



**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 23, 2019  
**SUBJECT:** COMAR 13A.01.05.06  
*Standard of Review*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

To request permission to publish amendments to COMAR 13A.01.05.06 *Standard of Review*.

**REGULATION PROMULGATION PROCESS:**

Under Maryland law, a state agency, such as the State Board, may propose an amendment to a regulation whenever the circumstances arise to do so. After the State Board votes to propose an amendment, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (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, the 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 suggested revision is not 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.

**BACKGROUND/HISTORICAL PERSPECTIVE:**

At the State Board meeting on May 21, 2019, the Board discussed possible changes to the way it analyzed and reviewed appeals in cases in which students were requesting transfers. The discussion ranged from changing the standard of review, shifting the burden of proof, and adopting a best interest of the student analysis. The Board decided to adopt a best interest of the student analysis and to retain the current standard of review and burden of proof.

**EXECUTIVE SUMMARY:**

A proposed regulation reflecting the Board's decisions is attached for review and discussion.

**ACTION:**

Request permission to publish amendments to COMAR 13A.01.05.06 *Standard of Review*.

COMAR 13A.01.05.06

.06 Standard of Review

A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.

B. A decision may be arbitrary or unreasonable if it is one or more of the following:

- (1) It is contrary to sound educational policy; or
- (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

C. *Appeals of School Transfer Decisions*

(1) *For an appeal of a denial of a request to transfer to a different school, the local board's decision shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision fails to address with particularity the best interests of the student, including when appropriate, how denying the transfers reasonably:*

- (1) meets the educational needs of the student;*
- (2) meets the physical or emotional needs of the student;*
- (3) meets the safety needs of the student; or*

(2) *If there are barriers that negatively impact the transfer request, such as school capacity, course availability, transportation, or other barriers, even if the transfer is in the best interests of the student, the decision explains with particularity why the barriers could not be overcome.*