



Nancy S. Grasmick  
State Superintendent of Schools

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**TO:** Members of the State Board of Education  
**FROM:** Nancy S. Grasmick, State Superintendent of Schools  
**DATE:** March 23, 2010  
**SUBJECT:** COMAR 13A.03.02.09-1 (Re-Propose)  
*Appeal of Denial of Diploma for Failure to Meet HSA Requirement*  
**ADOPTION**

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**PURPOSE:**

The purpose of this action is to request adoption 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.

**BACKGROUND:**

In December 2009, the State Board granted permission to publish the proposed changes to COMAR 13A.03.02.09-1 in the *Maryland Register*. The changes extend to the Class of 2010 the appeal process that was implemented for the Class of 2009 through emergency regulations approved in 2008. The regulation establishes a limited waiver process for certain eligible seniors in the Class of 2010 who have not met the HSA requirement for the Maryland High School Diploma. The previous 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.

No public comments were received following publication of the proposed changes in the *Maryland Register*.

**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. 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 these students.

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 related 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 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:**

I am requesting the adoption of the proposed COMAR 13A.03.02.09-1.

NSG:sks

Attachment

**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 no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Carolyn Decker, Regulations Coordinator, Motor Vehicle Administration, Room 200, 6601 Ritchie Highway N.E., or call 410-424-3105, or email to cdecker@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.07 Licensing Limitations.**

A. (text unchanged)

B. *An applicant for a commercial driver's license with a restriction imposed under Transportation Article, §16-113(a)(1), Annotated Code of Maryland shall be issued a commercial driver's license with the restriction if it is determined by the Medical Advisory Board that the individual is physically qualified to operate a commercial motor vehicle.*

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

**Title 13A**

**STATE BOARD OF EDUCATION**

**Subtitle 03 GENERAL INSTRUCTIONAL PROGRAMS**

**13A.03.02 Graduation Requirements for Public High Schools in Maryland**

Authority: Education Article, §§2-205, 7-205, and 8-404, Annotated Code of Maryland

**Notice of Proposed Action**

[10-051-P]

The Maryland State Board of Education proposes to adopt new Regulation .09-1 under **COMAR 13A.03.02 Graduation Requirements for Public High Schools in Maryland**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is 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.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

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

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:	(E+)		Minimal
	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. 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 State Superintendent of Schools.

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

**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 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 HAS 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.

**Opportunity for Public Comment**

Comments may be sent to Ronald Peiffer, Deputy State Superintendent of Office for Academic Policy, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0473, or email to rpeiffer@msde.state.md.us, or fax to 410-333-2275. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**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 March 23-24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.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;
  - (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; or
  - (e) The student moved to Maryland in the senior year, has passed all the HSA courses, but has failed the related HSA, 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 E(2)(a) of this regulation shall sunset on June 30, 2010 with no further action of the State Board of Education.

P. Section E(2)(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.

NANCY S. GRASMICK  
State Superintendent of Schools