



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

TO: Members of the State Board of Education

FROM: Nancy S. Grasmick *Nancy*

DATE: April 26, 2011

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)
ADOPTION

PURPOSE:

The purpose of this action is to request State Board adoption of the proposed regulations that were published in the Maryland Register on February 25, 2011. These regulations amend current State Board regulations in COMAR 13A.05.01 Provision of a Free Appropriate Public Education and COMAR 13A.05.02 Administration of Services for Students with Disabilities, with a tentative effective date of May 30, 2011.

HISTORICAL BACKGROUND:

Since submission of the proposed amendments to the State Board of Education on December 14, 2010, the Division of Special Education/Early Intervention Services (DSE/EIS) followed established procedures for promulgation of the regulations. On January 6 and 20, 2011, the DSE/EIS disseminated information to local school system personnel, educational organizations, advocacy organizations, stakeholders, and the Special Education State Advisory Committee (SESAC), on the tentative Maryland Register publication date and how the public should provide the Department with written comment. Proposed COMAR amendments were published in the Maryland Register, Vol. 38, Issue 5, Friday, February 25, 2011 (Attachment I). Personnel within DSE/EIS conducted two public hearings to solicit public input on the proposals after publication in the Maryland Register. The public hearings resulted in no comments being received. Two sets of written comments were received via U.S. mail (Attachment III). The written comments were fully in support of the proposed amendments with no suggestions offered or need for revision. (Attachment II).

Members of the State Board of Education
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EXECUTIVE SUMMARY:

The purpose of the adoption of amendments is to make revisions as a result of State legislation, and make technical revisions.

ATTACHMENT I	Maryland Register, Vol. 38, Issue 5, Friday, February 25, 2011
ATTACHMENT II	Analysis of Comments
ATTACHMENT III	Copies of Comments

ACTION:

I request the State Board of Education adopt proposed amendments to COMAR 13A.05.01 Provision of a Free Appropriate Public Education and COMAR 13A.05.02 Administration of Services for Students with Disabilities. The tentative timeline is as follows:

ADOPTION:	April 26, 2011
EFFECTIVE DATE:	May 30, 2011

NSG/CAH/DRR
Attachments

PROPOSED ACTION ON REGULATIONS

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**Title 13A
STATE BOARD OF
EDUCATION**

**Subtitle 05 SPECIAL INSTRUCTIONAL
PROGRAMS**

**13A.05.01 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

**Notice of Proposed Action
[11-054-F]**

The Maryland State Board of Education proposes to amend Regulations .03, .06, .07, and .16 under COMAR 13A.05.01 Provision of a Free Appropriate Public Education. This action was considered at the Maryland State Board of Education meeting on December 14, 2010.

Statement of Purpose

The purpose of this action is to amend 13A.05.01 concerning the provision of services for students with disabilities. Currently, COMAR 13A.05.01.16C(4)(a) is inconsistent with the Supreme Court's decision in *Forest Grove v. T.A.*, 129 S.Ct. 2484 (2009), which authorizes reimbursement for private special education services when a public school fails to provide a free appropriate public education (FAPE) and the private school placement is appropriate, regardless of whether the child previously received special education services. Currently, COMAR 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 v. T.A.*, 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. Also, the 2010 Maryland General Assembly passed H.B. 269 and S.B. 540. These bills amended Education Article, §§-403, Annotated Code of Maryland, to require school personnel to provide parents with an accessible copy of each assessment, report, data chart, draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least 5 business days before the scheduled meeting. The 2010 Maryland General Assembly also passed H.B. 1558, the Student Stigma Act, which requires references to emotional disturbance to be changed to "emotional disability." Finally, under 34 C.F.R. §111(b)(1), States are allowed to define "developmental delay" for ages 3 to 9 or any subset of that age range. Following a review of data from Maryland, local school systems and public agencies in regards to identification of students with a developmental delay, a majority of children in Maryland are identified as having a specific disability by age 7. The age range for developmental disability is therefore changed to 3 to 7.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE), local school systems, and public

agencies will need to expand 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 Impact	Revenue (R+/R-) Expenditure (E+/E-)	
		Magnitude
A. On issuing agency: Professional development	(E+)	\$150,000
B. On other State agencies: Professional development	(E+)	\$50,000
C. On local governments: Professional development	(E+)	\$50,000
	Benefit (+) Cost (-)	
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 and to 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. For the implementation of these regulations, funds are needed to revise interagency agreements, policies, and procedures and to conduct professional development for agency personnel in public agencies. 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.

Economic Impact on Small Businesses

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

PROPOSED ACTION ON REGULATIONS

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Impact on Individuals with Disabilities

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).

Opportunity for Public Comment

Comments may be sent to Allen L. Perrigan, Education Program Specialist, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0250, or email to aperrigan@made.state.md.us, or fax to 410-333-1571. Comments will be accepted through March 28, 2011. A public hearing will be held March 28, 2011, 9 a.m. — 12 p.m., Maryland State Department of Education, 200 West Baltimore Street, 9th Floor Conference Room, Baltimore, Maryland 21201.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on April 26 and 27, 2011, at 200 West Baltimore Street, Baltimore, MD 21201.

.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)—(c) (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.

(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)

(b) (text unchanged)

(79)—(85) (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)

(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)

B. (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(e), 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, draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least 5 business days before the scheduled meeting; and

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

[(3)] (4)—[(9)] (10)

.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)

(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)

NANCY S. GRASMICK
State Superintendent of Schools

PROPOSED ACTION ON REGULATIONS

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Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

13A.05.02 Administration of Services for Students with Disabilities

Authority: Education Article, §§2-205, 3-301—3-307, and 3-401—3-416; 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

Notice of Proposed Action
[11-097-F]

The Maryland State Board of Education proposes to amend Regulation .05 under COMAR 13A.05.02 Administration of Services for Students with Disabilities. This action was considered at the Maryland State Board of Education meeting on December 14, 2010.

Statement of Purpose

The purpose of this action is to amend COMAR 13A.05.02 concerning the administration of services to students with disabilities. 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, will 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.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

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).

Opportunity for Public Comment

Comments may be sent to Allan L. Ferrigan, Education Program Specialist, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0250, or email to aperrigan@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through March 28, 2011. A public hearing will be held on March 15, 2011, 9 a.m. — 12 p.m., at Maryland State Department of Education, 200 West Baltimore Street, 9th Floor Conference Room, Baltimore, Maryland 21201.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on April 26 and 27, 2011, at 200 West Baltimore Street, Baltimore, MD 21201.

.05 State Advisory Committee.

A.—C. (text unchanged)

D. The State Advisory Committee shall include:

(1)—(9) (text unchanged)

(10) Representatives from the State juvenile and adult corrections agencies; [and]

(11) A representative of the Maryland Department of Human Resources (DHR); and

(12) A representative of the State Parent Training and Information Center.

E.—I. (text unchanged)

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 14 CHILD AND FAMILY DAY CARE

13A.14.10 Child Care Accreditation Support Fund

Authority: State Government Article, §8-206, Annotated Code of Maryland

Notice of Proposed Action

[11-093-F]

The State Superintendent of Schools proposes to amend Regulations .02— under COMAR 13A.14.10 Child Care Accreditation Support Fund.

Statement of Purpose

The purpose of this action is to clarify and add certain definitions, expand reimbursable costs made under the Accreditation Support Fund, and increase fund award amounts.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Awards made under the Child Care Accreditation Support Fund are proposed for increase to offset increases in the costs of becoming accredited. It is estimated that the increased awards will cost the State a total of \$1,287,500 during FY 2011.

II. Types of Economic Impact.

Revenue (+/R-)	Expenditure (E+/E-)	Magnitude
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A. On issuing agency:

(1) Cost of support for family child care providers	(E+)	\$300,000
(2) Cost of support for child care centers	(E+)	\$987,500

B. On other State agencies:

NONE

C. On local governments:

NONE

Benefit (+)	Cost (-)	Magnitude
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D. On regulated industries or trade groups:

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
COMAR 13A.05.01 Provision of a Free Appropriate Public Education (FAPE)			
.03 DEFINITIONS			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.03B(8, 23, 78) – We write to express our support for the proposed changes to COMAR 13A.05.01, which would change “emotional disturbance” to “emotional disability” in accord with the Student Stigma Bill enacted last year by the Maryland General Assembly.	No Change	MSDE agrees that the change from “emotional disturbance” to “emotional disability” would be in accord with the Student Stigma Act.
Special Education State Advisory Committee (SESAC)	COMAR 13A.05.01.03B(8, 23, 78) – The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities: Changing the term “emotional disturbance” to emotional disability related to the enactment of the Student Stigma Act in 2010.	No Change	MSDE agrees that the change from “emotional disturbance” to “emotional disability” would be in accord with the Student Stigma Act.
.06 EVALUATION, REEVALUATION, AND ELIGIBILITY			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.06(D)(2, 5) – We write to express our support for the proposed changes to COMAR 13A.05.01, which would change “emotional disturbance” to “emotional disability” in accord with the Student Stigma Bill enacted last year by the Maryland General Assembly.	No Change	MSDE agrees that the change from “emotional disturbance” to “emotional disability” would be in accord with the Student Stigma Act.

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
Special Education State Advisory Committee (SESAC)	<p>COMAR 13A.05.01.06(D)(2, 5) – The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities:</p> <p>Changing the term “emotional disturbance” to emotional disability related to the enactment of the Student Stigma Act in 2010.</p>	No Change	MSDE agrees that the change from “emotional disturbance” to “emotional disability” would be in accord with the Student Stigma Act.
.07 INDIVIDUALIZED EDUCATION PROGRAM (IEP) TEAM			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.07(D)(3) – We write to express our support for the proposed changes to COMAR 13A.05.01, which would codify the requirements of HB 269/SB 540 regarding IEP documents enacted last year by the Maryland General Assembly.	No Change	MSDE agrees that the proposed change would codify the requirements of HB 269/SB 540 regarding IEP documents enacted last year by the Maryland General Assembly.
Special Education State Advisory Committee (SESAC)	<p>COMAR 13A.05.01.07(D)(3) – The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities:</p> <p>Codifying the requirements of HB 269/SB 540 regarding documents discussed at an IEP meeting</p>	No Change	MSDE agrees that the proposed change would codify the requirements of HB 269/SB 540 regarding IEP documents enacted last year by the Maryland General Assembly.
.16 STUDENTS IN NONPUBLIC SCHOOLS			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.16(C)(4)(a) – We write to express our support for the proposed changes to COMAR 13A.05.01, which would bring Maryland in line with the ruling by the United States Supreme Court in the <i>Forest Grove</i> case.	No Change	MSDE agrees that the proposed change would bring Maryland in line with the ruling by the United States Supreme Court in the <i>Forest Grove</i> case.

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
Special Education State Advisory Committee (SESAC)	<p>COMAR 13A.05.01.16(C)(4)(a) – The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities:</p> <p>Aligning Maryland with the Supreme Court’s decision in <i>Forest Grove v. T.A.</i></p>	No Change	MSDE agrees that the proposed change would bring Maryland in line with the ruling by the United States Supreme Court in the <i>Forest Grove</i> case.
COMAR 13A.05.02 Administration of Services for Students with Disabilities			
.05 STATE ADVISORY COMMITTEE			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.02(D)(12) – We support the addition of Parents’ Place of Maryland, the state’s parent training and information center, to the Special Education State Advisory Committee; although not legally required, membership by Parents’ Place is good policy and it ensures that the voice of parents on the committee will be heard.	No Change	MSDE agrees that the proposed change although not legally required, membership by Parents’ Place is good policy and it ensures that the voice of parents on the committee will be heard.
Special Education State Advisory Committee (SESAC)	<p>COMAR 13A.05.02(D)(12) – The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities:</p> <p>Adding the state’s parent training and information center to the SESAC.</p>	No Change	MSDE agrees that the proposed change although not legally required, membership by Parents’ Place is good policy and it ensures that the voice of parents on the committee will be heard.

Education Advocacy Coalition for Students with Disabilities

March 9, 2011

Via Facsimile and Regular Mail

Allan Perrigan
Education Program Specialist
Maryland State Department of Education
200 W. Baltimore Street
Baltimore, Maryland 21201

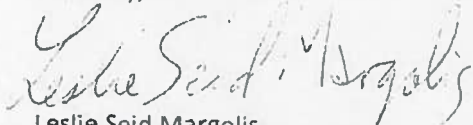
Re: Proposed Revisions to COMAR 13A.05.01

Dear Mr. Perrigan:

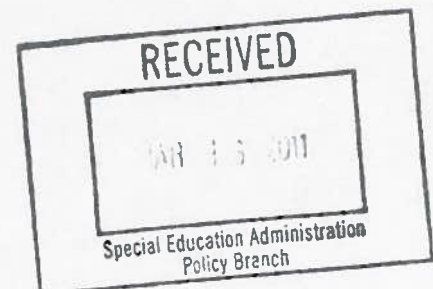
The Education Advocacy Coalition for Students with Disabilities (EAC) is a coalition of more than 30 organizations and individuals concerned with special education in the state of Maryland. We write to express our support for the proposed changes to COMAR 13A.05.01, which would change "emotional disturbance" to "emotional disability" in accord with the Student Stigma Bill enacted last year by the Maryland General Assembly, and which would codify the requirements of HB 269/SB 540 regarding IEP documents, also enacted by the Maryland General Assembly last year. In addition, the proposed regulations would bring Maryland in line with the ruling by the United States Supreme Court in the *Forest Grove* case. Each of these changes is required to ensure that Maryland school districts can fulfill their statutory responsibilities. Finally, we support the addition of Parents' Place of Maryland, the state's parent training and information center, to the Special Education State Advisory Committee; although not legally required, membership by Parents' Place is good policy and it ensures that the voice of parents on the committee will be heard.

Thank you for the opportunity to comment on the proposed regulations. Should you have any questions about our comments, please feel free to contact me at 410-727-6352, extension 2505 or lesliem@mdlclaw.org.

Sincerely,



Leslie Seid Margolis
Managing Attorney, Maryland Disability Law Center
Chairperson, Education Advocacy Coalition



Leslie Seid Margolis, Chairperson
Maryland Disability Law Center
1800 N. Charles Street, Suite 202
Baltimore, Maryland 21201
410-727-6352 1-800-233-7201

Special Education State
Advisory Committee (SESAC)

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 W. Baltimore Street, 9th Floor
Baltimore, Maryland 21201

March 28, 2011

Allan Perrigan
Education Program Specialist
Maryland State Department of Education
200 W. Baltimore Street
Baltimore, Maryland 21201
VIA EMAIL AND REGULAR MAIL

Re: Proposed Revisions to COMAR 13A.05.01

Dear Mr. Perrigan:


The Special Education State Advisory Council (SESAC) supports the proposed changes to COMAR 13A.05.01. The mission of the SESAC is to advise and assist the Maryland State Department of Education, Division of Special Education/Early Intervention Services to assure that all children with disabilities, three through 21, and their families have access to appropriate educational and related services. This year, in order to focus efforts, the SESAC established three top priorities - parent education, professional development and getting feedback from the local Special Education Citizens Advisory Councils.

The SESAC supports the following changes to COMAR 13A.05.01 because they align with our mission and priorities:

- Adding the state's parent training and information center to the SESAC.
- Codifying the requirements of HB 269/SB 540 (2010) regarding documents discussed at an IEP meeting.
- Changing the term "emotional disturbance" to emotional disability related to the enactment of the Student Stigma Act in 2010.
- Aligning Maryland with the Supreme Court's decision in *Forest Grove v. T.A.*

Thank you for the opportunity to comment on the proposed regulations. Please feel free to contact me at 410-767-3786 or RLondon@md-council.org if you have any questions or concerns.

Sincerely,



Rachel London
Director, Children & Family Policy, Maryland Developmental Disabilities Council
Chair, Special Education State Advisory Council

