



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

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: March 23, 2021
SUBJECT: COMAR 13A.06.02
Prekindergarten Programs
COMAR 13A.08.01
General Regulations
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this item is to request permission to publish proposed amendments to COMAR 13A.06.02 *Prekindergarten Programs* and COMAR 13A.08.01 *General Regulations*.

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 PERSPECTIVE:

A public hearing was held on November 5, 2020, to solicit comments on the current regulations for prekindergarten and kindergarten programs. Based on the public comments, the MSDE has reviewed and proposed changes to the current regulations:

- COMAR 13A.06.02.01-05 *Prekindergarten Programs* – **Definitions** were updated to reflect current language. **Eligibility** language to allow for other indicators of risk and for universal access was added. **Local School System Responsibilities** were revised to add requirements for prekindergarten

paraprofessionals, to clarify class sizes, and to reference licensing regulations for all childcare programs that could be considered as qualified vendors for offering prekindergarten programs.

- COMAR 13A.08.01.01-.02-2 *General Regulations* – **Attendance** language was updated and attendance for alternative programs language was removed. **Age for School Attendance** language that referred to age of entrance from 2002 to 2008 is no longer needed and was removed. Language to differentiate between prekindergarten for 3 year olds and for 4 year olds was added. The window for early entrance for kindergarten was defined as children who are 5 by October 15th to provide clarity and allow for the differences in school system start dates for the school year. **Definitions** of alternative program settings exemptions are removed as not needed. **Exemptions to Kindergarten Attendance Requirements** that applied to alternative settings were removed as alternative programs can apply for nonpublic school approval as a kindergarten program. **Kindergarten Readiness Assessment** language was updated to reflect 2018 revisions to Maryland Code, Education Section §7-210 *Prekindergarten and kindergarten assessments*.

EXECUTIVE SUMMARY:

Based on review of the current regulations and input from stakeholders at the November 5, 2020, public hearing, the MSDE recommends multiple amendments to the regulations in order to update language, clarify early entrance for kindergarten, reflect the differences between prekindergarten for 3 year olds and prekindergarten for 4 year olds, and add language to reflect legislative changes to the Kindergarten Readiness Assessment.

ACTION:

Request permission to publish the proposed amendments to COMAR 13A.06.02 *Prekindergarten Programs* and COMAR 13A.08.01 *General Regulations*.

ATTACHMENTS:

COMAR 13A.06.02 *Prekindergarten Programs*
COMAR 13A.08.01 *General Regulations*

Title 13A STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

Chapter 02 Prekindergarten Programs

Authority: Education Article §§2-205(c) and (g) and 7-101.1, Annotated Code of Maryland

.01 Scope and Purpose.

A. This chapter applies to all publicly funded prekindergarten programs *administered by local boards of education or qualified vendors* for all eligible 3 and 4-year-old children, as defined in Education Articles, §7-101.1(a)(3) and 7-101.2(a)(2), Annotated Code of Maryland *[administered by local boards of education or qualified vendors.]*

B. The overall goal of the prekindergarten program is to provide learning experiences to help children develop and maintain school readiness skills necessary for successful school performance.

C. Local boards of education *and qualified vendors* shall provide prekindergarten programs to accommodate all eligible 4-year-old children seeking enrollment in public school programs.

.02 Definitions.

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

B. Terms Defined.

(1) "Accredited" means meets standards of high quality set by the Department's Early Childhood Accreditation Program Standards or by an accrediting organization recognized by the Department.

(2) "Bridge to Excellence Master Plan" means the comprehensive master plan required by Education Article, §5-401, Annotated Code of Maryland.

(3) "Department" means the Maryland State Department of Education.

(4) "CDA" means the Child Development Associate Credential.

(5) "Economically disadvantaged background" means a family whose income *[would make a child eligible for free or reduced price meals based on eligibility requirements established by the United States Department of Agriculture if the child were in kindergarten.] is at or below 185 percent of the annual federal poverty guidelines.*

(6) "Eligibility" means meeting the criteria for enrollment into prekindergarten as stated in Regulation .03A of this chapter.

(7) "Head Start" means a federally sponsored preschool program for children 3 years old to 5 years old from low income families that is licensed by Child Care Administration or administered by local boards of education.

(8) "Homeless student" means a child or youth who lacks a fixed, regular, or adequate nighttime place of residence as defined in COMAR 13A.05.09.02.

(9) *["Maryland Common Core State Curriculum"] "Maryland State Department of Education approved standards"* means measurable statements of what students should know and be able to do within a content area as defined and approved for prekindergarten by the Department *[in collaboration with local school systems]*.

(10) "Prekindergarten" means a publicly funded program for all eligible 3 and 4-year-olds focusing on social *[/emotional] foundations, physical well-being and motor development, [and cognitive development as described in the Maryland Common Core State Curriculum.], English language arts, mathematics, science, social studies, and fine arts.*

(11) "Qualified vendor" means a State or nationally accredited child care program or an approved nonpublic school that:

(a) Is partnering with a local school system through a memorandum of agreement; and

(b) Meets the requirements of Regulation .05 of this chapter.

(12) "School readiness" means the stage of early development that enables an individual child to engage in and benefit from early learning experiences. *[As a result of family nurturing and interactions with others, a young child in this stage has reached certain levels of social and emotional development], School readiness includes the areas of social foundations, cognition and general knowledge, language development, and physical well-being and motor development.* School readiness acknowledges *[individual approaches toward learning as well as]* the unique experiences and backgrounds of each child.

.03 Student Eligibility.

A. A local school system shall enroll in prekindergarten all 4-year-old applicants who are from families with economically disadvantaged backgrounds or who are homeless.

B. For vacancies remaining after compliance with §A of this regulation a local school system may:

(1) enroll 4-year-old applicants who are not from families with economically disadvantaged backgrounds but who represent a student population that exhibits a lack of school readiness due to other indicators of risk; and

(2) provide universal access to prekindergarten.

C. Prekindergarten Programs for 3-Year-Old Children.

(1) A local school system or qualified vendor may establish a prekindergarten program enrolling 3-year-old applicants who are from economically disadvantaged or homeless families, or who represent a student population that exhibits a lack of school readiness *due to other indicators of risk.*

(2) A local school system shall be in compliance with 34 CFR §300.115(a)(b) and COMAR 13A.05.01.10 regarding children with disabilities.

(3) A prekindergarten program for 3-year-old children shall meet the requirements of Regulation .05 of this chapter.

.04 Prekindergarten Site Selection.

A. A local school system shall develop a facilities plan identifying appropriate sites to ensure that a publicly funded prekindergarten program is available to all eligible 4-year-old children in its jurisdiction.

B. The facilities plan may include local school system memorandums of agreement with qualified vendors and Head Start to provide prekindergarten program services that meet the local school system responsibilities in accordance with Regulation .05 of this chapter.

.05 Local School System Responsibilities.

[A local school system shall:]

A. A local school system shall:

(1) Develop and maintain a policy for determining the eligibility and selection of prekindergarten sites as well as the eligibility of 4-year-old students for prekindergarten programs consistent with the requirements of this chapter;

(2) Develop criteria in reference to Regulation .03B and C of this chapter that establishes procedures to include children in the prekindergarten program who are not eligible under Regulation .03A of this chapter;

(3) Operate the prekindergarten educational program 5 days per week for a minimum of 2.5 hours per day consistent with the school calendar approved by the local board;

(4) Analyze the Department-approved kindergarten assessment system information described in COMAR 13A.08.01.02-3 to evaluate the effectiveness of the prekindergarten program, and make necessary adjustments to the prekindergarten instructional program;

(5) Provide data in the Bridge to Excellence Master Plan needs assessment to indicate progress on prekindergarten program goals;

(6) Provide staffing for each session of prekindergarten to include [a teacher who possesses a current State professional certificate in early childhood education and a para-professional with a minimum of a high school diploma, or its equivalent, or a CDA;];

(a) A teacher who possesses a current Maryland Standard Professional certificate in early childhood education and an assistant teacher or para-professional with a minimum of a high school diploma, or its equivalent, or a CDA and

(b) Beginning with September 1, 2021, newly hired assistant teachers or para-professionals must possess a minimum of a high school diploma, or its equivalent and a CDA or an AA or a ParaPro certificate or at least 48 college credits;

(7) Align each prekindergarten program with the Maryland [Common Core State Curriculum] State Department of Education approved standards;

(8) Based on the September 30 enrollment count, maintain [an average] a staff to student ratio of at least 1:10 with [an average of] no more than 20 students per classroom; and

(9) Provide responses to Department requests for information and data related to the operation of the prekindergarten program.

B. A qualified vendor shall:

(1) Maintain State or national early childhood program accreditation;

(2) Have the capacity to meet the responsibilities identified in this regulation;

(3) Be licensed to operate a child care [center] program pursuant to COMAR 13A.15, COMAR 13A.16, COMAR 13A.17, or COMAR 13A.18; and

(4) Provide responses to Department requests for information and data related to the operation of the prekindergarten program.

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

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-101.1, 7-301, 7-301.1, 7-303—7-305, 7-305.1, 7-307, 7-308, and 8-404, Annotated Code of Maryland; Ch. 273, Acts of 2016; Federal Statutory Reference: 20 U.S.C. §§1232g and 7912

.01 Attendance.

A. Who Shall Attend. Each child who resides in this State and is 5 years old or older and under [16] *18 years old*, shall attend a public school regularly during the entire school year [unless the child is otherwise receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age,] *except as otherwise provided in Annotated Code of Maryland, Education Article, 7-301,* or the child is exempted under Regulation .02-[2]*1A* of this chapter.

B. A child who resides in this State shall attend a public or nonpublic kindergarten program regularly during the school year before entering the first grade unless the child is [enrolled in an alternative program as specified in Regulation .02-2B of this chapter or is] receiving home instruction as provided in COMAR 13A.10.01.

C. A child who resides in this State and attends a nonpublic kindergarten program for part of the year may transfer to a public kindergarten if the child meets the minimum age requirement for admission to a public school kindergarten program, as set forth in Regulation .02[B(2)]*C(2)* of this chapter.

D. Students shall be considered in attendance at school when participating in school-sponsored activities during the school day, and when that participation is approved by the local superintendent of schools or the school principal, or their designees. [Students shall be considered in attendance in an alternative program setting when participating in activities during the day sponsored by the alternative program, and when that participation is approved by the director of a licensed child care center, registered family day care home, or Head Start 5-year-old program.]

E. [Daily] Attendance Record. A [record of the daily attendance of each student shall be kept] *system of information on enrollment, attendance, and promotion of students shall be maintained* in accordance with regulations of the State Board of Education and the Maryland Student Records System Manual 2020, which is incorporated by reference in COMAR 13A.08.02.01.

.02 Age for School Attendance.

[A. Prekindergarten.

(1) Beginning with the 2002—2003 school year through the 2004—2005 school year, a child admitted to the prekindergarten program in the public schools shall be 4 years old or older on:

- (a) November 30, 2002, if the child applies for entrance for the 2002—2003 school year;
- (b) October 31, 2003, if the child applies for entrance for the 2003—2004 school year; and
- (c) September 30, 2004, if the child applies for entrance for the 2004—2005 school year.

(2) Beginning with the 2005—2006 school year and each school year thereafter, a child admitted to the prekindergarten program in the public schools shall be 4 years old or older on September 1 of the school year in which the child applies for entrance.

(3) The local board of education shall adopt a regulation permitting a 3-year-old child, upon request by the parent or guardian, to be admitted to prekindergarten if the local superintendent of schools or the superintendent's designee certifies that the child is eligible under COMAR 13A.06.02 and has demonstrated educational needs warranting early admission.]

A. 3-Year-Old Prekindergarten.

(1) A child admitted to the 3-year-old prekindergarten program in the public schools shall be 3 years old or older on September 1 of the school year in which the child applies for entrance.

B. 4-Year-Old Prekindergarten.

(1) A child admitted to the 4-year-old prekindergarten program in the public schools shall be 4 years old or older on September 1 of the school year in which the child applies for entrance.

(2) The local board of education shall adopt a regulation permitting a 3-year-old child, upon request by the parent or guardian, to be admitted to the 4-year-old prekindergarten if the local superintendent of schools or the superintendent's designee certifies that the child is eligible under COMAR 13A.06.02 and has demonstrated educational needs warranting early admission.

[B.] **C. Kindergarten.**

[(1) Beginning with the 2003—2004 school year through the 2005—2006 school year, a child admitted to the kindergarten program in the public schools shall be 5 years old or older on:

- (a) November 30, 2003, if the child applies for entrance for the 2003—2004 school year;
- (b) October 31, 2004, if the child applies for entrance for the 2004—2005 school year; and
- (c) September 30, 2005, if the child applies for entrance for the 2005—2006 school year.

(2) Beginning with the 2006—2007 school year and each school year thereafter, a]

(1) A child admitted to the kindergarten program in the public schools shall be 5 years old or older on September 1 of the school year in which the child applies for entrance.

(3) (2) Beginning with the 2022-2023 school year and each school year thereafter, the [The] local board of education shall adopt a regulation permitting a 4-year-old child, who will be 5 years of age by October 15th, upon request by the parent or guardian, to be admitted to kindergarten if the local superintendent of schools or the superintendent's designee determines that the child demonstrates [capabilities warranting early admission] readiness for kindergarten. The regulation shall include a provision for promotion of the 5-year-old child to first grade if the local superintendent or the superintendent's designee determines that the child demonstrates capabilities warranting promotion to first grade.

[C.] D. First Grade.

(1) Beginning with the 2004—2005 school year through the 2006—2007 school year, a child admitted to the first grade in the public schools shall be 6 years old or older on:

- (a) November 30, 2004, if the child applies for entrance for the 2004—2005 school year;
- (b) October 31, 2005, if the child applies for entrance for the 2005—2006 school year; and
- (c) September 30, 2006, if the child applies for entrance for the 2006—2007 school year.

(2) Beginning with the 2007—2008 school year and each school year thereafter, a]

(1) A child admitted to the first grade in the public schools shall be 6 years old or older on September 1 of the school year in which the child applies for entrance.

(3) (2) The local board of education shall adopt a regulation permitting a 5-year-old child, upon request of the parent or guardian, to be admitted to the first grade if the local superintendent of schools or the superintendent's designee determines that the child has demonstrated capabilities warranting early admission.

.02-1 Definitions.

A. In Regulation .02-2 of this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Full-time in a licensed child care center" means the child is enrolled in the child care center only and does not attend any other kindergarten program.

(2) "Full-time in a registered family day care home" means the child is cared for by the family day care provider only and does not attend any other kindergarten program.

(3) "Part-time in a Head Start 5-year-old program" means the child is enrolled in the Head Start program and may or may not be enrolled in another child care program.]

.02-[2] -1 Exemptions to Kindergarten Attendance Requirement.

A. Level of Maturity Waiver.

(1) A child who resides in this State and is 5 years old may be exempted from mandatory school attendance for 1 year if the child's parent or guardian believes that a delay in school attendance is in the best interest of the child and the parent or guardian files a written request with the local superintendent of schools asking that the child's attendance be delayed due to the child's level of maturity.

(2) A written request for a 1-year exemption from mandatory attendance for a 5-year-old shall be filed with the local superintendent of schools or the superintendent's designee before the opening of school of the year in which the child becomes 5 years old.

(3) After a child is enrolled in kindergarten, a parent or guardian may file a written request to withdraw the child from the program and delay attendance until the following school year if the parent or guardian believes it is in the best interest of the child.

(4) The local school system shall approve the request for delay or withdrawal in writing within 5 working days from date of receipt.

(5) The local school system shall report to the State Department of Education, on forms provided by the State Department of Education, information on the number of 5-year-old children for whom requests have been received.

[B. Alternative Program Settings.

(1) A child may be exempted from attending kindergarten if a parent or guardian of the child files in writing their intent to place the child in an alternative setting and verifies that the child is enrolled:

- (a) Full-time in a licensed child care center;
- (b) Full-time in a registered family day care home; or
- (c) Part-time in a Head Start 5-year-old program.

(2) A parent or guardian who elects to enroll a child full-time in a licensed child care center, full-time in a family day care home, or part-time in a Head Start 5-year-old program shall file their intent to enroll the 5-year-old child in an alternative program with the local school system before the opening of school of the year in which the child becomes 5 years old. The parent or guardian shall verify enrollment by providing the following information:

- (a) Name of program;
- (b) Address of facility location; and
- (c) License or registration number and expiration date.

(3) A parent or guardian of a child who attended an alternative program shall register the child for first grade before the opening of school of the year in which the child becomes 6 years old and shall provide documentation showing proof of attendance in the alternative program setting. Documentation includes:

- (a) Date child was enrolled; and
- (b) Number of days child was absent.
- (4) Program directors/providers who enroll a 5-year-old child full-time in a licensed child care center, full-time in a family day care home, or part-time in a Head Start 5-year-old program shall furnish the parent or guardian with the documentation as specified in §B(2)—(3) of this regulation.]

[C] **B.** Non-State Residents. A 5-year-old child who moves into Maryland who has had a kindergarten experience in another state for part of the school year shall be enrolled in kindergarten. A 6-year-old child who moves into Maryland who has not had a kindergarten experience may be enrolled in kindergarten or first grade. The local school system shall determine the appropriate grade placement of a 6-year-old child who moves into Maryland based on a review of the documentation provided by the parent or guardian.

.02-[3] -2 Kindergarten Readiness Assessment.

A. Definitions.

- (1) For the purpose of this regulation, the following terms have the meanings indicated.
- (2) Terms Defined.

(a) “Department-approved kindergarten readiness assessment” means the kindergarten readiness assessment developed and approved by the Department for the purpose of measuring school readiness.

(b) “Representative sample” means a sample of sufficient size to produce valid and reliable assessment information on all and major subgroups of students in the local school systems as of the first day of school and as identified by the Department.

(c) “*Early Learning Assessment*” means the formative assessment for 36-72 month olds developed and approved by the Department for the purpose of providing information on a child’s progress in skills, knowledge, and behaviors in the domains of learning.

B. Before November 1 of each year, each local school system shall administer a statewide kindergarten assessment with the purpose of measuring school readiness.

[B] C. Representative Sample Assessment Process.

(1) Each school year, each local school system shall complete the administration of the Department-approved kindergarten readiness assessment to the representative sample by **October 10** in the following areas:

- (a) Social **[development] foundations**;
- (b) Language and literacy skills;
- (c) **[Academic knowledge in mathematics, science, and social studies; and] Mathematics**
- (d) Physical **well-being and motor** development.

(2) The Department shall provide each local school system with the representative sample identified for the local school system by the Department for assessment.

(3) The Department shall **[report the results] provide each local school system with their respective aggregate results** of the representative sample assessment to local school systems in a format developed by the Department **within 45 days after the administration of the assessment.**

[C] D. Full-Census Assessment Process.

(1) A **local school system [county board of education]** or a principal and a teacher who are in mutual agreement may decide to assess all students entering kindergarten in a school year using the Department-approved kindergarten readiness assessment.

(2) The superintendent of a local school system shall notify the Department that:

- (a) The local **school system [county board of education]** has decided to conduct a full census assessment of all students in all kindergarten classes; or
- (b) A principal and teacher in a school in the local school system have agreed to conduct a full census assessment of all students in that teacher’s kindergarten class.

(3) A teacher who is administering a full census assessment shall complete the assessment on or before October **[1] 10** of the school year.

(4) The Department shall **[return to the] provide each** local school system **[the] with their respective** aggregate results of the full census assessment within 45 days after the administration of the assessment.

[D] E. Publication of Results of Assessments. The Department shall publish and disseminate to local school systems the aggregated assessment information **[no later than November 15 of each year].**

F. Prekindergarten Students.

(1) Except as provided in paragraph (2) of this subsection, a statewide kindergarten assessment may not be administered to an enrolled 4-year-old Prekindergarten student.

(2) The statewide Kindergarten Readiness Assessment may be administered to an enrolled 4-year-old Prekindergarten student by a school psychologist or other school-based professional trained in the administration of the Kindergarten Readiness Assessment who intends to use the results in order to identify a disability.

(3) A county board may administer the Early Learning Assessment to enrolled 3 or 4-year-old Prekindergarten students in the county.

(4) Before administering the Early Learning Assessment, a county board shall consult with their Prekindergarten teachers of 3 or 4-year-old students, including teachers nominated by the exclusive bargaining representative, in determining how to implement the assessment.

.03 Lawful Absence.

Students presently enrolled in public schools are considered lawfully absent from school, including absence for any portion of the day, only under the following conditions:

- A. Death in the immediate family. The local school system shall determine what relationships constitute the immediate family.
- B. Illness of the student. The principal or a pupil personnel worker shall require a physician's certificate from the parent or guardians of a student reported continuously absent for illness.
- C. Pregnancy and parenting related conditions as determined by the local school system, including absences due to:
 - (1) Labor, delivery, recovery, and prenatal and postnatal medical appointments;
 - (2) Illness or a medical appointment of the student's child; and
 - (3) A legal appointment involving the pregnant or parenting student related to family law proceedings, including adoption, custody, and visitation.
- D. Court summons.
- E. Hazardous weather conditions. Hazardous weather conditions shall be interpreted to mean weather conditions which would endanger the health or safety of the student when in transit to and from school.
- F. Work approved or sponsored by the school, the local school system, or the State Department of Education, accepted by the local superintendent of schools or the school principal, or their designees as reason for excusing the students.
- G. Observance of a religious holiday.
- H. State emergency.
- I. Suspension.
- J. Lack of authorized transportation. This does not include students denied authorized transportation for disciplinary reasons.
- K. Other emergency or set of circumstances which, in the judgment of the superintendent or designee, constitutes a good and sufficient cause for absence from school.

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