



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

TO: Members of the State Board of Education (Revised 1/17/13)
FROM: Lillian M. Lowery, Ed.D. *Lillian M. Lowery*
DATE: January 22, 2013
SUBJECT: COMAR 13A.04.15 Digital Learning

PURPOSE:

The purpose of the proposed regulations, COMAR 13A.04.15 Digital Learning (Attachment I), is to provide additional course opportunities for students and replace emergency regulations published for this purpose by the State Board in August 2012. The proposed COMAR addresses digital learning, the incorporation of a fee structure that will support the activities outlined in Senate Bill 674 (2012 General Assembly), and provides standards which districts and MSDE will follow for the approval and posting of digital course opportunities.

HISTORICAL BACKGROUND:

The goal of the Maryland online program is to provide high quality online courses for students; however, due to the lack of funding, there has not been an online course approved by the Maryland State Department of Education (MSDE) since 2009. Prior to this time, MSDE was able to pay reviewers through funding sources that are no longer available. Until passage of Senate Bill 674, MSDE was the only entity that could review and evaluate online courses. This review process proved to be costly and time consuming. Although attempts were made to recruit voluntary reviewers for online courses, MSDE was unsuccessful in securing educators who were willing to work on a volunteer basis.

During this past General Assembly session, Senate Bill 674 was passed authorizing the State Board of Education to set reasonable vendor fees to cover the costs incurred by the Department for the review and approval of each online course. This bill also allows county boards to set and charge vendor fees to review and evaluate online courses according to the standards established by MSDE.

EXECUTIVE SUMMARY:

On September 25, 2012, the State Board granted permission to publish and the public comment period concluded January 2, 2013. During this time, the Federation of the Blind of Maryland raised concerns related to the adverse impact online delivered courses could present to visually impaired students (Attachment II). MSDE staff met with the Federation several times and attempted to address their concerns. Specifically, staff explained that the rubric currently used for reviewing online courses is consistent

Members of the State Board of Education
January 22, 2013
Page 2

with Section 508 of the Rehabilitation Act compliance requirements and the trainers/reviewers receive formal training to ensure that there are no barriers to making these new opportunities accessible to people with disabilities, including the blind.

On January 16, 2013, I received a letter from the AELR Committee placing a hold on these regulations. In the e-mail conveying that letter, the Presiding Chair of the Committee, Delegate Sandy Rosenberg requested that MSDE meet with the Federation of the Blind to address the concerns raised (Attachment III).

ACTION:

I am requesting that the State Board delay adoption of these regulations until MSDE can meet again with the Federation of the Blind.

Attachments

PROPOSED ACTION ON REGULATIONS

1581

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.10 Nursing Facility Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Proposed Action [12-324-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .07-1 under COMAR 10.09.10 Nursing Facility Services.

Statement of Purpose

The purpose of this action is to extend the Interim Working Capital Fund for 1 year to May 1, 2013.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The fiscal impact of these proposed regulations will be \$163,347 in lost interest to the State.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R-)	\$163,347
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(+)	\$163,347
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 and D. The maximum outstanding fund would be \$14,849,700 at 1.1%, which would be \$163,347 in lost interest to the State.

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 Michele Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through January 2, 2013. A public hearing has not been scheduled.

.07-1 Interim Working Capital Fund.

A.—H. (text unchanged)

I. The Interim Working Capital Fund expires on May 1, [2012] 2013. Providers shall repay all outstanding funds to the Department by May 1, [2012] 2013. The Department may grant repayment extensions of not longer than 60 days under extraordinary circumstances.

JOSHUA M. SHARPSTEIN, M.D.
Secretary of Health and Mental Hygiene

Title 13A STATE BOARD OF EDUCATION

Subtitle 04 SPECIFIC SUBJECTS

13A.04.15 Digital Learning

Authority: Education Article, §§2-205 and 7-1002, Annotated Code of Maryland

Notice of Proposed Action [12-326-P]

The Maryland State Board of Education proposes to adopt new Regulations .01—.05 under a new chapter, COMAR 13A.04.15 Digital Learning. These regulations replace the emergency regulations 13A.03.02.02 and .05 published on August 24, 2012.

This action was considered at the September 25, 2012, meeting of the Maryland State Board of Education.

Statement of Purpose

The purpose of this action is to provide additional course opportunities for students.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed regulation will have a fiscal impact on MSDE's ability to hire content expert educators and trained reviewers to evaluate student online courses. It will also impact MSDE's ability to provide professional development for district educators as it relates to the review and evaluation of online courses.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$14,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	

PROPOSED ACTION ON REGULATIONS

1582

B. 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. S.B. 674, Acts of 2012, states that the State Board may set reasonable fees for reviewing and processing approvals for online courses and services. Each course review requires several content expert educators and a trained reviewer. It is anticipated that a minimum of ten courses will be reviewed each year. The Department may delegate the authority to review and approve online courses to a County board. Professional development provided by MSDE that is related to the review process is required to expand each district's capacity to review and approve courses.

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 Valerie Emrich, Director of Instructional Technology, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0382 (TTY 410-333-6442), or email to vemrich@msde.state.md.us, or fax to 410-333-2128. Comments will be accepted through January 2, 2013. 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 January 22, 2013, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.01 Purpose.

Digital learning encompasses a wide spectrum of tools and practices that support teaching and learning for students and educators. This chapter defines online and blended courses and establishes requirements for such courses to be offered to students for credit. Processes for the approval of online credit bearing student courses and professional development courses are addressed. These processes include the setting of a vendor fee structure for reviewing and approving courses.

.02 Definitions.

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

B. Terms Defined.

(1) "Blended course" means one in which less than 20 percent of the instruction is conducted online. Such a course is also referred to as a "hybrid course."

(2) "Digital learning" means any instructional practice that effectively uses Internet-related technology to strengthen the student and/or educator learning experience.

(3) "Online course" means an Internet-based course in which 80 percent or more of the instruction is conducted online, the teacher and student are separated by distance or time or both, and two-way communication is required between teacher and student.

(4) "Review" means an analysis of a student or professional development online course by a panel of experts designated by the Department to determine whether the course shall be recommended for approval.

(5) "Vendor" means a person or organization that markets online courses or contracted online student seats in such courses.

.03 Approval Requirements.

A. Credit-bearing online courses provided to students by a local education agency (LEA) are subject to Department approval.

B. Noncredit-bearing courses and blended courses provided to students by a local education agency do not require Department approval.

C. All online professional development courses offered by vendors to local education agencies are subject to Department approval.

.04 Review and Approval Procedures.

A. There are three options for obtaining review and approval of credit-bearing online courses and professional development courses.

B. Options for Obtaining Review and Approval.

(1) Departmental Review and Approval.

(a) A vendor may request a Department review of an online credit-bearing course or professional development course.

(b) Department review shall be conducted by a panel of at least three content experts, one of whom shall be a reviewer trained to conduct such reviews.

(c) A vendor seeking Department approval of an online or professional development course shall pay a nonrefundable fixed fee of \$1,400 to the Department to cover the cost of a review.

(d) The Department reserves the right to review previously approved courses every 3 years.

(e) The Department reserves the right to determine which courses will be reviewed based on student and local education agency need.

(2) Local Education Agency Review and Approval Process.

(a) A vendor may request an LEA review of an online credit-bearing course or professional development course.

(b) The LEA review shall be conducted by a panel of at least three content experts, one of whom must be a reviewer trained to conduct such reviews as designated by the Department.

(c) An LEA may establish a reasonable fee to cover the cost of a review.

(d) After conducting the review, the LEA shall submit its review and recommendation for approval to the Department for final approval.

(e) To cover the cost of the final review, the LEA shall submit to the Department 15 percent of the fee it collected from the vendor.

(f) The LEA reserves the right to determine which courses will be reviewed based on student need.

(3) MSDE-Approved Reviewing Program.

(a) A vendor may request an MSDE-Approved Reviewing Program review of an online credit-bearing course or a professional development course.

(b) After the review is completed, the MSDE-Approved Reviewing Program shall submit the review documentation to MSDE.

(c) The vendor shall pay a fee of \$360 to the Department to cover the cost of the final review.

.05 Fee Increase.

Upon review and approval by the State Board, in FY 2016 and any subsequent year thereafter, the Department may increase the vendor fees set forth in this Regulation by no more than 20 percent per annum. If the Department increases the fee, it shall publish such increase on its website at <http://marylandpublicschools.org/MSDE>.

LILLIAN M. LOWERY, Ed.D.
State Superintendent of Schools



Melissa Riccobono, *President*

1026 East 36th Street Baltimore, MD 21218
Phone 410 235 3073 president@nfbmd.org

January 2, 2013

SENT VIA ELECTRONIC AND U.S. MAIL

Ms. Valerie Emrich, Director of Instructional Technology
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201
vemrich@msde.state.md.us

Re: Comments of the National Federation of the Blind of Maryland to Notice of Proposed Action to Adopt COMAR 13.A.04.15 Digital Learning

Dear Ms. Emrich:

This letter contains the comments of the National Federation of the Blind of Maryland (NFB of Maryland), the state affiliate of the National Federation of the Blind (NFB), the nation's largest and oldest organization of blind people, to the Notice of Proposed Action by the Maryland State Board of Education (MSBE) to adopt new regulations under a new chapter, COMAR 13A.04.15 Digital Learning, as published in the Maryland Register. See 39:24 Md.R. 1581-1582 (November 30, 2012). The Digital Learning regulation, if adopted, would establish processes for the approval of online courses for students and professionals and expand online learning opportunities for students throughout the State of Maryland. The regulation fails to address accessibility of digital learning to the blind or other students or professionals with print disabilities. As a result, adoption of the regulation as proposed would put Maryland's blind students and professionals at serious risk.

To be clear, the NFB of Maryland does not object to the overall goal of expanding digital technology to students or professionals, nor does it object to MSBE's establishment of processes for approval of such technology. As you are likely aware, digital technology can be an equalizer for blind students and professionals when accessibility is made a priority. Unlike print, digital content is inherently accessible; that is, it can be rendered visually, aurally, or tactilely, including through the use of screen access technology and / or a refreshable braille display. Indeed, many developers have designed their digital learning tools, online courses, and other educational technologies to be accessible. Blind or sighted, students and professionals can participate equally in the educational opportunities offered.

Ms. Emrich
January 2, 2013
Page two

At the same time, many vendors offer educational technology and courses that are inaccessible because the vendors have not designed them with accessibility in mind. When educational institutions adopt inaccessible online courses and technologies, blind students and professionals are severely hampered in their ability to learn and keep up with their colleagues and classmates, or are excluded altogether. On a far-too frequent basis, the NFB and the NFB of Maryland hear from parents of blind children, blind professionals, and students from throughout the country – including Maryland – who are effectively shut out from learning because their public schools have chosen to offer inaccessible digital technologies and courses, instead of deploying accessible technology and demanding accessibility from their vendors. Blind students and professionals are either denied the opportunity to participate in such courses because they cannot access them, or must go through significant obstacles, such as depending upon a parent or third party to spend hours reading and describing the content of each screen. It is an unfortunate and unnecessary irony that the transformation from print to digital content – which is inherently accessible – has meant for many blind students and professionals less access to education, solely as a result of the choices made by their schools and by technology companies.

The Digital Technology regulations proposed by MSBE are the gateway to determining whether, as Maryland schools expand their digital learning options, Maryland's blind students and professionals will be included in our public education or will be left behind. It is the responsibility of our schools, both under federal law and as part of their mission to educate all students including those with disabilities, to ensure that the digital technologies they offer are accessible. If the MSBE adopts approval processes for online courses without consideration of accessibility, as currently proposed, the risk is heavy, if not certain, that our blind students will be excluded. In addition, because school districts that adopt inaccessible technology violate federal law, by failing to mandate accessibility, MSDE puts itself at legal risk.¹

On the other hand, if the MSBE adopts regulations that make accessibility a priority in the review process, Maryland's blind students and professionals will be able to participate in the educational benefits the online courses will offer. In addition, implementing accessibility will lessen MSBE's exposure to legal liability while establishing Maryland as a leader in ensuring equal educational opportunities for our blind students during this pivotal time.

¹ See 28 C.F.R. § 35.130(a); 34 C.F.R. § 104.4(a); and Letter from U.S. Department of Justice, Civil Rights Division, & U.S. Department of Education, Office for Civil Rights, to College and University Presidents, at 1 (June 29, 2010) (copy attached).

Ms. Emrich
January 2, 2013
Page three

With the explanation above in mind, we offer the following suggestions to amend the text of the Digital Learning regulation. A redlined draft of the Notice of Proposed Action and regulatory language is also attached for your consideration.

(1) Address the Impact on Individuals with Disabilities

Currently, the Notice of Proposed Action states "The proposed action has no impact on individuals with disabilities." As addressed above, this statement is untrue. The impact will be enormous on blind and other individuals with print disabilities. As such, we propose changing this statement to state:

The proposed action will impact students who are blind or have other print disabilities and rely on screen access technology to access digital content. To ensure that students with such disabilities are not adversely impacted, each course review requires an accessible technology expert and the course must be accessible to be granted final approval.

(2) Require that Online Courses and Digital Technology Must Be Accessible as a Criteria for Approval

We recommend adding a provision that the Department shall only approve courses and digital learning that are accessible. We would also define "accessible" to mean "fully and equally accessible to and independently usable by blind individuals so that blind students and professionals are able to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students and professionals, with substantially equivalent ease of use."

(3) Include an Expert in Access Technology as Part of the Review Panel

Currently, the regulation would establish three options for obtaining review and approval of credit-bearing online courses and professional development courses. Two of these options require a review by a panel of experts of online courses to be considered for approval. The panels would include three content experts, one of whom must be a reviewer trained to conduct such reviews as designated by the Maryland State Department of Education ("Department").

We recommend that at least one access technology expert be added to the Department and Local Education Agency review panels. The access technology expert would assess and report on the accessibility of the online course as part of the review process.

Ms. Emrich
January 2, 2013
Page four

The NFB of Maryland, on behalf of its members, including blind students and professionals in Maryland, objects to the adoption of the Digital Learning regulation as it is currently drafted. For the reasons stated above, we strongly urge the MSBE to add the provisions suggested above and contained in the attached redline to the Digital Learning regulation.

Respectfully Submitted,

Melissa Riccobono/vay

Melissa Riccobono
President, National Federation of the Blind of Maryland

MR/vay
Enclosures



June 29, 2010

Dear College or University President:

We write to express concern on the part of the Department of Justice and the Department of Education that colleges and universities are using electronic book readers that are not accessible to students who are blind or have low vision and to seek your help in ensuring that this emerging technology is used in classroom settings in a manner that is permissible under federal law. A serious problem with some of these devices is that they lack an accessible text-to-speech function. Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities – individuals with visual disabilities – is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

The Departments of Justice and Education share responsibility for protecting the rights of college and university students with disabilities. The Department of Justice is responsible for enforcement and implementation of title III of the ADA, which covers private colleges and universities, and the Departments of Justice and Education both have enforcement authority under title II of the ADA, which covers public universities. In addition, the Department of Education enforces Section 504 with respect to public and private colleges and universities that receive federal financial assistance from the Department of Education. As discussed below, the general requirements of Section 504 and the ADA reach equipment and technological devices when they are used by public entities or places of public accommodation as part of their programs, services, activities, goods, advantages, privileges, or accommodations.

Under title III, individuals with disabilities, including students with visual impairments, may not be discriminated against in the full and equal enjoyment of all of the goods and services of private colleges and universities; they must receive an equal opportunity to participate in and benefit from these goods and services; and they must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others.¹ Under title II, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor subjected to discrimination by, public universities and colleges.² Both title II and Section 504 prohibit colleges and universities from affording individuals with disabilities with an opportunity to participate in or benefit from college and university aids,

¹ 28 C.F.R. § 36.201(a); 28 C.F.R. § 36.202(a); and 28 C.F.R. § 36.202(c) (2009).

² 28 C.F.R. § 35.130(a) (2009).

benefits, and services that is unequal to the opportunity afforded others.³ Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others.⁴ A college or university may provide an individual with a disability, or a class of individuals with disabilities, with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others.⁵

The Department of Justice recently entered into settlement agreements with colleges and universities that used the Kindle DX, an inaccessible, electronic book reader, in the classroom as part of a pilot study with Amazon.com, Inc. In summary, the universities agreed not to purchase, require, or recommend use of the Kindle DX, or any other dedicated electronic book reader, unless or until the device is fully accessible to individuals who are blind or have low vision, or the universities provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use. The texts of these agreements may be viewed on the Department of Justice's ADA Web site, www.ada.gov. (To find these settlements on www.ada.gov, search for "Kindle.") Consistent with the relief obtained by the Department of Justice in those matters, the Department of Education has also resolved similar complaints against colleges and universities.

As officials of the agencies charged with enforcement and interpretation of the ADA and Section 504, we ask that you take steps to ensure that your college or university refrains from requiring the use of any electronic book reader, or other similar technology, in a teaching or classroom environment as long as the device remains inaccessible to individuals who are blind or have low vision. It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students.

Congress found when enacting the ADA that individuals with disabilities were uniquely disadvantaged in American society in critical areas such as education.⁶ Providing individuals with disabilities full and equal access to educational opportunities is as essential today as it was when the ADA was passed. In a Proclamation for National Disability Employment Awareness Month, President Obama underscored the need to "*strengthen and expand* the educational opportunities for individuals with disabilities," noting that, "[i]f we are to build a world free from unnecessary barriers . . . we must ensure that every American receives an education that prepares him or her for future success." <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-disability-employment-awareness-month> (September 30, 2009) (emphasis added).

³ 28 C.F.R. § 35.130(b)(1)(ii) and 34 C.F.R. § 104.4(b)(1)(ii) (2009).

⁴ Cf. 28 C.F.R. § 35.130(b)(1)(iii) and 34 C.F.R. § 104.4(b)(1)(iii) (2009).

⁵ 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv) (2009).

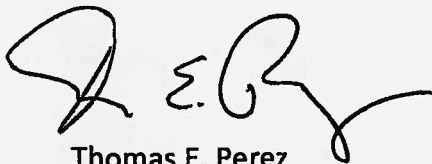
⁶ 42 U.S.C. § 12101(a) (1990).

Technology is the hallmark of the future, and technological competency is essential to preparing all students for future success. Emerging technologies are an educational resource that enhances learning for everyone, and perhaps especially for students with disabilities. Technological innovations have opened a virtual world of commerce, information, and education to many individuals with disabilities for whom access to the physical world remains challenging. Ensuring equal access to emerging technology in university and college classrooms is a means to the goal of full integration and equal educational opportunity for this nation's students with disabilities. With technological advances, procuring electronic book readers that are accessible should be neither costly nor difficult.

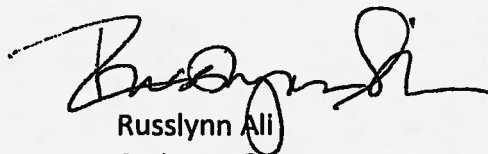
We would like to work with you to ensure that America's technological advances are used for the benefit of all students. The Department of Justice operates a toll-free, technical assistance line to answer questions with regard to the requirements of federal laws protecting the rights of individuals with disabilities. For technical assistance, please call (800) 514-0301 (voice) or (800) 514-0383 (TTY). Specialists are available Monday through Friday from 9:30 AM until 5:30 PM (ET) except for Thursday, when the hours are 12:30 PM until 5:30 PM. These specialists have been trained specifically to address questions regarding accessible electronic book readers. Colleges, universities, and other stakeholders can also contact the Department of Education's Office for Civil Rights for technical assistance by going to OCR's Web site at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

We appreciate your consideration of this essential educational issue and look forward to working with you to ensure that our nation's colleges and universities are fully accessible to individuals with disabilities.

Sincerely,



Thomas E. Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice



Russlynn Ali
Assistant Secretary
for Civil Rights
U.S. Department of Education

Title 13A
STATE BOARD OF EDUCATION
Subtitle 04 SPECIFIC SUBJECTS

13A.04.15 Digital Learning

Authority: Education Article, §§2-205 and 7-1002, Annotated Code of Maryland

Notice of Proposed Action

[12-326-P]

The Maryland State Board of Education proposes to adopt new Regulations .01—.05 under a new chapter, COMAR 13A.04.15 **Digital Learning**. These regulations replace the emergency regulations 13A.03.02.02 and .05 published on August 24, 2012. This action was considered at the September 25, 2012, meeting of the Maryland State Board of Education.

Statement of Purpose

The purpose of this action is to provide additional course opportunities for students.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed regulation will have a fiscal impact on MSDE's ability to hire content expert educators and trained reviewers to evaluate student online courses. It will also impact MSDE's ability to provide professional development for district educators as it relates to the review and evaluation of online courses.

II. Types of Economic Impact.

Revenue (R+/R-)

Expenditure (E+/E-) Magnitude

A. On issuing agency: (E+) \$14,000

B. On other State agencies: NONE

C. On local governments: NONE

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. S.B. 674, Acts of 2012, states that the State Board may set reasonable fees for reviewing and processing approvals for online courses and services. Each course review requires several content expert educators, an accessible technology expert, and a trained reviewer. It is anticipated that a minimum of ten courses will be reviewed each year. The Department may delegate the authority to review and approve online courses to a County board. Professional development provided by MSDE that is related to the review process is required to expand each district's capacity to review and approve courses.

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.~~ The proposed action will impact students who are blind or have other print disabilities and rely on screen access technology to access digital content. To ensure that students with such disabilities are not adversely impacted, each course review requires an accessible technology expert and the course must be accessible to be granted final approval.

Opportunity for Public Comment

Comments may be sent to Valerie Emrich, Director of Instructional Technology, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0382 (TTY 410-333-6442), or email to

vemrich@msde.state.md.us, or fax to 410-333-2128. Comments will be accepted through January 2, 2013. 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 January 22, 2013, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.01 Purpose.

Digital learning encompasses a wide spectrum of tools and practices that support teaching and learning for students and educators. This chapter defines online and blended courses and establishes requirements for such courses to be offered to students for credit. Processes for the approval of online credit bearing student courses and professional development courses are addressed. These processes include the setting of a vendor fee structure for reviewing and approving courses.

.02 Definitions.

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

B. Terms Defined.

(1) "Blended course" means one in which less than 20 percent of the instruction is conducted online. Such a course is also referred to as a "hybrid course."

(2) "Digital learning" means any instructional practice that effectively uses Internet-related technology to strengthen the student and/or educator learning experience.

(3) "Online course" means an Internet-based course in which 80 percent or more of the instruction is conducted online, the teacher and student are separated by distance or time or both, and two-way communication is required between teacher and student.

(4) "Review" means an analysis of a student or professional development online course by a panel of experts designated by the Department to determine whether the course shall be recommended for approval.

(5) "Vendor" means a person or organization that markets online courses or contracted online student seats in such courses.

(6) "Accessible" means fully and equally accessible to and independently usable by blind individuals so that blind students and professionals are able to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students and professionals, with substantially equivalent ease of use.

.03 Approval Requirements.

A. Credit-bearing online courses provided to students by a local education agency (LEA) are subject to Department approval.

B. Noncredit-bearing courses and blended courses provided to students by a local education agency do not require Department approval.

C. All online professional development courses offered by vendors to local education agencies are subject to Department approval.

.04 Review and Approval Procedures.

A. There are three options for obtaining review and approval of credit-bearing online courses and professional development courses.

B. Options for Obtaining Review and Approval.

(1) Departmental Review and Approval.

(a) A vendor may request a Department review of an online credit-bearing course or professional development course.

(b) Department review shall be conducted by a panel of at least three content experts, one of whom shall be a reviewer trained to conduct such reviews. The panel shall also include at least one access technology expert.

(c) Department review shall include an assessment of the accessibility of the course.

~~(d)~~ (d) A vendor seeking Department approval of an online or professional development course shall pay a nonrefundable fixed fee of \$1,400 to the Department to cover the cost of a review.

~~(e)~~ (e) The Department reserves the right to review previously approved courses every 3 years.

~~(f)~~ (f) The Department reserves the right to determine which courses will be reviewed based on student and local education agency need.

(2) Local Education Agency Review and Approval Process.

(a) A vendor may request an LEA review of an online credit-bearing course or professional development course.

(b) The LEA review shall be conducted by a panel of at least three content experts, one of whom must be a reviewer trained to conduct such reviews as designated by the Department. The panel shall also include at least one access technology expert.

(c) The LEA review shall include an assessment of the accessibility of the course.

~~(e)~~(d) An LEA may establish a reasonable fee to cover the cost of a review.

~~(d)~~(e) After conducting the review, the LEA shall submit its review and recommendation for approval to the Department for final approval.

~~(e)~~(f) To cover the cost of the final review, the LEA shall submit to the Department 15 percent of the fee it collected from the vendor.

~~(f)~~(g) The LEA reserves the right to determine which courses will be reviewed based on student need.

(3) MSDE-Approved Reviewing Program.

(a) A vendor may request an MSDE-Approved Reviewing Program review of an online credit-bearing course or a professional development course.

(b) After the review is completed, the MSDE-Approved Reviewing Program shall submit the review documentation to MSDE.

(c) The vendor shall pay a fee of \$360 to the Department to cover the cost of the final review.

.05 Fee Increase.

Upon review and approval by the State Board, in FY 2016 and any subsequent year thereafter, the Department may increase the vendor fees set forth in this Regulation by no more than 20 percent per annum. If the Department increases the fee, it shall publish such increase on its website at <http://marylandpublicschools.org/MSDE>.

.06 Accessibility.

The Department shall only approve courses and digital learning that are accessible.

LILLIAN M. LOWERY, Ed.D.
State Superintendent of Schools

From: [Renee Spence](#)
To: [Val Emrich](#); [Elizabeth Kameen](#)
Cc: [Lisa Bishop](#)
Subject: FW: Proposed Digital Learning Regulation
Date: Wednesday, January 16, 2013 9:44:48 AM
Attachments: [1-14-13_hold_ltr.Sec.SBOE.digitallearning.doc](#)

FYI
Renee

-----Original Message-----

From: delsandy@aol.com [<mailto:delsandy@aol.com>]
Sent: Wednesday, January 16, 2013 9:39 AM
To: [Lillian Lowery](mailto:Lillian.Lowery@nfbmd.earthlink.net); nfbmd@earthlink.net
Cc: paul.pinsky@senate.state.md.us; [Renee Spence](#); Evan.Isaacson@mlis.state.md.us
Subject: Proposed Digital Learning Regulation

Dr. Lowery and Ms. Maneki,

Attached is the letter in which I expressed the intent of the AELR Committee to conduct a more detailed study of MSDE's proposed regulations on digital learning. On behalf of the committee, I write to ask that you or your representatives meet to address the concerns raised by the Maryland Federation of the Blind.

If you have any questions regarding this matter, do not hesitate to contact me.

Sandy Rosenberg

January 14, 2013

Lillian M. Lowery, Ed.D.
State Superintendent of Schools
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Re: Proposed Regulations
State Board of Education:
Specific Subjects: Digital Learning:
COMAR 13A.04.15.01-.05

Dear Superintendent Lowery:

The Joint Committee on Administrative, Executive, and Legislative Review is currently reviewing the above-referenced proposed regulations, which were published in the November 30, 2012 issue of the *Maryland Register*.

In light of the issues raised regarding the accessibility of digital learning technology for individuals with disabilities, and in accordance with the committee's authority under § 10-111 of the State Government Article, the committee hereby notifies you of its intent to conduct a more detailed study of these regulations and the committee asks the board to delay final adoption of the regulations.

The purpose of these regulations is to provide additional course opportunities for students. The purpose of the requested delay is to provide the committee with an opportunity to examine more closely a number of issues relating to whether the statutes under which the regulations were adopted authorize the adoption and whether the regulations conform to the legislative intent of the statutes. The committee wishes to ensure that concerns raised by stakeholders about the regulations are addressed.

To facilitate its review, the committee would be grateful if the board would submit to the committee copies of any correspondence received concerning these regulations during the public comment period.

Lillian M. Lowery, Ed.D.
State Superintendent of Schools
January 14, 2013
Page 2

The committee appreciates your cooperation in this matter.

Sincerely,

Delegate Samuel I. Rosenberg
Presiding Chairman

SIR/EMI/arr

cc: Governor Martin O'Malley
President Thomas V. Mike Miller, Jr.
Speaker Michael E. Busch
AELR Committee Members
Victoria L. Gruber, Senate Chief of Staff
Kristin F. Jones, House Chief of Staff
Charlene L Necessary
Gail Klakring