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The Learning Disabilities Association of Montgomery County (LDAMC) submits the following comments on proposed Amendments to the Code of Maryland Regulations (COMAR) Governing the Provision of a Free Appropriate Public Education (FAPE) published in the "Maryland Register" in Volume 33, Issue 12 on June 9, 2006. The Maryland State Department of Education (MSDE) has proposed amendments to COMAR rules at 13A.05.01 to implement statutory changes to the Individuals with Disabilities Education Act enacted in 2004.

LDAMC is a volunteer organization and an affiliate of the Learning Disabilities Association of America and the Learning Disabilities Association of Maryland. LDAMC is dedicated to the advancement of educational, social and vocational opportunities for persons with learning disabilities. We currently have about 350 members including parents, individuals with learning disabilities, educators, and other professionals, and our membership keeps growing. Our organization works to create a greater awareness of learning disabilities, improve education, employment and social opportunities for persons with learning disabilities, educate parents, professionals, and individuals with learning disabilities, and connect parents and young adults with learning disabilities to community resources.

LDAMC applauds MSDE for retaining the requirement in Regulation .09A(1)(b) that the IEP must include benchmarks or short-term instructional objectives and the requirement in Regulation .09A(3)(a) stating that the IEP for a student who is 14 years old, and younger if appropriate, and updated annually, shall include a statement of the transition service needs of the student that focuses on the student's course of study. We believe that the short-term objectives are necessary in order to ensure that the annual goals are effectively implemented. We also believe that it is important to begin planning for transition before age 16. However, LDAMC does have a number of general and specific concerns with the proposed amendments that we will outline below.

Our major general concern is the timing of the proposed amendments, particularly as they relate to the identification of students with specific learning disabilities (SLD). We are also concerned that some of the proposed amendments are drafted in a manner that is not user-friendly. We do not believe that it is appropriate to simply reference the U.S. Code in those cases where the IDEA provision provides additional or more specific or detailed information. In such cases, COMAR rules should incorporate these provisions so that the reader fully understands the rules.

We believe that the timing in implementing new COMAR rules presents potential problems. As you are aware, proposed Federal regulations implementing Part B of IDEA were published in June 2005, but final regulations are not expected to be published until late summer. There are

many provisions in both the proposed COMAR rules and the proposed IDEA regulations that merely restate or reference Federal statutory language. However, there are a number of instances where final Federal rules regulate beyond the statute, most notably the rules governing the identification of children with SLD.

The proposed COMAR rules for determining whether a student has an SLD merely restate the new IDEA statutory provisions that (1) allow school districts to use a process that determines whether a student responds to scientific research-based intervention as part of the assessment procedures and (2) no longer require the school district to take into consideration whether a student has a severe discrepancy between achievement and ability. As such, the proposed COMAR rules would provide no specific guidance to school districts in determining whether a student has an SLD. Proposed IDEA regulations in Part B §300.307 through §300.311, and most likely final regulations, would require a State to adopt criteria for determining whether a child has a Specific Learning Disability as defined in §300.8(c)(10) and establish other specific requirements. Thus, COMAR regulations, as proposed, would need to be substantially revised after the final Federal rules are published.

Listed below are additional comments on specific proposed COMAR amendments, including technical comments.

Regulation .05 Assessment

1. Observation for the Determination of SLD: Technical changes should be made to the proposed amendment at Regulation .05 (B)(5) of Subtitle 05 to improve clarity. We would also suggest including a reference to 20 U.S.C. §1414(c)(1)(A) which is the authority for conducting classroom observations. We recommend that the language at Regulation .05 (B)(5) be revised to read as follows:

“...shall observe the student in his or her learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty consistent with the definition of term specific learning disability in 20 U.S.C §1401(30) and in accordance with evaluation requirements in 20 USC §1414 (b)(6) and 20 U.S.C. §1414(c)(1)(A).”

Regulation .06 Evaluation, Reevaluation, and Eligibility

2. SLD Identification: The proposed amendment to COMAR Regulation .06 D. (1) of Subtitle 05 which states that, *"In determining whether a student has an SLD, consistent with 20 U.S.C. §1414(b)(6), a public agency:..."* needs to be revised to reference the definition of SLD so that it is clear that whatever method is used in determining whether a student has an SLD, it must be consistent with the definition of SLD and the general evaluation procedures in §1414(b) and (c). We suggest that proposed regulation .06 D.(1) be revised to read as follows:

"(1) In determining whether a student has an SLD, consistent with 20 U.S.C. §1401(30) and §1414(b)(6) and in accordance with the evaluation procedures in 20 U.S.C. §1414(b) and (c), a public agency:"

3. SLD Written Report: There is a technical error in the amendment to the written report at Regulation .06 D(2)(f). The proposed COMAR amendment would delete the requirement that the written report include “*a statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education services*” and adds the requirement that the written report include “*a description of the student's response to scientific research-based interventions:*” Since school districts may, but are not required to use response to scientific research-based interventions as their method for determining whether a student has an SLD, the proposed provision needs to be revised to read as follows--

"(f) If the child has participated in a process that assesses the child's response to scientific research-based interventions, a description of the student's response to such interventions."

Regulation .09 Individualized Education Program Document

4. Progress in Meeting Annual Goals: The proposed amendment to the Regulation .09A.(1)(c) would eliminate language requiring that the IEP include appropriate objective criteria and evaluation procedures for determining whether the annual goals are achieved. This proposed change is not consistent with Section 614(d)(1)(A)(i)(III) of IDEA which requires that the Individualized Education Program (IEP) include a description of how the child’s progress toward meeting the annual goals will be measured. This provision must be retained.

Regulation .15 Procedural Safeguards – Written Complaints, Mediation, and Due Process

5. Mediation: Current Regulation .15.B.(7) requiring that mediation be conducted by a qualified and impartial hearing officer who is trained in effective mediation techniques should not be deleted. This provision is a requirement in section 615 (e)(2)(A)(iii) of IDEA.

6. Resolution Session: The proposed language at Regulation .15 (C)(7)(b) is not very helpful to the reader and should be revised to include clauses (I) through (IV) at 20 U.S.C. § 1415(f)(1)(B)(i).

7. Hearing timelines: The proposed amendments to this regulation are confusing. Proposed amendments delete the language at current Regulation .15 C.(6) stating that the due process hearing be conducted and a decision made not later than 45 days after receipt of request for a hearing and the language providing for a time extension. However, the reference “*in accordance with Education Article §8-413 Annotated Code of Maryland*” is added. The referenced section currently contains these same requirements. Does MSDE intend to change the timelines in §8-413? We recommend that language providing the specific timelines be retained in this regulation rather than just referring to §8-413. As you are aware, Federal regulations provide for a 45-day timeline that begins at such time that the parties are unable to resolve the dispute through mediation.

Chapter 13A.08.03 Discipline of Students with Disabilities

8. Determination of Whether Behavior is a Manifestation of Student’s Disability: We are concerned that the proposed amendment to Regulation .08 D. deletes language that provides for

the appropriateness of the IEP as factor in determining whether the behavior was a manifestation of the student's disability. We support the amendment that would add "the direct result of the public agency's failure to implement the student's IEP" as a factor in the determination. However, often the problem is that the IEP does not include the research-based interventions that are needed to address behavioral problems resulting from the disability.

Thank you for the opportunity to comment on these proposed amendments. LDAMC looks forward to future opportunities to assist MSDE in addressing the needs of students with learning disabilities.

Sincerely,

Susan Healy
Immediate Past-President
LDAMC