



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

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: December 3, 2019
RE: Disqualification Criteria For Substitute Teachers
COMAR 13A.07.12 ADOPTION

PURPOSE:

The purpose of this item is to request adoption of a new regulation regarding the disqualification criteria for substitute teachers when a local school system (LSS) has been informed that a substitute has been identified for possible involvement in child abuse, neglect, failure to report suspected child abuse or neglect, or is found guilty of specific crimes.

HISTORICAL BACKGROUND:

In 2017, the Maryland State Department of Education (MSDE) revised its policies and procedures involving suspensions and revocations of professional certificates of individuals who violate one of the causes identified in the Code of Maryland Regulations (COMAR) 13A.12.05 *Suspensions and Revocations*. Revisions were made in an effort to streamline existing processes to ensure the safety of Maryland students. During this revision, it became apparent that the MSDE should collaborate with local superintendents to determine if the current reporting procedures requiring the notification of the MSDE when a local school system (LSS) has been informed that an employee has been identified for possible involvement in child abuse, neglect, or the failure to report suspected child abuse or neglect, require revisions.

In March 2018, the State Superintendent charged a new workgroup with reviewing COMAR 13A.12.05.03 *Reporting Procedures*, to determine if the regulation requires amendments, as well as, to determine how the policies and procedures pertaining to this regulation can be improved to ensure the safety of students in Maryland. The workgroup, facilitated by the MSDE, convened seven times and was comprised of representatives/designees from the following local school systems:

- Dr. Kimberly Hill, Charles County Public Schools
- Mr. Brian Johnson, Charles County Public Schools
- Dr. Andrea Kane, Queen Anne's County Public Schools
- Dr. John Mayo, Baltimore County Public Schools
- Ms. Christina Byers, Baltimore County Public Schools
- Ms. Erica Cook, Wicomico County Board of Education
- Ms. Linda Johnson, Montgomery County Public Schools
- Ms. Donna Hollingshead, Montgomery County Public Schools
- Ms. Robin Welsh, Prince George's County Public Schools
- Ms. Deirdria Hudness, Prince George's County Public Schools

To facilitate the work, the initial meeting focused on the current regulatory requirements outlining reporting procedures, local school system hiring and reporting procedures, and current local and state-level issues regarding the current process. In the beginning, the workgroup identified the need for a statewide database to house the names of disqualified substitute teachers, as substitutes do not require a Maryland Educator Certificate and therefore, are not covered under the reporting procedures outlined in COMAR 13A.12.05.03. The workgroup spent subsequent meetings drafting regulatory language.

The SBOE granted permission to publish this regulation at the July 23, 2019, meeting. On September 13, 2019, the proposed regulation was published in the Maryland Register (Attachment I) through October 15, 2019. The MSDE received one public comment, which is summarized in the attached chart (Attachment II). The MSDE is not recommending any changes to COMAR 13A.12.05.03.

PROPOSED REGULATION:

The proposed regulation outlines the following with respect to disqualification criteria for substitute teachers:

- Causes of Disqualification
- Notice of Disqualification and Right to Appeal
- Disqualified Substitute Teacher Database
- Disqualification of a Substitute who holds a Maryland Educator Certificate

SUMMARY:

A workgroup comprised of multiple constituent organizations is recommending a new regulation be established regarding disqualification criteria for substitute teachers who engage in certain behaviors.

ACTION:

Request permission to adopt regulation COMAR 13A.07.12.

Attachments: Maryland Register September 13, 2019
Public Comment Chart
Public Comment received from Montgomery County Public Schools

.13 Public Hours of Operation of the Terminal and Other Locations at the Airport.

A. *General Regulations.* The terminal at the Airport, the pedestrian bridges connecting the hourly garage at the Airport to the terminal, the hourly garage, and the on-Airport consolidated rental car facility are open to the public from 4:00 a.m. to 11:00 p.m. each day. No individual may enter or be present in the terminal, pedestrian bridges, hourly garage, or on-Airport consolidated rental car facility from 11 p.m. to 4 a.m. the next day except:

- (1) Airline passengers and on-Airport consolidated rental car facility customers;
- (2) Individuals meeting, accompanying, or assisting passengers on an arriving or departing flight;
- (3) Individuals whose employment requires their presence in the terminal, pedestrian bridges, hourly garage, or on-Airport consolidated rental car facility; and
- (4) Other individuals specifically authorized by the Executive Director to enter and be present in some or all of these locations.

B. *Violations.*

(1) For purposes of this section, "authorized employee" means an employee of the Administration designated by the Executive Director to ask a person to leave the terminal, pedestrian bridges, hourly garage, or on-Airport consolidated rental car facility when the surrounding circumstances suggest that the person has no apparent lawful business to pursue at the terminal, pedestrian bridges, hourly garage, or on-Airport consolidated rental car facility.

(2) If a person refuses or fails to leave the terminal, pedestrian bridges, hourly garage, or on-Airport consolidated rental car facility upon proper request to do so by an authorized employee, the Airport Police shall be notified and the person shall be treated as a trespasser in accordance with Criminal Law Article, §6-409, Annotated Code of Maryland.

RICKY D. SMITH, SR.
Executive Director
Maryland Aviation Administration

**Title 13A
STATE BOARD OF
EDUCATION**

Subtitle 07 SCHOOL PERSONNEL

13A.07.12 Disqualification Criteria for Substitute Teachers

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

Notice of Proposed Action

[19-177-P]

The Maryland State Board of Education proposes to adopt new Regulation .01 under a new chapter, **COMAR 13A.07.12 Disqualification Criteria for Substitute Teachers**. This action was considered by the State Board of Education at their July 23, 2019, meeting.

Statement of Purpose

The purpose of this action is to establish disqualification criteria for substitute teachers when a local school system has been informed that a substitute has been identified for possible involvement in child abuse or neglect, or failure to report suspected child abuse or neglect, or is found guilty of specific crimes.

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 Kelly Meadows, M.S., Director, Certification, Division of Educator Certification and Program Approval, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0406 (TTY 410-333-6442), or email to kelly.meadows@maryland.gov, or fax to 410-333-8963. Comments will be accepted through October 15, 2019. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on December 3, 2019, at 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

.01 Disqualification Criteria for Substitute Teachers.

A. *Disqualification Causes.*

(1) A local school system shall disqualify a substitute teacher from employment in any local school system if the individual:

(a) Pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of a crime involving:

- (i) Contributing to the delinquency of a minor;
- (ii) Moral turpitude if the offense bears directly on the individual's fitness for employment in education;
- (iii) A controlled dangerous substance offense if the offense occurred on school property or during a school event or if the individual has been convicted and the clerk of the court has certified and reported the controlled dangerous substance conviction to the Department;

(iv) Child abuse or neglect as defined in Criminal Law Article, §§3-601—3-603, Annotated Code of Maryland, or a comparable crime in another state;

(v) A crime of violence as defined in Criminal Law Article, §14-101, Annotated Code of Maryland, or a comparable crime in another state;

(vi) Sexual solicitation of a minor; or

(vii) Possession, distribution, receipt, or production of child pornography;

(b) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-701, Annotated Code of Maryland;

(c) Is dismissed or resigns after notice of allegation of misconduct involving a student in any school system or any minor; or

(d) Is dismissed or resigns after notice of allegations of sexual child abuse.

(2) This regulation does not prevent a local school system from terminating, declining to hire, or declining to use the services of a substitute teacher based on any of the disqualifying causes or for any other lawful reason not listed as a disqualifying cause.

B. *Notice of Disqualification and Right to Appeal.*

(1) Prior to disqualifying a substitute teacher, a local school system shall send the individual notice of the proposed action, including the specific cause or causes for disqualification, and provide an opportunity to challenge the disqualification.

(2) A challenge to disqualification is limited to whether a substitute should be added to the Disqualified Substitute Teacher Database.

(3) An individual may appeal the disqualification in writing to the State Superintendent of Schools within 30 days of the final decision of the local school system. An individual shall remain on the disqualified list while an appeal to the State Superintendent of Schools is pending.

C. Disqualified Substitute Teacher Database.

(1) The Maryland State Department of Education shall maintain an electronic database of substitute teachers who have been disqualified by a local school system under §§A and B of this regulation.

(2) The local school system shall notify the Maryland State Department of Education of a substitute teacher's disqualification within 10 days of the final action.

(3) The notification to the Maryland State Department of Education shall be in the format prescribed by the Department.

(4) Within 10 days of receipt of notification, the Maryland State Department of Education shall enter the individual into an electronic database established under this regulation.

(5) Prior to employing an individual as a teacher, a local school system shall check whether the individual is listed in the Disqualified Substitute Teacher Database.

(6) The Maryland State Department of Education shall provide a list of those individuals in the Disqualified Substitute Teachers Database to each local school system on a monthly basis.

D. If a decision to disqualify an individual from being able to serve as a substitute is based on §A(1)(a) of this regulation and if the plea, probation before judgment, or conviction is overturned or expunged and there is no subsequent proceeding leading to a plea, probation before judgment, or conviction, the individual who has been disqualified may file a written request with the Maryland State Department of Education to be removed from the Disqualified Substitute Teacher Database.

E. If an individual who is disqualified from being able to serve as a substitute in Maryland based on §A of this regulation holds a valid Maryland Educator Certificate, the local superintendent of schools shall notify the State Superintendent of Schools in writing of charges against the certificate holder pursuant to COMAR 13A.12.05.02.

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

Title 33 STATE BOARD OF ELECTIONS

Subtitle 19 SAME DAY REGISTRATION AND ADDRESS CHANGES

Notice of Proposed Action

[19-172-P]

The State Board of Elections proposes to amend:

- (1) Regulations .01 and .02 under **COMAR 33.19.01 Definitions; General Provisions;**
- (2) Regulation .01 under **COMAR 33.19.03 Election Judges;** and
- (3) Regulations .01 and .02 under **COMAR 33.19.04 Processing New Registrants and Address Changes.**

This action was considered by the State Board of Elections at its July 25, 2019, meeting, notice of which was given in accordance with the General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Bring the regulations into alignment with recent statutory enactments, specifically Ch. 755, Acts of 2019, which added Election Law Article, §3-306, Annotated Code of Maryland;
- (2) Clarify for which elections same day registration and same day address changes are eligible;
- (3) Update the required information to be included on a pre-election mailing to pre-qualified voters;
- (4) Clarify the number of election judges and their responsibilities related to same day registration and same day address change; and
- (5) Clarify the circumstances under which an election judge would give a regular ballot or a provisional ballot for same day registration and same day address change.

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 Tracey Hartman, Director of Special Projects, State Board of Elections, P.O. Box 6486, Annapolis, MD 21401, or call 410-269-2931, or email to traceye.hartman@maryland.gov, or fax to 410-974-2019. Comments will be accepted through October 15, 2019. A public hearing has not been scheduled.

COMAR 13A.07.12 Disqualification Criteria of Substitute Teachers

Public Comment

Commenter	Comment	MSDE Comment
Andrew M. Zuckerman, Ed.D., Chief Operating Officer, Montgomery County Public Schools	As a general matter, MCPS recommends that MSDE be attentive to how the substitute disqualification regulation aligns with Maryland House Bill 486, Child Sexual Abuse and Misconduct Prevention, and to the proposed revisions of COMAR 13A.12.01-.07, Educator Licensure, which are not yet available for public comment. Given some of the overlap of these laws, one unintended consequence of this proposed regulation may be redundant reporting to MSDE and additional expenditure of time and resources. In addition, MCPS requests that MSDE consider ways to streamline local school systems' access to reported information and the manner in which local school systems input such data into its own personnel management systems.	MSDE recognizes that since requesting permission to publish this regulation, the passing of House Bill 486 now requires school systems, nonpublic schools, and contracting agencies to undergo extensive employment history checks prior to hiring an applicant who will have direct contact with children. This regulation establishes a database for all local school systems to access to see if a substitute has engaged in behavior that prohibits them from serving in that position, something that HB 486 does not do.
	13A.07.12.01(A)(1)(iii) MCPS proposes that this subsection be amended to read "...the offense bears directly on the individual's fitness for employment in education." MCPS is concerned that the current language would allow substitute teachers to escape consequences if a clerk of the court does not notify MCPS or the Department. MCPS believes such an amendment would give MCPS the opportunity to engage in a fair disqualification process if it learns of any crime bearing on the substitute's ability to teach children, regardless of the manner in which MCPS learns of the plea or conviction. Further absent from this amendment, there would be no consequence for a conviction of a controlled substance offense in a neighboring jurisdiction.	The regulation does not require that the only way to move forward is for the clerk of the court to certify a conviction to MSDE. The regulation also permits taking action if there is a drug crime that occurs on school property or during a school event. This is in line with the proposed changes to causes for teacher suspension or revocation. MSDE believes that this additional language (school property or school event) creates

		an appropriate nexus to the person's employment.
	<p>COMAR 13A.07.12.01(A)(1)(b) MCPS recommends that this subsection be amended to define the level of intent for failure to report suspected child abuse as "willfully and knowingly". Section 13A.12.06.02(C)(2), the teacher licensure suspension, revocation, denial counterpart to this regulation, itemizes conduct that requires suspension, denial, or revocation and defines the level of intent necessary for such action as "willfully and knowingly". This move would make the mens rea for substitute teacher disqualification consistent with the mens rea for mandatory suspension denial, or revocation offenses.</p>	<p>The teacher licensure regulations only require "knowingly failing to report" abuse, not "willfully". This statement is false. MSDE believes at this time that it should remain as is to emphasize the importance of reporting requirements.</p>
	<p>COMAR 13A.07.12.01(A)(1)(c) MCPS proposes that this be amended to read "<i>Is dismissed or resigns after receiving notice of an allegation of misconduct with a student that bears directly on the individual's fitness for employment in education...and there is substantial evidence that such misconduct occurred.</i>"</p> <p>As written this provision applies a one-sized fits all approach regardless of severity of the conduct.</p>	<p>The current language mirrors the teacher suspension and revocation regulation. The proposed language would create a much higher bar for disqualifying a substitute than for suspending or revoking a teacher's license. MSDE believes the current language provides flexibility to the Department to address a range of misconduct involving students and requires the individual being on notice of the allegations prior to resigning or being terminated.</p>
	<p>COMAR 13A.07.12.01(A)(1)(a) MCPS strongly recommends adding three subsections to this provision:</p> <ol style="list-style-type: none"> 1. under subsection (1) that reads: "Is indicated for child abuse and has exhausted or waived their right to appeal the indicated finding" 2. adding to the list of enumerated disqualifying crimes, "a crime involving a student either as a victim or as co-conspirator, aider, and abettor, or accomplice" 	<p>The crime of violence statute does include "attempt" for most of the enumerated crimes of violence. It does not currently include conspiracy or the additional suggested crimes offered by MCPS. At this time, MSDE</p>

	<p>3. adding a provision to the enumerated crimes that would also mandate disqualification if the plea or conviction is to an “attempt to” or “conspiracy to” engage in the crimes already enumerated in this section.</p> <p>Adding these provisions would provide additional safeguards for students and ensure that a teacher who has engaged in a crime with a student or has victimized a student, is disqualified. Additionally, because plea deals often involve pleas to a lesser-included crime, an attempt or conspiracy to engage in the unlawful conduct should be included as disqualifying offenses.</p>	<p>recommends keeping the language consisted with the educator suspension and revocation regulation, which includes this same list of crimes. MSDE could always in the future look at expanding or changing it’s list of crimes.</p>
	<p>MCPS interprets 13A.07.12.01 to apply prospectively. If MSDE intends for the substitute disqualification regulation to apply retroactively, MCPS recommends that it be amended to include such a provision.</p>	<p>MSDE intends the disqualification list to only work prospectively at this time.</p>



**COMAR 13A.07.12,
Disqualification Criteria for Substitute Teachers
Proposed New Regulation .01, Under a New Chapter**

Comments from Andrew M. Zuckerman, Ed.D., Chief Operating Officer
Office of the Chief Operating Officer
Montgomery County Public Schools, Rockville, MD

Maryland State Board of Education Statement of Purpose

The purpose of this action is to establish disqualification criteria for substitute teachers when a local school system has been informed that a substitute has been identified for possible involvement in child abuse or neglect, or failure to report suspected child abuse or neglect, or is found guilty of specific crimes.

**Montgomery County Public Schools comments on new regulation COMAR 13A.07.12.01,
*Disqualification Criteria for Substitute Teachers***

In Montgomery County Public Schools (MCPS), we have implemented robust internal investigative processes for reviewing allegations of employee misconduct. These processes ensure that the Montgomery County Board of Education's (Montgomery County Board) policies and MCPS regulations are enforced, appropriate progressive and corrective discipline is imposed in a fair and equitable manner, and reaffirm MCPS' expectations that its employees are expected to adhere to MCPS' core values and standards of conduct. Of utmost importance, enforcing these rules and regulations promotes the safety and security of our students and staff. There are times, however, that despite the current revisions, MCPS may still be limited in the actions it can take to protect its students due to a lack of awareness of conduct in other jurisdictions or occurring prior to the employee's joining MCPS. In this vein, MCPS joins the Maryland State Department of Education (MSDE) in its efforts to ensure only qualified employees work with Maryland's children. MCPS proposes the following revisions to the substitute disqualification criteria regulations—namely, to encourage information sharing among school districts, protect students from individuals who have been indicated by child welfare agencies, increase local schools systems' ability to take action against employees for criminal conduct outside of the workplace that puts into question their ability to do their job – while promoting fairness and due process – and to codify local school systems' ability to do so. When available for comment, MCPS will be making similar comments to the proposed repeal and replace of COMAR 13A.12.01-.06, *Certification*, with COMAR 13A.12.01-.07, *Educator Licensure*.

Office of the Chief Operating Officer

Further, as a general matter, MCPS recommends that MSDE be attentive to how the substitute disqualification regulation aligns with Maryland House Bill 486, *Child Sexual Abuse and Misconduct Prevention*, and to the proposed revisions to COMAR 13A.12.01-.07, *Educator Licensure*, which are not yet available for public comment. Given some of the overlap of these laws, one unintended consequence of this proposed regulation may be redundant reporting to MSDE and additional expenditure of time and resources. In addition, MCPS requests that MSDE consider ways to streamline local school systems' access to the reported information and the manner in which local school systems input such data into its own personnel management systems.

Below are MCPS' comments, which correspond to the subsections listed below.

Controlled Dangerous Substance Offenses: 13A.07.12.01(A)(1)(iii)

A. Disqualification causes. A local school system shall disqualify a substitute teacher from employment in any local school system if the individual: . . . (1) Pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of a crime involving: . . . (iii) A controlled dangerous substance if: (i) the offense occurred on school property or during a school event or if the individual has been convicted and the clerk of the court has certified and reported the controlled dangerous substance conviction to the Department.”

MCPS proposes that subsection (A)(1)(iii)(i) be amended to read: “. . .the offense bears directly on the individual's fitness for employment in education.” MCPS is concerned with this subsection as written because, in effect, it would allow substitute teachers to escape consequences if a clerk of court does not notify MCPS or the Department. MCPS believes such an amendment would give MCPS the opportunity to engage in a fair disqualification process if it learns of any crime bearing on the substitute's ability to teach children, regardless of the manner in which MCPS learns of the plea or conviction. Further, absent this amendment, there would be no consequence for a conviction of a controlled substance offense in a neighboring jurisdiction – which is common given Montgomery County's proximity to Washington, DC and Virginia.

Failing to Report Suspected Child Abuse: 13A.07.12.01(A)(1)(b)

A. Disqualification causes. (1) A local school system shall disqualify a substitute teacher from employment in any local school system if the individual: . . .(b) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-701, Annotated Code of Maryland;

MCPS recommends that this subsection be amended to define the level of intent for failure to report suspected child abuse as “willfully and knowingly.” Section 13A.12.06.02(C)(2), the teacher licensure suspension, revocation, or denial counterpart to this regulation, itemizes conduct that requires suspension, denial, or revocation and defines the level of intent necessary for such action as “willfully and knowingly.” This move would make the *mens rea* for substitute teacher disqualification consistent with the *mens rea* for mandatory suspension, denial, or revocation offenses. When the comment period opens for the teacher licensure regulation, MCPS intends to recommend the same change to 13A.12.06.02(C)(4).

Misconduct Involving Students: 13A.07.12.01(A)(1)(c)

A. Disqualification causes. (1) A local school system shall disqualify a substitute teacher from employment in any local school system if the individual: . . .(c) Is dismissed or resigns after notice of allegation of misconduct involving a student in any school system or any minor

MCPS proposes that subsection (c) be amended to read “Is dismissed or resigns *after receiving* notice of an allegation of *misconduct with a student that bears directly on the individual’s fitness for employment in education*. . . and *there is substantial evidence that such misconduct occurred*. . . As written, this provision applies a one-size-fits-all approach regardless of the severity of the conduct. By requiring a nexus between the conduct and the teacher’s duties, such a revision will, on the one hand, continue to achieve the goal of keeping an unfit teacher from endangering students in another school system. On the other hand, adding a “substantial evidence” standard, will also promote fairness and require a higher level of evidence before taking such an action.

Enumerated Crimes**13A.07.12.01(A)(1)(a)**

D. Disqualification causes. (1) A local school system shall disqualify a substitute teacher from employment in any local school system if the individual:(a) Pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of, a crime involving: (i) contributing to the delinquency of a minor; (ii) moral turpitude if the offense bears directly on the individual’s fitness for employment in education; (iii) a controlled substance offense...(iv) Child abuse or neglect as defined in Criminal Law Article, §§3-601—3-603, Annotated Code of Maryland, or a comparable crime in another state; (v) A crime of violence as defined in Criminal Law Article, §14-101, Annotated Code of Maryland, or a comparable crime in another state; (vi) Sexual solicitation of a minor; (vii) or Possession, distribution, receipt, or production of child pornography. (; (d)

MCPS strongly recommends adding three subsections to this provision –first, a provision under subsection (1) that reads : “Is indicated for child abuse and has exhausted or waived their right to appeal the indicated finding;” second, a subsection adding to the list of enumerated disqualifying crimes, “a crime involving a student either as a victim or as co-conspirator, aider and abettor, or accomplice; and third, a adding a provision to the enumerated crimes that would also mandate disqualification if the plea or conviction is to an “attempt to” or “conspiracy to” engage in the crimes already enumerated in this section. Adding these provisions would provide additional safeguards for students in Maryland schools, and ensure that a teacher who has engaged in a crime with a student or has victimized a student is disqualified. In addition, because plea deals often involve pleas to a lesser-included crime, an attempt or conspiracy to engage in the unlawful conduct should be included as disqualifying offenses.

Last, MCPS interprets section 13A.07.12.01 to apply prospectively. If MSDE intends for the substitute disqualification regulation to apply retroactively, MCPS recommends that it be amended to include such a provision.

Submitted October 15, 2019