



**Mohammed Choudhury**  
State Superintendent of Schools

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

**FROM:** Mohammed Choudhury

**DATE:** August 24, 2021

**SUBJECT:** COMAR 13A.07.14  
*Child Sexual Abuse and Sexual Misconduct History*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

The purpose of this item is to request permission to publish amendments to Code of Maryland Regulations (COMAR) 13A.07.14 *Child Sexual Abuse and Sexual Misconduct*, to reflect changes made to Md. Code, Education Article §6-113.2 during the 2021 legislative session.

**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 BACKGROUND:**

Effective July 1, 2019, House Bill 486, *Child Sexual Abuse and Sexual Misconduct Prevention*, became law and was codified in Md. Code, Education Article §6-113.2. The law established a process, including requirements for specific documentation regarding whether an individual has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct,” for the hiring of public school and nonpublic school employees who have direct contact with minors. This law applies to local boards of education, nonpublic schools, and contracting agencies that contract with a county board of education or nonpublic school to provide a service to a school or the students of a school.

During the 2021 legislative session, the Maryland General Assembly passed House Bill 373, amending Md. Code, Education Article §6-113.2. As a result, COMAR 13A.07.14 requires amendments to remain aligned with the statute.

**EXECUTIVE SUMMARY:**

The MSDE is amending COMAR 13A.07.14 *Child Sexual Abuse and Sexual Misconduct History*, to align with House Bill 373, which revises Md. Code, Education Article §6-113.2. The proposed amendments include revisions to 13A.07.14.02 *Definitions* and 13A.07.14.03 *General Provisions*, and incorporate verbatim language from House Bill 373 to ensure alignment with the statute amendments.

**ACTION:**

Request permission to publish amendments to regulation COMAR 13A.07.14 *Child Sexual Abuse and Sexual Misconduct History*.

**ATTACHMENT**

COMAR 13A.07.14 *Child Sexual Abuse and Sexual Misconduct History*

**Title 13A STATE BOARD OF EDUCATION**

**Subtitle 07 SCHOOL PERSONNEL**

**Chapter 14 Child Sexual Abuse and Sexual Misconduct History**

**Authority: Education Article, §§2-205(c) and 6-113.2, Annotated Code of Maryland**

**.01 Scope.**

(text unchanged)

**.02 Definitions.**

A—B-1. (text unchanged)

(2) *“Contracting agency” means an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school.*

[2](3) *“Current or former employer” means a county board, nonpublic school, or any other entity through which an individual had direct contact with minors.*

[3](4) *“Department” means the Maryland State Department of Education.*

[4](5) *“Direct contact with minors” means the [possibility of] care, supervision, guidance, or control of [a minor], or routine interaction with, a minor.*

(6) *“Emergent Employee” means an employee hired by a county board or nonpublic school without completing the employment history review required under this section.*

([5]7) [5](7) *“Prospective employer” means a county board, nonpublic school, or contracting agency that is considering hiring an applicant for a position involving direct contact with minors.*

(8) *“School” means a public or nonpublic school.*

[6](9) *“Sexual misconduct” means an act by an adult, including an oral, nonverbal, written, or electronic communication, or a physical activity directed toward or with a minor that is designed to promote a romantic or sexual relationship with the minor, including:*

- (a) Sexual or romantic invitation;
- (b) Dating or soliciting dates;
- (c) Engaging in sexualized or romantic dialogue;
- (d) Making sexually suggestive comments;
- (e) Grooming behaviors;
- (f) Self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and
- (g) A sexual, indecent, romantic, or erotic contact with the minor.

### **.03 General Provisions.**

#### ***A. Employer Requirements for Employment History Review.***

(1) A county board, nonpublic school, or contracting agency shall follow the requirements of Education Article, §6-113.2, Annotated Code of Maryland, to obtain information on an applicant's child sexual abuse and sexual misconduct history from current and former employers [prior to] *before* hiring that individual for a position involving direct contact with minors.

[B.](2) Current *employers, former school employers,* and former employers *where the applicant had direct contact with minors within the last 10 years* shall complete and return the employment history review form to a prospective employer within 20 days of receiving the employment history review form.

[C.](3) Employers shall provide the information required by Education Article, §6-113.2, Annotated Code of Maryland, unless an exception provided for in the law does not require disclosure of the information.

#### ***B. Applicant Requirements for Employment History Review.***

(1) *An applicant for a position involving direct contact with minors shall submit to a county board, nonpublic school, or contracting agency both the contact information and a signed written*

consent form authorizing the release of all records relating to child sexual abuse or sexual misconduct from the following employers:

(a) The current employer;

(b) All former school employers; and

(c) Former employers where the applicant had direct contact with minors within the last 10 years.

(2) An applicant for a position involving direct contact with minors shall also submit to a county board, nonpublic school, or contracting agency a written statement of whether the applicant:

(a) Has been the subject of a child sexual abuse or sexual misconduct investigation by any employer, arbitrator, county board, State licensing agency, law enforcement agency, or child protective services agency, unless the investigation resulted in a finding by:

(i) The employer that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to the policies of the county board or nonpublic school;

(ii) An arbitrator or a county board to reject any disciplinary action in response to allegations that the applicant engaged in sexual misconduct;

(iii) A State licensing agency that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to either State law or the policies of the county board or nonpublic school;

(iv) A law enforcement agency that allegations that the applicant engaged in child sexual abuse were unfounded; or

(v) A child protective services agency that allegations that the applicant engaged in child sexual abuse were ruled out.

*(b) While allegations of child sexual abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of child sexual abuse or sexual misconduct, has ever:*

*(i) Been disciplined, discharged, non-renewed, asked to resign, or otherwise separated from any employment; or*

*(ii) Had a license, professional license, or certificate suspended, surrendered, or revoked.*

#### *C. Sharing Employment History Reviews.*

*(1) A county board or nonpublic school may:*

*(a) Share an employment history review with other county boards and nonpublic schools; and*

*(b) Use an employment history review completed by a current or former employer that is a county board or nonpublic school if the applicant swears or affirms that the completed employment history review includes all prior employment required to be reported and provides information about any subsequent employment.*

*(2) A contracting agency may:*

*(a) Share an employment history review with other contracting agencies; and*

*(b) Use an employment history review completed by a current or former employer that is a contracting agency and the applicant swears or affirms that the completed employment history review includes all prior employment required to be reported and provides information about any subsequent employment.*

#### *D. Emergent Employees.*

*(1) Applicants may be hired by a county board or nonpublic school as emergent employees for a period not to exceed 60 days pending the employment history review if:*

*(a) The applicant has provided all required information and supporting documentation;*

*(b) An employer has no knowledge of information that would disqualify the applicant from employment;*

*(c) The applicant swears or affirms that the applicant is not disqualified from employment;*

*and*

*(d) The applicant is not authorized to work alone with minors unless the applicant:*

*(i) Works in the immediate vicinity of a permanent employee; or*

*(ii) Is a school vehicle driver subject to audio and video monitoring and recording that is promptly reviewed by school administrators.*

*(2) The county board or nonpublic school may rescind the offer of employment or complete the hiring process at any time within 60 days of hiring the applicant as an emergent employee.*

*(3) A county board's decision to dismiss an applicant hired as an emergent employee for any reason other than child sexual abuse or sexual misconduct may be appealed within 60 days of hiring in accordance with:*

*(a) Education Article § 4-205;*

*(b) Education Article § 6-202; or*

*(c) The collective bargaining agreement applicable to the emergent employee.*

#### **.04 Reporting Violations.**

(text unchanged)

#### **.05 Penalties.**

(text unchanged)

#### **.06 Appeal.**

(text unchanged)