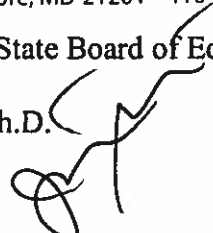




200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

TO: Members of the State Board of Education
FROM: Jack R. Smith, Ph.D. 
DATE: May 24, 2016
SUBJECT: COMAR 13A.10.01.01-.05 (AMEND)
Home Instruction
ADOPTION

PURPOSE:

To obtain permission to adopt revisions to COMAR 13A.10.01.01-.05, Home Instruction.

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 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 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 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.

BACKGROUND/HISTORICAL PERSPECTIVE:

The proposed amendments to COMAR 13A.10.01.01-.05 expand home instruction in two ways. First, it expressly authorizes enrollment in college courses on a part-time or full-time basis. This change eliminates the requirement that a local school system home school coordinator determines whether a particular number of college credits is “supplemental” to any other primary instruction received at home from the parent. Second, it eliminates the phrase “teach his or her children at home” and allows a parent or guardian to “provide a home instruction program for his or her child.” This rephrasing gives parents and guardians additional flexibility in designing a home instruction program for their children.

Members of the State Board of Education

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Parents and guardians may continue to teach their children directly, using educational materials of their choice, or may arrange for individualized instruction to be delivered by another person inside or outside of the home. The regulation was originally published in the Maryland Register on November 13, 2015 (Attachment I). Based upon the public comments received, the Department accepted two substantive changes to the proposed regulation: 1) submission of a report card or transcript for college courses instead of a portfolio of educational materials is optional; and 2) enrollment in college courses need not be pre-approved by a supervising nonpublic school or institution.

On February 12, 2016, the State Board approved the re-proposed regulation for publication. It was published in the Maryland Register on April 1, 2016, for public comment (Attachment II). During the 30-day comment period, the Department received roughly two dozen comments from individuals, as well as representatives of home school associations. The most frequent comment received was a request that the term “home instruction program” be defined (Attachment III). The request for a definition of “home instruction program” was considered when the proposed regulation was published the first time. The Department opted not to introduce new regulatory language to describe and define “home instruction program” because the essential elements of a home instruction program are defined in §C and §F of Regulation .01.

EXECUTIVE SUMMARY:

The proposed final regulation would: (1) eliminate the phrase “teach his or her child at home” to allow flexibility in instructor and location of instruction; (2) allow a home instruction program to include enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges, with an option to submit verification through either a report card or transcript to the local superintendent; and (3) allow enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges, without requiring the approval of a supervising nonpublic school or institution prior to enrollment.

ACTION:

Request permission to adopt COMAR 13A.10.01.01-05, Home Instruction.

JRS:WS

PROPOSED ACTION ON REGULATIONS

1461

Subtitle 10 HOME INSTRUCTION**13A.10.01 General Regulations**

Authority: Education Article, §7-301, Annotated Code of Maryland

Notice of Proposed Action

[15-352-P]

The Maryland State Board of Education proposes to amend Regulations .01, .03, and .05 under COMAR 13A.10.01 General Regulations. This action was considered at the September 22, 2015 meeting of the State Board of Education.

Statement of Purpose

The purpose of this action is to provide flexibility in instructor and locations of instruction for home schooled students.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Dr. Richard D. Scott, School Counseling Specialist, Maryland State Department of Education, Division of Student, Family and School Support, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0288 (TTY 410-333-6442), or email to richard.scott@maryland.gov, or fax to 410-333-8148. Comments will be accepted through December 14, 2015. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 26, 2016, 9:00 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.01 Home Instruction Program.

A. (text unchanged)

B. Written Agreement.

(1) A parent or guardian who chooses to [teach his or her child at home] provide a home instruction program for his or her child shall initially sign a statement on a form prescribed by the State Department of Education which:

(a)—(b) (text unchanged)

(2)—(3) (text unchanged)

C. Instruction Program.

(1) The home instruction program shall:

[(1)](a)—[(3)](c) (text unchanged)

(2) The home instruction program may include enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges.

D. Educational Materials.

(1) A parent or guardian who chooses to [teach a child at home] provide a home instruction program for his or her child shall maintain a portfolio of materials which:

[(1)] (a) Demonstrates the parent or guardian is providing regular, thorough instruction during the school year in the areas specified in §C(1) [and (2)];

[(2)] (b) Includes relevant materials, such as instructional materials, reading materials, and examples of the child's writings, worksheets, workbooks, creative materials, and tests; and

[(3)] (c) (text unchanged)

(2) A parent or guardian who chooses to enroll his or her child under §C(2) of this regulation shall provide to the local superintendent or the superintendent's designee a copy of a report card or transcript from the accredited or unaccredited college at the conclusion of each semester of the accredited or unaccredited college in lieu of a portfolio of materials for the courses in which the child is enrolled under §C(2) of this regulation.

E. A parent or guardian shall agree to permit a representative of a local school system to review the portfolio of educational materials, discuss the instructional program, and observe instruction provided that all of the following requirements are met:

(1) (text unchanged)

(2) The purpose of the review is to ensure that the child is receiving regular, thorough instruction as set forth in §C; and

(3) (text unchanged)

F. (text unchanged)

.03 Noncompliance with Requirements.

A. Failure to Consent. If a parent or guardian does not agree to the requirements of Regulation .01B, C, [and] D, [above] and E of this chapter, a child shall be enrolled promptly in a public school or nonpublic school as defined in COMAR [13A.09.09.02B(9)] 13A.09.09.02B.

B. Deficiencies in the Program. If a local superintendent determines on the review of the home instruction program or inspection of the portfolio that a child is not receiving a regular, thorough instruction program in conformity with Regulation .01C and D, the local superintendent shall notify the parent or guardian in writing of any deficiencies in the program. The following apply:

(1) Within 30 days of receipt of written notification of any deficiencies, the parent or guardian shall provide evidence to the local superintendent that the deficiency has been or is being corrected.

(2) If a local superintendent determines there is not a satisfactory plan to correct a deficiency or if a deficiency is not corrected, a child shall be enrolled promptly in a public school or a nonpublic school as defined in COMAR [13A.09.09.02B(4)(a)] 13A.09.09.02B.

.05 Home Instruction Under Supervision of Nonpublic School or Institution.

A. A parent or guardian may provide [instruction for a child at home] a home instruction program for his or her child without compliance with the requirements of this regulation, other than the requirements of Regulations .01B(1)(b) and .04 of this chapter, if that [instruction is offered through correspondence courses] program offers regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age and is under the supervision of a:

(1) (text unchanged)

(2) Nonpublic school with a certificate of approval from the State Board of Education, and the supervision includes at a minimum all of the following components:

(a) (text unchanged)

(b) Assignment of a school-based teacher to assist the home teacher in [using the correspondence courses] implementing the home instruction program and to assist the pupil by issuing progress reports, marking papers, and grading tests.

B. The home instruction program may include enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges with the approval of the supervising nonpublic school or institution described in §A of this regulation.

PROPOSED ACTION ON REGULATIONS

1462

[B.] C. Annual Verification. The supervising nonpublic school or institution described in §A of this regulation annually shall:

(1)—(3) (text unchanged)

[C.] D. (text unchanged)

JACK R. SMITH, Ph.D.
Interim State Superintendent of Schools

Title 14 INDEPENDENT AGENCIES

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.02 Criminal Offenses and Seriousness Categories

Authority: Criminal Procedure Article, §6-211, Annotated Code of Maryland

Notice of Proposed Action {15-359-P}

The Maryland State Commission on Criminal Sentencing Policy proposes to amend Regulation .02 under COMAR 14.22.02 Criminal Offenses and Seriousness Categories. This action was considered at an open meeting held on September 22, 2015, pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to indicate modifications to the table of seriousness categories (guidelines offense table) in Regulation .02 under COMAR 14.22.02. The proposed revisions reflect:

(1) New and or amended offenses passed during the 2015 Legislative Session;

(2) Addition of previously unclassified offenses; and

(3) Other minor edits to the table.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Soule, Executive Director, Maryland State Commission on Criminal Sentencing Policy, 4511 Knox Road, Suite 309, College Park, MD 20742, or call 301-403-4165, or email to dsoule@umd.edu, or fax to 301-403-4164. Comments will be accepted through December 14, 2015. A public hearing has not been scheduled.

.02 Seriousness Categories.

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
1—9-1 (text unchanged)									
9-2	<i>Alcoholic Beverages</i> <i>County-specific provisions concerning giving, serving, dispensing, keeping, or allowing alcoholic beverages without license; bottle clubs; places of public entertainment—Anne Arundel, Baltimore, Calvert, Caroline, Charles, Dorchester, Frederick, Kent, Prince George's, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester Counties, or Baltimore City</i>	1-0884	2B, §20-101 2B, §20-102 2B, §20-103 2B, §20-103.1 2B, §20-103.2 2B, §20-105 2B, §20-105.1 2B, §20-106 2B, §20-107.1 2B, §20-108.1 2B, §20-108.2 2B, §20-110 2B, §20-111 2B, §20-112 2B, §20-113	Misd.	2Y		Property	VII	\$10,000
[9-2]9-3 —[9-3] 9-1 (text unchanged)									
10—30 (text unchanged)									
30-1	Assault and Other Bodily Woundings Assault on law enforcement officer, [or] parole or probation agent, or first responder, 2 nd degree	1-1416	CR, §3-203(c)	Felony	10Y		Person	V	\$5,000

PROPOSED ACTION ON REGULATIONS

**Title 13A
STATE BOARD OF
EDUCATION**

Subtitle 10 HOME INSTRUCTION

13A.10.01 General Regulations

Authority: Education Article, §§2-205 and 7-301, Annotated Code of Maryland

Notice of Proposed Action
[15-352-R]

The Maryland State Board of Education proposes to amend Regulations .01, .03, and .05 under COMAR 13A.10.01 General Regulations. Because substantive changes have been made to the original proposal as published in 42:11 Md. R. 733—734 (May 29, 2015), this action is being repropose at this time. This action was considered at the February 12, 2016 meeting of the State Board of Education.

Statement of Purpose

The purpose of this action is to provide flexibility in instructor and location of instruction for home schooled students. This is a reproposal of substantively different text from that printed in the Md. Register, Volume 42, Issue 23, November 13, 2015.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michael Linkins, School Counseling Specialist, Division of Student, Family and School Support, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0769 (TTY 410-333-6442), or email to michael.linkins@maryland.gov, or fax to 410-333-8148. Comments will be accepted through May 2, 2016. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on May 24, 2016, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

- (2) Clearly communicate the following:
 - (a) The extent to which the HIE has the capability to disclose the patient's information in an emergency and how this compares to disclosure for routine access; and
 - (b) The circumstances under which the HIE would disclose the patient's information in an emergency, including how opting in or out of participation would impact access to the patient's information during an emergency.
- B. If an HIE's emergency access policy allows the disclosure of information during an emergency, the HIE shall:
 - (1) Only disclose information to the requesting health care provider if the following conditions are met:
 - (a) The requesting health care provider:
 - (i) Advises the HIE that it is the health care provider's professional opinion that an emergency exists; and
 - (ii) Attests that all conditions of the participating organization's policy have been met;
 - (b) The patient's condition preclude the participating organization from obtaining the consent of the health care consumer;
 - (c) Information available through the HIE may be relevant to the treatment needed by the patient in the specific emergency; and
 - (d) The participating organization has an established policy that describes the requirements and attestation process for emergency access;
 - (2) Establish technical procedures for documenting an attestation by the requesting health care provider that the conditions in §B(1) of this regulation, were met prior to accessing information through the HIE;
 - (3) Review the emergency access logs at least monthly, in coordination with the participating organization, to identify any unusual finding;
 - (4) Take action in accordance with Regulation .06 of this chapter, in the event the emergency access log reveals an unusual finding;
 - (5) Maintain an audit trail of user emergency access logs in accordance with Regulation .06A(6)(d) of this chapter; and
 - (6) Require a participating organization to:
 - (a) Access only the minimum necessary information needed to care for the patient during the emergency encounter;
 - (b) Discontinue querying of the patient's record upon the completion of the emergency encounter;
 - (c) Allow emergency access only to authorized users with the appropriate access designation consistent with the policy of the participating organization; and
 - (d) Notify the health care consumer, as soon as reasonably possible, and no later than ten business days from the initial access, when the HIE has granted access to the health care consumer's information during an emergency.

CRAIG P. TANIO, M.D.
Chair

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. ***Arial Bold Italic*** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [[[Triple brackets]]] indicate text proposed for deletion which substantively alters the originally proposed text.

PROPOSED ACTION ON REGULATIONS

464

.01 Home Instruction Program.

A. — C. (originally proposed text unchanged)

D. Educational Materials.

(1) (originally proposed text unchanged)

(2) *A parent or guardian who chooses to enroll his or her child under §C(2) of this regulation [shall] may elect to provide to the local superintendent or the superintendent's designee a copy of a report card or transcript from the accredited or unaccredited college at the conclusion of each semester of the accredited or unaccredited college in lieu of a portfolio of materials for the courses in which the child is enrolled under §C(2) of this regulation.*

E. — F. (originally proposed text unchanged)

.03 Noncompliance with Requirements.

(originally proposed text unchanged)

.05 Home Instruction Under Supervision of Nonpublic School or Institution.

A. (originally proposed text unchanged)

B. *The home instruction program may include enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges [with the approval of the supervising nonpublic school or institution described in §A of this regulation].*

C. — D. (originally proposed text unchanged)

JACK R. SMITH, Ph.D.
Interim State Superintendent of Schools

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 01 OFFICE OF THE SECRETARY

15.01.01 Procedural Regulations

Authority Agriculture Article, §2-103, State Government Article, §10-206;
Annotated Code of Maryland

Notice of Proposed Action
(16-089-P)

The Secretary of Agriculture proposes to amend Regulation .03 under COMAR 15.01.01 Procedural Regulations.

Statement of Purpose

The purpose of this action is to establish an administrative review process by the Secretary of Agriculture, available to an aggrieved person in a contested case.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Andrew M. Griffin, Legislative Aide, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call 410 841 5887, or email to andrewm.griffin@maryland.gov, or fax to 410 841 5914. Comments will be accepted through May 1, 2016. A public hearing has not been scheduled.

.03 Procedural Regulations—Contested Cases.

A.—B. (text unchanged)

C. Default.

(1)—(3) (text unchanged)

[(4) A person may appeal a default decision and order to the Department's Board of Review as provided under Agriculture Article, Title 2, Subtitle 4, Annotated Code of Maryland.]

D. Hearings.

(1)—(8) (text unchanged)

(9) [A decision shall be rendered within 30 days of the hearing, and the hearing officer, within that time, shall notify all parties in writing, to be mailed to the last known address of each party. The mailing of a decision shall be prima facie evidence of notification to a party of the decision.] *Within 30 days after the hearing record is closed, the hearing officer shall prepare a written decision and mail it to the last known address of each party. The 30-day period provided in this subsection is directory and no penalty shall incur if this time limitation is not satisfied. The mailing date of the hearing officer's decision to a party constitutes notice of the decision.*

E. [An appeal to the Secretary, pursuant to Agriculture Article, §2-405, Maryland Annotated Code, shall be taken within 30 days of a decision of any position or unit within the Department.] *Review by the Secretary.*

(1) *Except as provided by law, a person aggrieved by a decision of a position or unit within the Department after a contested case hearing or default decision that is subject to judicial review under the Administrative Procedure Act, may file a written statement with the Secretary requesting review of that decision setting forth the nature of the complaint and the relevant facts and argument.*

(2) *The aggrieved person shall file the written statement with the Secretary within 30 days from either the date of the written decision issued under §D(9) of this regulation or any default decision. The time restrictions imposed by this subsection is mandatory and any written statement filed beyond 30 days may not be considered.*

(3) *The Secretary may require the aggrieved person to pay the costs of compiling the record of the decision to be reviewed, including the cost to transcribe testimony, if any.*

(4) *Within 90 days after receiving the complete record, the Secretary shall investigate any claim made in the written statement, review the record, issue a decision in writing, and send a copy to each party. The 90-day period provided in this subsection is not mandatory; however, any delay beyond the 90-day period operates as an automatic denial by the Secretary.*

(5) *The Secretary may affirm, reverse, or modify any written decision issued by any position or unit within the Department, including any default decision. The decision of the Secretary shall be the final agency decision or action for purposes of judicial review under the Administrative Procedure Act.*

(6) A party [who is] aggrieved by the final decision of the Secretary may file a petition for judicial review with the appropriate circuit court as required by the Maryland Rules of Civil Procedure.

F. [The appellant shall pay the expense of transcription of testimony in an appeal from a final decision of the Department to a Court.

G.] Administrative Procedure Act. In addition to the foregoing regulations, the Administrative Procedure Act in the State

Home School Regulation – Public Comment Chart

Comment	# Received	MSDE Response
1. Define “home instruction program”	19	Essential elements are defined in §C and §F of COMAR 13A.10.01.01
2. Support previous amendments	8	Already incorporated into regulation for adoption
3. Eliminate “observe instruction”	2	Beyond the scope of the current revision
4. Open up entire regulation to public comment	2	Beyond the scope of the current revision