

# Transmittal Sheet

Proposed Action on Regulations	
<b>Date Filed with AELR Committee</b> July 27, 2023	<b>Date Filed with Division of State Documents</b>
	<b>Document Number</b> 23-176-P
	<b>Date of Publication in MD Register</b>

**1. Desired date of publication in Maryland Register: September 08, 2023**

**2. COMAR Codification**

Title	Subtitle	Chapter	Regulation
13A	01	07	01
13A	01	07	02
13A	01	07	03
13A	01	07	04
13A	01	07	05
13A	01	07	06
13A	01	07	07

**3. Promulgating Authority**

State Board of Education

**4. Name of Regulations Coordinator**

Charlene Necessary

**Telephone Number**

4107670467

**Mailing Address**

200 West Baltimore Street, Baltimore, MD 21201

**Email**

charlene.necessary@maryland.gov

**5. Name of Person to Call About this Document**

Akilah Alleyne

**Telephone Number**

410-767-0504

**Mailing Address**

200 West Baltimore Street, Baltimore, MD 21201

**Email**

akilah.alleyne@maryland.gov

**6. Check applicable items:**

- New Regulations
- Amendments to Existing Regulations
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval

**7. Is there Emergency text that is identical to this Proposal:**

Yes  No

**8. Incorporation by Reference**

Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final

\_\_\_\_\_ action will be considered at an open meeting

## 10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council

## 11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Lori Hopkins, Assistant Attorney General, telephone #410-576-6465, on July 21, 2023. A written copy of the approval is on file at this agency.

### Name of Authorized Officer

Mohammed Choudhury

### Title

State Superintendent of Schools

### Telephone No.

410-767-0467

### Date

July 26, 2023

## Title 13A

# STATE BOARD OF EDUCATION

## Subtitle 01 STATE SCHOOL ADMINISTRATION

### 13A.01.07 Nondiscrimination in Education

Authority: Education Article, §§2-303, 4-108, and 26-701 et seq.; State Government Article, §§10-122 and 10-201 et seq., Annotated Code of Maryland; Federal Statutory References: 29 U.S.C. §794 et seq. and 42 U.S.C. §12101 et seq.

#### Notice of Proposed Action

[23-176-P]

The State Board of Education proposes to:  
adopt new Regulations .01 through .07 under new chapter COMAR 13A.01.07 Nondiscrimination in Education. This action was considered by the State Board of Education at their meeting on May 23, 2023.

#### Statement of Purpose

The purpose of these regulations is to prohibit unlawful discrimination and retaliation in education in Maryland public and nonpublic schools that receive State funds per enacted legislation amending Education Article §2-303(b).

#### 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 Akilah Alleyne, Ph.D., Executive Director, Governmental Affairs, Education Policy, and External Relations, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0504, or email to [akilah.alleyne@maryland.gov](mailto:akilah.alleyne@maryland.gov). Comments will be accepted through October 10, 2023. 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 October 24, 2023 at 9:00 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

MOHAMMED CHOUDHURY  
State Superintendent of Schools

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: **FY 2024**

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:

**undefined**

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

**Existing general fund operation resources.**

E. If these regulations have no economic impact under Part A, indicate reason briefly:

**The proposed amendment will have no economic impact on MSDE. MSDE will implement the proposed processes identified in the regulation using existing operating dollars and personnel.**

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

**The proposed amendment outlines how MSDE will consider nondiscrimination challenges but does not place a new burden or requirement on nonpublic schools.**

G. Small Business Worksheet:

**There are currently 1,449 public schools, 27 nonpublic prekindergarten programs, 266 nonpublic elementary and secondary schools and 72 publicly funded nonpublic special education schools that receive state funds in Maryland. MSDE estimates a low to moderate fiscal impact to process discrimination complaints and appeals, conduct mediations, and administer fiscal penalties as required in this legislation. MSDE's impact assessment is low because, while MSDE cannot reliably offer a proposed cost as the Department is not currently engaged in processing and mediating**

complaints of this nature using the fully adopted process as proposed, MSDE has observed that the utility of the temporary process in place at the Department has had no demand as of yet. The publication and adoption of these regulations could alter that underlying assumption if submissions increase following greater public awareness.

## ***Title 13A STATE BOARD OF EDUCATION***

### ***Subtitle 01 STATE SCHOOL ADMINISTRATION***

#### ***Chapter 07 Nondiscrimination in Education***

*Authority: Education Article, §§2-303, 4-108, and 26-701 et seq.; State Government Article, §§10-122 and 10-201 et seq., Annotated Code of Maryland; Federal Statutory References: 29 U.S.C. §794 et seq. and 42 U.S.C. §12101 et seq.*

##### ***.01 Scope.***

*A. This chapter implements Education Article, §§2-303(b) and 26-701 et seq., Annotated Code of Maryland, prohibiting unlawful discrimination and retaliation in education in Maryland public and nonpublic schools that receive state funds.*

*B. This chapter applies to the following entities in Maryland:*

- (1) All county boards of education;*
- (2) All public prekindergarten programs;*
- (3) All public primary and secondary schools;*
- (4) All nonpublic prekindergarten programs that receive state funds; and*
- (5) All nonpublic primary or secondary schools that receive state funds.*

*C. This chapter does not apply to:*

- (1) With respect to discrimination on the basis of sex, a prekindergarten program or school that limits admission to students of only one sex;*
- (2) With respect to discrimination on the basis of religion, a nonpublic prekindergarten program or nonpublic school that is affiliated with a religious institution:
  - (a) Providing instruction on the religious beliefs of the religion with which the program or school is affiliated;*
  - (b) Declining to provide instruction in beliefs that are different from the religion with which the program or school is affiliated;*
  - (c) Requiring student attendance at religious events inherent to the religion with which the program or school is affiliated;*
  - (d) Having a preference in or limiting admission to a student of certain religious beliefs or a student who is a member or is part of a family that is a member of the religious institution affiliated with the program or school, if the program or school has had the preference or limitation continually since the date on which the program or school was established; or*
  - (e) Granting tuition discounts for a student of certain religious beliefs or who is a member or is part of a family that is a member of the religious institution affiliated with the program or school if the practice of granting the discounts was established the later of before July 1, 2022, or since the date on which the program or school was established; and**
- (3) With respect to discrimination on the basis of disability, a nonpublic prekindergarten program or nonpublic school that is in compliance with §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq., or the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., as applicable.*

##### ***.02 Definitions.***

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

- (1) "Administrative law judge" means a hearing officer designated by the Maryland Office of Administrative Hearings to render the final decision of the Superintendent in a hearing.*
- (2) "Complainant" means a person who files a complaint alleging a discriminatory act under this chapter.*
- (3) "Department" means the Maryland State Department of Education.*
- (4) "Discriminatory act" means an act prohibited under this chapter.*
- (5) "Gender identity" means the gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth, which may be demonstrated by:
  - (a) Consistent and uniform assertion of the person's gender identity; or*
  - (b) Any other evidence that the gender identity is sincerely held as part of the person's core identity.**

(6) "Office of Administrative Hearings" means the administrative unit of Maryland government which is responsible for processing requests for hearings, for scheduling and conducting hearings, and for rendering decisions pursuant to State Government Article, §9-1601 et seq., Annotated Code of Maryland.

(7) "Party or Parties" means the complainant and the respondent.

(8) "Protective hairstyle" includes braids, twists, and locks.

(9) "Race" includes traits associated with race, including hair texture, afro hairstyles, and protective hairstyles.

(10) "Respondent" means a person accused in a complaint of a discriminatory act.

(11) "Sexual orientation" means the identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.

(12) "Superintendent" means the State Superintendent of Schools.

### **.03 Nondiscrimination in Education.**

A. Educational entities have a responsibility to protect every student's right to learn in an environment free from unlawful discrimination.

B. Entities identified in Regulation .01B of this chapter may not:

(1) Discriminate against a current student, a prospective student, or the parent or guardian of a current or prospective student on the basis of race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability;

(2) Refuse enrollment of a prospective student, expel a current student, or withhold privileges from a current student, a prospective student, or the parent or guardian of a current or prospective student because of an individual's race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability; or

(3) Discipline, invoke a penalty against, or take any other retaliatory action against a student or parent or guardian of a student who files a complaint alleging that the program or school discriminated against the student, regardless of the outcome of the complaint.

C. Entities identified in Regulation .01B(1) of this chapter shall adopt and maintain a written antidiscrimination policy that prohibits unlawful discrimination as described in §B of this regulation.

D. Entities identified in Regulation .01B of this chapter shall include the following antidiscrimination statement in their student handbook: It is the policy of the State of Maryland that all public and publicly funded schools and school programs operate in compliance with:

(1) Title VI of the federal Civil Rights Act of 1964; and

(2) Title 26, Subtitle 7 of the Education Article of the Maryland Code, which states that public and publicly funded schools and programs may not:

(i) Discriminate against a current student, a prospective student, or the parent or guardian of a current or prospective student on the basis of race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability;

(ii) Refuse enrollment of a prospective student, expel a current student, or withhold privileges from a current student, a prospective student, or the parent or guardian of a current or prospective student because of an individual's race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability; or

(iii) Discipline, invoke a penalty against, or take any other retaliatory action against a student or parent or guardian of a student who files a complaint alleging that the program or school discriminated against the student, regardless of the outcome of the complaint."

### **.04 Complaints.**

A. A complainant alleging discrimination in violation of Education Article, §26-704, Annotated Code of Maryland, may file a complaint in writing with the Superintendent.

B. A parent or guardian of a minor alleging discrimination may file a complaint on behalf of the minor.

C. The complaint shall be delivered by regular mail or electronic mail to the Department.

D. The complaint shall be in writing and include the following information:

(1) The complainant's name, mailing address, email address, telephone number and signature;

(2) The respondent's name, mailing address, email address, and telephone number;

(3) The date of any alleged discriminatory acts;

(4) A statement of facts describing any discriminatory acts;

(5) A statement of the relief requested; and

(6) Any supporting documents, exhibits, and affidavits.

E. The complaint shall be no longer than 15 pages, excluding attachments.

F. Deadlines.

(1) A complaint shall be filed within 60 days from the later of the date of the last discriminatory act or when the complainant learned of the discrimination.

(2) A complaint shall be deemed to have been filed within the 60-day period if, before the expiration of the 60-day period, it has been:

(a) Delivered to the Department; or

(b) Deposited in the United States mail, as registered or certified mail or Express Mail, or deposited with a delivery service, such as Fed Ex, UPS, or DHL, that provides verifiable tracking of the item from the point of origin.

**G. Concurrent Jurisdiction with State Board.**

(1) The State Board may stay action of an appeal filed pursuant to COMAR 13A.01.05 that also alleges discrimination in violation of Education Article, §26-701 et seq., Annotated Code of Maryland, pending a mediation agreement or final decision on a complaint filed under this chapter.

(2) The parties shall immediately provide to the State Board written notice of the mediation agreement or final decision.

(3) The provisions of this chapter do not extend any filing deadlines for any appeals filed with the State Board pursuant to COMAR 13A.01.05.

**.05 Response to Complaints.**

A. Upon receiving a complaint, the Department shall provide written notice of the complaint to the program or school that is the subject of the complaint and, if applicable, the county board in which the program or school is located.

B. Within 30 days of receipt of written notice of the complaint, the county board, program, or school, shall submit a written response to the Superintendent setting out its position.

C. The response shall contain the following information:

(1) A statement of facts relevant to the complaint;

(2) An argument on each allegation raised in the complaint, including citations of authority, reference to relevant legal principles, and reference to pages of documents and exhibits relied upon, if any;

(3) A statement of the relief requested; and

(4) Any supporting documents, exhibits, or affidavits.

**.06 Department Response.**

A. The Superintendent is authorized to enforce this chapter consistent with Education Article, §§2-303(b) and 26-701 et seq., Annotated Code of Maryland.

B. Calculating Deadlines. The last day of the period of time prescribed by any regulation of this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day which is not a Saturday, Sunday, or State legal holiday.

C. Mediation.

(1) Within 5 days of receiving the response from the county board, program, or school, the Department shall contact the parties and determine if the parties are willing to attempt mediation of an agreement between the complainant and the respondent to remedy and eliminate the alleged discrimination.

(2) Mediation is a voluntary process for each of the parties.

(3) If the parties are agreeable to mediation of the complaint, the Department will refer the complaint to the Office of Administrative Hearings for mediation to be completed within 60 days of the filing of the complaint.

(4) Mediation procedures shall be in accordance with the Administrative Procedure Act, State Government Article, Title 10, subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01.18.

(5) If mediation is successful, the Superintendent shall issue a written statement to both parties of the mediation findings and agreement, including the timeline within which any agreed actions must be taken.

(6) If a mediation agreement is not reached within the 60-day time period, the parties shall give written notice to the Superintendent.

D. Superintendent's Decision.

(1) The Superintendent shall make a decision based on the filings with the Department unless additional information is requested by the Department from either of the parties.

(2) Before issuing a decision, the Superintendent may request the parties to present additional documents, answer any questions, or present oral argument.

(3) Within 120 days after the complaint is filed, the Superintendent shall issue a written decision including:

(a) Findings of Fact;

(b) Conclusions of Law; and

(c) Notice of Appeal Rights, including any deadlines for filing an appeal.

(4) If the Superintendent finds that a county board, program, or school has violated Education Article, §26-704, Annotated Code of Maryland, the decision shall specify:

(a) Any actions required to remedy or eliminate the discrimination, including the timeline within which the actions must be taken; and

(b) Notification of how to reopen any complaint to remedy or eliminate the discrimination required by the Superintendent's final decision.

(5) The Superintendent's decision may require the Comptroller to withhold funding from the county board, program, or school in an amount to be determined by the Superintendent in accordance with Education Article, §2-303(b), Annotated Code of Maryland.

(6) If the Superintendent does not issue a decision within 120-day time period, the complainant may appeal to the Office of Administrative Hearings as described in Regulation .07 of this chapter.

E. Reopening Complaints.

(1) A complainant alleging that a county board, program, or school did not remedy or eliminate the discrimination as agreed in mediation or required by the Superintendent's decision may reopen a complaint previously made without having to file a new complaint or engaging in mediation.

(2) If the Superintendent finds that a county board, program, or school did not remedy or eliminate the discrimination as agreed or required by the Superintendent's decision, the Superintendent shall issue an updated written decision to both parties requiring the Comptroller to withhold funding from the county board, program, or school in an amount determined by the Superintendent in accordance with Education Article, §2-303(b), Annotated Code of Maryland.

**.07 Appeals.**

A. The Superintendent has delegated authority to administrative law judges of the Office of Administrative Hearings to make the final administrative decision on the appeal of the Superintendent's decision in a complaint brought under this chapter.

B. Hearing Requests.

(1) Either party may appeal the Superintendent's decision to the Office of Administrative Hearings by filing a request for hearing with the Department.

(2) The hearing request must be filed within 10 days from the date notice of the Superintendent's decision is sent to the party; or

(3) If the Superintendent does not issue a decision within the 120-day time period required by Regulation .06D(3) of this chapter, the hearing request may be filed within 130 days after the complaint is filed.

(4) If the subject of the Superintendent's decision is also before the State Board on an appeal filed pursuant to COMAR 13A.01.05 as described in Regulation .04H of this chapter, the party shall choose between:

(a) Filing a request for hearing to appeal the Superintendent's decision to the Office of Administrative Hearings and withdrawing the State Board appeal; or

(b) Pursuing the appeal before the State Board pursuant to COMAR 13A.01.05 and foregoing a hearing request to appeal the Superintendent's decision.

(5) The hearing request shall state:

(a) The name and address of the parties and any representatives of the parties; and

(b) The date of the Superintendent's decision.

(6) The Superintendent and the Department may not participate as a party in an appeal.

(7) The Department shall forward a hearing request to the Office of Administrative Hearings within 5 days of the filing date.

C. Hearing Procedures.

(1) Except as otherwise provided in this chapter, hearing procedures shall be in accordance with the Administrative Procedure Act, State Government Article, Title 10, subtitle 2, Annotated Code of Maryland and COMAR 28.02.

(2) The party filing the appeal and request for a hearing shall have the burden of proof by a preponderance of the evidence.

(3) The appeal hearing shall be held in the county where the alleged discrimination occurred.

D. The administrative law judge shall issue, by regular mail, a decision and order to the parties stating:

(1) Findings of Fact;

(2) Conclusions of Law; and

(3) If the administrative law judge finds that the respondent has violated Education Article, §26-704, Annotated Code of Maryland, a directive:

(a) To cease and desist from engaging in the discrimination; and

(b) To take any affirmative action necessary to effectuate the purposes of Education Article, §§26-701 et seq., Annotated Code of Maryland.

E. A decision by an administrative law judge of the Office of Administrative Hearings in an appeal under this chapter is the final administrative decision and may be appealed to circuit court pursuant to State Government Article, §10-222, Annotated Code of Maryland.

MOHAMMED CHOUDHURY  
State Superintendent of Schools