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State Superintendent of Schools

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TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D. *KBS/CN*
DATE: July 26, 2016
SUBJECT: Code of Maryland Regulations (COMAR) 13A.05.01.01-.16
Provision of a Free Appropriate Public Education (FAPE)
(AMEND) PERMISSION TO PUBLISH

PURPOSE:

To request permission to publish amendment to regulations that govern the provision of a free appropriate public education (FAPE) (attached).

REGULATION PROMULGATION PROCESS:

In accordance with the Regulatory Review and Evaluation Act, State Government Article §§ 10-130 – 10-139, Annotated Code of Maryland, the Maryland State Department of Education (MSDE) periodically schedules regulations for review to evaluate the need to retain, amend, or repeal any provisions. The purpose of this review is to determine whether the regulations: 1) continue to be necessary for the public interest; 2) continue to be supported by statutory authority and judicial opinions; and 3) are obsolete or otherwise are appropriate for amendment or repeal.

BACKGROUND/HISTORICAL PERSPECTIVE:

The regulations promulgated by the State Board to ensure the provision of a FAPE to students with disabilities in Maryland, consistent with the federal Individuals with Disabilities Education Act (IDEA), are located in COMAR 13A.05.01. This chapter of COMAR addresses referrals and evaluations for special education, the individualized education program (IEP) team process, and the procedural safeguards required by the IDEA. The MSDE consulted stakeholder groups to assist in the review process and, as a result of its review and evaluation, now proposes several amendments that fall into three categories: 1) updates to terminology; 2) updates to statutory or regulatory citations; and 3) cross-references to the regulations that govern Maryland Infants and Toddlers Programs. The MSDE has proposed no substantive changes.

EXECUTIVE SUMMARY:

The following changes are reflected in the amended regulations:

1. 13A.05.01.03B(73)(c) - replaces the term “emotional disturbance” with “emotional disability” to reflect current terminology
2. 13A.05.01.03B(77)(b) – reflects reference to correct citation
3. 13A.05.01.03B(77)(c) – reflects reference to correct citation
4. 13A.05.01.05D(1) – reflects a statutory amendment
5. 13A.05.01.06B – coordinates with Maryland Infants and Toddlers regulations
6. 13A.05.01.07A(8) - coordinates with Maryland Infants and Toddlers regulations
7. 13A.05.01.08A(2)(a)(i) – coordinates with Maryland Infants and Toddlers regulations
8. 13A.05.01.08A(2)(a)(ii) – coordinates with Maryland Infants and Toddlers regulations
9. 13A.05.01.08A(2)(a)(iii) – coordinates with Maryland Infants and Toddlers regulations

ACTION:

I request permission to publish the proposed amendments to COMAR 13A.05.01.01-.16 for public comment.

Attachment

13A.05.01

.01 Purpose

(proposed text unchanged)

.02 Scope

A. (proposed text unchanged)

B. (proposed text unchanged)

.03 Definitions

A. (proposed text unchanged)

B. Terms Defined

(1) (proposed text unchanged)

...

(72) (proposed text unchanged)

(73) Specific Learning Disability (SLD)

(a) (proposed text unchanged)

(b) (proposed text unchanged)

(c) "SLD" does not include students who have learning problems which are primarily the result of visual, hearing, or motor impairments, intellectual disability, [emotional disturbance] *emotional disability*, or environmental, cultural, or economic disadvantage.

(74) (proposed text unchanged)

(75) (proposed text unchanged)

(76) (proposed text unchanged)

(77) "Student with a developmental delay" means a student within the age range of 3 years old through 7 years old assessed and evaluated in accordance with Regulations .05 and .06 of this chapter as having:

(a) (proposed text unchanged)

(b) Atypical development or behavior as defined in COMAR

13A.13.01 [.02B(21)(b)].03B(12)(b); or

(c) A diagnosed physical or mental condition as defined in COMAR

13A.13.01 [.02B(21)(c)].03B(12)(c).

(78) (proposed text unchanged)

...

(85) (proposed text unchanged)

.04 Referral

- A. (proposed text unchanged)
- B. (proposed text unchanged)

.05 Assessment

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)
- D. Report of Assessments
 - (1) A report of assessment procedures administered to a student in each area of suspected disability, as determined in accordance with Regulation .04 of this chapter, shall be available to *the parents, consistent with Education Article §8-405, and to* the IEP team at the time of the evaluation.
 - (2) (proposed text unchanged)
 - (3) (proposed text unchanged)

.06 Evaluation, Reevaluation, and Eligibility

- A. (proposed text unchanged)
- B. A public agency shall convene an IEP team meeting to determine if a child in transition from a local infants and toddlers program has a disability or developmental delay that requires the provision of special education and related services, *in accordance with COMAR 13A.13.01.09B(10)*.
- C. (proposed text unchanged)
- D. (proposed text unchanged)
- E. (proposed text unchanged)

.07 Individualized Education Program (IEP) Team

- A. IEP Team Members
 - (1) (proposed text unchanged)
 - (2) (proposed text unchanged)
 - (3) (proposed text unchanged)
 - (4) (proposed text unchanged)
 - (5) (proposed text unchanged)
 - (6) (proposed text unchanged)
 - (7) (proposed text unchanged)

- (8) For the initial IEP team meeting of a child who was previously served by a local infants and toddlers program, the IEP team shall, at the request of the child's parent, invite the local infants and toddlers program service coordinator or other representatives of the local infants and toddlers program to assist with the smooth transition of services, *in accordance with COMAR 13A.13.01.09F.*
- B. (proposed text unchanged)
- C. (proposed text unchanged)
- D. (proposed text unchanged)

.08 Individualized Education Program (IEP) Team Responsibilities

A. IEP Development

- (1) (proposed text unchanged)
- (2) Transition from a Local Infants and Toddlers Program
- (a) If a child transitioning from a local infants and toddlers program is determined to be a student with a disability or developmental delay in accordance with Regulation .06B of this chapter, the public agency shall:
- (i) Ensure that an IEP team meets *[to develop an IEP for the student] in a timely manner to determine a child's eligibility for special education and related services before the child's third birthday;*
- (ii) Invite the *[student's] child's* local infants and toddlers service coordinator or other representatives of the local infants and toddlers program to assist with a smooth transition of services, consistent with Regulation .07A(8) of this chapter; and
- (iii) Ensure that the student's IEP is in effect on the student's third birthday in accordance with Regulation .09 of this chapter *if a child's family chooses to receive preschool special education services.*
- (b) (proposed text unchanged)
- (3) (proposed text unchanged)
- (4) (proposed text unchanged)
- (5) (proposed text unchanged)
- (6) (proposed text unchanged)
- (7) (proposed text unchanged)
- (8) (proposed text unchanged)
- (9) (proposed text unchanged)
- (10) (proposed text unchanged)
- (11) (proposed text unchanged)
- B. (proposed text unchanged)

.09 Individualized Education Program Document

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)
- D. (proposed text unchanged)
- E. (proposed text unchanged)
- F. (proposed text unchanged)

.10 Least Restrictive Environment (LRE)

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)

.11 Procedural Safeguards – General Provisions

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)
- D. (proposed text unchanged)
- E. (proposed text unchanged)
- F. (proposed text unchanged)
- G. (proposed text unchanged)

.12 Procedural Safeguards – Prior Written Notice

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)

.13 Procedural Safeguards – Consent

- A. (proposed text unchanged)
- B. (proposed text unchanged)

.14 Procedural Safeguards – Independent Educational Evaluation

- A. (proposed text unchanged)
- B. (proposed text unchanged)

.15 Procedural Safeguards – State Complaints, Mediation, and Due Process

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)

.16 Students in Nonpublic Schools

- A. (proposed text unchanged)
- B. (proposed text unchanged)
- C. (proposed text unchanged)