

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
State Board of Education**
(DLS Control No. 20-055)

Overview and Legal and Fiscal Impact

The regulations establish a process for reporting violations of certain requirements relating to child sexual abuse and sexual misconduct employment history reviews under § 6-113.2 of the Education Article. The regulations also establish a process for imposing specified penalties for certain violations.

The regulations present no legal issues of concern.

General fund revenues may increase minimally to the extent that fines are imposed. There is no other impact on State or local agencies beyond that estimated in the fiscal and policy note for Chapter 55 of 2019 (House Bill 486), which these regulations implement. However, as discussed below, the fiscal impact on State expenditures has been delayed.

Regulations of COMAR Affected

State Board of Education:

School Personnel: Child Sexual Abuse and Sexual Misconduct History:
COMAR 13A.07.14.01 through .06

Legal Analysis

Background

Chapter 55 of 2019, codified as § 6-113.2 of the Education Article, requires county boards of education, nonpublic schools, and certain contracting agencies to acquire certain employment information and conduct child sexual abuse and sexual misconduct employment history reviews of applicants for a position involving direct contact with minors. Among other things, Chapter 55 also authorizes the State Department of Education to adopt regulations establishing procedures for disciplinary proceedings and the assessment of penalties for failing to comply with the requirements established in the section.

Summary of Regulations

Regulation .01 outlines the scope of the new chapter, COMAR 13A.07.14.

Regulation .02 defines relevant terms, including “child sexual abuse” and “sexual misconduct”.

Regulation .03 requires a county board, nonpublic school, or contracting agency to comply with the requirements under § 6-113.2 of the Education Article to obtain information on an applicant’s child sexual abuse and sexual misconduct history prior to hiring the individual for a position involving direct contact with minors. The regulation requires current and former employers to return the employment history review form within 20 days of receipt. Additionally, it requires employers to provide the required information unless an exception applies under § 6-113.2.

Regulation .04 establishes a process for employers to report violations related to the required employment history reviews. Unless a certain exception applies, a prospective employer must submit a report including specified information to the department if a current or former employer fails to complete and return the employment history review form within 20 days of its receipt. The regulation prohibits a prospective employer from making a report to the department if (1) the current or former employer has no records available about the applicant, is no longer in business, or did not complete the form due to a state law or terms of a contract entered into before a certain date that prohibits disclosure of the information or (2) the prospective employer did not make three attempts to obtain the form. The regulation also requires a current or former employer to report to the department if it learns that a certificated employee has knowingly provided false information or deliberately withheld relevant information during the review process.

Regulation .05 authorizes the department to, subject to certain requirements, impose a specified fine against any current or former employer that does not provide the information required by the employment history review within 20 days of its receipt. The regulation requires the department, prior to imposing a fine, to send a warning letter and provide the employer with 10 additional days in which to complete the form or explain why it is exempt from reporting. The regulation establishes a fine schedule with escalating penalties for repeat offenses. Additionally, an applicant or employee who provides false information or deliberately withholds information as part of a background history review may be denied employment or terminated, if consistent with the employer’s policies. The department may take action to deny, suspend, or revoke an educator’s certificate based on providing false information or deliberately withholding information.

Regulation .06 establishes an appeal process, authorizing a current or former employer to appeal a fine by writing to the State Superintendent of Schools within 15 days of the department imposing the fine. The State Superintendent must forward the appeal to the Office of Administrative Hearings for a proposed decision, including findings of fact and conclusions of law. An employer or the department may file exceptions to the proposed decision within 15 days after the decision is issued. Finally, the regulation authorizes the State Superintendent to affirm, reverse, or modify the proposed decision. The State Superintendent’s decision is the final decision of the department.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-205(c) and 6-113.2 of the Education Article as statutory authority for the regulations. Section 2-205(c) requires the State Board of Education to adopt bylaws, rules, and regulations for the administration of the public schools. Section 6-113.2 establishes the requirements for county boards, nonpublic schools, and certain contracting agencies to require specified information from applicants for a position involving direct contact with minors and to conduct certain employment history reviews of those applicants. Specifically, 6-113.2(k) authorizes the department to adopt regulations establishing procedures for disciplinary proceedings and the assessment of penalties. This subsection also authorizes the department to initiate disciplinary action before a hearing officer against an applicant, an employee, a contracting agency, or a school administrator for willful violations of § 6-113.2.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the State Department of Education has agreed to revise the Statement of Purpose and Regulation .01 to more adequately reflect the substance of the new chapter.

Fiscal Analysis

General fund revenues may increase minimally to the extent that fines are imposed. There is no other impact on State or local agencies beyond that estimated in the fiscal and policy note for Chapter 55 of 2019 (House Bill 486), which these regulations implement. However, as discussed below, the fiscal impact on State expenditures has been delayed.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations and the associated statute necessitate the formation of a new office to ensure compliance with the more rigorous requirements for employee background checks. The Department of Legislative Services disagrees, as the regulations implement Chapter 55 of 2019 (House Bill 486) and do not impose any additional requirements on the department beyond those that have already been accounted for, as discussed below.

In its response to a request for an estimate of the fiscal impact associated with House Bill 486 of 2019, the department advised that it would require nine staff members to conduct audits of affected entities, including local school systems, at an estimated cost of approximately \$1.0 million annually. However, in the fiscal and policy note for House Bill 486,

the Department of Legislative Services noted that, because the bill did not require any proactive enforcement by the department, staffing of that magnitude was not required. Instead, it was assumed that the department would adopt regulations to, at a minimum, establish a process to respond to reports of potential violations of Chapter 55 requirements. Based on that assumption, it was estimated that one staff member was necessary to investigate and respond to potential violations of which the department has been made aware, and that expenditures would accordingly increase by \$95,800 in fiscal 2020 and by at least \$120,000 beginning in fiscal 2021 and annually thereafter, which reflected a start date of October 1, 2019. To the extent that a large number of reports are received by the department, additional staff may be necessary in future years; however, such impact is speculative without actual experience and the potential for additional staff under these circumstances was already indicated in the fiscal and policy note for House Bill 486. The Department of Legislative Services further noted that, if the department subsequently submitted regulations that include provisions regarding active monitoring of the employment records of local schools systems, contracting agencies, and nonpublic schools, the impact of these provisions would be accounted for at that time.

However, the proposed regulations do not include provisions regarding active monitoring; therefore, additional resources to support more robust enforcement are not required strictly by the regulations. Based on the regulations, it is still estimated that a new staff member is necessary to investigate and follow up on reports that are received by the department, but such impact was already accounted for in the fiscal and policy note for House Bill 486. The Department of Legislative Services does note, however, that the department has not yet received the position associated with the legislation as specified in the fiscal and policy note. Accordingly, general fund expenditures for fiscal 2021 are likely to be less than originally anticipated to reflect a later start date for the new staff person.

To the extent that the department imposes fines, as authorized in the regulations, general fund revenues increase. Any such impact is assumed to be minimal.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful impact on small businesses. To the extent that small businesses, in this case third-party contractors, do not comply with the requirements and are assessed a fine, as authorized by the proposed regulations, the Department of Legislative Services concurs that there is a potential meaningful impact. Otherwise, the proposed regulations do not impose substantially new responsibilities on these entities, as they generally implement provisions that are already required by Chapter 55 of 2019.

Contact Information

Legal Analysis: Jeremy D. Baker – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer K. Botts – (410) 946/(301) 970-5510