

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
State Board of Education  
(DLS Control No. 21-019)**

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**Overview and Legal and Fiscal Impact**

The regulation clarifies and specifies certain requirements with which local school systems must comply when administering physical education instructional programs for students in prekindergarten through grade 12.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**State Board of Education:**

Specific Subjects: Program in Physical Education: COMAR 13A.04.13.01

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**Legal Analysis**

**Background**

State law requires each public school to have a program of physical education that is given in a planned and sequential manner to all students in kindergarten through grade 12, for the purpose of developing students' health and physical fitness, and to improve their motor coordination and physical skills. To further aid this purpose, each local school system may develop and implement an annual Wellness Policy Implementation and Monitoring Plan. State law further requires students with disabilities to have an equal opportunity to participate in mainstream physical education programs, which are programs that are developed and offered to students based on criteria established by the State Board of Education.

**Summary of Regulation**

The regulation clarifies that physical education programs in public schools are to be standards-based programs that meet the requirements of the State Framework. As part of a standards-based program, each local school system must provide physical education curriculum documents for its elementary and secondary schools that, in addition to existing requirements, develop standards-based instructional assessments that:

- periodically evaluate progress toward achievement of certain content standards;
- align to outcomes in the State Framework;
- monitor a student’s cognitive, affective, and psychomotor progress;
- include all students;
- do not evaluate student dress or attendance; and
- are not based on the results of a health–related fitness test.

The regulation also:

- authorizes local school systems to conduct a health–related fitness test as part of an annual Wellness Policy Implementation and Monitoring Plan;
- requires all physical education teachers to submit to their local school system a current certificate of completion of the concussion education training required under Regulation .04 of Chapter .08;
- requires local school systems to ensure that students with disabilities have an equal opportunity and are provided with reasonable accommodations to participate in a standards–based physical education program that meets the requirements of the State Framework and, if students are temporarily unable to participate in physical education programs, to develop individualized action plans for those students; and
- makes technical corrections and clarifications.

Finally, with respect to a standards-based physical education program and requirements, the regulation prohibits a local school system from:

- authorizing a student to substitute other activities for the program;
- waiving the requirement needed for graduation;
- excusing students from the program to participate in content area classes or to complete classwork assignments in other content areas; and
- withholding students from the program as punishment, unless the student is also removed from the regular classroom setting.

## **Legal Issues**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The board cites §§ 2-205(c) and (h), 7-205.2, 7-409, and 7-4B-01 of the Education Article as statutory authority for the regulations. This authority is incomplete, additional authority is found in §§ 7-4B-02 and 7-4B-03 of the Education Article.

Section 2-205(c) requires the board to adopt regulations for the administration of public schools and subsection (h) requires the board, with the advice and consent of the State Superintendent of Schools, to establish basic policy and guidelines for the program of instruction for public schools. Sections 7-205.2 and 7-409 specify the purpose and various details and requirements of physical education programs in public schools.

Sections 7-4B-02 and 7-4B-03 set forth the duties of the board and each county board of education relating to equal opportunities for students with disabilities to participate in mainstream physical education and athletic programs. Section 7-4B-01 lists definitions and is not relevant as statutory authority.

With the addition of §§ 7-4B-02 and 7-4B-03 of the Education Article, the authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulation has no fiscal impact. The Department of Legislative Services notes, however, that local school systems may need to revise curricular resources to align with the regulation. The regulation clarifies and adds requirements with which local school systems must comply when administering physical education instructional programs for students in prekindergarten through grade 12. Under the current regulation, each local superintendent must certify to the State Superintendent that its physical education program is in compliance with the regulation every five years beginning September 1, 2016; the next certification deadline is September 2026. Local school systems regularly revise their curricula to align with the new standards and requirements of the regulation. Thus, the Department of Legislative Services advises that any fiscal impact can be handled with existing resources.

## **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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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