

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Independent Agencies**
(DLS Control No. 14-207)

Overview and Legal and Fiscal Impact

These regulations establish procedures to ensure that the Maryland Longitudinal Data System Center (Center) properly implements and complies with the requirements for access to public records, correction of public records, and open meetings.

The regulations present no legal issues of concern, although special notes are provided below for the committee's consideration.

There is minimal fiscal impact on State and local agencies.

Regulations of COMAR Affected

Independent Agencies:

Maryland Longitudinal Data System Center: Inspection and Copying of Records:
COMAR 14.36.01.01-.12
Inspection and Copying of Records: COMAR 14.36.01.13-.16
Corrections of Public Records: COMAR 14.36.02.01-.06, and .08-.11
Meetings: COMAR 14.36.03.01-.06
Longitudinal Data Requests: COMAR 14.36.04.01-.07

Legal Analysis

Background

Chapter 190 of 2010 established the Maryland Longitudinal Data System (MLDS). Pursuant to Chapter 190, Maryland has developed a comprehensive statewide longitudinal data system that will allow the effective organization, management, disaggregation, and analysis of individual student data as well as the examination of student progress and outcomes over time, including preparation for postsecondary education and the workforce. The development of a longitudinal data system in Maryland was largely driven by the fact that a comprehensive statewide longitudinal data system was a key component of applications for Race to the Top funds and was one of the assurances that the State was required to make in order to receive funds from the State Fiscal Stabilization Fund authorized by the American Recovery and Reinvestment Act of 2009.

Prior to the creation of a statewide longitudinal data system, Maryland's three data systems for primary and secondary education data, higher education data, and workforce data could not be linked together in a cohesive way. The primary and secondary education data

system included only 4 of the 10 essential components of an effective data system that would be used to evaluate longitudinal data systems in state Race to the Top allocations. Two required elements that were missing from the system were the ability to link to higher education and the use of a unique teacher identifier.

Chapter 190 also established the Maryland Longitudinal Data System Center as an independent unit within State government that will serve as a central repository for the data, ensure compliance with federal privacy laws, perform research on the data sets, and fulfill education reporting requirements and approved public information requests. General oversight and direction is provided to the center by the Maryland Longitudinal Data System Governing Board. The board established an initial set of 15 policy questions that have served to guide the work of the center, its research agenda, and the development of the system. The following are examples of the types of policy questions the system is designed to answer:

- Are Maryland students academically prepared to enter postsecondary institutions and complete their programs in a timely manner?
- What percentage of Maryland high school exiters go on to enroll in Maryland postsecondary education?
- What percentage of Maryland high school exiters entering college are assessed to need to take developmental courses and in what content areas?
- How likely are students placed in developmental courses to persist in postsecondary education and transfer and/or graduate?
- Are exiters of Maryland colleges successful in the workforce?

The Maryland Longitudinal Data System is statutorily required to be fully operational by December 31, 2014. The data system is expected to be operational in the fall of 2014.

Summary of Regulations

The regulations establish provisions necessary to fully implement the Maryland Longitudinal Data System, which is scheduled to be operational sometime in the fall of 2014.

Chapter 1: Inspection and Copying of Records (14.36.01)

Regulation .01 states the purpose of this chapter. Regulation .02 states that it is the policy of the Center to facilitate public access to the Center's public records when access is authorized by law. Regulation .03 provides a list of defined terms to be used throughout Chapter One.

Regulation .04 requires the Executive Director of the Center to designate an official custodian of public records of the Center. Regulation .04 also requires the Center to provide the name and contact information for the custodian on the Center's website. Regulations .05 through .08 govern who may make a request for a public record of the Center, how the request must be made, what is required to be in the request, and who the request must be addressed to.

Regulation .09 requires the custodian to produce a public record for inspection without delay if the custodian decides to grant a request for inspection, except in certain circumstances. Regulation .09 also designates certain public records that must be made available for immediate inspection. Finally, regulation .09 requires the custodian to submit a written statement if the custodian denies a request for inspection.

Regulation .10 authorizes the custodian to provide notice of a request for inspection or copying of a public record to a person who, in the judgment of the custodian, could be adversely affected by the disclosure of the public record. Regulations .11 and .12 require the Center to follow certain procedures if a public record is temporarily unavailable or destroyed or lost. Regulation .13 authorizes an applicant to request administrative review if a custodian denies a request to inspect or copy a public record. If an applicant requests administrative review, regulation .13 requires the Executive Director, or the Executive Director's designee to issue a final decision of the Center. If the review results in a total or partial denial of the request, the applicant may file an appropriate action in the circuit court.

Regulation .14 authorizes the Executive Director to temporarily deny the request to obtain a court order allowing nondisclosure if the Executive Director believes disclosure of the public record would cause substantial injury to the public interest. Regulation .15 provides the fee structure for making copies of public records of the Center and authorizes the custodian to charge a reasonable fee for responding to requests under certain circumstances. Regulation .15 also authorizes the custodian to waive or reduce any fees under certain circumstances. Regulation .16 authorizes an applicant to inspect any public record of the Center that the applicant is entitled to inspect during the normal working hours of the Center.

Chapter 2: Corrections of Public Records (14.36.02)

Regulations .01 and .02 provide the scope and a list of defined terms for this chapter. Regulations .03 through .06 govern how a request to correct a public record held by the Center must be made, including: who may make a correction request, what is required to be in the request, who the request must be addressed to, and what the Center must do if a request does not comply with certain requirements. Regulation .07 requires the custodian, within 30 days of receiving a request for correction or amendment, to make the requested correction or amendment or inform the requester why the Center cannot act on the request.

Regulations .08, .09, and .10 authorize a person in interest to file a Statement of Disagreement with the Center if the person does not agree with the refusal of a requested correction or amendment and regulation .09 provides for the content of a Statement of Disagreement. Regulation .10 requires the Center to put a copy of a Statement of Disagreement in the file of the public record in question anytime a third party requests the public record.

Regulation .11 authorizes a person to request administrative review of the Center if the Center has performed certain actions. Regulation .11 also requires that a request for review to be filed with the Executive Director of the Center within 30 days of the requester being advised of the Center's action.

Chapter 3: Meetings (14.36.03)

Regulation .01 provides a list of defined terms for this chapter. Regulations .02 and .03 authorize members of the general public to attend and observe any open sessions of the Center and participate in a meeting under certain circumstances. Regulations .04, .05, and .06 prohibit certain conduct at open sessions of the Center, authorize the presiding officer of an open session to perform certain activities in order to restore order to a public meeting, and provide for the circumstances under which a member of the public may record an open session of the Center.

Chapter 4: Longitudinal Data Requests (14.36.04)

Regulation .01 provides for the scope of this chapter. Regulations .02 through .05 provide for the application process and the fee structure for data requests from the Center, including the application form, a required affidavit, and the time for application and required response by the Executive Director of the Center.

Regulation .06 requires the Center to maintain the educational records that are incorporated into MLDS in a manner that is consistent with the protections established by the federal Family Educational Rights and Privacy Act (FERPA). Regulation .06 also requires the Center to (1) only use de-identified aggregate data in its research and reporting requirements and (2) deny any data requests that may be identifiable based on the size or uniqueness of the population under consideration. Regulation .07 describes what a non-longitudinal data set is and requires the Center to deny a request for a non-longitudinal data set.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Center cites §§ 24-701, 24-703, 24-706 of the Education Article; §§ 10-611, 10-612, 10-628, 10-613(b), 10-615(2)(i), 10-621, 10-625 of the State Government Article; and § 8-625 of the Labor & Employment Article as legal authority for the regulations. Specifically, § 24-706 of the Education Article requires the Center to adopt regulations to implement the provisions of Title 24, Subtitle 7 of the Education Article. Additionally subtitles 5 and 6 of the State Government Article govern custodianship of records under the Public Information Act and access to the meetings of public bodies under the Open Meetings Act. The cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Regarding the Public Information Act provisions of the regulations contained in Chapter 1, the Attorney General's Office reports that nothing contained within these regulations would authorize a custodian of public records to deny the inspection of a public record if that denial is not a mandatory or permissive denial contained within Title 10, Subtitle 6 of the State Government Article. For example, Section .10B of Chapter 1 merely describes the internal procedures that a custodian of records may engage as part of the custodian's fact finding duties; this provision cannot be construed to expand the grounds for denial of a record.

Additionally, the Center has agreed to clarify a provision of the regulations that may be construed as inconsistent with the Open Meetings Act, which pertains to a requirement to provide advance notice to the Center of an intention to record an open meeting; as initially submitted, the provision's requirement would potentially have been counter to the intent of the Open Meetings Act.

Finally, the Center has been made aware of the opportunity to provide greater clarity in a number of regulations. Most notably, in Chapter 04, the Center has been made aware of the need to add a definition section. The terms "Center" and "de-identified aggregate data" are used throughout the chapter and should be defined to provide clarity to the reader.

Fiscal Analysis

There is minimal fiscal impact on State and local agencies.

Agency Estimate of Projected Fiscal Impact

The Center advises that the regulations may result in a minor increase in fee revenues associated with supplying data to requestors. The Department of Legislative Services generally concurs and notes that regulations state that the fees for the inspection and copying of public records (beyond the first two hours of work, which are free) must be a reasonable fee based on the actual costs to the Center. Moreover, fees for longitudinal data requests must take into consideration the volume of requests, the complexity of responding to the request, the hourly staff time spent, and other associated expenses. However, the Executive Director may waive or reduce any fee imposed – if, after considering the applicant's ability to pay and other relevant factors (including but not limited to the purpose specified for the data request), the Executive Director determines that a waiver or reduction of fees is in the public interest.

The Department of Legislative Services further advises that Chapter 190 of 2010, which established the Center, specifically permitted the collection of user fees; however, no such fees were directly anticipated in the fiscal and policy note for the bill. In addition, as no special fund was established in Chapter 190 and no assumptions about dedicated funds were made in the fiscal and policy note, it is assumed any user fees collected will go to the general fund.

Public educational or research institutions in the State and State agencies may bear the costs of some data requests to the Center. The Center anticipates that the impact will be minor because fees will be reasonable and the number of requests from any one person or institution will be minimal. The Center further advises that the data that will be available on its website for free should reduce the number of requests that will need to be made. Moreover, the Center advises it plans to work proactively with institutions and State agencies (including the Department of Legislative Services) to provide answers to policy questions, and the Executive Director hopes to be able to waive the fees for institutions and State agencies in the majority of cases. However, the Department of Legislative Services is unable to anticipate the type and amount of data that will be freely available, the amount of fees waived by the Center, or the types of data that may be needed.

The Department of Legislative Services further advises that any actual fiscal impact on an institution or a State agency will be based on the number and type of requests made and the

number of cases in which the Executive Director is able to waive the fee. Thus, institutions and agencies could restrict their data requests to mitigate costs. However, as noted above, the Executive Director of the Center hopes to work with institutions and State agencies to reduce the fees charged.

Impact on Budget

There is no material impact on the State operating or capital budget. As discussed above, any increase in fees is anticipated to be minimal and approximately equal to expenses for the services provided. However, since no special fund was created, it is assumed that user fees will be directed to the general fund rather than the Center itself.

Public institutions of higher education and State agencies can manage the fees paid to the Center by restricting the requests for data made to the Center or working with the Center to have their fees reduced or waived; thus, any impact on their budgets is anticipated to be minimal. In addition, the Center reports that many educational institutions have memorandums of understanding with the Center regarding the transfer of data that may mitigate their fees. However, individual researchers at educational institutions may choose to pay fees for data that was previously unavailable. It is assumed that this will have no material impact on the State budget.

Agency Estimate of Projected Small Business Impact

The Center advises that the regulations have minimal or no economic impact on small businesses in the State. Individual small business may choose to pay fees for data that was previously unavailable. The Department of Legislative Services concurs.

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