

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/6/2020

2. COMAR Codification

Title Subtitle Chapter Regulation

13A 07 14 01-.06

3. Name of Promulgating Authority

Maryland State Department of Education

4. Name of Regulations Coordinator Telephone Number
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6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: .
- Repeal of Existing Regulations

Notice of Proposed Action

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The Maryland State Board of Education proposes to adopt new Regulations .01—.06 under new chapter COMAR 13A.07.14 Child Sexual Abuse and Sexual Misconduct History.

This action was considered by the State Board of Education at their December 3, 2019 meeting.

Statement of Purpose

The purpose of this action is to establish a process, including requirements for specific documentation regarding whether an individual has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct,” for the hiring of public school and nonpublic school employees who have direct contact with minors. This law applies to local boards of education, nonpublic schools, and contracting agencies that contract with a county board of education or nonpublic school to provide a service to a school or the students of a school.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

This regulation, which is a direct response from Maryland Code, Education Article 6-113.2, will have a fiscal and operational impact on the Maryland State Department of Education (MSDE), local school systems, nonpublic schools, and contracting agencies that do business with Maryland schools. Due to the requirements of the statute, the MSDE will need to hire additional staff to conduct the audits of local school systems, nonpublic schools, and contracting agencies hiring practices to ensure compliance with the background and reference checks of employees, as well as, hire staff to manage the fines imposed on those employers who are non-compliant. Given that the regulation implements fines for those employers who do not comply, it will have a negative fiscal impact for those employers and a positive impact on the State.

Education Article 6-113.2 requires local school systems, nonpublic schools, and/or contracting agencies to conduct a more rigorous vetting process prior to hiring individuals with direct contact with students. In addition, the law requires the MSDE to assure compliance with the requirements of HB 486 for each local school system (24), each nonpublic school (1,000) and each contracting agency. The law also requires the MSDE to initiate disciplinary action against an employee, any applicant, any contracting agency, or any school administrator who does not meet the reference and background check requirements of individuals with access to students. As such, the general and fiscal impact on the MSDE will be significant. During the 2019 legislative session, the MSDE

submitted a detailed fiscal analysis requesting funds to establish a new office to manage and monitor the requirements of Education Article 6-113.2. This analysis determined that a total of 9 staff would be required to ensure fidelity (1 education program supervisor, 5 education specialists, and 3 support staff).

Additionally, the law has had an impact on local school systems, nonpublic schools, and contracting agencies. While these three entities have established hiring practices which include background and reference checks, the law requires these entities to now collect specific information on all applicants that have direct access to students. In addition, the law mandates timelines for the collection and review of the required documents. As such, local school systems, nonpublic schools, and contracting agencies may need to hire additional staff if they do not have dedicated human resources staff and/or system-wide databases to meet the additional requirements.

Given the fine incorporated into the regulation, there is an anticipated increase in revenue.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	Unknown
(2)	(R+)	Unknown
B. On other State agencies:	NONE	
C. On local governments:	(E+)	Unknown
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	Unknown
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(1). Education Article 6-113.2 requires local school systems, nonpublic schools, and/or contracting agencies to conduct a more rigorous vetting process prior to hiring individuals with direct contact with students. In addition, the law requires the Maryland State Department of Education to assure compliance with the requirements of HB 486 for each local school system (24), each nonpublic school (1,000) and each contracting agency. The law also requires the MSDE to initiate disciplinary action against an employee, any applicant, any contracting agency, or any school administrator who does not meet the reference and background check requirements of individuals with access to students. As such, the general and fiscal impact on the MSDE will be significant. During the 2019 legislative session, the MSDE submitted a detailed fiscal analysis requesting funds to establish a new office to manage and monitor the requirements of Education Article 6-113.2. This analysis determined that a total of 9 staff would be required to

ensure fidelity (1 education program supervisor, 5 education specialists, and 3 support staff).

A(2). Given that the regulations implement fines for those employers who do not comply, it will have a positive impact on the State.

C. Statute and regulations have an impact on local school systems, nonpublic schools, and contracting agencies. While these three entities have established hiring practices which include background and reference checks, the law requires these entities to now collect specific information on all applicants that have direct access to students. In addition, the law mandates timelines for the collection and review of the required documents. As such, local school systems, nonpublic schools, and contracting agencies may need to hire additional staff if they do not have dedicated human resources staff and/or system-wide databases to meet the additional requirements. Given that the regulations implement fines, this may also contribute to the increase in expenditures for these entities.

D. Statute and regulations have an impact on local school systems, nonpublic schools, and contracting agencies. While these three entities have established hiring practices which include background and reference checks, the law requires these entities to now collect specific information on all applicants that have direct access to students. In addition, the law mandates timelines for the collection and review of the required documents. As such, local school systems, nonpublic schools, and contracting agencies may need to hire additional staff if they do not have dedicated human resources staff and/or system-wide databases to meet the additional requirements. Given that the regulations implement fines, this may also contribute to the increase in expenditures for these entities.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

It is unknown how many nonpublic schools and contracting agencies are considered small businesses. As this regulation will affect all schools and contracting agencies that do business with schools, any small businesses impacted will be required to undergo the employee history review, which will take a significantly longer period of time than the running only a background check. Additionally, if a contracting agency is not able to receive the results of the history in a short enough time to provide a contractual employee, they will lose that potential business. Subsequently, it is anticipated that small schools will not be able to fill substitute and high need area positions that are often filled temporarily with contractual employees. Finally, it is anticipated that smaller businesses will be at risk of incurring fines as they may not have the human capital to respond to the employee history requests in the timeframe required by the law.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:
Given the extensive nature of the required employee history review process, it takes significantly longer to fill positions that have direct contact with children. Given the nature of special education, many students with disabilities require the services of paraprofessionals or specialists such as a speech pathologist or occupational therapist. Those students with services on an Individualized Education Program (IEP) may have a delay in services due to not being able to staff the required positions in a timely manner.

Opportunity for Public Comment

Comments may be sent to Sarah Spross, M.Ed., Assistant State Superintendent, Division of Educator Certification and Program Approval, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0385 TTY: 410-333-6442, or email to sarah.spross@maryland.gov, or fax to 410-333-8963. Comments will be accepted through August 6, 2020. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on August 25, 2020, 9:00 am, at 200.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2021
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
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:
general funds
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

.01 Scope.

This chapter specifies the penalties for entities that fail to comply with the child sexual abuse and sexual misconduct background history review established by the Education Article, § 6-113.2, Annotated Code of Maryland.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Child sexual abuse" means an act by an adult involving a minor or a student that constitutes a sexual offense under the laws of the State, or any sexual contact between an adult and a minor.

(2) "Current or Former Employer" means a county board, nonpublic school, or any other entity in which an individual had direct contact with minors.

(3) "Department" means the Maryland State Department of Education.

(4) "Direct contact with minors" means the possibility of care, supervision, guidance, or control of a minor or routine interaction with a minor.

(5) "Prospective Employer" means a county board, nonpublic school, or contracting agency that is considering hiring an applicant for a position involving direct contact with minors.

(6) "Sexual misconduct" means an act by an adult, including an oral, nonverbal, written, or electronic communication, or a physical activity directed toward or with a minor that is designed to promote a romantic or sexual relationship with the minor, including:

(a) Sexual or romantic invitation;

(b) Dating or soliciting dates;

(c) Engaging in sexualized or romantic dialogue;

(d) Making sexually suggestive comments;

(e) Grooming behaviors;

(f) Self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and

(g) A sexual, indecent, romantic, or erotic contact with the minor.

.03 General Provisions.

A. A county board, nonpublic school, or contracting agency shall follow the requirements of Education Article, § 6-113.2, Annotated Code of Maryland to obtain information on an applicant's child sexual abuse and sexual misconduct history from current and former employers prior to hiring that individual for a position involving direct contact with minors.

B. Current and former employers shall complete and return the employment history review form to a prospective employer within 20 days of receiving the employment history review form.

C. Employers shall provide the information required by Education Article, § 6-113.2, Annotated Code of Maryland unless an exception provided for in the law does not require disclosure of the information.

.04 Reporting Violations.

A. A prospective employer shall report to the Department if a current or former employer does not complete and return the employment history review form within 20 days of its receipt.

B. The prospective employer shall make the report immediately to the Department using a form specified by the Department.

C. The report shall include:

(1) The name, address, phone, fax, and email address for the current or former employer;

(2) A detailed list of all attempts made by the prospective employer to contact the current or former employer, including method of contact, date of attempted contact, and any response;

(3) Any supporting documentation or other information relevant to the report;

(4) The name of the individual making the report, along with the individual's title, employer, address, phone, and email address.

D. The prospective employer may not make a report to the Department if:

(1) The current or former employer has no record of employing the applicant, no longer retains records for the applicant, or otherwise has no records available about the applicant;

(2) The current or former employer is no longer in business and no other entity has records for the closed business;

(3) The current or former employer did not complete the form because:

(a) The laws of the state in which the current or former employer is located prohibit the release of the information or records requested;

(b) The disclosure of the information and records requested is restricted by the terms of a contract entered into on or before June 30, 2019; or

(4) The prospective employer did not make three attempts to obtain the form.

E. A current or former employer shall report to the Department if it learns that a certificated employee has knowingly provided false information in connection with an employment history review form or deliberately withheld information concerning past incidents of child sexual abuse or sexual misconduct.

.05 Penalties.

A. The Department may impose a fine against any current or former employer that does not provide the information required by the Employment History Review Form within 20 days of its receipt.

B. Prior to imposing a fine, the Department shall send a warning letter to the current or former employer that explains:

- (1) The requirements of the law; and
- (2) How the current or former employer failed to comply with the law.

C. The Department shall provide the current or former employer with 10 additional days in which to complete the employment history review form or explain why it is exempt from the reporting requirements.

D. If, after the 10 additional days have passed, the current or former employer has not returned a completed employment history review form or provided a legal exemption from the reporting requirements, the Department may impose a fine.

E. Fine Schedule.

- (1) \$1,000 for a first offense.
- (2) \$2,500 for a second offense.
- (3) \$5,000 for a third or subsequent offense.

F. Penalties Against Applicants or Employees.

(1) An applicant or employee who provides false information or deliberately withholds information regarding current or past employment to an employer as part of the child sexual abuse and sexual misconduct background history review may be denied employment or terminated from employment, if consistent with the employer's policies.

(2) For professionally certificated personnel, the Department may take action to deny, suspend, or revoke an educator's certificate based on providing false information or deliberately withholding information, in addition to any discipline imposed by an employer.

.06 Appeal.

A. A current or former employer may appeal a fine in writing to the State Superintendent of Schools within 15 days of the Department imposing the fine.

B. The appeal shall include the reasons for taking the appeal, along with any supporting documentation.

C. The State Superintendent of Schools shall forward the appeal to the Office of Administrative Hearings for a proposed decision, including findings of fact and conclusions of law.

D. An employer or the Department may file exceptions to the Administrative Law Judge's proposed decision within 15 days of the decision being issued.

E. The State Superintendent of Schools may affirm, reverse, or modify the Administrative Law Judge's proposed decision.

F. The State Superintendent of Schools' decision is the final decision of the agency.

KAREN B. SALMON, Ph.D.
State Superintendent of Schools