



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

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TO: Members of the State Board of Education
FROM: Lillian M. Lowery, Ed.D. *L. Lowery*
DATE: June 23, 2015
SUBJECT: COMAR 13A.02.05 Maintenance of Effort (AMEND)
ADOPTION

PURPOSE:

The purpose of this agenda item is to request adoption of the proposed amendments to the Maintenance of Effort (MOE) regulations.

HISTORICAL BACKGROUND:

The MOE law was established in 1984 and requires each county (including Baltimore City) to provide, on a per pupil basis, at least as much funding as was provided in the prior fiscal year. In 1996 the MOE law was amended to allow local jurisdictions to apply to the State Board of Education for a one-year waiver from MOE. Chapter 6 of the 2012 legislative session altered the maintenance of effort law. The new law requires counties to apply for a waiver, alters the MOE penalty, creates two new types of waiver requests, and refines the MOE process. The proposed changes will update the MOE regulations so that the regulations are in line with statute. The regulations will also set forth the procedures and calculations for the MOE escalator that went into effect on July 1, 2014.

The State Board of Education granted permission to publish the amended regulations for public comment. No comments have been received.

SUMMARY:

Proposed modifications and additions to MOE regulations include the following:

- Altering the timeline for the MOE process to conform to deadlines in State law. This includes the date by which local jurisdictions must submit a request to the State Board and the date by which the Board must notify the local jurisdiction of its decision.
- Defining the three different types of waiver requests. These include the impeded ability waiver request, rebasing waiver request, and the agreed upon waiver request.
- Updating the criteria the State Board must consider when evaluating each of the three types of maintenance of effort requests. The proposed changes align with the criteria outlined in statute.

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- Defining education effort.
- Establishing procedures and calculations for the MOE escalator that went into effect on July 1, 2014.

ACTION:

I request the State Board of Education adopt amendments to COMAR 13A.02.05, Maintenance of Effort.

Attachment



Opportunity for Public Comment

Comments may be sent to Thomas C. Smith, Director, Policy and Process Review, Maryland Police and Correctional Training Commissions, 6832 4th Street, Sykesville, Maryland 21784, or call 410-875-3605, or email to tosmith@dpscc.state.md.us, or fax to 410-875-3584. Comments will be accepted through May 18, 2015. A public hearing has not been scheduled.

.19 Procedures for Requesting a Waiver.

A. — C. (text unchanged)

D. *A request for a waiver on behalf of an individual may not again be submitted under this regulation within 1 year after the date on which the Commission has denied the request for the waiver on behalf of the individual.*

STEPHEN T. MOYER
Secretary of Public Safety and Correctional Services

Title 13A
STATE BOARD OF
EDUCATION
Subtitle 02 LOCAL SCHOOL
ADMINISTRATION

13A.02.05 Maintenance of Effort

Authority: Education Article, §§2-205 and 5-202, Annotated Code of Maryland

Notice of Proposed Action
[15-113-P]

The Maryland State Board of Education proposes to amend Regulations .02—.05 under COMAR 13A.02.05 Maintenance of Effort. This action was considered during a Maryland State Board of Education meeting held on February 24, 2015.

Statement of Purpose

The purpose of this action is to align regulations with statute and set forth the procedures and calculations for the Maintenance of Effort escalator that went into effect held on July 1, 2014.

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 Kristy Michel, Chief Operating Officer, Office of the Deputy for Finance and Administration, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0011 (TTY 410-333-6442), or email to kristy.michel@maryland.gov, or fax to 410-333-2232. Comments will be accepted through May 18, 2015. 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 June 23, 2015, 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) *"Agreed on Waiver" means a waiver based on an agreement to reduce recurring costs pursuant to Education Article §5-202(d)(9), Annotated Code of Maryland.*

[(1)] (2)—[(2)] (3) (text unchanged)

(4) *"Education effort" means a county's appropriation to the local school system divided by the county's wealth, as defined in Education Article, §5-202(a)(14), Annotated Code of Maryland.*

(5) *"Five-year moving average of education effort" means the simple average of a county's education effort for the five preceding years.*

[(3)] (6) (text unchanged)

(7) *"Impeded Ability Waiver" means a waiver for a fiscal year pursuant to Education Article, §5-202(d)(8), Annotated Code of Maryland.*

[(4)] (8) *"Local board" means the local board of education and includes the [New] Board of School Commissioners of Baltimore City.*

(9) *"Local wealth per pupil" means a county's wealth divided by the county's full-time equivalent enrollment.*

(10) *"Rebasing Waiver" means a waiver to rebase maintenance of effort permanently pursuant to Education Article, §5-202(d)(10), Annotated Code of Maryland.*

(11) *"Statewide 5-year moving average of education effort" means the simple average of the 5-year moving average of education effort for the 24 local school systems.*

[(5)] (12) *"Supplemental" means expenditures that are in excess of the original appropriation to the regular school operating budget that qualify as nonrecurring costs.*

.03 Nonrecurring Cost Exclusion.

A. (text unchanged)

B. Procedure.

(1) [Beginning with fiscal year 1998, the] *The county shall submit to the Department between January 1 and March 31 of the prior fiscal year, a written request to exclude qualifying nonrecurring costs that are supplemental to the regular school operating budget. The request shall include an explanation of why the cost qualifies as nonrecurring. Before submitting the written request, the county shall confer with the local board. The county shall send a copy of the written request to the local board.*

(2)—(5) (text unchanged)

.04 Waiver of Maintenance of Effort Requirement.

A. [Procedure] *Waiver Requests.*

(1) [Beginning with fiscal year 1998, in] *In order to qualify for a maintenance of effort waiver [for a fiscal year], a county shall make a request for a waiver in writing to the State Board of Education [by April 1 of the prior fiscal year.] by the earlier of April 20 or the 7th day following the end of the legislative session of the fiscal year prior to the waiver year. The county shall send to the local board of education a copy of the waiver request.*

(2) *The waiver request shall be in writing and shall be received by the Department between January 1 and March 31 of the prior fiscal year. The county shall send to the local board of education a copy of the waiver request.*

(3) *The written request shall include the following:*

(a) *The amount the county proposes to appropriate to its school operating budget and the amount the county is required to appropriate to meet the maintenance of effort requirement;*

(b) Information detailing the county's projected fiscal condition for the fiscal year the waiver is being requested and the current fiscal year, as well as information regarding the county's revenue stream from property tax, income tax, other taxes, and other revenue streams;

(c) If applicable, information regarding statutory prohibitions for raising revenues;

(d) Copies of the county's three most recent audited financial statements;

(e) The county's projected expenditure plan for the fiscal year in which the waiver is requested, as well as the current fiscal year expenditure plan; and

(f) Additional information in support of the waiver request as the county considers necessary.

(4) The State Board may request additional information from the county as it considers necessary.]

(2) *There are three types of waiver requests:*

- (a) *Impeded Ability Waiver;*
- (b) *Agreed on Waiver; and*
- (c) *Rebasing Waiver.*

(3) *The State Board shall inform the county whether the waiver is approved or denied in whole or in part 30 days after receipt of an application or May 20 of the fiscal year prior to the waiver year, whichever is earlier.*

B. Public Hearing.

(1) *Upon receipt of the waiver request, the State Superintendent of Schools shall provide a preliminary assessment of the waiver request to the State Board.*

[[1)] (2)—[(3)] (4)(text unchanged)

[C. Standard for Granting a Waiver.

(1) The State Board's decision on whether to approve or deny in whole or in part a waiver request shall be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

(2) The State Board may consider the following:

- (a) External environmental factors such as a loss of a major business or industry;
- (b) Tax bases;
- (c) Rate of inflation relative to growth of student population; and
- (d) Maintenance of effort requirement relative to the county's statutory ability to raise revenues.

(3) The county has the burden of proof by a preponderance of the evidence.

(4) The State Board shall issue its written decision to the county, with a copy to the local board, within 45 days from receipt of the written request, but no later than May 15.]

C. Standards for Granting Waivers.

(1) *For an Impeded Ability Waiver for a fiscal year, the county shall address whether the waiver request is contested and submit the amount of the waiver request and a full explanation of how each of the following factors impact and support the request for this waiver:*

- (a) *External environmental factors such as a loss of a major employer or industry affecting a county or a broad economic downturn affecting more than one county;*
- (b) *A county's tax base;*
- (c) *Rate of inflation relative to growth of the student population in the county;*
- (d) *Maintenance of effort requirement relative to the county's statutory ability to raise revenues;*
- (e) *The county's history of exceeding the required maintenance of effort amount;*
- (f) *An agreement between a county and a county board that a waiver should be granted;*

(g) *Significant reductions in State aid to the county and municipalities of the county for the fiscal year for which a waiver is requested;*

(h) *The number of waivers the county has received in the past 5 years;*

(i) *The history of compensation adjustments for employees of the county board and county government; and*

(j) *Other factors, upon request by the State Board.*

(2) *For an Agreed on Waiver based on an agreed-on reduction in recurring costs, the county must submit:*

(a) *The amount of the agreed-on reduction in recurring costs by line item in the local board's budget;*

(b) *The amount of the waiver request;*

(c) *A comparison of the requested appropriation level to the amount required by Education Article, §5-202(d)(1)(i), Annotated Code of Maryland;*

(d) *The document that sets forth the mutual agreement between the county and the local board; and*

(e) *If the reduction in recurring costs includes reductions in personnel or personnel costs, the document that reflects the agreement of the exclusive employee representative.*

(3) *For a Rebasing Waiver to rebase maintenance of effort permanently, the county shall:*

(a) *Have obtained a waiver for a fiscal year under §C(1) of this regulation;*

(b) *Submit the amount requested to be permanently rebased;*

(c) *Demonstrate that the county education appropriation under Education Article, §5-202(d)(1)(ii), Annotated Code of Maryland, for the waiver year exceeds 100 percent of the Statewide 5-year moving average of education effort times a county's local wealth; and*

(d) *Submit a full explanation of whether and how:*

(i) *The county is at its maximum taxing authority under the law;*

(ii) *The county's education appropriation is commensurate with the county's wealth;*

(iii) *The county's history of exceeding the required maintenance of effort has made meeting the maintenance of effort requirement in future years unsustainable;*

(iv) *The county has or has not received a rebasing waiver in the past 5 years; and*

(v) *The factors set forth in §C(1)(a)—(i) of this regulation affect the county's ongoing ability to meet the maintenance of effort requirement.*

.05 Additional Maintenance of Effort for Low-Effort Counties.

A. Procedure.

(1) *In each fiscal year in which a county's prior year's education effort is below 100 percent of the Statewide five-year moving average of education effort, the Department will designate the county as a low-effort county.*

(2) *The local board in a low-effort county shall adjust the maintenance of effort amount for the county by increasing the per-pupil amount by the lesser of:*

(a) *A county's increase in local wealth per pupil between the prior fiscal year and current fiscal year;*

(b) *The Statewide average increases in local wealth per pupil between the prior fiscal year and the current fiscal year; or*

(c) *2.5 percent.*

(3) *If the number calculated pursuant to §A(2)(a) or (b) of this regulation is a negative number, the adjustment to the maintenance of effort amount shall be zero.*

B. Calculations.

(1) *For the purpose of calculating the 5-year moving average of education effort, the Department's calculation of wealth in each*

fiscal year included in the 5-year period shall be based on the amount the Comptroller certifies as net taxable income based on tax returns filed on or before:

- (a) September 1st for fiscal years 2015—2017; and
- (b) November 1st for fiscal year 2018 and each fiscal year thereafter.

(2) To calculate a county's increase in local wealth per pupil, divide the current fiscal year's local wealth per pupil by the prior fiscal year's local wealth per pupil and subtract 1.

(3) To calculate the Statewide average increase in local wealth per pupil, add together the 24 changes in local wealth per pupil as calculated in §B(2) of this regulation and divide by 24.

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

Subtitle 08 STUDENTS

13A.08.07 Transfer of Educational Records for Children in State-Supervised Care

Authority: Education Article, §§2-205, 2-206, 4-122, and 8-501—8-506, Annotated Code of Maryland

Notice of Proposed Action
[15-114-F]

The Maryland State Board of Education proposes to adopt new Regulation .06 under COMAR 13A.08.07 Transfer of Educational Records for Children in State-Supervised Care. This action was considered at the December 16, 2014 meeting of the State Board of Education.

Statement of Purpose

The purpose of this action is to promote the educational stability of children in foster care.

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. There will be costs associated with transportation of foster children. All transportation costs will be the responsibility of the Local Departments of Social Services.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	(E+)	Unknown
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.)

B. Costs for transportation of foster children will be the responsibility of Local Departments of Social Services.

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 John T. McGinnis, Pupil Personnel and School Social Worker Specialist, Division of Student, Family and School Support, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0295 (TTY 410-333-6442), or email to john.mcginis@maryland.gov, or fax to 410-333-8148. Comments will be accepted through May 18, 2015. 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 June 23, 2015, 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.06 School Stability.

A. Scope. Children in foster care are children in State-supervised care to whom special provisions apply under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 and under Education Article, §7-101(b)(2)(i), Annotated Code of Maryland. The purpose of this regulation is to implement the educational stability requirements of those laws.

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

- (1) "Child welfare agency" means local department of social services or Department of Juvenile Services.
- (2) "Enroll" and "enrollment" means attending classes and participating fully in school activities.
- (3) Foster Child.
 - (a) "Foster child" means a child in the custody of, committed to, or otherwise placed by a local department of social services or the Department of Juvenile Services;
 - (b) "Foster child" does not include a child awaiting foster care placement as defined in COMAR 13A.05.09.02B or a child in any of the following placements:
 - (i) A detention facility;
 - (ii) A forestry camp;
 - (iii) A training school;
 - (iv) A State-owned and State-operated facility that accommodates more than 25 children; or
 - (v) Any other facility operated primarily for the detention of children who are determined to be delinquent.
 - (4) "Receiving school" means the school serving the geographic attendance area where the child welfare agency has placed the foster child.
 - (5) "Receiving school system" means the school system serving the jurisdiction where the child welfare agency has placed the foster child.
 - (6) "School of origin" means the school the foster child attended prior to the original placement or prior to the most recent change in placement by the child welfare agency.

C. In accordance with Education Article, §7-101(b)(2)(ii), Annotated Code of Maryland, the local school system superintendent of the school of origin shall allow a foster child to remain enrolled in