identified in §C of this regulation, the school principal shall consider whether to recommend to the local superintendent a waiver of the HSA graduation requirements that the student has not fulfilled to date if:

- (1) The student meets the following criteria:
  - (a) The student has or will meet all other graduation requirements;
  - (b) The student has or will take all required HSAs before the graduation date; and
  - (c) If the student had an opportunity to participate in one or more interventions, or remediation opportunities, including the Bridge Plan, the student participated in them; and
- (2) The student is prevented from meeting the HSA graduation requirements because:
  - (a) Of a decision made by the local school system about scheduling, course sequencing or test taking.
  - (b) Of a decision made by the local school system concerning the provision of adequate interventions as required by Regulation .07D of this chapter.
  - (c) The student experienced a special, extraordinary, or extenuating circumstance or

combination of circumstances preceding the administration of the most recent HSA, such as a recent death in the immediate family, a serious or prolonged illness or pregnancy with medical complications, an accident causing serious injury, or a destructive house fire; or

(d) The student moved to the United States in the junior or senior year and the student is literate in the student's native language but not literate in English.

(e) The student moved to Maryland in the senior year, has passed all the HSA courses, but has failed the related HSA(s), and has had no adequate opportunity for intervention.

F. On or about April 1, the principal shall notify the student and the student's parents or guardians that the student is being considered for a waiver of the HSA graduation requirements that the student has not fulfilled to date. The notice shall explain the waiver decision-making process.

G. On or before May 1, the principal of the high school shall make an HSA waiver recommendation to the local superintendent for each student who meets the criteria set forth in §E of this regulation with the participation of:

- (1) The student's IEP team, if the student is a student with disabilities;
- (2) The English Language Learner staff, if the student is an English Language Learner;
- (3) Other school personnel; or
- (4) One or more of them.

H. The principal shall explain the reason for each recommendation under §G of this regulation, whether the recommendation is to grant or deny the waiver.

I. The local superintendent shall review each recommendation and shall:

- (1) Grant or deny the waiver;
- (2) Promptly notify the student and the student's parent or guardian of the decision; and
- (3) If the waiver is granted, include in the notification the local procedures and requirements that must be met for a diploma to be awarded.

J. The superintendent's decision in this matter is not appealable to the local board of education, but may be appealed to the State Superintendent of Schools.

K. A student or the student's parents or guardians may appeal the waiver denial to the State Superintendent by sending a written appeal letter explaining why the waiver denial was an arbitrary or unreasonable decision. The State Superintendent may affirm or reverse the local superintendent's decision and shall inform the student, the student's parents or guardians, the local superintendent, and the State Board in writing of the decision.

L. The decision of the State Superintendent may be appealed to the circuit court pursuant to Maryland Rules 7-201, et seq. On appeal:

- (1) If the State Superintendent has reversed the local superintendent's decision to deny the HSA waiver and the local school system appeals that decision, the State Superintendent shall defend the decision on appeal; or

(2) If the State Superintendent has affirmed the local superintendent's decision and the aggrieved student appeals, the local superintendent shall defend the State Superintendent's decision on appeal.

M. By August 1, the local superintendent shall send a report to the State Superintendent or the State Superintendent's designee on waiver decisions rendered under this regulation.

N. Nothing in this regulation is intended to establish any right to participate in the graduation ceremony while an appeal is pending. Participation in the graduation ceremony remains at the discretion of the local superintendent.

O. Section E2(a) of this Regulation shall sunset on June 30, 2010 with no further action of the State Board of Education.

P. Section E2(b) of this Regulation, upon review, approval, and promulgation of an amendment of these Regulations by the State Board of Education, shall sunset on June 30, 2015.

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## IMPACT STATEMENTS

### *Part A*

(check one option)

#### Estimate of Economic Impact

The proposed action has no economic impact. (**Minimal**)

or

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

**I. Summary of Economic Impact.**

The proposed action has only minimal impact as explained below.

**II. Types of Economic Impacts.**

Revenue (R+/R-)

Expenditure (E+/E-) Magnitude

**No Additional Expense**

A. On issuing agency:

**The impact on the Maryland State Department of Education would be minimal with the possibility of a slight increase in the number of AYP school appeals that might need to be handled by the Office of the State Superintendent of Schools.**

B. On other State agencies:

**None**

C. On local governments:

**Local school systems could see a slight increase in the time required to process Waiver requests for local students.**

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.)**

**Additional time required to process waiver appeals would be absorbed with existing staff.**

**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 change would have a positive impact on individuals with disabilities. Some students with disabilities are not passing the High School Assessments and are in danger of not graduating. The waiver will allow students to graduate on time when their failure to satisfy the requirement is due to no fault of their own but rather to issues such as the scheduling of course sequences in a particular school may have prevented the student from enrolling in the HSA-course in time to receive the instruction, take the assessment, participate in remediation, and meet the requirement before the anticipated graduation date for the Class of 2010.**

*Part C*

(For legislative use only; not for publication.)

- A. Fiscal Year in which regulations will become effective: **FY10**
- 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:
- D. If "no," identify the source(s) of funds necessary for implementation of these regulations:  
**No funds are required to implement this regulation.**
- E. If these regulations have no economic impact under Part A, indicate reason briefly:  
**The waiver will ensure that the possible failure of some students in the Class of 2010 to receive a Maryland High School Diploma is not due to extenuating circumstances or through no fault of the student because of course sequences, opportunities to participate in remediation, or opportunities to retake the HSA or complete the HSA graduation requirement.**
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

**The proposed change will have only minimal impact on small businesses, but will ensure that small businesses that hire graduates with Maryland High School Diplomas will know the graduate has met the standards/requirements for high school graduation stipulated by the Maryland State Department of Education.**



**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, but the proposed regulation is not more restrictive or stringent.

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: