


Nancy S. Grasmick
State Superintendent of Schools

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TO: Members of the State Board of Education

FROM: Nancy S. Grasmick 

DATE: August 25, 2009

SUBJECT: COMAR 13A.05.01 Provision of a Free Appropriate Public Education (Amend)
COMAR 13A.05.02 Administration of Services for Students with Disabilities (Amend)
COMAR 13A.08.03 Discipline of Students with Disabilities (Amend)
COMAR 13A.08.04 Student Behavior Interventions (Amend)
COMAR 13A.13.01 Maryland Infants and Toddlers Program (Amend)
ADOPTION

PURPOSE:

The purpose of this action is to request permission to adopt the proposed regulations that were published in the Maryland Register on July 6, 2009. These regulations amend current State Board regulations in COMAR 13A.05.01 Provision of a Free Appropriate Public Education, COMAR 13A.05.02 Administration of Services for Students with Disabilities, COMAR 13A.08.03 Discipline of Students with Disabilities, COMAR 13A.08.04 Student Behavior Interventions, and COMAR 13A.13.01 Maryland Infants and Toddlers Program, with a tentative effective date of September 21, 2009.

HISTORICAL BACKGROUND:

Since submission of the proposed amendments to the State Board of Education on April 27, 2009, the Division of Special Education/Early Intervention Services (DSE/EIS) followed established procedures for promulgation of the regulations. On May 27, 2009 the DSE/EIS and the Division of Student, Family and School Support (DSFSS) disseminated a memorandum to local school system personnel, educational organizations, advocacy organizations, and stakeholders announcing the tentative Maryland Register publication date and how the public should provide the Department with written comment. Proposed COMAR amendments were published in the Maryland Register, Vol. 36, Issue 14, Monday, July 6, 2009 (Attachment I). Personnel within DSE/EIS and DSFSS conducted three public hearings across the State to solicit public input on the proposals after publication in the Maryland Register. Four comments were received.

State Board of Education
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EXECUTIVE SUMMARY:

Adoption of amendments to include new federal requirements, clarify the use of student behavior interventions, make revisions as a result of State legislation, make technical and nonsubstantive revisions.

ATTACHMENT I	Maryland Register, Vol. 36, Issue 14, Monday, July 6, 2009
ATTACHMENT II	Comments and Analysis

ACTION:

I request the State Board of Education adopt proposed amendments to COMAR 13A.05.01 Provision of a Free Appropriate Public Education, COMAR 13A.05.02 Administration of Services for Students with Disabilities, COMAR 13A.08.03 Discipline of Students with Disabilities, COMAR 13A.08.04 Student Behavior Interventions, and COMAR 13A.13.01 Maryland Infants and Toddlers. The tentative timeline is as follows:

ADOPTION:	August 25, 2009
EFFECTIVE DATE:	September 21, 2009

NSG/CAH/DRR:gh
Attachments

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
COMAR 13A.05.01 Provision of a Free Appropriate Public Education (FAPE)			
.02 Scope			
MSDE	Add the SEED School as an agency that serves students with disabilities and required to comply with the applicable regulations.	Revise	Revise the regulation to read as follows: This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's IEP, including the Maryland State Department of Education, local school systems, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, [and] the Department of Labor, Licensing, and Regulation, and the SEED School.
.03 DEFINITIONS			
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.03B(12) – Consent – Subsection (b)(1) Revocation of Consent – Clarify that revocation includes only the specific services listed on the student's IEP. Also, clarify whether parents can revoke consent to some IEP-listed services and not others. With more and more students with disabilities receiving services through a Response to Intervention (RtI) model, it is important to clarify that revocation in the context of the special education regulations means special education services listed in the IEP.	No Change	In accordance with the Individuals with Disabilities Education Act (IDEA), revocation of consent is revocation of the implementation of the services described in the student's Individualized Educational Program (IEP), as determined by the student's IEP team as necessary to ensure the provision of FAPE.

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
Educational Advocacy Coalition (EAC)	COMAR 13A.05.01.03B(36) – Intellectual Disability – Explain the term “significantly sub-average” by using guidelines, percentile rank, or some other means that helps parents and others understand what it means. Many people do not know what “average” means in a quantifiable way and, therefore, will not be able to make sense of this definition.	No Change	The definition is unchanged from the federal definition of mental retardation in 34 CFR §300.8(c)(6).
MSDE	COMAR 13A.05.01.03B(59)(b) – Public Agency – Add the SEED School as a public agency.	Revise	Revise regulation to read as follows: (b)“Public agency” includes local school systems, the Department, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, [and] the Department of Labor, Licensing, and Regulation, <i>and the SEED School</i> .
COMAR 13A.05.02 Administration of Services for Students with Disabilities			
.02 Scope			
MSDE	Add the SEED School as an agency that serves students with disabilities and required to comply with the applicable regulations.	Revise	This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's IEP, including the Maryland State Department of Education, local school systems, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, [and] the Department of Labor, Licensing, and Regulation, <i>and the SEED School</i> .

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
COMAR 13A.08.03 Discipline of Students with Disabilities			
No Comments			
COMAR 13A.08.04 Student Behavior Interventions			
.02 Definitions			
Educational Advocacy Coalition (EAC)	COMAR 13A.08.04.02B(3) – The EAC commends MSDE for including gestures, symbols, and American Sign Language within the definition of "communicate." Children with disabilities communicate in a variety of ways and the proposed revisions recognize that. Making clear that students communicate in a variety of ways is extremely important so that a student's attempt to communicate is not inadvertently hindered by the use of restraint or seclusion. It is not difficult to imagine how a difficult situation can escalate when a student's use of nonverbal communication is cut off by restraint of the student's hands or arms or by the placement of the student in a room alone.	No Change	MSDE agrees that regulations must clearly include that communication occurs in a variety of verbal and nonverbal formats and that a child is able to freely communicate his or her distress.
Maryland Developmental Disabilities Council (DDC)	COMAR 13A.08.-04.02B(3) – We commend MSDE for the expansion of the definition of "communicate" to include gestures, symbols, and American Sign Language. It is important to acknowledge that students communicate in a variety of ways, including nonverbally and that no form of communication should be hindered, especially in an escalated situation that results in restraint or seclusion.	No Change	MSDE agrees that regulations must clearly include that communication occurs in a variety of verbal and nonverbal formats and that a child is able to freely communicate his or her distress.
.05 GENERAL REQUIREMENTS FOR THE USE OF RESTRAINT OR SECLUSION			
Educational Advocacy Coalition (EAC)	COMAR 13A.08.04.05A(1)(d) – Use of Restraint – EAC is pleased to see the additional restrictions on the use of restraint but would prefer to see a complete ban on the use of prone restraint. As noted in the most recent report published by the General Accountability Office (GAO) and discussed during the hearing convened by Congressman George Miller to discuss the GAO report, prone restraint can be particularly deadly. Although the proposed safeguards are an improvement over the current regulations and we support the proposed revisions to COMAR, there is no absolutely safe way to engage in prone restraint, nor is there any peer reviewed research supporting its use.	No Change	To conform to the Maryland Style Guide and to read as agreed upon in consultation with the Maryland Disability Law Center (MDLC), Maryland Association of Nonpublic Special Education, Facilities (MANSEF), Attorney General's Office: (e) In applying physical restraint, school personnel may not: (i) Place a student in a face down position; (ii) Place a student in any other position that will: (I) obstruct a student's airway or otherwise impair a student's ability to breathe; or

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
			<p>(II) [obstruct] <i>OBSTRUCT</i> a staff member's view of a student's face[,];</p> <p>(III) [restrict] <i>RESTRICT</i> a student's ability to communicate distress[, or place];</p> <p>(IV) <i>PLACE</i> pressure on a student's head, neck, or torso; or</p> <p>[(iii)] (V) Straddle a student's torso.</p>
Maryland Developmental Disabilities Council (DDC)	COMAR 13A.08.04.05A(1)(e) – Although the proposed safeguards are an improvement over the current regulations, there is no absolutely safe way to engage in prone restraint. As noted on many occasions, most recently in the report published by the General Accountability Office (GAO) and subsequent hearings to discuss the GAO's report, prone restraint can be particularly deadly. MSDE should take the next step and ban prone restraint altogether.	Revise	<p>To conform to the Maryland Style Guide and to read as agreed upon in consultation with the Maryland Disability Law Center (MDLC), Maryland Association of Nonpublic Special Education, Facilities (MANSEF), Attorney General's Office:</p> <p>(e) In applying physical restraint, school personnel may not[(i) Place] place a student in a face down position[(ii) Place a student] <i>OR</i> in any other position that will: (I) [obstruct] <i>OBSTRUCT</i> a student's airway or otherwise impair a student's ability to breathe[,]; (II) [obstruct] <i>OBSTRUCT</i> a staff member's view of a student's face[,]; (III) [restrict] <i>RESTRICT</i> a student's ability to communicate distress[, or place]; (IV) <i>PLACE</i> pressure on a student's head, neck, or torso; or [(iii)] (V) Straddle a student's torso.</p>

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
Robin Church Kennedy Krieger	<p>In the email you sent dated April 1st where you summarized what Leslie Margolis wrote and asked for agreement from all of us you use the following language and I quote: "A physical restraint shall not place a student in a face down position or any other position that will: (i) obstruct a student's airway or impair a student's ability to breathe; (ii) obstruct a staff member's view of a student's face; (iii) restrict a student's ability to communicate distress; (iv) place pressure on a student's head, neck, or torso; or (v) straddle a student's torso"</p> <p>In the proposed regulation the first sentence is broken in two and now reads and I quote: "(i) Place a student in a face down position; (ii) Place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or..."</p> <p>Putting statement (i) separate from statement (ii) provides a very different interpretation than it had before and this we are uncomfortable with what we all agreed to was the language that had "face down or any other position that..."</p>	Revise	<p>To conform to the Maryland Style Guide and to read as agreed upon in consultation with the Maryland Disability Law Center (MDLC), Maryland Association of Nonpublic Special Education, Facilities (MANSEF), Attorney General's Office: (e) In applying physical restraint, school personnel may not[(i) Place] place a student in a face down position[; (ii) Place a student] OR in any other position that will: (I) [obstruct] OBSTRUCT a student's airway or otherwise impair a student's ability to breathe[,]; (II) [obstruct] OBSTRUCT a staff member's view of a student's face[,]; (III) [restrict] RESTRICT a student's ability to communicate distress[, or place]; (IV) PLACE pressure on a student's head, neck, or torso; or [(iii)] (V) Straddle a student's torso.</p>

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
Educational Advocacy Coalition (EAC)	COMAR 13A.08.04.05B(5) – Use of Seclusion – The EAC is pleased to see a proposed time limit of 30 minutes on the use of seclusion and to see proposed limits on the use of seclusion based on the student’s developmental level, severity of behavior, and ability to communicate distress. The EAC would prefer to see a ban on the use of seclusion. The dangers of seclusion were discussed most recently in the GAO report and at the hearing convened by Congressman George Miller. We would urge MSDE to work with local school systems to develop an alternative to seclusion rooms based on state-of-the-art alternatives such as doorless or unlocked multisensory de-escalation rooms.	No Change	<p>The use of seclusion is prohibited in public agencies and nonpublic schools unless there is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate, the student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used, or the parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.</p> <p>MSDE is working with MDLC and local school systems to implement multisensory de-escalation rooms as an alternative to seclusion.</p>
Maryland Developmental Disabilities Council (DDC)	COMAR 13A.08.04.05B(5) – Use of Seclusion – Again the proposed safeguards are an improvement over the current regulation. The proposed time limit of 30 minutes on the use of seclusion and the proposed limits on the use of seclusion based on the student’s developmental level and severity of the behavior and ability to communicate distress area good first step. However, with the known dangers associated with the use of seclusion in schools (described most recently in the GAO report and the following hearing), there should be an outright ban on the use of seclusion.	No Change	<p>The use of seclusion is prohibited in public agencies and nonpublic schools unless there is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate, the student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used, or the parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.</p>

SYNOPSIS OF COMMENTS

COMMENTERS	COMMENT	PROPOSED ACTION	RATIONALE
.06 Administrative Procedures			
Maryland State Teacher's Association (MSTA)	C(3) – Classroom teachers that work with students should receive the training described.	No Change	Each local school system and nonpublic school is required to identify school personnel to serve as a school-wide resource to assist in ensuring the proper administration of exclusion, restraint, and seclusion by school personnel. The individual serving as the school-wide resource is to ensure the school personnel, including classroom teachers, as determined appropriate, responsible for the implementation of exclusion, restraint, or seclusion, receive professional development to address the school's policies, procedures, and practices to address a continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint, or seclusion, the prevention of self-injurious behaviors, methods for identifying and defusing potentially dangerous behavior, and the appropriate use and documentation of exclusion, restraint, and seclusion.
COMAR 13A.13.01 Maryland Infants and Toddlers			
No Comments			

- (3) (text unchanged)
C. — F. (text unchanged)

11.23.02 Driver Education Program

Authority: Transportation Article, §§12-104(b), 12-117, 13-621, 15-102 — 15-111, 15-701 — 15-710, 15-801 — 15-807, 16-212.1(b), and 16-501 — 16-507, Annotated Code of Maryland

14 Criminal Background Check.

A. [An] Under Transportation Article, §15-804, Annotated Code of Maryland, an individual applying for an instructor certification or renewal of an instructor certification shall be fingerprinted and have a State and national criminal background check conducted by the Criminal Justice Information System (CJIS) Central Repository of the Department of Public Safety and Correctional Services.

B. The applicant shall:

(1) (text unchanged)

(2) Pay the required fee, including the fee authorized under Criminal Procedure Article, §10-221(b), Annotated Code of Maryland, for access to [Maryland] criminal history records; and

(3) (text unchanged)

C. — E. (text unchanged)

JOHN T. KUO

Administrator

Motor Vehicle Administrated

Title 13A

STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

13A.05.01 Provision of a Free Appropriate Public Education

Authority: Education Article, §§2-205, 8-301 — 8-307, and 8-401 — 8-416;

[Article 49D] Human Services Article, §§8-401 — 8-409;

Annotated Code of Maryland

Federal Statutory Reference: 20 U.S.C. [§1400 et seq.]

§§1411 — 1416; Federal Regulatory References: 34 CFR 99, 300, and 301[, 303, and 99]

Notice of Proposed Action

[09-191-P]

The Maryland State Board of Education proposes to amend Regulations .02, .03, .06, .08 — .10, .13, and .15 under COMAR 13A.05.01 Provision of a Free Appropriate Public Education. This action was considered at the Maryland State Board of Education meeting held on April 27, 2009.

Statement of Purpose

The purpose of this action is to align State regulations with the Individuals with Disabilities Education Act of 2004 and House Bill 20, Ch. 119, Acts of 2009, "Rosa's Law," and to make technical revisions.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. **Summary of Economic Impact.** The Maryland State Department of Education (MSDE), local school systems, and public agencies will need to expend existing federal, State, and local funds to provide professional development on the implementation of these regulations and revisions to policies and procedures. For the implementation of professional development, the MSDE has allocated funds to local school systems and public agencies to offset the cost of developing professional development materials and conducting professional development activities for administrators, general educators, special educators, related service personnel, parents, and advocates.

II. Types of Economic Impact.

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency: Professional development		(E+)	\$150,000
B. On other State agencies: Professional development		(E+)	\$50,000
C. On local governments: Professional development		(E+)	\$50,000
	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. Funds are needed to revise policies and procedures, develop professional development materials for local school systems, public agencies, Preschool Partners, Partners for Success Centers, families, and advocates. It is expected that the State local school systems and public agencies will fund this professional development with existing funding sources.

B. Funds are needed to revise interagency agreement, policies, and procedures and to conduct professional development for agency personnel in public agencies, for the implementation of regulations. It is expected that the State, local school systems, and public agencies will fund this professional development with existing funding sources.

C. Funds are needed by local school systems and public agencies for the revision and distribution of local policies and procedures for the implementation of these regulations and professional development for school personnel and parents. It is expected that the State, local school systems, and public agencies will fund this professional development with existing funding sources.

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: Proposed amendments implement the Individuals with Disabilities Education Act of 2004 for students with disabilities to ensure the provision of a free appropriate public education.

Opportunity for Public Comment

Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/

Early Intervention Services, 200 W. Baltimore Street, Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment on proposed amendments to COMAR 13A.05.01. Individuals wishing to make oral public comment must be registered to speak. To register, contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

Tuesday, July 21, 2009
Anne Arundel County Public Schools
2644 Riva Road, Board Room
Annapolis, MD 21401

Wednesday, July 22, 2009
Chesapeake College
Wye Mills Campus, Continuing Education Building
Routes 50 and 213
Wye Mills, MD 21679

Thursday, July 23, 2009
Frederick County Public Schools
Professional Development Center
7630 Hayward Road
Frederick, MD 21702

Appropriate accommodations for individuals with disabilities will be provided upon request given 8 business days prior to the event. Contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us.

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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore St., Baltimore, MD 21201.

.02 Scope.

A. This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's IEP, including the Maryland State Department of Education, local school systems, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, [and] the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulation.

B. (text unchanged)

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (11) (text unchanged)

(12) ["Consent" means a parent:] *Consent.*

(a) "Consent" means a parent:

[(a)] (i) — [(c)] (iii) (text unchanged)

(b) "Consent" includes consent given to an action before a parent revokes consent, so that:

(i) If a parent revokes consent, that revocation is not retroactive and does not negate an action that occurred after the consent was given and before the consent was revoked; and

(ii) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the student's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(13) — (35) (text unchanged)

(36) "Intellectual disability" means general intellectual functioning, adversely affecting a student's educational performance, that:

(a) Is significantly subaverage;

(b) Exists concurrently with deficits in adaptive behavior; and

(c) Is manifested during the developmental period.

[(36)] (37) — [(41)] (42) (text unchanged)

[(42)] "Mental retardation" means general intellectual functioning, adversely affecting a student's educational performance, which:

(a) Is significantly subaverage;

(b) Exists concurrently with deficits in adaptive behavior; and

(c) Is manifested during the developmental period.]

(43) (text unchanged)

(44) Multiple Disabilities.

(a) "Multiple disabilities" means concomitant impairments, such as [mental retardation] *intellectual disability-blindness* or [mental retardation] *intellectual disability-orthopedic impairment*, the combination of which causes such severe educational problems that the student cannot be accommodated in special education programs solely for one of the impairments.

(b) (text unchanged)

(45) — (58) (text unchanged)

(59) Public Agency.

(a) (text unchanged)

(b) "Public agency" includes local school systems, the Department, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and [adult correctional facilities] *the Department of Labor, Licensing, and Regulation.*

(60) — (72) (text unchanged)

(73) Specific Learning Disability (SLD).

(a) — (b) (text unchanged)

(c) "SLD" does not include students who have learning problems which are primarily the result of visual, hearing, or motor impairments, [mental retardation] *intellectual disability*, emotional disturbance, or environmental, cultural, or economic disadvantage.

(74) — (77) (text unchanged)

(78) "Student with a disability" means a student, 3 years old through the end of the school year in which the student turns 21 years old:

(a) Evaluated in accordance with Regulation .06 of this chapter as having:

(i) — (iv) (text unchanged)

(v) [Mental retardation] *Intellectual disability*;

(vi) — (xii) (text unchanged)

- (b) (text unchanged)
 (79) — (85) (text unchanged)

.06 Evaluation, Reevaluation, and Eligibility.

- A. — C. (text unchanged)
 D. Determination of an SLD.
 (1) (text unchanged)
 (2) The IEP team shall determine that a student has an SLD if:
 (a) (text unchanged)
 (b) The student's lack of achievement described in §D(2) of this regulation is not primarily the result of:
 (i) (text unchanged)
 (ii) [Mental retardation] *Intellectual disability*;
 (iii) — (vi) (text unchanged)
 (3) — (4) (text unchanged)
 (5) When a student is suspected of having an SLD, the IEP team shall prepare a written report that includes:
 (a) — (e) (text unchanged)
 (f) The determination of the IEP team concerning the effects of visual, hearing, or motor disability, [mental retardation] *intellectual disability*, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency on the student's achievement level;
 (g) — (h) (text unchanged)
 (6) — (7) (text unchanged)
 E. Reevaluation.
 (1) — (2) (text unchanged)
 (3) The IEP team shall review existing assessment data in accordance with [§B] §C of this regulation.
 (4) — (12) (text unchanged)

.08 Individualized Education Program (IEP) Team Responsibilities.

- A. IEP Development.
 (1) (text unchanged)
 (2) Transition from a Local Infants and Toddlers Program.
 (a) If a child transitioning from a local infants and toddlers program is determined to be a student with a disability or developmental delay in accordance with Regulation .06B of this chapter, the public agency shall:
 [(i) Ensure that a representative of the public agency attends the local infants and toddlers transition planning meeting as described in 20 U.S.C. §637(a)(9)(A)(ii)(II);
 [(ii)] (i) — [(iv)] (iii) (text unchanged)
 (b) (text unchanged)
 (3) — (11) (text unchanged)
 B. (text unchanged)

.09 Individualized Education Program Document.

- A. — B. (text unchanged)
 C. Students in Adult Correctional Facilities.
 (1) — (2) (text unchanged)
 (3) The Department of Labor, Licensing, and Regulation provides special education and related services to students with disabilities incarcerated in adult correctional institutions identified in §C(2) of this regulation.
 (4) — (5) (text unchanged)
 D. — F. (text unchanged)

.10 Least Restrictive Environment (LRE).

- A. — B. (text unchanged)
 C. Placements.
 (1) — (5) (text unchanged)
 (6) Removal of Students for Disciplinary Actions.

(a) The removal of a student with a disability from the student's current educational setting and the provision of educational services shall conform with the provisions of 34 CFR §§300.101 and [300.521 — 300.529] 300.530 — 300.536, Education Article, §7-305; Annotated Code of Maryland, and COMAR 13A.08.03.

- (b) (text unchanged)

.13 Procedural Safeguards — Consent.

- A. (text unchanged)
 B. Consent for Special Education Services.
 (1) — (3) (text unchanged)
 (4) [If] *Consistent with 34 CFR §300.300, if a parent of a student with a disability refuses to provide the initial consent as described in §B(2) of this regulation, or revokes consent as described in §B(5) of this regulation, the public agency is not:*
 (a) Considered to be in violation of the requirement to make FAPE available to the student for failing to provide the student with the special education and related services for which the public agency sought parental consent in accordance with §B(1) of this regulation *or further special education and related services in accordance with §B(5) of this regulation and consistent with 34 CFR §300.300; and*
 (b) (text unchanged)
 (5) *If, at any time subsequent to the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the public agency:*

(a) *Shall provide the parent prior written notice in accordance with 34 CFR §300.503 and Regulation .12 of this chapter before ceasing the provision of special education and related services;*

(b) *May not continue to provide special education and related services to the student;*

(c) *May not use the procedures described in Regulation .15B and C of this chapter to obtain agreement or a ruling that the services may be provided to the child; and*

(d) *Is not required to amend the student's education records to remove any references to the student's receipt of special education and related services, in accordance with 34 CFR §300.9(c)(3).*

- [(5)] (6) — [(9)] (10) (text unchanged)

.15 Procedural Safeguards — State Complaints, Mediation, and Due Process.

- A. — B. (text unchanged)
 C. Due Process Complaint.
 (1) — (10) (text unchanged)
 (11) Resolution Session.
 (a) — (c) (text unchanged)
 (d) *In accordance with 34 CFR §300.510(a)(3), a resolution session need not be held if:*
 (i) *The parent and the public agency agree in writing to waive the meeting;*
 (ii) *The parent and the public agency agree to try mediation; or*
 (iii) *The public agency initiated the due process complaint.*

- [(d)] (e) — [(h)] (i) (text unchanged)

- (12) — (17) (text unchanged)

(18) *Any party to a due process hearing, conducted in accordance with 34 CFR §§300.507 — 300.513 or §§300.530 — 300.536, has the right to:*

- (a) *Represent themselves;*

(b) Be represented by an attorney, in accordance with State Government Article, §9-1607.1, Annotated Code of Maryland; and

(c) Be accompanied and advised by persons with special knowledge or training with respect to the problems of children with disabilities.

[(18)] (19) — [(22)] (23) (text unchanged)

[(23)] (24) The Department shall forward the records of the administrative proceedings to the court, on request, when an aggrieved party brings a civil action as described in [§C(19)] §C(20) of this regulation.

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

13A.05.02 Administration of Services for Students with Disabilities

Authority: Education Article, §2-205, 8-301 — 8-307 and 8-401 — 8-416;

[Article 49D] Human Services Article, §§8-401 — 8-409;

Annotated Code of Maryland

Federal Statutory Reference: 20 U.S.C. [§1400 et seq.]

§§1411 — 1416 Federal Regulatory References: 34 CFR 300[, and 301[, and 99]

Notice of Proposed Action

[09-192-P]

The Maryland State Board of Education proposes to amend Regulations .02, .04, and .13 under COMAR 13A.05.02 Administration of Services for Students with Disabilities. This action was considered at the Maryland State Board of Education meeting held on April 27, 2009.

Statement of Purpose

The purpose of this action is to identify the Department of Labor, Licensing, and Regulation as a public agency responsible for providing special education and related services to youth with disabilities incarcerated in State adult correctional facilities, include a new requirement to notify the public if the U.S. Secretary of Education proposes taking enforcement action, and ensure that local public agencies include a representative of the local school system at local infants and toddlers transition planning meetings.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE) will need to expend existing federal funds to revise existing documents and materials.

Revenue

(R+/R-)

Expenditure

(E+/E-)

Magnitude

II. Types of Economic Impact.

A. On issuing agency:

Revising existing documents (E+) \$50,000

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. Funds are needed to revise documents to indicate the Department of Labor, Licensing, and Regulation as the public agency responsible for providing a free appropriate public education to youth with disabilities incarcerated in State adult correctional facilities through the end of the school year in which they turn 21 years of age.

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: Proposed amendments clarify the public agencies responsible to ensure students with disabilities receive a free appropriate public education, including youth with disabilities incarcerated in State correctional facilities.

Opportunity for Public Comment

Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore Street, Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment upon proposed amendments to COMAR 13A.05.02. Individuals wishing to make oral public comment must be registered to speak. To register, contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

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Annapolis, MD 21401

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Chesapeake College
Wye Mills Campus, Continuing Education Building
Routes 50 and 213
Wye Mills, MD 21679

Thursday, July 23, 2009
Frederick County Public Schools
Professional Development Center
7630 Hayward Road
Frederick, MD 21702

Appropriate accommodations for individuals with disabilities will be provided upon request given 8 business

days prior to the event. Contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us.

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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore St., Baltimore, MD 21201.

.02 Scope.

A. This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's Individualized Education Program (IEP), including the Department, local school systems, Department of Health and Mental Hygiene, Department of Juvenile Services, the Maryland School for the Blind, [and] the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulation.

B. (text unchanged)

.04 State Administration.

A. — C. (text unchanged)

D. State Performance Plan.

(1) — (4) (text unchanged)

(5) *If the Department receives notice that the Secretary of the U.S. Department of Education is proposing to take or is taking an enforcement action pursuant to 34 CFR §300.604, the Department shall notify the public in the manner described in 34 CFR §300.606.*

E. (text unchanged)

.13 Local Public Agency Administration.

A — N. (text unchanged)

O. *Transition from a Local Infants and Toddlers Program. The public agency shall ensure that a representative of the public agency attends the local infants and toddlers transition planning meeting as described in 20 U.S.C. §1437(a)(9)(A)(ii)(II).*

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 08 STUDENTS

13A.08.01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-101.1, 7-301, 7-303 — 7-305, 7-307, 7-308, and 8-404,

Annotated Code of Maryland;

Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

Notice of Proposed Action

[09-193-P]

The Maryland State Board of Education proposes to amend Regulation .11 under COMAR 13A.08.01 **General Regulations**. This action was considered at the Maryland State Board of Education meeting on April 27, 2009.

Statement of Purpose

The purpose of this action is to align State regulations with the longstanding guidance from the U.S. Department

of Education, Office of Special Education Programs, relative to in-school suspension of students with disabilities.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE) and public agencies will need to expend existing federal, State, and local funds to provide professional development on the implementation of these regulations and to revise policies and procedures.

II. Types of Economic Impact.

	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency: Professional development	(E+)	\$150,000
B. On other State agencies:	NONE	
C. On local governments: Professional development	(E+)	\$50,000
	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. Funds are needed to revise administrative policies and procedures and develop and conduct professional development for public agencies. It is expected that the State and public agencies will fund this professional development with existing funding sources.

C. Funds are needed by public agencies for the revision and dissemination of local policies and procedures and to develop and conduct professional development activities for agency administrators, general educators, special educators, related service providers, and parents. It is expected that the State and public agencies will fund this professional development with existing funding sources.

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 amendments clarify in-school suspensions for students with disabilities and implementation of services for students with disabilities to ensure the Department, local school systems, and public agencies provide a free appropriate public education to students with disabilities.

Opportunity for Public Comment

Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore Street, Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment upon proposed amendments to COMAR 13A.08.01.11. Individuals wishing to make oral public comment must be registered to speak. To register,

contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

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Wye Mills Campus, Room EDC27
Routes 50 and 213
Wye Mills, MD 21679

Thursday, July 23, 2009
Frederick County Public Schools
Professional Development Center
7630 Hayward Road
Frederick, MD 21702

Appropriate accommodations for individuals with disabilities will be provided upon request given 8 business days prior to the event. Contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us.

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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore St., Baltimore, MD 21201.

.11 Disciplinary Action.

A. (text unchanged)

B. Terms Defined. In this regulation, the following terms have the meanings indicated:

(1) — (2) (text unchanged)

(3) "Extended suspension" means the temporary [exclusion] removal of a student from school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or the local superintendent's designated representative.

(4) "In-school suspension" means the [exclusion] removal within the school building of a student from the student's [regular] current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.

(5) (text unchanged)

(6) "Short-term suspension" means the [exclusion] removal of a student from school for up to but not more than 10 school days for disciplinary reasons by the principal.

(7) "Suspension" means the application of extended suspension, in-school suspension, or short-term suspension.

C. Suspension and Expulsion.

(1) (text unchanged)

(2) In-School Suspension.

(a) An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

(i) Appropriately progress in the general curriculum;

(ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;

(iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and

(iv) Participate with peers as they would in their current education program to the extent appropriate.

(b) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(c) The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school.

(d) After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.

(e) The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.

(f) Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension.

(g) Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

[(2)] (3) — [(7)] (8) (text unchanged)

D. — E. (text unchanged)

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 08 STUDENTS

13A.08.03 Discipline of Students with Disabilities

Authority: Education Article, §§2-205, 7-305, 8-404, and 8-407,
Annotated Code of Maryland

Notice of Proposed Action

[09-194-P]

The Maryland State Board of Education proposes to amend Regulation .10 under COMAR 13A.08.03 **Discipline of Students with Disabilities**. This action was considered at the Maryland State Board of Education meeting held on April 27, 2009.

Statement of Purpose

The purpose of this action is to incorporate a revised federal regulatory requirement relative to students with disabilities not yet eligible for special education and parental revocation of consent for special education and related services.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE), local school systems, and public agencies will need to expend existing federal, State, and local funds to provide professional development on the implementation of this revised regulation and to revise policies and procedures relative to parental revocation of consent for services and discipline of students with disabilities. For the implementation of professional development, MSDE has allocated funds to public agencies to offset the cost of developing professional development materials and conducting professional development activities for administrators, general educators, special educators, related service personnel, parents, and advocates.

II. Types of Economic Impact:

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:			
Professional development	(E+)		\$50,000
B. On other State agencies:	NONE		
C. On local governments:			
Professional development	(E+)		\$50,000
	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. Funds are needed to revise policies and procedures and develop professional development materials for local school systems, public agencies, Preschool Partners, Partners for Success Centers, families, and advocates. It is expected that the State and public agencies will fund this professional development with existing funding sources.

C. Funds are needed by public agencies for development and distribution of local policies and procedures for the implementation of these regulations and professional development for school personnel and parents. It is expected that the State and public agencies will fund this professional development with existing funding sources.

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 amendment incorporates that a public agency is not deemed to have knowledge that a student is a student with a disability under the Individuals with Disabilities Education Act if the parent revokes consent for the provision of special education and related services.

Opportunity for Public Comment

Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore St., Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment on proposed amendments to COMAR 13A.08.03. Individuals wishing to make oral public comment must be registered to speak. To register, contact Andrew Wilson, MSDE,

Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

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Wye Mills, MD 21679

Thursday, July 23, 2009

Frederick County Public Schools
Professional Development Center
7630 Hayward Road
Frederick, MD 21702

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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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore St., Baltimore, MD 21201.

10 Students Not Yet Eligible for Special Education and Related Services.

A. — B. (text unchanged)

C. A public agency is not deemed to have knowledge in accordance with §B of this regulation if:

(1) The parent of the student:

(a) (text unchanged)

(b) Refused or revoked consent for services in accordance with COMAR 13A.05.13; or

(2) (text unchanged)

D. — G. (text unchanged)

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 08 STUDENTS

13A.08.04 Student Behavior Interventions

Authority: Education Article, §§2-205, 7-301, 7-303 —
7-305, 7-307, 7-308, and 7-1101 — 7-1104,
Annotated Code of Maryland

Notice of Proposed Action

[09-195-P]

The Maryland State Board of Education proposes to amend Regulations .02 and .04 — .06 under COMAR 13A.08.04 Student Behavior Interventions. This action was considered at the Maryland State Board of Education meeting held on April 27, 2009.

Statement of Purpose

The purpose of this action is to more closely align regulations with other State regulations regarding exclusion, physical restraint, seclusion, and required professional development for local school system and nonpublic special education facility personnel.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE) and public agencies will need to expend existing federal, State, and local funds to provide professional development on the implementation of these regulations and revisions to policies and procedures.

II. Types of Economic Impact.

	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency: Professional development	(E+)	\$150,000
B. On other State agencies:	NONE	
C. On local governments: Professional development	(E+)	\$50,000
	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. Funds are needed to revise policies and procedures and to provide professional development to local school systems, nonpublic special education facilities, families, and advocates.

C. Funds are needed by public agencies and nonpublic special education facilities to revise and distribute policies and procedures for the implementation of these regulations and professional development for school personnel, parents, and advocates. It is expected that the State and public agencies will fund this professional development with existing funding sources.

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: This action clarifies the purpose of and time limit of exclusion, the time limit for a physical restraint, what a physical restraint should not do, and the professional development personnel should receive.

Opportunity for Public Comment

Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore St., Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment on proposed amendments to COMAR 13A.08.04. Individuals wishing to make oral public comment must be registered to speak. To register, contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

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Appropriate accommodations for individuals with disabilities will be provided upon request given 8 business days prior to the event. Contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax 410-333-8165, or email to awilson@msde.state.md.us.

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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore Street, Baltimore, MD 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(2-1) Communicate.

(a) "Communicate" means to convey information verbally or nonverbally.

(b) "Communicate" includes, but is not limited to:

(i) Speech;

- (ii) Gestures; and
- (iii) Symbols; and
- (iv) American Sign Language.
- (3) — (18) (text unchanged)

.04 Use of Exclusion.

A. School personnel may use exclusion to address a student's behavior [if the student's behavior]:

(1) [Unreasonably] *If the student's behavior unreasonably interferes with the student's learning or the learning of others; [or]*

(2) [Constitutes] *If the student's behavior constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;*

(3) *If exclusion is requested by the student; or*

(4) *If supported by the student's behavior intervention plan.*

B. — C. (text unchanged)

D. [Each] *School personnel shall ensure that each period of exclusion [may not exceed 30 minutes.].*

(1) *Is appropriate to the developmental level of the student and the severity of the behavior; and*

(2) *Does not exceed 30 minutes.*

E. — G. (text unchanged)

.05 General Requirements for the Use of Restraint or Seclusion.

A. Use of Restraint.

(1) Physical Restraint.

(a) — (c) (text unchanged)

(d) *Physical restraint:*

(i) *Shall be removed as soon as the student is calm;*

and

(ii) *May not exceed 30 minutes.*

(e) *In applying physical restraint, school personnel may not:*

(i) *Place a student in a face down position;*

(ii) *Place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or*

(iii) *Straddle a student's torso.*

(2) — (5) (text unchanged)

B. Use of Seclusion.

(1) — (4) (text unchanged)

(5) [At a minimum, school personnel shall reassess a student in seclusion every 30 minutes.] *A seclusion event:*

(a) *Shall be appropriate to the student's developmental level and severity of the behavior;*

(b) *May not restrict the student's ability to communicate distress; and*

(c) *May not exceed 30 minutes.*

(6) — (8) (text unchanged)

C. (text unchanged)

.06 Administrative Procedures.

A. — B. (text unchanged)

C. Professional Development.

(1) — (2) (text unchanged)

(3) The school personnel described in §C(2) of this regulation shall receive training in current professionally accepted practices and standards regarding:

(a) Positive behavior interventions strategies and supports, including methods for identifying and defusing potentially dangerous behavior;

(b) — (c) (text unchanged)

(d) *Restraint and alternatives to restraint; [and]*

(e) *Seclusion; and*

(f) *Symptoms of physical distress and positional asphyxia.*

(4) *The professional development described in §C(3) of this regulation shall include a written examination and physical demonstration of proficiency in the described skills and competencies.*

D. (text unchanged)

NANCY S. GRASMICK

State Superintendent of Maryland

Subtitle 13. MARYLAND INFANTS AND TODDLERS PROGRAM

13A.13.01 Early Intervention Services to Eligible Infants and Toddlers and Their Families

Authority: Education Article, §8-416,

Annotated Code of Maryland

Federal Regulatory Reference: 34 CFR 99, 300, 303

Notice of Proposed Action

[09-196-P]

The Maryland State Board of Education proposes to amend Regulations .11 and .12 under COMAR 13A.13.01 **Early Intervention Services to Eligible Infants and Toddlers and Their Families**. This action was considered at the Maryland State Board of Education meeting held on April 27, 2009.

Statement of Purpose

The purpose of this action is to align State regulations with the Individuals with Disabilities Education Act (IDEA) of 2004 and make other technical amendments.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The Maryland State Department of Education (MSDE) and local infants and toddlers programs will need to expend existing federal, State, and local funds to provide professional development on the implementation of these regulations and revisions to policies and procedures. For the implementation of professional development, the MSDE has allocated funds to public agencies to offset the cost of developing professional development materials and conducting professional development activities for administrators, general educators, special educators, related service personnel, parents, and advocates.

Revenue

(R+/R-)

Expenditure

(E+/E-)

Magnitude

II. Types of Economic Impact.

A. On issuing agency:

Professional development

(E+)

\$100,000

B. On other State agencies:

NONE

C. On local governments:

Professional development

(E+)

\$50,000

	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. Funds are needed to revise policies and procedures and develop professional development materials for public agencies and local infants and toddlers programs, Preschool Partners, Partners for Success Centers, families, and advocates. It is expected that the State and public agencies will fund this professional development with existing funding sources.

C. Funds are needed to revise policies and procedures and develop professional development materials for public agencies, local infants and toddlers programs, families, and advocates. It is expected that the State and public agencies will fund this professional development with existing funding sources.

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: Proposed amendments implement the Individuals with Disabilities Education Act of 2004 for infants, toddlers, and their families to ensure access to an opportunity for dispute resolution and filing written complaints for students 3 years old and older and their families.

Opportunity for Public Comment
Comments may be sent to Donna R. Riley, Policy and Resource Specialist, MSDE, Division of Special Education/Early Intervention Services, 200 W. Baltimore St., Baltimore, MD 21201, or call 410-767-0242, or email to driley@msde.state.md.us, or fax to 410-333-1571. Comments will be accepted through August 6, 2009. Three public hearings will be conducted to provide the public an opportunity to comment upon proposed amendments to COMAR 13A.13.01.11 and .12. Individuals wishing to make oral public comment must be registered to speak. To register, contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us not later than 4 p.m. the day prior to the applicable public hearing. Each registered presenter will have 3 minutes to present their testimony and should bring a written copy of their comments to the hearing for the moderator. Each public hearing is scheduled for 7 to 9 p.m. at the following locations:

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Appropriate accommodations for individuals with disabilities will be provided upon request given 8 business days prior to the event. Contact Andrew Wilson, MSDE, Division of Special Education/Early Intervention Services, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0242, or fax to 410-333-8165, or email to awilson@msde.state.md.us.

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 August 27 and 28, 2009, at the Nancy S. Grasmick Education Building, 200 W. Baltimore St., Baltimore, MD 21201.

.11 Procedural Safeguards.

A. (text unchanged)

B. Resolution of Individual Child Complaints.

(1) The Department of Education/Maryland Infants and Toddlers Program shall provide for impartial resolution of individual child complaints by parents concerning any [of the matters in 34 CFR §303.403(a) through the Office of Administrative Hearings] *matter related to the provision of early intervention services in accordance with 20 U.S.C. §1439 and 34 CFR 303.*

(2) A parent may file a written complaint when a public agency or service provider proposes or refuses to initiate or change the:

(a) Identification, evaluation, or placement of an eligible child;

(b) Provision of appropriate early intervention services to the child or the child's family; or

(c) Assignment of financial obligations for early intervention services to the parents.

(3) A written complaint shall:

(a) Be signed by the parent or surrogate parent;

(b) Contain a description of the complaint; and

(c) Be filed with the Department of Education/Maryland Infants and Toddlers Program.

(4) The Department of Education/Maryland Infants and Toddlers Program shall confirm receipt of the complaint in writing with the parent and all other parties involved in the complaint not later than 5 working days after receipt of the complaint.

(5) The Department of Education/Maryland Infants and Toddlers Program shall submit the complaint to the Office of Administrative Hearings, in compliance with the requirements of the State Government Article, §§9-1601 — 9-1607, Annotated Code of Maryland.

(6) An impartial person shall be appointed consistent with 34 CFR §303.421 to implement the impartial complaint resolution procedure.

(7) The impartial complaint resolution procedure shall be:

(a) Completed not later than 30 days after the Department of Education/Maryland Infants and Toddlers Program receives a parent's written complaint; and

(b) Carried out at a time and place that is reasonably convenient to the parents.

(8) Parents involved in an administrative proceeding, consistent with 34 CFR §303.422, shall be informed of their right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;

(b) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least 5 days before the proceeding;

(d) Obtain a written or electronic verbatim transcription of the proceeding at no cost; and

(e) Obtain written findings of fact and decisions.

(9) The Office of Administrative Hearings shall mail the written decision to each of the parties not later than 30 days after the receipt of a parent's complaint, consistent with 34 CFR §303.423.

(10) A party aggrieved by the findings and decision regarding an individual child complaint has the right to bring a civil action in State or federal court, consistent with 34 CFR §303.424.

(11) Status of the Child During Impartial Complaint Resolution Procedure.

(a) During the pendency of any proceedings involving an individual child complaint, unless the local lead agency and parents of a child otherwise agree, the child shall continue to receive appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services, the child will receive those services that are not in dispute.

(12) The Department of Education/Maryland Infants and Toddlers Program shall, after removing personally identifiable information, transmit to the interagency coordinating council the decisions regarding individual child complaints, and also make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.]

[(13)] (2) Mediation.

[(a)] Before filing a written complaint, a parent or local lead agency may request mediation to resolve a dispute involving any [of the matters in 34 CFR §303.403(a) by submitting an application to the Office of Administrative Hearings] *matter related to the provision of early intervention services in accordance with 20 U.S.C. §1439 and 34 CFR 303.*

[(b)] When filing a written complaint in accordance with §B of this regulation, a parent may request mediation.]

C. (text unchanged)

.12 State Administration.

A. (text unchanged)

B. Procedures for Resolving Early Intervention System Complaints.

[(1)] The Department of Education/Maryland Infants and Toddlers Program shall[:

(a) Receive] *receive and resolve any early intervention system complaint [that one or more requirements of Part C of the Act or 34 CFR 303 are not being met; and] in accordance with 34 CFR 303.*

[(b) Disseminate information on the State's procedures to receive and resolve early intervention system complaints to parents, family support and advocacy organizations, and other interested individuals and agencies throughout the State.

(2) The early intervention system complaint may concern violations by:

(a) Any public agency in the State that receives funding under 34 CFR 303;

(b) Other public agencies that are identified as being part of the State's early intervention system; or

(c) Private service providers under public supervision.

(3) An individual or organization, including an individual or organization from another State, may file a written signed early intervention system complaint with the Department of Education/Maryland Infants and Toddlers Program. The complaint shall include:

(a) A statement that the State has violated a requirement of Part C of the Act or 34 CFR 303; and

(b) The facts on which the early intervention system complaint is based.

(4) Alleged violations included in the written complaint shall have occurred not more than 1 year before the date that the complaint is received by the Department of Education/Maryland Infants and Toddlers Program, unless a longer period is reasonable because:

(a) The alleged violation continues for the child or other children; or

(b) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than 3 years before the date on which the complaint is received by the State lead agency.

(5) Within 60 days of the receipt of an early intervention system complaint, the Department of Education/Maryland Infants and Toddlers Program shall:

(a) Carry out an independent on-site investigation, if determined necessary by the Department of Education/Maryland Infants and Toddlers Program;

(b) Give the complainant and other parties to the complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Review all relevant information and make an independent determination as to whether there has been a violation of a requirement of Part C of the Act or 34 CFR 303; and

(d) Issue a written decision to the complainant and other parties to the complaint that addresses each allegation in the written complaint and contains findings of fact, conclusions, and the reasons for the final decision.

(6) An extension of the time limit under §B(5) of this regulation shall be granted by the Superintendent of the Department of Education only if exceptional circumstances exist with respect to a particular early intervention system complaint.

(7) If the written decision includes a finding that there was a failure to provide appropriate services, the Department of Education/Maryland Infants and Toddlers Program shall address:

(a) How to remediate the denial of services, including, as appropriate, the awarding of monetary reimbursement or other corrective actions appropriate to the needs of the child and family; and

(b) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(8) The Department of Education/Maryland Infants and Toddlers Program shall provide for the effective implementation of the final decision and may include technical assistance activities, negotiations, and corrective actions to achieve compliance.

(9) If a complaint is filed as an early intervention system complaint and as an individual child complaint, the Department of Education/Maryland Infants and Toddlers Program shall:

(a) Set aside any part of the early intervention system complaint that is being addressed in the impartial complaint resolution procedure until the conclusion of the procedure; and

(b) Resolve any issue in the early intervention system complaint that is not part of the impartial complaint resolution procedure within the 60 days established for early intervention system complaints.

(10) If an issue raised in an early intervention system complaint has previously been decided in an impartial complaint resolution procedure involving the same parties:

(a) The impartial complaint resolution procedure decision is binding; and

(b) The Department of Education/Maryland Infants and Toddlers Program shall inform the complainant to that effect.

(11) The Department of Education/Maryland Infants and Toddlers Program shall resolve a complaint alleging the failure of a service provider to implement an impartial complaint resolution procedure decision.

(12) The Department of Education/Maryland Infants and Toddlers Program shall, after removing personally identifiable information, transmit to the interagency coordinating council the decisions regarding early intervention system complaints and also make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.]

C. — N. (text unchanged)

NANCY S. GRASMICK

State Superintendent of Schools

Title 13B MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 02 ACADEMIC REGULATIONS

13B.02.03 Academic Programs — Degree-Granting Institutions

Authority: Education Article, §§11-105(k), 11-105(u), and 11-201;

Annotated Code of Maryland

Notice of Proposed Action

[09-197-P]

The Maryland Higher Education Commission proposes to amend Regulation .02, and adopt new Regulation .34 under COMAR 13B.02.03 Academic Programs — Degree-Granting Institutions. This action was considered by the Maryland Higher Education Commission at an open meeting held pursuant to State Government Article, § 10-506, Annotated Code of Maryland, on May 20, 2009.

Statement of Purpose

The purpose of this action is to enable Maryland institutions of higher education to award a degree called an Associate of Science in Engineering that will permit students who earn that degree to be eligible for admission and block transfer of credits, with some exceptions, into a parallel 4-year program. The purpose also is to provide a procedure for continuous review of the program and for participation by institutions.

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 no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Dr. George W. Reid, Assistant Secretary, Planning and Academic Affairs, Maryland Higher Education Commission, 839 Bestgate Road, Suite 400, Annapolis, MD 21401, or call 410-260-4552, or email to greid@mhec.state.md.us, or fax to 410-260-3200. Comments will be accepted through August 20, 2009. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (6) (text unchanged)

(6-1) "Associate of Science in Engineering (A.S.E.)" means a degree that recognizes a mastery in engineering and that:

(a) Meets the lower-level degree academic content, outcomes, and requirements for engineering education, similar to the first 2 years of a parallel baccalaureate program in engineering education;

(b) Requires at least a 2.0 on a 4.0 grade scale in all courses required by the degree program in computer science, engineering, mathematics, and the physical and natural sciences; and

(c) If conferred, transfers without further review or course-by-course match by Maryland public and participating independent 4-year institutions into a parallel baccalaureate program, except that transfer students may be treated like native students with regard to credits earned through Advanced Placement (AP), International Baccalaureate (IB), and transcribed credits.

(7) — (31) (text unchanged)

.34 Associate of Science in Engineering.

A. The Commission shall convene a continuous review committee for each ASE degree area, such as electrical engineering. Each continuous review committee shall be composed of faculty with relevant expertise in that area of study from Maryland 2-year and 4-year public and independent institutions with approved engineering programs.

B. Outcomes for each ASE degree area shall be reviewed by the appropriate continuous review committee to ensure that outcomes are consistent with current standards. The committees shall meet at least once a year for the purpose of conducting this review.

C. The president or president's designee of a Maryland independent 4-year institution that wishes to participate in the Statewide articulation agreement shall submit a letter to the Secretary stating that the ASE shall transfer to its institution without further review or course-by-course match, except that credits earned through Advanced Placement (AP), In-