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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D. *KBS*

**DATE:** December 5, 2016

**SUBJECT:** COMAR 13A.05.01.01-.16  
*Provision of a Free Appropriate Public Education (FAPE)*  
**ADOPTION**

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**PURPOSE:**

The purpose of this action is to request that the State Board adopt revisions to the regulations that govern provision of a free appropriate public education (FAPE) (ATTACHMENT I).

**REGULATION PROMULGATION PROCESS:**

In accordance with the Regulatory Review and Evaluation Act, State Government Article §§ 10-130 – 10-139, Annotated Code of Maryland, the Maryland State Department of Education (MSDE) periodically schedules regulations for review to evaluate the need to retain, amend, or repeal any provisions. The purpose of this review is to determine whether the regulations: 1) continue to be necessary for the public interest; 2) continue to be supported by statutory authority and judicial opinions; and 3) are obsolete or otherwise are appropriate for amendment or repeal.

**BACKGROUND/HISTORICAL PERSPECTIVE:**

The regulations promulgated by the State Board to ensure the provision of a FAPE to students with disabilities in Maryland, consistent with the federal Individuals with Disabilities Education Act (IDEA), are located in COMAR 13A.05.01. This chapter of COMAR addresses referrals and evaluations for special education, the individualized education program (IEP) team process, and the procedural safeguards required by the IDEA. The MSDE consulted stakeholder groups to assist in the review process and, as a result of its review and evaluation, has proposed several amendments that fall into three categories: 1) updates to terminology; 2) updates to statutory or regulatory citations; and 3) cross-references to the regulations that govern Maryland Infants and Toddlers Programs. The MSDE has proposed no substantive changes.

On July 26, 2016, the State Board approved the proposed regulation for publication. It was published in the Maryland Register on September 30, 2016, for public comment. During the 30-day public comment period, the Department received no comments.

**EXECUTIVE SUMMARY:**

The following changes are reflected in the amended regulations:

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1. 13A.05.01.03B(73)(c) - replaces the term “emotional disturbance” with “emotional disability” to reflect current terminology
2. 13A.05.01.03B(77)(b) – reflects reference to correct citation
3. 13A.05.01.03B(77)(c) – reflects reference to correct citation
4. 13A.05.01.05D(1) – reflects a statutory amendment
5. 13A.05.01.06B – coordinates with Maryland Infants and Toddlers regulations
6. 13A.05.01.07A(8) - coordinates with Maryland Infants and Toddlers regulations
7. 13A.05.01.08A(2)(a)(i) – coordinates with Maryland Infants and Toddlers regulations
8. 13A.05.01.08A(2)(a)(ii) – coordinates with Maryland Infants and Toddlers regulations
9. 13A.05.01.08A(2)(a)(iii) – coordinates with Maryland Infants and Toddlers regulations

**ACTION:**

Request that the State Board adopt COMAR 13A.05.01.01-.16, Provision of a Free Appropriate Public Education, as amended.

PROPOSED ACTION ON REGULATIONS

1138

.08 Standards—Administrative Record Keeping.

The managing official shall have a written policy and procedure:

A. — D. (text unchanged)

E. Requiring a complete case record for each inmate, which includes provisions for:

(1) — (3) (text unchanged)

(4) Establishment of a records retention schedule with documentation of disposition[.]; and

(5) Transfer of pertinent records to other correctional facilities[.];

F. To ensure compliance with Correctional Training Commission employee background checks; and

G. To ensure compliance with Correctional Training Commission training requirements.

12.14.05 Minimum Standards for Adult Community Correctional Facilities

Authority: Correctional Services Article, Title 8, Subtitle 1, Annotated Code of Maryland

.01 Standards—Security and Inmate Control.

A. — B. (text unchanged)

C. The managing official shall have a written policy and procedure:

(1) (text unchanged)

(2) Governing the availability, control, accountability, storage, and use of firearms, ammunition, chemical agents, organic agents, restraining devices, communication apparatus, riot equipment, and other security-related equipment, which includes provisions for:

(a) — (b) (text unchanged)

(c) [Quarterly] Monthly inspection and inventory to determine condition, [and] accountability, and operational status;

(d) — (f) (text unchanged)

(3) — (4) (text unchanged)

(5) Governing the search of the facility, vendors, vehicles, inmates, visitors, and staff, which includes provisions for:

(a) (text unchanged)

(b) A [once-a-year] semiannual search of inmate living and program and activity areas[.];

(c) — (l) (text unchanged)

(6) — (10) (text unchanged)

D. (text unchanged)

.02 Standards—Inmate Safety.

A. (text unchanged)

B. The managing official shall have written disaster plans for fires, chemical spills, civil defense, natural disasters, power outages, and other circumstances, which include provisions for:

(1) — (3) (text unchanged)

(4) The placement and housing of inmates within the facility and at alternate sites when the facility or portions of it are rendered uninhabitable; [and]

(5) Quarterly fire drills during each shift which include inmates, unless their inclusion compromises security[.];

(6) A written evacuation plan that conforms to federal, State, and local fire safety codes; and

(7) An annual review that includes:

(a) Building interior diagram or floor plan;

(b) Marked exits;

(c) Directional symbols; and

(d) Locations of posted evacuation diagrams.

C. — D. (text unchanged)

.05 Standards—Inmate Rights.

A. The managing official shall have a written policy which:

(1) (text unchanged)

(2) Establishes inmate protection from physical and mental abuse, and harassment[; and] by personnel that includes a zero tolerance for sexual abuse and sexual harassment providing for:

(a) Facility response;

(b) Access to medical health care; and

(c) Access to mental health counseling and support; and

(3) (text unchanged)

B. — C. (text unchanged)

.08 Standards—Administrative Record Keeping.

The managing official shall have a written policy and procedure:

A. — D. (text unchanged)

E. Requiring a complete case record for each inmate, which includes provisions for:

(1) — (3) (text unchanged)

(4) Establishment of a records retention schedule with documentation of disposition[.]; and

(5) Transfer of pertinent records to other correctional facilities[.];

F. To ensure compliance with Correctional Training Commission employee background checks; and

G. To ensure compliance with Correctional Training Commission training requirements.

STEPHEN T. MOYER

Secretary of Public Safety and Correctional Services

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, 7-305, 8-301—8-307, 8-3A-01—8-3A-08, and 8-401—8-416, Human Services Article, §§8-401—8-409, Labor and Employment Article, §§11-801 and 11-901 et seq., State Government Article §9-1607.1, Annotated Code of Maryland Federal Statutory Reference 20 U.S.C. §§1637 and 1411—1416, Federal Regulatory References: 34 CFR 300, 301, and 99

Notice of Proposed Action

[15-259-P]

The Maryland State Board of Education proposes to amend Regulations .03 and .05—.08 under COMAR 13A.05.01 Provision of a Free Appropriate Public Education. This action was considered by the State Board of Education at their meeting on July 26, 2016.

Statement of Purpose

The purpose of this action is to provide updates to: (1) terminology; (2) statutory or regulatory citations; and (3) cross-references to the regulations that govern Maryland Infants and Toddlers Programs.

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**

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 an impact on individuals with disabilities as follows:

The proposed action ensures consistency with the education regulations that govern services for children birth through four (COMAR 13A.13) and for children three through twenty-one (COMAR 13A.05.01 and 13A.05.02). The previously adopted COMAR regulations (13A.13) allow for families of eligible children to continue to receive services through the Maryland Infants and Toddlers Program until the beginning of the school year following the child's fourth birthday. The proposed regulations reference and ensure consistency with those regulations and update current terminology.

**Opportunity for Public Comment**

Comments may be sent to Carmen A. Brown, LCSW-C, Branch Chief, Interagency Collaboration, Division of Special Education/Early Intervention Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-7197 (TTY 410-333-6442), or email to carmen.brown1@maryland.gov, or fax to 410-333-1571. Comments will be accepted through October 31, 2016. 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 5, 2016, 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

**.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(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, intellectual disability, emotional [disturbance] disability, or environmental, cultural, or economic disadvantage.

(74)—(76) (text unchanged)

(77) "Student with a developmental delay" means a student within the age range of 3 years old through 7 years old assessed and evaluated in accordance with Regulations .05 and .06 of this chapter as having:

(a) (text unchanged)

(b) Atypical development or behavior as defined in COMAR [13A.13.01.02B(21)(b)] 13A.13.01.03B(12)(b); or

(c) A diagnosed physical or mental condition as defined in COMAR [13A.13.01.02B(21)(c)] 13A.13.01.03B(12)(c).

(78)—(85) (text unchanged)

**.05 Assessment.**

A.—C. (text unchanged)

D. Report of Assessments.

(1) A report of assessment procedures administered to a student in each area of suspected disability, as determined in accordance with Regulation .04 of this chapter, shall be available to the parents, consistent with Education Article, §8-405, Annotated Code of Maryland, and to the IEP team at the time of the evaluation.

(2)—(3) (text unchanged)

**.06 Evaluation, Reevaluation, and Eligibility.**

A. (text unchanged)

B. A public agency shall convene an IEP team meeting to determine if a child in transition from a local infants and toddlers program has a disability or developmental delay that requires the provision of special education and related services, in accordance with COMAR 13A.13.01.09B(10).

C.—E. (text unchanged)

**.07 Individualized Education Program (IEP) Team.**

A. IEP Team Members.

(1)—(7) (text unchanged)

(8) For the initial IEP team meeting of a child who was previously served by a local infants and toddlers program, the IEP team shall, at the request of the child's parent, invite the local infants and toddlers program service coordinator or other representatives of the local infants and toddlers program to assist with the smooth transition of services, in accordance with COMAR 13A.13.01.09F.

B.—D. (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 an IEP team meets [to develop an IEP for the student] in a timely manner to determine a child's eligibility for special education and related services before the child's third birthday;

(ii) Invite the [student's] child's local infants and toddlers service coordinator or other representatives of the local infants and toddlers program to assist with a smooth transition of services, consistent with Regulation .07A(8) of this chapter; and

(iii) Ensure that the student's IEP is in effect on the student's third birthday in accordance with Regulation .09 of this chapter if a child's family chooses to receive preschool special education services.

(b) (text unchanged)

(3)—(11) (text unchanged)

B. (text unchanged)

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