



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: December 3, 2019
RE: Child Sexual Abuse and Sexual Misconduct History
COMAR 13A.07.14 PERMISSION TO PUBLISH

PURPOSE:

The purpose of this item is to request permission to publish a new regulation regarding the child sexual abuse and sexual misconduct history review required by Md. Code, Education Article §6-113.2.

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 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.

PROPOSED REGULATION:

The proposed regulation outlines the following with respect to the requirements of the employee history review required by Md. Code, Education Article §6-113.2:

- Scope
- Definitions
- General Provisions
- Reporting Violations
- Penalties
- Appeal

SUMMARY:

The MSDE is establishing a new regulation regarding the child sexual abuse and sexual misconduct history review required by Md. Code, Education Article §6-113.2.

ACTION:

Request permission to publish regulation COMAR 13A.07.14.

Attachment

TITLE 13A STATE BOARD OF EDUCATION

Subtitle 07

Chapter 14 – Child Sexual Abuse and Sexual Misconduct History

Authority: Education Article, § 6-113.2, Annotated Code of Maryland

.01 Scope.

This chapter 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.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) “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.

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

(3) “Department” means the Maryland State Department of Education.

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

(5) “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.

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

B. Current and former employers shall complete and return the employment history review form to a prospective employer within 20 days of receiving the employment history review form.

C. Employers shall provide the information required by Md. Code, Education Article 6-113.2 unless an exception provided for in the law does not require disclosure of the information.

.04 Reporting Violations.

A. A prospective employer shall report to the Department if a current or former employer does not complete and return the employment history review form within 20 days of its receipt.

B. The prospective employer shall make the report immediately to the Department using a form specified by the Department.

C. The report shall include:

- (1) The name, address, phone, fax, and email address for the current or former employer;
- (2) A detailed list of all attempts made by the prospective employer to contact the current or former employer, including method of contact, date of attempted contact, and any response;
- (3) Any supporting documentation or other information relevant to the report;
- (4) The name of the individual making the report, along with the individual's title, employer, address, phone, and email address.

D. The prospective employer may not make a report to the Department if:

- (1) The current or former employer has no record of employing the applicant, no longer retains records for the applicant, or otherwise has no records available about the applicant;
- (2) The current or former employer is no longer in business and no other entity has records for the closed business;
- (3) The current or former employer did not complete the form because:
 - (a) The laws of the state in which the current or former employer is located prohibit the release of the information or records requested;
 - (b) The disclosure of the information and records requested is restricted by the terms of a contract entered into on or before June 30, 2019; or
- (4) The prospective employer did not make three attempts to obtain the form.

E. A current or former employer shall report to the Department if it learns that a certificated employee has knowingly provided false information in connection with an employment history review form or deliberately withheld information concerning past incidents of child sexual abuse or sexual misconduct.

.05 Penalties.

A. The Department may impose a fine against any current or former employer that does not provide the information required by the Employment History Review Form within 20 days of its receipt.

B. Prior to imposing a fine, the Department shall send a warning letter to the current or former employer that explains:

- (1) the requirements of the law; and
- (2) how the current or former employer failed to comply with the law.

C. The Department shall provide the current or former employer with 10 additional days in which to complete the employment history review form or explain why it is exempt from the reporting requirements.

D. If, after the 10 additional days have passed, the current or former employer has not returned a completed employment history review form or provided a legal exemption from the reporting requirements, the Department may impose a fine.

E. Fine schedule.

- (1) \$1,000 for a first offense.
- (2) \$2,500 for a second offense.
- (3) \$5,000 for a third or subsequent offense.

F. Penalties against applicants or employees.

(1) An applicant or 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 denied employment or terminated from employment, if consistent with the employer's policies.

(2) For professionally certificated personnel, the Department may take action to deny, suspend, or revoke an educator's certificate based on providing false information or deliberately withholding information, in addition to any discipline imposed by an employer.

.06 Appeal.

A. A current or former employer may appeal a fine in writing to the State Superintendent of Schools within 15 days of the Department imposing the fine.

B. The appeal shall include the reasons for taking the appeal, along with any supporting documentation.

C. The State Superintendent of Schools shall forward the appeal to the Office of Administrative Hearings for a proposed decision, including findings of fact and conclusions of law.

D. An employer or the Department may file exceptions to the Administrative Law Judge's proposed decision within 15 days of the decision being issued.

E. The State Superintendent may affirm, reverse, or modify the Administrative Law Judge's proposed decision.

F. The State Superintendent's decision is the final decision of the agency.

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

Child Sexual Abuse and Sexual Misconduct History



STATE BOARD MEETING

December 3, 2019

Background

- House Bill 486 was introduced in the 2019 session
- Sponsored by Delegates *Wilson, Atterbeary, Bromwell, Guyton, Patterson, Reilly, Walker, Young, Kaiser, Barnes, Boteler, Buckel, Cain, Ebersole, Hornberger, Ivey, Long, Luedtke, Mosby, Palakovich, Carr, Rose, Shoemaker, Smith, Turner, Washington, and Wilkins*
- Approved by the Governor on April 18, 2019
- MSDE provided guidance on June 20, 2019
- Became Md. Code, Educ. §6-113.2 on July 1, 2019

Impact on Schools and Contracting Agencies

- What employers are covered by the law?
 - Local boards of education
 - Nonpublic schools (approved and church-exempt)
 - Contracting agencies
 - Entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school
- What does the law require of applicants?
 - Contact information of current/former employers
 - Written consent authorizing employers to release records relating to child sexual abuse or sexual misconduct
 - Written statement regarding history of child sexual abuse/sexual misconduct
 - *Employment History Review* form fulfills these requirements

Impact on Schools and Contracting Agencies

- What does the law require of current/previous employers?
 - Written statement regarding history of child sexual abuse/sexual misconduct (*Employment History Review* form)
 - Submission of required documentation, within 20 days of receiving a request
- What does the law require of the prospective employer?
 - Review of an applicant's employment history by contacting all former employers in which the applicant had direct contact with minors
 - Request a report from the MSDE regarding whether the applicant holds an active and valid certificate and has ever been the subject of professional discipline related to child sexual abuse or sexual misconduct (*Request for Information on Applicant's Certification Status* form)

Proposed Regulations

- General Provisions
 - 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
- Reporting Violations
 - 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

Proposed Regulations

- Penalties
 - 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

Proposed Regulations

- Appeal- Employer
 - An employer may appeal a fine in writing to the State Superintendent within 15 days
 - Office of Administrative Hearings will issue a proposed decision
 - Employer or MSDE may file exceptions to the Administrative Law Judge's decision within 15 days
 - State Superintendent may affirm, reverse, or modify the Administrative Law Judge's decision
 - State Superintendent's decision is the final decision of the agency



Questions
