



**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:** July 28, 2020

**SUBJECT:** COMAR 13A.19.01  
*Commensurate Funding for Charter Schools*  
**PERMISSION TO WITHDRAW BEFORE PUBLICATION**

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**PURPOSE:**

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

**REGULATION PROMULGATION PROCESS:**

The State Board voted on October 22, 2019, to propose the regulation. The regulation was sent to the Division of State Documents (DSD), then the Department of Legislative Services (DLS), and then to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) for review. The AELR Committee has requested a hearing at the request of the Public School Superintendents' Association of Maryland (PSSAM) of the proposed regulation. The regulation has not been published in the Maryland Register for a 30-day public comment period.

**BACKGROUND/HISTORICAL PERSPECTIVE:**

The State Board developed the basic commensurate funding formula for charter schools in 2004 and its decision was affirmed by the Court of Appeals in 2007. Thereafter, this Board has addressed commensurate funding in several appeals, which have been upheld by the Maryland courts. Local Boards of Education have been operating their charter school programs consistent with the framework set out in State Board rulings and Maryland court decisions.

**EXECUTIVE SUMMARY:**

The State Board proposed COMAR 13A.19.01 *Commensurate Funding for Charter Schools* to distill the various State Board rulings into a regulatory formula for calculating commensurate funding. The proposed regulation intended to create an easy to follow formula set out in regulation for local school systems and charter schools to refer to when they have questions about the commensurate funding requirement. The proposed regulation reflects specific State Board rulings in a charter school funding appeal or a Maryland court decision.

The regulation has not yet been published in the Maryland Register for public comment, and has been under review by the DSD, DLS, and the AELR committee. On June 24, 2020, PSSAM made a

request to AELR to hold a hearing on the regulation. PSAAM stated that it had equity and fairness concerns and focused on four areas: (1) administrative costs, (2) the definition of restricted funds, (3) special education, and (4) food services. On July 15, the MSDE received notice that AELR has scheduled a hearing on the regulation for August 4, 2020.

**ACTION:**

Request permission to withdraw COMAR 13A.19.01 *Commensurate Funding for Charter Schools* from publication for further review and evaluation.

**ATTACHMENT:**

June 24, 2020 Letter from Kelly L. Griffith, President, PSSAM

**Dr. Kelly L. Griffith**  
President, PSSAM  
Superintendent of Schools  
Talbot County Public Schools  
12 Magnolia Street, P.O. Box 1029  
Easton, MD 21601  
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June 24, 2020

The Honorable Sarah K. Elfreth, Senate Chair  
Administrative, Executive, and Legislative Review Committee  
103 James Senate Office Building  
11 Bladen Street  
Annapolis, Maryland 21401

The Honorable Samuel I. Rosenberg, House Chair  
Administrative, Executive, and Legislative Review Committee  
House Office Building, Room 365  
6 Bladen Street  
Annapolis, Maryland 21401

*Sent via electronic mail only*

Re: Maryland State Board of Education's Proposed Regulation COMAR 13A.19.01  
Commensurate Funding for Charter Schools

Dear Senator Elfreth and Delegate Rosenberg,

As President of the Public School Superintendents' Association of Maryland (PSSAM) representing our twenty-four school superintendents, I thank you for the opportunity to provide comment regarding the proposed COMAR regulations, ***13A.19.01 Commensurate Funding for Charter Schools.***

I specifically write to request that the Administrative, Executive, and Legislative Review (AELR) Committee convene a public hearing on these proposed regulations where we, along with many of our public education partners, may present our equity and fairness concerns if these regulations are adopted.

Many Local Education Agencies (LEAs) host very successful charter schools and have maintained positive funding and operational relationships with these providers. While MSDE ('the Department') has characterized these proposed regulations as a compilation of previous

Board rulings regarding charter schools, we believe they go beyond current law and practice. Further, we believe they may cause confusion and inequity in the way we currently fund and operate charter schools. PSSAM is focusing on four areas of concern (1) administrative costs (2) the definition of restricted funds (3) special education, and (4) food services. However, we are aware of, and support the concerns expressed by Baltimore City, Prince George's County and others about the funding implications for local decision making in capital projects, as well as potential unintended consequences in the proposed funding for special education and ESOL students.

With regard to the ***administrative cost*** requirement of **2%**, we would like more explanation on how this amount was determined; we believe most systems are currently providing more than 2% administrative support and 2% should not be a static and mandatory figure.

We believe all ***restricted funds*** for specific, earmarked purposes - federal, state and local – should be removed from the funding calculation for charter schools. Therefore, we suggest that the definition of “restricted funds” includes local funds when they are funds *with* detailed eligibility requirements.

***Special education*** is a highly regulated area of operations, and compliance is of the utmost importance. We recommend that special education be a non-negotiable, in-kind service provided centrally by the LEAs. Again, these are important services that need to be provided and monitored with fidelity, and are best provided directly by the LEA.

Lastly, we suggest clarifying language that if an LEA’s operating budget supports part of the charter school’s ***food service*** operation, these costs should be included in the formula. However, if a LEA’s program is a self-supporting enterprise then no funds should be included in the charter school formula.

For the above reasons, we respectfully request that the Administrative, Executive, and Legislative Review (AELR) Committee take the necessary actions to hold a hearing on these proposed regulations and recommend to the Department that they work with the stakeholders to make revisions. We appreciate the Committee’s consideration, and thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly L. Griffith".

Dr. Kelly L. Griffith  
President, PSSAM  
Superintendent, Talbot County Public Schools

cc: Local Superintendents  
Dr. Karen Salmon, Superintendent, MSDE  
Brigadier General Warner I. Sumpter, Ret., President, Maryland State Board of Education  
Cheryl Bost, President, MSEA  
Frances Hughes Glendening, Executive Director, MABE Director  
Mary Pat Fannon, Executive Director, PSSAM