

Small Entity Compliance Guide

COMAR 13A.07.14 Child Sexual Abuse and Sexual Misconduct

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Introduction

This Maryland State Department of Education, Division of Educator Certification and Program Approval (hereinafter “the Agency”), has prepared this document as the “Small Entity Compliance Guide” required by Chapter 212 of the Maryland Laws of 2019. This Guide summarizes and explains the new regulation published by the Maryland State Board of Education (hereinafter “State Board”), but is not a substitute for any regulation itself. Only the regulation itself can provide complete and definitive information regarding its requirements.

Purpose of the Regulatory Action

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 establishes 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.

The law states that the Maryland State Department of Education (MSDE) may adopt regulations establishing procedures for disciplinary proceedings and the assessment of penalties against an applicant, employee, contracting agency, or school administrator for willful violations of the requirements of the statute.

On December 3, 2019, the State Board granted permission to publish new regulations .01—.06 under Code of Maryland Regulations (COMAR) 13A.07.14 Child Sexual Abuse and Sexual Misconduct. The purpose of these regulations is to codify in the COMAR certain requirements pertaining to the employment history review required by Education Article, §6-113.2, Annotated Code of Maryland.

Definitions

“Current or Former Employee” means a county board, nonpublic school, or any other entity in which an individual had direct contact with minors.

“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.

“Child sexual abuse” means an act by an adult involving a minor or a student that constitutes a sexual offense under the laws of the State, or any sexual contact between an adult and a minor.

“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.

Summary of the Major Provisions

As stated in the Maryland Register, the regulations:

- Specifies the penalties for entities that fail to comply with the child sexual abuse and sexual misconduct background history review established by the Md. Code, Education Article §6-113.2.
- Prospective employer must obtain applicant's history of child sexual abuse and sexual misconduct from all former/current employers.
- Employers must complete the history review within 20 days of receipt.
- Employers must provide the information required unless an exception provided for in the law does not require the disclosure of the information.
- Employers who fail to respond will be reported to the MSDE.
- Applicants and employees who hold a MD Educator Certificate may be reported to the MSDE if an employer discovers the individual has provided false information or has withheld information in connection with the history review.
- MSDE will send a warning letter to an employer that does not respond to the request for an Employment History Review.
- MSDE may impose a fine against an employer that does not respond to the request for an Employment History Review within 10 days of receiving the warning letter.
- Fine Schedule
 - \$1000 for a first offense
 - \$2500 for a second offense
 - \$5000 for a third or subsequent offense
- A certified applicant/employee who provides false information or deliberately withholds information regarding current or past employment to an employer as part of the child sexual abuse and sexual misconduct background history review may be subject to disciplinary action against their MD Educator Certificate.
- An employer may appeal a fine in writing to the State Superintendent within 15 days.
- State Superintendent's decision is the final decision of the agency

Compliance Date for Entities Subject to These Regulations

The tentative date of adoption of these regulations is July 1, 2020.

Entities Subject to the Regulations

The regulation pertains 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.

Estimate of Economic Impact on Small Entities

It is unknown how many nonpublic schools and contracting agencies are considered small businesses in Maryland. Any small business defined as a school or contracting agency that provides a service to the

school or the students of a school, will be required to undergo the employee history review for all employees hired after July 1, 2019 who have direct contact with minors. Given the broad statutory definition of “direct contact with minors”, it is estimated that most of the employees of such an entity will require the employee history review to be completed before hire. This process takes a significantly longer period of time than running a federal and state background check and checking references. Additionally, if a contracting agency is not able to receive the results of the history in a short enough time to provide a contractual employee to a school, they will lose that potential business. Subsequently, it is anticipated that small schools will not be able to fill substitute and high need area positions that are often filled temporarily with contractual employees. Finally, it is anticipated that smaller businesses will be at risk of incurring fines as they may not have the human capital to respond to the employee history requests in the timeframe required by the law (20 days).

Resources

The proposed regulations published for the Maryland State Department of Education may be found on the Department of Education’s [website](#).

Technical Assistance

The Maryland State Department of Education, Division of Educator Certification and Program Approval, is available to assist small business entities with questions regarding the proposed child sexual abuse and sexual misconduct regulations. Please direct questions by telephone to (410) 767-0385.