


TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., State Superintendent of Schools 

DATE: October 22, 2024

SUBJECT: COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*
Permission to Publish
EMERGENCY ACTION

Executive Summary

The purpose of this item is to request emergency action to amend COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*. MSDE reviewed the regulation, recently adopted by the State Board in July 2024, and recommends that the language within the regulation be amended to state that the Superintendent **shall** transmit the information obtained under the regulation as a confidential file to the local superintendent of another local education agency (LEA) or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation. Given the possible seriousness of the reportable offenses, the amendment to the regulation is being presented as an emergency regulation.

Background and Process

Under Maryland law, when a student is arrested for certain offenses, the law enforcement agency making the arrest shall notify the student's local superintendent, the school principal, and for a school that has a school security officer, the school security officer of the arrest and the charges within 24 hours of the arrest, or as soon as practicable. The offenses which necessitate this notification are known as "reportable offenses." Reportable offenses are those offenses that occur off school premises, did not occur at an event sponsored by the school, and are serious criminal offenses. Reportable offenses are dictated by statute and include murder, arson, armed carjacking, sexual offenses, among other serious offenses. Offenses that are related to the student's membership in a criminal organization must also be reported. See Md. Code, Education § 7-303.

The intent of the reportable offense law is not to "punish" the student, but instead to provide the LEA with information that may impact the safety dynamics within the school community. This is different from school discipline where the LEA is using positive and punitive measures to correct inappropriate behavior in school. The reportable offense law governs the exchange and use of arrest information regarding serious and criminal offenses for the purpose of educational programming and for the maintenance of a safe and secure school environment.

In the event that a student transfers to a school in another LEA or to a private school, COMAR 13A.08.01.17F presently states that “If the disposition of the reportable offense was a conviction or an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal **may** transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.”

If this information is not transmitted to the LEA/school in which the student transfers, the receiving LEA/school does not have the information that may impact the safety dynamics within the school community. LEAs must balance the educational rights and needs of the individual student charged with a reportable offense alongside the overall safety of the students and staff, often with very limited information about the circumstances of the offense.

Action

MSDE requests emergency action to amend COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents*.

Regulation Promulgation Process

This regulation is being proposed as an emergency regulation because the regulation is necessary to amend COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents* to ensure that reportable offense information is shared with another LEA or non-public school in the event that a student with a reportable offense transfers from the LEA that was informed of the student’s reportable offense. The adoption of a standard regulation, which requires a notice and comment period, cannot be completed in the timeframe required to ensure that information on reportable offenses is shared with the LEA/school that a student attends. Thus, an emergency regulation is being proposed to address any gaps in information that an LEA/school should have regarding students who are enrolled.

An emergency regulation, which bypasses the normal public notice and comment period, remains in effect for a limited period of time - not to exceed 180 days - to meet exigent circumstances. Although an emergency regulation is not published in the Maryland Register before adoption, notice of the Administrative, Executive, and Legislative Review (AELR) Committee's receipt of the regulation is posted on the Maryland General Assembly’s website. In addition, the state agency must post the text of the proposed emergency regulation on the agency website within three business days of submission to the AELR Committee. If a member of the AELR Committee requests a public hearing on the emergency adoption of a regulation, the Committee must hold the hearing. If no public hearing is requested, staff of the Committee may poll the Committee members on the emergency regulation as soon as ten business days after receipt of the regulation. Approval by the AELR Committee is required for an emergency regulation to take effect. The emergency regulation will expire 180 days after filing or upon withdrawal by the promulgating agency. Under Maryland law, a state agency, such as the State Board of Education (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 AELR Committee 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, MSDE staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board to either: (1) adopt the regulation in the form it was proposed; or (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 this 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.

Attachment

COMAR 13A.08.01.17F *Confidentiality of Information and Retention of Documents.*

Title 13A

STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-101.1, 7-301, 7-301.1, 7-303—7-305, 7-305.1, 7-307, 7-308, and 8-404, Annotated Code of Maryland; Ch. 273, Acts of 2016; Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.01-.16 no change

.17 A-E no change

.17 F. Confidentiality of Information and Retention of Documents.

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §F(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction or an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal [may] shall transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

(3) A local superintendent or school principal who transmits information about a student under §F(2) of this regulation shall include in the confidential transmittal information on any educational programming and related services provided to the student.

(4) Nothing in this regulation is intended to limit the manner in which a local school obtains information or uses information obtained by any lawful means.

(5) The reportable offense information obtained by a local superintendent, school principal, or school security officer shall be:

(a) Transmitted only to school personnel of the school in which the student is enrolled and as necessary to carry out the purposes set forth in this regulation; and

(b) Destroyed when the first of the following occurs:

- (i) The student graduates;
- (ii) The student otherwise permanently leaves school;
- (iii) The student turns 22 years old;
- (iv) The criminal case involving the reportable offense is dismissed;
- (v) The student is found not guilty of the reportable offense; or
- (vi) The student pleads to a lesser offense that is not a reportable offense.

TO: Local Education Agency Superintendents
FROM: Carey M. Wright, Ed.D., State Superintendent of Schools
DATE: October 22, 2024
SUBJECT: Reportable Offenses



Effective immediately, upon notification by the States Attorney or law enforcement of a student who has been arrested for a reportable offense or an offense that is related to the student's membership in a criminal organization (Md. Code, Education §7-303), the Superintendent shall immediately inform the school principal, and for a school that has a school security officer, the school security officer. In addition, if the disposition of the reportable offense was a conviction, an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal **shall transmit the information obtained under the reportable offense regulation (COMAR 13A.08.01.17 *School Use of Reportable Offenses*) as a confidential file to the local superintendent of another public school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.**

Additionally, Superintendents shall ensure that all records have been sent in a confidential file for a student enrolled in your local education agency since the start of the 2023-2024 school year with a reportable offense and who has transferred to another public school system or to another nonpublic school in the state.

DIVISION OF STUDENT SUPPORT AND FEDERAL PROGRAMS

Reportable Offenses:

COMAR 13A.08.01.17F

Confidentiality of Information and Retention of Documents.

October 22, 2024

Presented By | Mary Gable, Assistant State Superintendent



Reportable Offenses: Confidentiality of Information and Retention of Documents

1. COMAR 13A.08.01.17 School Use of Reportable Offenses
2. Definition - Reportable Offenses
3. Confidentiality of Information and Retention of Documents
4. Amendment: Confidentiality of Information and Retention of Documents
5. Emergency Regulation

COMAR 13A.08.01.17 School Use of Reportable Offenses

- COMAR 13A.08.01.17 was amended to address legislative changes from the 2022 General Assembly (Md.Code, Educ. § 7-303 and 305)
- The amended regulation came before the State Board – July 25, 2023
- Following public comment, the regulation returned to the State Board on March 26, 2024
- Further amendments were made to the regulation and the State Board voted to republish the regulation.
- Final amendments to COMAR 13A.08.01.17 were adopted July 23, 2024

Definition – Reportable Offenses

- Reportable offenses are those offenses that:
 - occur off school premises,
 - did not occur at an event sponsored by the school,
 - are serious criminal offenses, and
 - are dictated by statute and include murder, arson, armed carjacking, sexual offenses, among other serious offenses.
- Also include offenses that are related to the student's membership in a criminal organization which must also be reported.

Confidentiality of Information and Retention of Documents

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §F(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction or an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal **may** transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

Amendment: Confidentiality of Information and Retention of Documents

(1) Except by order of a juvenile court or other court upon good cause shown or as provided in §F(2) of this regulation, the reportable offense information is confidential and may not be redisclosed by subpoena or otherwise and may not be made part of the student's permanent educational record.

(2) If the disposition of the reportable offense was a conviction or an adjudication of delinquency, or the criminal charge or delinquency petition is still pending, a local superintendent or school principal [~~may~~] **shall** transmit the information obtained under this regulation as a confidential file to the local superintendent of another local school system or to another nonpublic school in the state in which the student has enrolled or has transferred, to carry out the purposes of this regulation.

Emergency Regulation

- There is special provision in the Administrative Procedure Act for the adoption of emergency regulations (SG, 5 10- 111 @)).
- Approval for an agency to create an emergency regulation rests exclusively with the Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly.
- To gain emergency status, an agency petitions the AELR Committee setting forth reasons for requesting emergency status for its regulation.
- The Committee always imposes a time limitation on the duration of an emergency regulation. The Committee may also impose any other condition that it feels is appropriate.
- Emergency status may be revoked by the Committee, which is also free to alter the conditions it has previously imposed.
- Once the Committee grants its approval, the emergency measure may go into effect immediately without an opportunity for public comment and without prior publication in the Maryland Register.

Emergency Regulation

- The full text of the emergency regulation will always be published in the next available issue of the Register.
- If any agency wishes an emergency regulation to have ongoing life, the regulation must be promulgated by the agency, following normal procedures.
- If the agency does not wish the regulation to continue beyond the time allotted to it by the AELR Committee, the emergency measure will expire and the agency's regulations revert to what they had been before the emergency was approved.
- The Committee may, however, grant an extension to the emergency time period, if an agency has not been able to complete permanent adoption of the emergency measure