



**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:** August 27, 2019

**SUBJECT:** Code of Maryland Regulations (COMAR) 13A.05.01.14  
*Provision of a Free Appropriate Public Education:  
Procedural Safeguards – Independent Educational Evaluation*  
**PERMISSION TO PUBLISH**

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**PURPOSE:**

To request permission to publish amendments to COMAR 13A.05.01.14 *Procedural Safeguards – Independent Educational Evaluations* (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:**

The federal Individuals with Disabilities Education Act (IDEA) and Maryland law requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old. Local school systems conduct educational evaluations to obtain data and information to develop Individualized Education Programs and educational programming for students with disabilities. Existing COMAR 13A.05.01.14 entitles a parent to an independent evaluation at public expense if the parent disagrees with the educational evaluation obtained by the public agency. On May 13, 2019, Governor Larry Hogan signed Chapter 547 amending Education Article §8-405 Annotated Code of Maryland, to

require the local school system to give the parent a specific written response approving or denying a parental request within a certain time and requires local school systems to file a due process request within a certain time period upon the denial. Chapter 547 also requires that regulations are amended to include these changes.

**EXECUTIVE SUMMARY:**

The purpose of these updated regulations is to implement amendments to COMAR as stated in Education Article §8-405 Annotated Code of Maryland which established the independent educational evaluation. The updates include:

- If a parent requests an independent educational evaluation at public expense the local school system or public agency shall provide a written response approving or denying the request within 30 days;
- if the local school system or public agency approves a request, the written response shall advise the parent of the process for arranging the evaluation at public expense; and
- if the local school system or public agency denies a request, the local school system or public agency shall file a due process complaint within 30 days of the date of denial.

**ACTION:**

Request permission to publish the proposed amendments to COMAR 13A.05.01.14 *Provision of a Free Appropriate Public Education: Procedural Safeguards – Independent Educational Evaluation* for public comment.

Attachment:

COMAR 13A.05.01.14 *Provision of a Free Appropriate Public Education: Procedural Safeguards – Independent Educational Evaluation*

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 01 Provision of a Free Appropriate Public Education

*Authority: Education Article, § 8-405, Annotated Code of Maryland*

**.14 Procedural Safeguards — Independent Educational Evaluation.**

A. General.

(1) A parent of a student with a disability may obtain an independent educational evaluation.

(2) On request, a public agency shall provide the parent with information about where an independent educational evaluation may be obtained and the public agency's criteria applicable for independent educational evaluations consistent with 34 CFR §300.502.

B. Parental Right to Independent Educational Evaluation at Public Expense.

(1) If a parent disagrees with the evaluation obtained by the public agency, the parent may request an independent educational evaluation at public expense.

(2) When a parent requests an independent educational evaluation at public expense, the public agency shall *provide a written response approving or denying the request within 30 days, and:*

(a) [Provide an independent educational evaluation; or] *If the public agency approves the request, the written response shall advise the parent of the process for arranging the evaluation at public expense; or*

(b) [File a due process complaint in accordance with Regulation .15C of this chapter, to demonstrate that the public agency's evaluation is appropriate.] *If the public agency denies the request, the public agency shall file a due process complaint in accordance with Regulation .15C of this chapter within 30 days of the date of the denial.*

(3) Decision of the Impartial Hearing Officer.

(a) If an impartial hearing officer determines that the evaluation obtained by the public agency is appropriate, the parent may not obtain an independent educational evaluation of the student at public expense.

(b) If an impartial hearing officer determines that the evaluation obtained by the public agency is not appropriate, the public agency shall provide an independent evaluation of the student at public expense.

(c) If an impartial hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the independent educational evaluation shall be at public expense.

(4) When an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria used by the public agency when it initiates an assessment, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(5) The results of an independent educational evaluation obtained at public or private expense:

(a) Shall be considered by an IEP team in making any decision regarding the provision of FAPE for the student; and

(b) May be presented as evidence at a due process hearing initiated under Regulation .15C of this chapter.

(6) Except for the criteria described in §B(4) of this regulation, a public agency may not impose conditions or time lines related to obtaining an independent educational evaluation at public expense.

(7) A parent is entitled to not more than one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees in accordance with 34 CFR §300.502(b)(5).