



**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:** May 22, 2018

**SUBJECT:** Code of Maryland Regulations (COMAR) 13A.05.02.04  
*State Administration*  
**ADOPTION**

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**PURPOSE:**

Request permission to adopt additions to COMAR 13A.05.02.04 *State Administration* which will govern the identification of significant disproportionality under the Individuals with Disabilities Education Act (ATTACHMENT I).

**REGULATION PROMULGATION PROCESS:**

Under Maryland law, a state agency, such as the State Board, may propose a new or amended 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 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 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:**

On December 12, 2016, the U.S. Department of Education released final regulations under Part B of the Individuals with Disabilities Education Act (IDEA). The regulations aimed to promote equity by addressing significant disproportionality in the identification, placement, and disciplinary removal of students with disabilities based on race or ethnicity. Such reporting under the IDEA is not new, but the regulations were revised to require that each state use a standard methodology (risk ratio) within reasonable data parameters (34 C.F.R. § 300.646(b)). The revised federal requirements were set to become effective on July 1, 2018.

During the following year, the MSDE set out to define Maryland's process for identifying significant disproportionality, consistent with the revised federal requirements. This involved setting a risk ratio threshold, a minimum cell size no greater than 10, and a minimum n-size no greater than 30 (34 C.F.R. § 300.647(b)). It also involved a decision as to whether Maryland would exercise one or both flexibility options that are available. A state is not required to identify a local education agency (LEA) until it has exceeded the risk ratio threshold for up to three consecutive years (multi-year flexibility) and/or failed to demonstrate reasonable progress in lowering the risk ratio (reasonable progress flexibility) (34 C.F.R. § 300.647(d)). Each of these decisions about the process for identifying significant disproportionality under the IDEA was incorporated into the proposed regulation.

Identifying an LEA as having significant disproportionality under the IDEA continues to trigger certain consequences. The LEA must review and revise its policies, practices, and procedures, if appropriate, and publicly report on the results of that process (34 C.F.R. § 300.646(c)). At the same time, the LEA must reserve the maximum 15 percent of its Part B funds to provide comprehensive coordinated early intervening services (CEIS) to address factors contributing to the significant disproportionality (34 C.F.R. § 300.646(d)). This occurs if significant disproportionality is identified in any of the applicable categories of analysis (i.e., identification, placement, and disciplinary removal).

On December 5, 2017, the State Board approved the proposed regulation for publication. It was published in the Maryland Register on March 30, 2018. During the 30-day public comment period, MSDE received one comment from Montgomery County Public Schools, which suggested using the minimum cell size (10) and minimum n-size (30) referenced in the federal regulation. These are the largest numbers that would still be presumed reasonable by the U.S. Department of Education. In addition, two public listening forums were held on April 24, 2018 and April 25, 2018 at public libraries in Frederick County and Anne Arundel County. MSDE received no comments at these forums. Ultimately, the proposed regulation was based on the advice of stakeholders, which MSDE solicited over the course of three meetings between April 2017 and July 2017, consistent with the revised federal requirements (34 C.F.R. § 300.647(b)).

On February 27, 2018, the U.S. Department of Education released a Notice of Proposed Rulemaking, in which it proposed postponing the compliance date of its final regulations by two years, from July 1, 2018, to July 1, 2020.<sup>1</sup> The proposal was open for public comment until May 14, 2018. As of this writing, the U.S. Department of Education has not yet adopted its proposal as final. The Notice of Proposed Rulemaking acknowledged that some states that may already be prepared, or nearly prepared, to implement the regulations on July 1, 2018, will continue to do so, regardless of any delay in the compliance date. Maryland is one such state.

### **EXECUTIVE SUMMARY:**

MSDE proposes the following process for identifying significant disproportionality under IDEA:

- Risk Ratio Threshold = 2.0 (if a LEA has a risk ratio above this number, it may be identified as having significant disproportionality)

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<sup>1</sup> If the compliance date is postponed until July 1, 2020, it will also delay inclusion of children ages 3-5 in the calculation of significant disproportionality in the area of identification until July 1, 2022. MSDE is planning to include this population of children on July 1, 2018, regardless of whether the compliance date is postponed.

- Minimum Cell Size = 5 (this is the numerator in the calculation; if a LEA has fewer than 5 instances of the measured action, then it is excluded from analysis)
- Minimum N-Size = 20 (this is the denominator in the calculation; if a LEA has fewer than 20 students in a racial/ethnic group, then it is excluded from the analysis)
- Reasonable Progress = 0.15 for risk ratios 2.0 – 4.0 and 0.50 for risk ratios above 4.0 (this is a two-step analysis whereby a LEA is not identified unless it has exceeded the risk ratio for two consecutive years; if it has, then it still may not be identified if it has shown progress in decreasing the risk ratio by these numbers)

The proposed regulation would adhere to the original effective date of July 1, 2018, regardless of whether the U.S. Department of Education decides to postpone the compliance date.

**ACTION:**

Request permission to adopt the additions to COMAR 13A.05.02.04 *State Administration*.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 02 LOCAL SCHOOL ADMINISTRATION

### 13A.02.02 Emergency Plans

Authority: Education Article, §§2-205, 7-435, and 8-702, Annotated Code of Maryland;  
Federal Statutory Reference: 20 U.S.C. 7114 and 20 U.S.C. 7118

#### Notice of Proposed Action

[18-050-P-I]

The Maryland State Board of Education proposes to amend Regulations .03 and .04 under **COMAR 13A.02.02 Emergency Plans**. This action was considered by the State Board of Education at their meeting held on December 5, 2017.

#### Statement of Purpose

The purpose of this action is to update the Maryland State Department of Education Emergency Planning Guidelines for Local School Systems and Schools.

#### Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

#### 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 Walter Sallee, Director, Student Services and Strategic Planning, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0417 (TTY 410-333-6442), or email to walter.sallee@maryland.gov, or fax to 410-333-0880. Comments will be accepted through April 30, 2018. A public hearing has not been scheduled.

#### Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on May 22, 2018, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

#### Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Maryland State Department of Education Emergency Planning Guidelines for Local School Systems and Schools (October 2017) has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 45:1 Md. R. 8 (January 5, 2018), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

#### .03 Incorporation by Reference.

The Maryland State Department of Education Emergency Planning Guidelines for Local School Systems and Schools [(April 2013)] (*October 2017*) is incorporated by reference.

#### .04 Emergency Plan.

A. In consultation with other health and safety officials in the local community, each local school system and the SEED School shall develop an emergency plan for all public school grounds to include maintenance, transportation, and central administration office under its jurisdiction that:

(1)—(2) (text unchanged)

(3) Aligns with the Maryland State Department of Education Emergency Planning Guidelines for Local School Systems and Schools [(April 2013)] (*October 2017*).

B. Each local school system and the SEED School shall ensure that:

(1) Each school facility under its jurisdiction has a school emergency plan that is aligned with the criteria outlined in the MSDE Emergency Planning Guidelines for Local School Systems and Schools [(April 2013)] (*October 2017*) and that a copy of each school emergency plan is on file at the central administration office.

(2) A central administration emergency plan that is aligned with the criteria outlined in the MSDE Emergency Planning Guidelines for Local School Systems and Schools [(April 2013)] (*October 2017*) is on file in each school grounds under its jurisdiction.

C. (text unchanged)

KAREN B. SALMON, Ph.D.  
State Superintendent of Schools

## Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

### 13A.05.02 Administration of Services for Students with Disabilities

Authority: Education Article, §§2-205, 8-301—8-319, 8-3A-01—8-3A-11, and 8-401—8-419; Human Services Article, §§8-401—8-409; Labor and Employment Article, §§11-801 and 11-901 et seq.; Annotated Code of Maryland

Federal Statutory Reference: 20 U.S.C. §§1408, 1412, 1413, and 1437;  
Federal Regulatory References: 34 CFR 300 and 303

#### Notice of Proposed Action

[18-052-P]

The Maryland State Board of Education proposes to amend Regulation .04 under **COMAR 13A.05.02 Administration of Services for Students with Disabilities**. This action was considered by the State Board of Education at their meeting held on December 5, 2017.

#### Statement of Purpose

The purpose of this action is to define Maryland's methodology for identification of local school systems as having significant disproportionality under the Individuals with Disabilities Education Act (IDEA). Under the IDEA, significant disproportionality must be analyzed for the identification, placement, and disciplinary removal of students with disabilities based on race and ethnicity. As a result of revisions to the federal regulations, a risk ratio methodology is now standard across the country. Nevertheless, each State is required to select data standards to complete the methodology, and may also exercise flexibility options in the identification of local school systems. Maryland has completed its methodology, based on the advice of stakeholders, with a risk ratio threshold of 2.0, a minimum

cell size of 5, and a minimum n-size of 20. These selections fit within the range that is presumed reasonable by the U.S. Department of Education. Furthermore, Maryland has elected to utilize both flexibility options that are available. It will not only review 2 consecutive years of data, but also identify local school systems that are making “reasonable progress” as defined.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action requires local school systems to reserve certain funds for certain purposes. If a local school system is identified as having significant disproportionality, it must reserve 15% of the Part B funds it receives under the Individuals with Disabilities Education Act (IDEA) to provide coordinated early intervening services (CEIS) to address the root cause of the disproportionality, and may use those funds for students with and without disabilities. The reservation of funds is not a new requirement under the IDEA; the proposed action merely implements a new methodology for identification.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E+)	Unknown
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

C. The reservation of Part B funds for CEIS may, but does not necessarily, affect local expenditures. If a local education agency reserves 15% of its Part B funds for CEIS, then it may replace those funds by using local funds, but the higher level of local expenditures becomes the new required funding level for IDEA maintenance of effort.

The assumption in Section II.C is that the local education agency determines, as appropriate, how to: 1) reserve 15% of its Part B funds for CEIS (which may be used for students with and without disabilities); and 2) utilize all available funding sources to ensure provision of special education and related services to eligible students with disabilities.

**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 an impact on individuals with disabilities as follows:

The proposed action requires an identified local school system to provide CEIS to address significant disproportionality in the

identification, placement, and disciplinary removal of students with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Marcella Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0238 (TTY 410-333-6442), or email to marcella.franczkowski@maryland.gov, or fax to 410-333-2488. Comments will be accepted through April 30, 2018. Public Hearings have been scheduled on April 24, 2018 from 5:30—6:30 p.m. at C. Burr Artz Public Library located at 110 E. Patrick St., Frederick, MD 21701, and on April 25, 2018 from 2—3 p.m. at the Odenton Regional Library (West County Area Library) located at 1325 Annapolis Rd., Odenton, MD 21113. Individuals may register to offer public comment upon arrival to the public hearings and will be accepted on a first-come, first-served basis. To ensure effective use of the time available for public comment, speakers will have 3 minutes to offer comments. Reasonable accommodations for individuals with disabilities will be provided upon request. To allow time to arrange accommodations, please submit requests for accommodations 8 business days prior to the meeting. Individuals must communicate requests for accommodations to Carmen Brown at (410) 767-7197 or via email at carmen.brown1@maryland.gov.

**Open Meeting**

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on May 22, 2018, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

**.04 State Administration.**

A.—E. (text unchanged)

F. *Significant Disproportionality.*

(1) *The Department shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in each public agency in the State in accordance with 34 CFR §300.646.*

(2) *In making determinations of significant disproportionality, the Department shall use:*

(a) *A risk ratio threshold of 2.0;*

(b) *A minimum cell size of 5; and*

(c) *A minimum n-size of 20.*

(3) *The Department shall determine that significant disproportionality is occurring in a public agency that has:*

(a) *Exceeded the risk ratio threshold for 2 consecutive years; and*

(b) *Failed to demonstrate reasonable progress under §F(4) of this regulation.*

(4) *Demonstrating reasonable progress means that a public agency has:*

(a) *Decreased its risk ratio by 0.15 and the current risk ratio is 2.0 to 4.0; or*

(b) *Decreased its risk ratio by 0.50 and the current risk ratio is above 4.0.*

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State Superintendent of Schools