



Nancy S. Grasmick  
State Superintendent of Schools

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**TO:** Members of the Maryland State Board of Education

**FROM:** Nancy S. Grasmick, State Superintendent of Schools *Nancy*

**DATE:** March 23, 2010

**SUBJECT:** COMAR 13A.06.03 and COMAR 13A.06.04  
The Fitness and Athletic Equity for Students with Disabilities Act  
**ADOPTION**

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**PURPOSE:**

The purpose of this action is to request adoption of COMAR 13A.06.03 and COMAR 13A.06.04 to ensure that students with disabilities have an opportunity to try out for and, if selected, participate in athletic programs, provide reasonable accommodations to allow athletic opportunities and provide corollary athletic programs.

**HISTORICAL BACKGROUND:**

In January 2010, the State Board granted permission to publish the proposed changes to COMAR 13A.06.03 and COMAR 13A.06.04 in the *Maryland Register*.

In 2008 the Fitness and Athletic Equity for Students with Disabilities Act was signed into law (Education Article §§7-4B-01—7-4B-06). The Act calls for the Maryland State Board of Education to:

- (1) Ensure that students with disabilities have an equal opportunity to:
  - (i) Try out for and, if selected, participate in mainstream athletic programs;
- (2) Ensure the provision of reasonable accommodations necessary to provide students with disabilities equal opportunity to participate, to the fullest extent possible, in mainstream athletic programs; and
- (3) Ensure that additional Athletic Programs are available.

In addition, the statute requires the State Board of Education to adopt a model policy to assist local boards of education in the implementation of the provisions set forward.

In order to implement these provisions of the law, the Maryland Public Secondary Schools Athletic Association (MPSSAA) and the Maryland State Department of Education (MSDE) have proposed amending two sections of COMAR.



First, to amend the athletic bylaws the procedure calls for:

“Amendments approved by the MPSSAA shall be forwarded to the State Superintendent of Schools who will receive recommendations from Local Superintendents of Schools before the State Superintendent of Schools submit recommendations to the State Board of Education.”

In December 2008 the MPSSAA Board of Control approved amendments to the athletic regulations. Local superintendents of schools voted to support these changes at their April 2009 meeting.

Second, in addition to providing the opportunity to try out for interscholastic athletic teams, the law also requires local Boards of Education to provide equivalent opportunities for students with disabilities to participate. Providing an equivalent opportunity is defined as providing an interscholastic athletic or corollary athletic program. To assist local school systems in implementing such plans, MSDE proposed a new chapter in the regulations to establish such programs.

These COMAR provisions were previewed at four regional briefings conducted for athletic, physical education and special education supervisors from all 24 local school systems during the spring of 2009. They were also reviewed by local superintendents of schools in October 2009.

One public comment was received from Special Olympics Maryland. That comment did not address the proposed language of the regulation but rather language in the introductory statement under the Notice of Proposed Action. That comment is attached.

#### **EXECUTIVE SUMMARY:**

The Fitness and Athletic Equity for Students with Disabilities Act passed in 2008 calls for full implementation within three years. MSDE and the local school systems have been working to establish programs to accommodate the provisions of the law.

The proposed regulations provide greater opportunities for students with disabilities and bring regulations into compliance with the Act. The regulations also provide specific guidance to local school systems for implementing the regulations. They provide the foundation needed so that all athletic offerings will comport with the regulations and satisfy the requirements specified in law.

#### **ACTION:**

I am requesting the adoption of the proposed COMAR 13A.06.03 and COMAR 13A.06.04.

From: Pat Fegan [mailto:pfegan@somd.org]  
Sent: Thursday, February 18, 2010 1:29 PM  
To: Ned Sparks  
Subject: Comments on Supporting Programs 13A.06.04 Corollary Athletic Programs

Hi Ned,

I know you are swamped, as we are, with rescheduling athletic competitions and I hope all is working out for you.

I also know you have discussed with Mike Bovino the difference between Allied and Unified Sports Programs and how both meet the mandates of the fitness and athletics equity act. However in reading the Notice of Proposed Action for the above COMAR regs, Section III. Assumptions C. The Fitness and Athletic Equity Act of 2008 requires.... Paragraph 2 reads "Either with an Allied Interscholastic Program or Corollary Athletic Program school systems may accommodate students with disabilities. These programs would encompass three sports seasons per school year and ..."

I think this is just a typo and what was meant to be written here is, "School systems may accommodate students with disabilities through the Interscholastic Athletic Program or through a Corollary Athletic Program. Corollary Athletic Programs would encompass three sports seasons per school year and ..."

If I have misinterpreted the intent of this paragraph please let me know. Good luck with trying to get through this snowy winter season!

Pat

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**Subtitle 06 SUPPORTING PROGRAMS**

**13A.06.03 Interscholastic Athletics in the State**

Authority: Education Article, §§2-205 and 2-303(k), Annotated Code of Maryland

**Notice of Proposed Action**

[10-065-P]

The Maryland State Board of Education proposes to amend Regulation .04 under **COMAR 13A.06.03 Interscholastic Athletics in the State**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to ensure that students with disabilities have an opportunity to try out for and if selected participate in athletic programs, provide reasonable accommodations to allow athletic opportunities, and provide corollary athletic programs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**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 an impact on individuals with disabilities as follows:

The proposed action provides greater opportunity for students with disabilities to tryout and if selected participate on an interscholastic athletic team.

**Opportunity for Public Comment**

Comments may be sent to Edward Sparks, Executive Director, Athletics Programs, Division of Instruction, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0555, or email to nsparks@msde.state.md.us, or fax to 410-333-3111. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23 and 24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.04 Operational Guidelines.**

The regulations given below are established for all MPSSAA interscholastic sports:

A. (text unchanged)

A-1. *Athletics Equity for Students with Disabilities.*

(1) *Students who meet the eligibility requirements of Regulation .02 of this chapter may not be excluded on the basis of disability from the opportunity to try out for and if selected, participate in mainstream interscholastic athletic programs.*

(2) *Member Maryland Public Secondary Schools Athletic Association (MPSSAA). MPSSAA schools shall provide reasonable accommodations necessary to provide students*

*with disabilities with equal opportunities to participate to the fullest extent possible in mainstream athletic programs.*

(3) *Students with disabilities who meet the eligibility requirements of Regulation .02 of this chapter may be excluded from mainstream athletic programs if inclusion:*

(a) *Presents an objective safety risk to the student or others based on an individualized assessment of the student; or*

(b) *Fundamentally alters the nature of the school's mainstream athletic program.*

B. — J. (text unchanged)

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 06 SUPPORTING PROGRAMS**

**13A.06.04 Corollary Athletic Programs**

Authority: Education Article, 7-4B-01 — 7-4B-06, Annotated Code of Maryland

**Notice of Proposed Action**

[10-064-P]

The Maryland State Board of Education proposes to adopt new Regulations .01 — .08 under **COMAR 13A.06.04 Corollary Athletic Programs**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to ensure that students with disabilities have an opportunity to try out for and, if selected, participate in athletic programs, provide reasonable accommodations to allow athletic opportunities, and provide corollary athletic programs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The Fitness and Athletic Equity Act of 2008 requires local school systems to "Provide the opportunity for students with disabilities to participate in extracurricular or intramural competition." The proposed regulation provides the opportunity for local school systems to be in compliance of the Act.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E+)	\$15,000 to \$33,000 per school
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
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.)

C. The Fitness and Athletic Equity Act of 2008 requires local school systems to "Provide the opportunity for students with disabilities to participate in extracurricular or intramural competition." The proposed regulation provides the opportunity for local school systems to be in compliance of the Act.

Either with an Allied Interscholastic Program or Corollary Athletic Program school systems may accommodate students with disabilities. These programs would encompass three sports seasons per school year and be designated to be populated with a roster comprised of students with and without disabilities.

Cost estimates for establishing new programs range from \$15,000 per school to \$33,000 per school with an estimated range around \$25,000 per school. These estimates include one sport offering per school in each of the three seasons. Thus, the total cost for local school systems to come into compliance with the law is \$4,725,000 the first year. Estimates in the following year would remain the same. Cost savings experienced with the reuse of equipment and uniforms would be mitigated with increases in travel fees.

**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 an impact on individuals with disabilities as follows:

The proposed action provides for athletic opportunities for students with disabilities in Maryland Public Schools.

**Opportunity for Public Comment**

Comments may be sent to Edward Sparks, Executive Director, Athletics Programs, Division of Instruction, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0555, or email to nsparks@msde.state.md.us, or fax to 410-333-3111. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23-24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.01 Purpose.**

The purpose of this chapter is to define the requirements for a Corollary Athletic Program in the local school systems to provide athletic opportunities so that every student in public schools may have an equal opportunity to access the benefits of education-based athletic programs.

**.02 Definitions.**

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

B. Terms Defined.

(1) "Corollary Athletic Program" means a program that is not governed by the requirements of COMAR 13A.06.03 and COMAR 13A.04.13 and that is specifically designed to combine groups of students with and without disabilities together in physical activity.

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

(3) Interscholastic Athletic Programs means programs governed by the requirements of COMAR 13A.06.03.

(4) "Student with a disability" means:

(a) A student who meets the definition of a "handicapped person" at 45 C.F.R. §84.3(j);

(b) A student who meets the definition of student with a disability as defined in COMAR 13A.05.01.03B; or

(c) A student who meets the definition of a "handicapped person" as defined in 34 C.F.R. §104.3(j).

**.03 Access to School Athletic Programs.**

Each local school system shall:

A. Develop a plan, policies and procedures to promote and protect the inclusion of students with disabilities in school athletic programs;

B. Provide students with disabilities equivalent opportunities for participation in either the Interscholastic Athletic Program or the Corollary Athletic Program; and

C. Maintain evidence indicating that the interests and abilities of students with disabilities have been fully and effectively accommodated by the local school systems Interscholastic Athletic or Corollary Athletic Program.

**.04 Corollary Athletic Programs.**

A. Corollary Athletic Programs shall provide for the diversity of abilities and interests of students with disabilities.

B. The local school system shall offer a Corollary Athletic Program in each of the fall, winter and spring seasons. The dates of the fall, winter and spring seasons do not need to match the dates prescribed in COMAR 13A.06.03. The sport season for the Corollary Athletic Program shall be limited to a maximum of 12 consecutive weeks.

**.05 Eligibility for Corollary Athletic Programs.**

A. Students in grades K-8 who participate in the Corollary Athletic Program shall:

(1) Be officially registered and attending a Maryland Public School; and

(2) Present to their school principal, or the principal's designee, a form from a parent or guardian giving permission for participation.

B. Secondary school students in grades 9-12 who participate in the Corollary Athletic Program:

(1) Shall be officially registered and attending a Maryland Public School;

(2) Shall present to their high school principal, or the principal's designee, a form from a parent or guardian giving permission for participation;

(3) Shall be making satisfactory progress toward:

(a) Graduation with a Maryland High School Diploma specified in COMAR 13A.03.02.09B; or

(b) School completion with a Maryland High School Certificate of Program Completion specified in COMAR 13A.03.02.09D; and

(4) May not have participated on an interscholastic athletic team in the same sport.

C. If a student acquires a disability during their years of participation in interscholastic sports, the local school system may permit an exception to §B(4) of this regulation.

**.06 Complaints and Appeal Process.**

A. Parents, guardians and legal representatives of students with disabilities may file a written complaint with the local superintendent regarding an alleged violation of this chapter.

B. The written complaint shall:

(1) State the alleged violation;

(2) Contain a brief statement of facts necessary to understand the complaint;

(3) Contain a brief statement of relief sought; and

(4) Be filed within 30 days of the discovery date of the alleged violation.

C. The appeals process set forth in Education Article, §4-205(c), Annotated Code of Maryland, including an appeal to

the State Board from a local board's decision on the complaint shall govern the processing of the complaint.

**.07 Corrective Actions.**

In response to systemic complaints filed alleging on-going violations of this chapter or at its discretion, the Department may initiate a fact-finding process and may impose corrective action on a school system.

**.08 Annual Reports.**

A. First Annual Report. Local school systems shall submit the first Annual Report on May 15, 2010. It shall:

(1) State the total number of students who participated in the Interscholastic Athletic Program and the Corollary Athletic Program along with the total number of students with disabilities as defined in Regulation .02B of this chapter who participated in the Interscholastic Athletic Program and the Corollary Athletic Program; and

(2) Provide a copy of the plans, policies and procedures developed by the local school systems under Regulation .03 of this chapter.

B. Subsequent Reports. Local school systems shall:

(1) Submit Annual Reports on May 15;

(2) Describe modifications of policies and procedures by the local school system to engage students with disabilities in the Interscholastic Athletic Program and the Corollary Athletic Program; and

(3) State the total number of students who participated in the Interscholastic Athletic Program and the Corollary Athletic Program along with the total number of students with disabilities as defined in Regulation .02B of this chapter who participated in the Interscholastic Athletic Program and the Corollary Athletic Program.

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 08 STUDENTS**

**13A.08.06 Positive Behavioral Interventions and Support Program**

Authority: Education Article, §§2-205 and 7-304.1,  
Annotated Code of Maryland

**Notice of Proposed Action**

[10-050-P]

The Maryland State Board of Education proposes to amend Regulations .01 and .02 and adopt new Regulation .03 under COMAR 13A.08.06 **Positive Behavioral Interventions and Support Programs**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to bring the regulations into alignment with Education Article, §7-304.1, Annotated Code of Maryland, as amended by the General Assembly in 2008. Legislation was passed expanding the criteria which requires that a school implement a Positive Behavioral Intervention Support or alternative behavioral modification program in collaboration with the Maryland State Department of Education.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Since Positive Behavioral Support and Interventions is a comprehensive prevention strategy, it is assumed that the cost to implement will be offset by the corresponding cost savings which will accrue due to the reduced discipline problems within our schools. Though not measurable at this time, there is a cost benefit that can be measured in two areas: student time in classroom and administrator time freed up.

Since PBIS is a framework through which research based practices can be implemented, it is possible to integrate secondary practices to target this population of students making up the Habitual Truancy rate. Most PBIS implementation across the nation has been provided to schools on a voluntary basis. There is no data to demonstrate how effective implementation is when a school is mandated to be trained in the PBIS model therefore, it is assumed that such training will be valuable.

Non quantifiable benefits: There is no way to estimate a dollar figure that will ultimately accrue to communities as an indirect result of creating safe and drug free learning environments. As children become more successful in our schools, thus producing more competent adolescents the ultimate effect will be better educated secondary schools graduates who will ultimately become productive citizens contributing to the overall good of the community, paying taxes and generating income instead of becoming the recipient of direct service agencies.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)		Unknown
B. On other State agencies:	NONE		
C. On local governments:	(E+)		\$8,000 per school
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE		
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. As the number of implementing schools increases (currently at approximately 750, the cost of supporting those schools also increases). Issuing agency currently absorbs costs for PBIS school-wide (universal) implementation, training and support into its existing budget. No line item budget for this initiative has been allocated in the 10 years the initiative has been operating, to date. This regulation identifies schools which are required to implement PBIS, which will increase annually the number of schools to be trained. There are ongoing state level costs associated with providing training for new teams identified through this regulation in addition to the current PBIS efforts to provide ongoing technical assistance, training and support to PBIS schools.

Based specifically on the habitual truant data that the local school systems provide to the Department, 62 schools would require training in PBIS. Thirty-eight schools would require new team training and 24 would require expansion according to the statute. Some of these schools have already been trained in PBIS but have not remained active in implementation or did not maintain fidelity in their implementation. In order to train these schools, it is estimated that it would cost \$800 per school. This entails providing the training and materials for school teams and coaches, but does not account for the annual operating budget necessary to provide follow-up meetings to ensure implementation is on track with fidelity, and ongoing technical assistance from the Department, Shepard Pratt, and Johns Hopkins. Moreover, the targeted audience of truant students would benefit most from secondary interventions of tier two which have never been funded.