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

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

**DATE:** January 24, 2017

**RE:** COMAR 13A.12.01.03  
*Personnel*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

The purpose of this item is to request permission to publish amendments to COMAR 13A.12.01.03 Personnel (Attachment I). Amendments are being proposed to formalize the process for denying certification to individuals who have a disqualifying cause that would result in a suspension or revocation if the individual already held a Maryland certificate. These changes would provide the same notice and opportunity for a hearing that is provided to current certificate holders.

**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. The State Board shares joint authority with the Professional Standards and Teacher Education Board (PSTEB) to develop regulations governing teacher certification and preparation.

When PSTEB initiates a regulatory change, the State Board must review the proposed regulation. In order to reject a proposed regulation, a super-majority of the State Board (three-fourths of its members) must vote against the change. Otherwise, the regulation moves forward in the regulation promulgation process.

After the State Board has voted to approve the regulation (or has failed to garner a super-majority vote to disapprove the regulation), the proposed regulation is sent to the Administrative, Executive and 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 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.

If the State Board moves to adopt the regulation in the form it was proposed, the regulation will be sent back to PSTEB for final adoption.

### **HISTORICAL BACKGROUND:**

Current regulations pertaining to suspension and revocation only apply to individuals that currently hold a Maryland certificate. These regulations not only identify the reasons under which a certificate can be revoked or suspended, they also provide clarification on the hearing procedures afforded to the individual. Occasionally, MSDE receives a certification application from an individual whose record indicates an offense that would result in a suspension or revocation of a Maryland certificate. Since the individual does not hold a certificate, MSDE has denied the issuance of certificates under these circumstances and afforded the individual the same rights that would be afforded to an individual whose certificate is being suspended or revoked.

These proposed changes incorporate those procedures into regulation, assuring that all individuals whose request for certification is denied are afforded the same due process rights as current certificate holders.

On March 3, 2016 PSTEB granted permission to publish the proposed regulations.

### **PROPOSED AMENDMENTS:**

The proposed amendments establish requirements for the denial of a certificate and assure that individuals that are applying for a certificate are afforded the same due process rights as those that currently hold a Maryland educator certificate.

### **SUMMARY:**

COMAR 13A.12.01.03 requires revision to assure individuals who are denied a certificate are afforded the same due process rights as current certificate holders when they commit a cause leading to suspension or revocation under Maryland regulations.

The proposed amendments to COMAR 13A.12.01.03 do not have any economic impact nor is there any impact on individuals with disabilities. There is no corresponding federal standard for these proposed actions.

### **ACTION:**

Request permission to publish amendments to COMAR 13A.12.03.

Attachments (1)

### **13A.12.01.03**

#### **.03 Personnel.**

A. The regulations in this subtitle are established as certification standards for personnel educating students. A local school system may establish additional requirements as a condition of employment.

#### B. Personnel Subject to Certification.

##### (1) Public Schools.

(a) A teacher employed in an early childhood, elementary, PreK—12 or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.02.

(b) A specialist employed in an early childhood, elementary, PreK—12, or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.03 or a license in certain areas as otherwise provided in State law.

(c) An administrator, supervisor, and assistant in administration and supervision employed in an early childhood, elementary, PreK—12, or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.04.

(2) State-Operated-School Personnel. A teacher, specialist, administrator, and supervisor employed in an early childhood, elementary, or secondary school program operated by a State agency shall hold an appropriate certificate for personnel employed in comparable positions in the public school systems.

(3) Nonpublic School Personnel. A teacher, specialist, administrator, and supervisor employed in an early childhood, elementary, and secondary school program in nonpublic schools approved by the State Board of Education under COMAR 13A.09.10 shall hold an appropriate certificate as provided under COMAR 13A.12.02, 13A.12.03, and 13A.12.04.

C. Personnel With Option. Personnel who are eligible to hold a certificate under Regulation .06A—E of this chapter have the option to hold that certificate.

#### D. Personnel Not Eligible.

(1) An individual who has been convicted of, pleads guilty or nolo contendere with respect to, or receives probation before judgment with respect to, a crime against children or a crime of violence, or an individual whose certificate is suspended, revoked, or voluntarily surrendered under COMAR 13A.12.05 or in another state for a cause comparable to one for which

suspension or revocation is required in Maryland, may not hold certification during the period of ineligibility.

**(2) Personnel Under Investigation.**

*(a) Personnel under investigation for a cause under COMAR 13A.12.05 shall remain ineligible for a certificate pending the result of the investigation.*

*(b) If the Department's investigation concludes that the individual has committed a cause listed under COMAR 13A.12.05, that individual shall be denied a certificate by the Department.*

*(c) An individual who has been denied a certificate may appeal that decision through the process outlined in COMAR 13A.12.05.03-.07.*

(3) An individual who signs the State regular contract or provisional contract for conditional or resident teacher certificate holders and leaves the employment of the local school system on or before the first day of the school year may be ineligible to receive a certificate for not more than 365 days.

(4) An individual whose failure to pay child support meets the criteria for denial of a professional license pursuant to Family Law Article, §10-119.3, Annotated Code of Maryland, following written notification to the State Superintendent of Schools by the Department of Human Resources, Child Support Enforcement Administration, is ineligible for a certificate.

(a) Prior to denial of a certificate, the State Superintendent shall send written notice to the individual, including the right to contest the identity of the individual whose certificate shall be denied.

(b) An individual may appeal the decision to deny a certificate based on failure to pay child support in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. At the appeal hearing, the issue shall be limited to whether the Department of Human Resources, Child Support Enforcement Administration, has mistaken the identity of the individual whose certificate was denied.

(c) The State Superintendent shall immediately process an application for a certificate if notified by the Department of Human Resources, Child Support Enforcement Administration, that the individual is eligible for a professional license and the individual otherwise qualifies for a certificate.