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TO: Members of the Maryland State Board of Education
FROM: Jack R. Smith, Ph.D. 
DATE: January 26, 2016
SUBJECT: Code of Maryland Regulation (COMAR) 13A.06.02 Prekindergarten Programs (AMEND)
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this memorandum is to inform the State Board of Education about the amended prekindergarten regulations under COMAR 13A.06.02 (Attachment).

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new 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, 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, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because 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.

HISTORICAL BACKGROUND:

In 1978, the Maryland State Board of Education issued a resolution (No. 1978-17) to establish the Extended Elementary Education Program (EEEP) for four-year old children in order to provide prekindergarten to children with a "high potential for school failure." The State Board instructed the State Superintendent of Schools to place the program in the FY80 budget, which was affirmed by the Maryland General Assembly, and issue grants by formula to all 24 school systems. Title1/Chapter1 schools were eligible as EEEP sites, and all four-year old children living in the attendance area of these schools were eligible to be enrolled in the program on a first-come first-serve basis.

In 2004, MSDE adopted revised COMAR regulations for Prekindergarten Programs. The revised regulations included changes in the prekindergarten program in order to meet the *Bridge to Excellence in Public Schools Act* requirement that local schools systems ensure publicly funded prekindergarten programs are available to all eligible students within their jurisdictions by the 2007-2008 school year. Eligibility is defined for “4-year-old applicants who are from families with economically disadvantaged backgrounds or who are homeless.” As of FY08, the EEEP grant funds were included in the new State Aid to Education program.

In 2011, the prekindergarten regulations were amended to include provisions that allow for an improved transition to prekindergarten of three-year old children with disabilities who received intervention services through Part C of Individuals with Disabilities Education Act (IDEA).

PROPOSED AMENDMENTS:

The proposed amendments address the expansion of prekindergarten services by the *Preschool Expansion Act of 2014*. The statute expanded the scope of services in three ways:

- Eligibility for 3- and 4-year olds from families with household incomes at or below 300 percent of poverty;
- Provision of services by “qualified vendors,” such as a licensed child care program that is published at Level 5 in Maryland EXCELS, State or nationally accredited, or an approved nonpublic school; and
- Direct funding to and oversight of qualified vendors by MSDE.

The expansion of prekindergarten services has been implemented since the fall of 2014 through a State funded grant program. The proposed regulations cover the requirements for the operation of publicly operated prekindergarten in both public schools and by qualified vendors. In December 2014, Maryland received a \$15 million Preschool Development Grant to expand prekindergarten for low-income four-year olds as of the school year 2015-16. The grant is scheduled to be for four years and aligns with the proposed regulations.

SUMMARY:

The proposed revised Regulations under COMAR 13A.06.02 will:

- Establish a mixed service delivery model which expands the operation of publicly funded prekindergarten to qualified vendors;
- Extend the definition of high quality public prekindergarten to incorporate the highest tier of Maryland EXCELS;
- Expand access to public prekindergarten to three-year olds from low-income families; and
- Establish new grant-specific eligibility guidelines for accessing public prekindergarten.

ACTION:

I request permission to publish amendments to COMAR 13A.06.02 with the following TENTATIVE timeline:

Maryland Register Issue Date	March 18, 2016
Hearing	N/A
30-Day Open Comment Period	March 18 – April 18, 2016
Adoption	May 24, 2016

JRS/rg

Title 13A STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

Chapter 02 Prekindergarten Programs

Authority: Education Article, §§2-205(c) and (g) and 7-101.1, Annotated Code of Maryland

.01 Scope and Purpose.

A. This chapter applies to all publicly funded prekindergarten programs for all eligible 3- and 4-year-old children, as defined in Education Article, §7-101.1(a)(3), Annotated Code of Maryland, and by the *Prekindergarten Expansion Act of 2014* administered by local boards of education or qualified vendors.

B. The overall goal of the prekindergarten program is to provide learning experiences to help children develop and maintain school readiness skills necessary for successful school performance.

C. Local boards of education or a qualified vendor shall provide prekindergarten programs to accommodate all eligible 3- and 4-year-old children seeking enrollment in public school programs.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Accredited" means meets standards of high quality set by the Department's Early Childhood Accreditation Program Standards or by an accrediting organization recognized by the Department.

(2) "Maryland EXCELS" means the State's Tiered Quality Rating and Improvement System (TQRIS) which has five levels of quality, level five being the highest.

(2)(3) "Bridge to Excellence Master Plan" means the comprehensive master plan required by Education Article, §5-401, Annotated Code of Maryland.

(3)(4) "Department" means the Maryland State Department of Education.

(4)(5) "CDA" means the Child Development Associate Credential.

(5)(6) "Economically disadvantaged background" means a family whose income would make a child eligible for free or reduced price meals based on eligibility requirements established by the United States Department of Agriculture if the child were in kindergarten.

(6)(7) "Eligibility" means meeting the criteria for enrollment into prekindergarten as stated in Regulation .03A of this chapter or set by Education Article, §7-101.1, Annotated Code of Maryland, which is 185 percent of the annual U.S. Poverty Guidelines or set by Education Article, §7-101.2, Annotated Code of Maryland, which is 300 percent of the annual U.S. Poverty Guidelines.

(7)(8) "Head Start" means a federally sponsored preschool program for children 3 years old to 5 years old from low income families that is licensed by Child Care Administration or administered by local boards of education.

(8)(9) "Homeless student" means a child or youth who lacks a fixed, regular, or adequate nighttime place of residence as defined in COMAR 13A.05.09.02.

(9)(10) "Maryland [Common Core State Curriculum] College- and Career-Ready Standards" means measurable statements of what students should know and be able to do within a content area as defined and approved for prekindergarten by the Department in collaboration with local school systems.

(10)(11) "Prekindergarten" means a publicly funded program for all eligible 3- and 4-year-olds focusing on social/emotional, physical, and cognitive development as described in the Maryland [Common Core State Curriculum] College- and Career-Ready Standards.

(11)(12) "Qualified vendor" means a [State or nationally accredited] licensed child care program that:

(a) Is published at Level 5 in Maryland EXCELS;

(b) [or] Is State or nationally accredited; or

(c) Is [An] an approved nonpublic school that:

(a) (i) Is [partnering with a local school system through a memorandum of agreement] establishing a Memorandum of Understanding (MOU) with the Department; and

(b) (ii) Meets the requirements of Regulation .05 of this chapter.

(12)(13) "School readiness" means the stage of early development that enables an individual child to engage in and benefit from early learning experiences. As a result of family nurturing and interactions with others, a young child in this stage has reached certain levels of social and emotional development, cognition and general knowledge, language development, and physical well-being and motor development. School readiness acknowledges individual approaches toward learning as well as the unique experiences and backgrounds of each child.

(14) "Prekindergarten Expansion Site" means public prekindergarten for 3- and 4-year-olds in accordance with Education Article, §7-101.2, Annotated Code of Maryland.

(15) "Children with disabilities" means a student who has either an Individualized Education Plan (IEP) or an Individualized Family Services Plan (IFSP).

.03 Student Eligibility.

A. A local school system or *qualified vendor* shall enroll in prekindergarten all 4-year-old applicants who are from families with economically disadvantaged backgrounds or who are homeless in accordance with Education Article, §7-101.1, Annotated Code of Maryland.

B. A local school system or *qualified vendor* shall enroll in prekindergarten expansion sites all 3- and 4-year old applicants from families who meet the income guidelines in accordance with Education Article, §7-101.2, Annotated Code of Maryland.

[B.] C. For vacancies remaining after compliance with §A of this regulation a local school system may enroll 4-year-old applicants who are not from families with economically disadvantaged backgrounds but who represent a student population that exhibits a lack of school readiness.

[C.] D. Prekindergarten Programs for 3-Year-Old Children.

(1) A local school system or qualified vendor may establish a prekindergarten program enrolling 3-year-old applicants who are from economically disadvantaged or homeless families, or who represent a student population that exhibits a lack of school readiness.

(2) A local school system shall be in compliance with 34 CFR §300.115(a)(b) and COMAR 13A.05.01.10 regarding children with disabilities.

(3) A prekindergarten program for 3-year-old children shall meet the requirements of Regulation .05 of this chapter.

.04 Prekindergarten Site Selection.

A. A local school system shall develop a facilities plan identifying appropriate sites to ensure that a publicly funded prekindergarten program is available to all eligible 4-year-old children in its jurisdiction.

B. [The facilities plan may include local school system memorandums of agreement with qualified vendors and Head Start to provide prekindergarten program services that meet the local school system responsibilities in accordance with Regulation .05 of this chapter.] *A qualified vendor must submit an application to the Department that identifies the sites operating a prekindergarten program.*

.05 Local School System Responsibilities.

A. A local school system shall:

(1) Develop and maintain a policy for determining the eligibility and selection of prekindergarten sites as well as the eligibility of 4-year-old students for prekindergarten programs consistent with the requirements of this chapter;

(2) Develop criteria in reference to Regulation .03B and C of this chapter that establishes procedures to include children in the prekindergarten program who are not eligible under Regulation .03A of this chapter;

(3) Operate the prekindergarten educational program 5 days per week for a minimum of 2.5 hours per day consistent with the school calendar approved by the local board;

(4) Analyze the Department-approved kindergarten assessment system information described in COMAR 13A.08.01.02-3 to evaluate the effectiveness of the prekindergarten program, and make necessary adjustments to the prekindergarten instructional program;

(5) Provide data in the Bridge to Excellence Master Plan needs assessment to indicate progress on prekindergarten program goals;

(6) Provide staffing for each session of prekindergarten to include a teacher who possesses a current State professional certificate in early childhood education and a para-professional with a minimum of a high school diploma, or its equivalent, or a CDA;

(7) Align each prekindergarten program with the Maryland [Common Core State Curriculum] *College and Career Ready Standards*;

(8) Based on the September 30 enrollment count, maintain an average staff to student ratio of 1:10 with an average of 20 students per classroom; and

(9) Provide responses to Department requests for information and data related to the operation of the prekindergarten program.

B. A qualified vendor shall:

(1) [Maintain] *Remain on Level 5 in Maryland EXCELS*;

(2) *Maintain* State or national early childhood program accreditation; or

(3) *Be an approved nonpublic school*;

[2)] (4) [Have] *Demonstrate* the capacity to meet the responsibilities identified in §A(4), (6), and (7) of this regulation;

[3)] (5) *Be licensed to operate a child care center pursuant to COMAR 13A.16.06*; and

[4)] (6) Provide responses to Department requests for information and data related to the operation of the prekindergarten program.