



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

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**TO:** Members of the State Board of Education  
**FROM:** Karen B. Salmon, Ph.D.  
**DATE:** October 22, 2019  
**SUBJECT:** COMAR 13A.19.01  
*Commensurate Funding for Charter Schools*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

This is a request to publish a proposed regulation, COMAR 13A.19.01 *Commensurate Funding for Charter Schools*.

**REGULATION PROMULGATION PROCESS:**

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review Committee (AELR) for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, the MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during the process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

**BACKGROUND/HISTORICAL PERSPECTIVE:**

When the charter school statute passed in 2003, it contained a requirement that the county board disburse to the charter schools “an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction.” Maryland Education Article. §9-109. The problem was, however, most county boards did not disburse funds to individual schools in the system to fund their operations. Funding and funding decisions were a centralized process.

Thus, very soon after the statute passed, the question of how to calculate commensurate funding arose.

The State Board developed the basic commensurate funding formula in 2004 and its decision was affirmed by the Court of Appeals in 2007. Thereafter, this Board has addressed commensurate funding in several appeals.

**EXECUTIVE SUMMARY:**

The proposed regulation distills the various State Board rulings into a regulatory formula for calculating commensurate funding. The proposed regulation essentially creates a one-stop-shop for local school systems and charter schools to refer to when they have questions about the commensurate funding requirement. Each segment of this proposed regulation reflects a specific State Board ruling in a charter school funding appeal.

**ACTION:**

Request permission to publish COMAR 13A.19.01 *Commensurate Funding for Charter Schools*.

**ATTACHMENT:**

COMAR 13A.19.01 *Commensurate Funding for Charter Schools*

**Title 13A**  
**State Board of Education**  
**Subtitle 19 Charter Schools**  
**Chapter .01 Commensurate Funding**

**Authority: Education Article, §§9-109 and 2-205, Annotated Code of Maryland**

**.01 Commensurate Funding**

**A. Purpose.** The purpose of this regulation is to set forth the formula for calculating “commensurate funding” for charter schools.

**B. Definitions.**

- (1) “Administrative costs” means 2% of the total average per pupil amount retained by the school system for central administrative functions related to the charter school.
- (2) “Average Per Pupil Amount” means the total operating budget divided by the enrollment count.
- (3) “Buy back” means a service that the charter school decides to purchase from the local school system.
- (4) “Enrollment count” means the September 30 student enrollment count for the year prior to the school year being funded.
- (5) “In-kind services” means services the school system offers to provide a charter school and the charter school accepts.
- (6) “Restricted funds” means State or federal funds that have detailed eligibility requirements, such as Title I funds or special education transportation funds, for which the charter school does not meet eligibility requirements.
- (7) “Total operating budget” means the total State, local, and federal funds appropriated in each of the major categories set forth in Md. Educ. Code Ann. §5-101(b)(2) for the operation of the school system in the school year being funded, excluding debt service and adult education amounts. The major categories are:
  - (a) Administration;
  - (b) Mid-level Administration;
  - (c) Instructional Salaries;
  - (d) Textbooks and Instructional Supplies;
  - (e) Other Instructional Costs;

- (f) Special Education;
- (g) Student Personnel Services;
- (h) Health Services;
- (i) Student Transportation;
- (j) Operation of Plant and Equipment;
- (k) Maintenance of Plant;
- (l) Fixed Charges;
- (m) Food Services; and
- (n) Capital Outlay.

### **C. Formula for Calculating Commensurate Funding**

The formula for calculating commensurate funding is: total operating budget divided by enrollment count = average per pupil amount, minus 2% for administrative costs, minus any restricted funds for which the charter school does not meet eligibility requirements.

### **D. Specific Funding Requirements**

#### (1) Transportation Funding.

- (a) In calculating the transportation funding to be included in the total operating budget, all general education transportation funds shall be included.
- (b) Special education transportation funds may be excluded from the transportation category if no special education students are enrolled in the charter school or if the charter school elects not to provide transportation services to the special education students enrolled in the charter school. In that case, the school system shall provide and pay for the service.

#### (2) Buy backs.

- (a) A charter school may buy back services from the school system subject to good faith negotiations about price and terms.
- (b) A school system shall not impose a buy back requirement on a charter school.

#### (3) In-kind Services.

- (a) A school system may offer to provide in-kind services to a charter school either for free or at a price negotiated in good faith with a charter school.
- (b) A school system may not mandate a charter school to accept in-kind services.

#### (4) Indirect Costs

- (a) The indirect costs associated with a major budget category shall be included when calculating the total operating budget.

**E. Agreement Between the Charter School and the School System**

- (1) Nothing in these regulations shall preclude a charter school and a school system from agreeing to a commensurate funding formula different from one set forth in this Chapter provided that such agreement shall be negotiated in good faith.