



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

TO: Members of the State Board of Education
FROM: Nancy S. Grasmick *Nancy*
DATE: September 21, 2009
RE: COMAR 13A.09.09 (AMEND)
Educational Programs in Nonpublic Schools
ADOPTION

PURPOSE:

The purpose of this item is to request adoption of amendments to COMAR 13A.09.09 Educational Programs in Nonpublic Schools (Attachment I). Amendments are being proposed to clarify due process procedures that have been implemented through policy and to add specific due process for revocation of a school's Certificate of Approval as a result of violating Education Article §2-206.1. Additional changes are being proposed to clarify current regulatory elements pertaining to the approval of Montessori Educational Programs.

BACKGROUND/HISTORICAL PERSPECTIVE:

Over the past two years, two significant events have occurred to prompt the review by staff of regulatory requirements for nonpublic schools approved under COMAR 13A.09.09: (1) the codification of Education Article §2-206.1; and (2) the consolidation of early childhood education program licensure.

On May 2, 2006, the General Assembly and the Governor enacted Senate Bill 111 (SB 111), which prohibits a nonpublic school from knowingly hiring or retaining employees who have been convicted of certain crimes. SB 111 has been codified in Education Article §2-206.1.

With an effective date of July 1, 2006, this statute applies to each nonpublic school approved under COMAR 13A.09.09 and affects all employees, regardless of hire date. Subsequently, the Office of the Attorney General issued an advice of counsel memorandum (Attachment II) indicating that the current appeal procedures set forth in statute and regulation governing nonpublic schools are not congruent with the mandate of Education Article §2-206.1. As such, the Department was advised to promulgate regulations providing adequate due process for a nonpublic school for which a Certificate of Approval may be revoked under this statute.

The proposed amendments establish the due process procedures for nonpublic schools whose Certificate of Approval may be revoked as a result of violation of Education Article §2-206.1

and also places existing due process procedures implemented through policy into regulation. Additionally, proposed amendments provide language clarifying the meaning of existing regulations and, in some instances, establishing more meaningful minimum standards.

Secondly, on March 27, 2007, the Maryland State Board of Education (MSBE) voted to adopt amended regulations that removed all regulatory language pertaining to Nursery School (age 3 and 4) from COMAR 13A.09.09 and introduced new regulatory language regarding the approval of nonpublic nursery schools (COMAR 13A.16.16). This action transferred all regulatory responsibilities (i.e., licensure of child care programs, approval of nonpublic nursery school programs, and the accreditation of early childhood programs) to the Division of Early Childhood Development. During regulatory development and discussions with stakeholder groups, it was determined that the new regulations should not differentiate among Montessori and other educational programs; thus, the nursery school regulations do not include specific regulatory requirements for Montessori educational programs. At the same time, no substantive changes were made to Nonpublic School Approval regulations in the interest of maintaining transparency and clarity; stakeholder groups acknowledged the need for future adjustment to align Montessori requirements, but these were held in abeyance to provide for implementation of licensure consolidation.

This course of action caused a temporary discrepancy between the regulatory requirements for Montessori Programs approved under COMAR 13A.09.09 (Kindergarten and grades 1-12) and those approved under COMAR 13A.16.16 (early childhood). COMAR 13A.09.09 specifies requirements for the operation of a Montessori Educational program (i.e., teacher credentials, curriculum and instructional materials), while COMAR 13A.16.16 is silent with regard to Montessori programs. Discussion with the original stakeholder group led to the conclusion that alignment – by eliminating Montessori references in the Nonpublic School Approval regulations – was desirable.

On April 29, 2008 the MSBE voted to publish the above-referenced changes to COMAR 13A.09.09. Through the regulatory process, the Montessori community expressed significant concern with the removal of Montessori-specific regulatory requirements during the open comment period. Subsequently, MSDE staff met with members of the Montessori community on July 10, 2008, August 13, 2008, and September 16, 2008 to discuss concerns. As a result of these meetings, and based on a recommendation from the State Superintendent of Schools, the MSBE acted to withdraw the revisions to COMAR 13A.09.09 at its October 28, 2008 meeting. This action represented an opportunity to respond to the concerns voiced by some members of the Maryland Montessori Community. This opportunity provided time for MSDE to address Montessori program standards and quality in a more meaningful way to better serve the interests of students and parents.

On December 19, 2008 and March 11, 2009, MSDE staff continued discussions with the Montessori community to identify ways to maintain regulatory assurance to the public regarding nonpublic Montessori educational programs in a more meaningful way than is currently available under existing regulation. It was agreed that the existing regulatory language is insufficient because teacher credential requirements do not require a Montessori Diploma from an accredited program; individuals wishing to operate a secondary school program are unable to find qualified teachers; and existing schools often find themselves out of compliance with the teacher credential requirements when a teacher leaves mid-year. It was also determined that

there are overarching standards that are consistent in all Montessori programs; however, there are slightly different philosophies for the implementation of these standards.

Participants at the June 18, 2009 meeting acknowledged that there are established Montessori organizations serving as experts in the field of Montessori education, and there was consensus that these organizations could become recognized by the MSDE to validate Montessori educational programs in Maryland. It was further agreed that the standards, identified by the group, would be considered as MSDE developed the policies and procedures for recognizing these organizations. MSDE staff also consulted with two national organizations - American Montessori Society (AMS) and Association Montessori International (AMI) - to discuss proposed regulatory changes and the concept of program validation by external organizations. Input from all stakeholders was considered and was included in the proposed regulatory amendment as appropriate.

On May 26, 2009, the MSBE acted to publish amended regulations that clarify due process procedures for the revocation of a schools Certificate of Approval as a result of violating Education Article §2-206.1 and to clarify current regulatory elements pertaining to the approval of Montessori Educational Programs. Subsequently, the proposed regulatory amendment was published in the *Maryland Register* on July 17, 2009.

Fourteen comments were received during the open comment period. Seven of these comments were in favor of the proposed changes. The remaining seven opposed the removal of the Montessori teacher credential and instructional materials and equipment regulations, citing that this change would allow any program to call itself a Montessori school and endangering the validity of Montessori programs in Maryland. Also noted in the comments is the concern that the regulations do not define the standards to be used by the Department-recognized validating organizations when validating Maryland Montessori educational programs. The concerns conveyed through opposing comments are addressed by MSDE staff in the Analysis of Public Comment (Attachment III).

Finally, the Administrative, Executive, and Legislative Review (AELR) Committee has requested that Education Article §2-102 be added as a legal authority citation for COMAR 13A.09.09. This addition will provide further clarification that the MSBE has the authority over the Department. The Attorney general's office has certified that this is a non-substantive change, and therefore, does not require the regulations to be republished. (Attachment IV)

EXECUTIVE SUMMARY:

COMAR 13A.09.09 requires revision due to the enactment of Education Article §2-206.1 and the July 1, 2007 transfer of approved nursery school programs to the Division of Early Childhood Development.

Proposed amendments:

1. establish appeal procedures that are congruent with the mandate of Education Article §2-206.1;
2. incorporate existing policy and due process procedures for serious noncompliance with regulatory requirements;

3. provide regulatory assurance to the public regarding nonpublic Montessori Programs in a more meaningful way than is currently available under existing regulation; and
4. provide clarification of the meaning of existing regulation.

Through publication in the Maryland Register, interested parties were invited to provide comments on these proposed changes. Fourteen comments were received and are summarized for your review. (Attachment III) The proposed amendments to COMAR 13A.09.09 do not have any economic impact, nor is there any impact on individuals with disabilities. There is no corresponding federal standard for these proposed actions.

ACTION:

I am requesting the adoption of proposed regulatory changes to COMAR 13A.09.09.

NSG: jes/sds

- Attachment #1: COMAR 13A.09.09 Educational Programs in Nonpublic Schools
- Attachment #2: August 24, 2006 Office of the Attorney General Advice of Counsel Memorandum
- Attachment #3: Analysis of Public Comments received
- Attachment #4: Attorney General's Certification

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert Crawford, Director, Division of Business Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0142, or email to rcrawford@msde.state.md.us, or fax to 410-333-8723. Comments will be accepted through August 17, 2009. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on September 21 and 22, 2009, at the Nancy S. Grasmick State Education Building, 200 West Baltimore Street, Baltimore, MD 21201.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Financial Reporting Manual for Maryland Public Schools, Revised 2009, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 36:3 Md. R. 194 (January 30, 2009), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

Subtitle 02 LOCAL SCHOOL ADMINISTRATION**13A.02.01 Local Boards of Education**

Authority: Education Article, §§2-205, 4-101, 4-105, 4-106, 5-101, 5-109, and 7-103,

Annotated Code of Maryland

.02 Records and Reports.

A. — B. (text unchanged)

C. Annual School Budget. The annual school budget shall be submitted by the local board of education to the board of county commissioners or county council or the city council according to the form and procedures adopted by the State Board of Education and set forth in the "Financial Reporting Manual for Maryland Public Schools Revised [1996 and Supplement 1] 2009", which is incorporated by reference. The forms and procedures in the manual shall apply to the annual school budgets beginning with fiscal year [1998] 2010.

D. — E. (text unchanged)

Subtitle 04 SPECIFIC SUBJECTS**13A.04.02 Secondary School Career and Technology Education**

Authority: Education Article, §§2-205(h), 5-202(f), 21-201, and 21-202, Annotated Code of Maryland

.03 Federal Funds.

A. (text unchanged)

B. Application for Funds.

(1) — (3) (text unchanged)

(4) Reporting Requirements.

(a) Financial reports shall be submitted according to the forms and procedures in the "Financial Reporting Manual for Maryland Public Schools Revised [1996] 2009", which is incorporated by reference in COMAR 13A.02.01.02C.

(b) (text unchanged)

(5) — (6) (text unchanged)

C. (text unchanged)

NANCY S. GRASMICK
State Superintendent of Schools

Subtitle 09 NONPUBLIC SCHOOLS**13A.09.09 Educational Programs in Nonpublic Schools**

Authority: Education Article, §§2-205, 2-206, 2-206.1, 2-304, 7-301, and 7-302; Family Law Article, §§5-561 and 5-704; Annotated Code of Maryland.

Notice of Proposed Action

[09-219-P]

The Maryland State Board of Education proposes to amend Regulations .02, .03, .06, .07, and .10, repeal existing Regulation .12, and adopt new Regulation .12 under COMAR 13A.09.09 Educational Programs in Nonpublic Schools.

This action was considered at the Maryland State Board of Education meeting on May 27 and 28, 2009.

Statement of Purpose

The purpose of this action is to clarify due process procedures that are now an implemented policy and to add specific due process for revocation of a school's Certificate of Approval as a result of violating Education Article, §2-206.1, Annotated Code of Maryland. Additional changes are being proposed to clarify current regulatory elements pertaining to the approval of Montessori Educational Programs.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Eleanor H. Kopchick, Nonpublic School Approval Specialist, Division of Certification and Accreditation, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0407, or email to ekopchick@msde.state.md.us, or fax to 410-333-8963. Comments will be accepted through August 17, 2009. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on September 21 and 22, 2009, at Nancy S. Grasmick State Education Building, 200 West Baltimore Street, Baltimore, MD 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (10) (text unchanged)

(11) "Montessori" means an educational program based on the educational philosophy of Dr. Maria Montessori [as reflected in the qualifications of the teachers, written curriculum, instructional methods, and materials and equipment used to implement the instructional program] that is validated by a Department-recognized Montessori validating organization.

[(12) "Montessori teacher credential" means the document that is evidence of successful completion of all academic course work, student internship, and all other requirements established by a Montessori teacher training program.]

[(13)] (12) — [(18)] (17) (text unchanged)

.03 Certificate of Approval for the Educational Program.

A. — M. (text unchanged)

N. Montessori.

(1) Effective September 1, 2009, any new Montessori educational program shall submit a validating document from a Department-recognized Montessori validating organization.

(2) Any Montessori educational program holding a Certificate of Approval issued prior to September 1, 2009 shall submit a validating document from a Department-recognized validating organization by July 1, 2015 in order to maintain the Montessori program recognition.

.06 Personnel Requirements.

A. (text unchanged)

B. Teachers.

(1) (text unchanged)

(2) A teacher, regardless of whether the employment status of the teacher is full-time, part-time, paid, volunteer, or substitute, shall meet the [following qualifications:] requirements of this regulation.

[(a)] (3) A teacher who provides instruction in English language arts, mathematics, science, social studies, and courses for which secondary school credit is granted, [and Montessori areas of instruction] shall hold, at a minimum, one of the following credentials:

[(i)] (a) — [(ii)] (b) (text unchanged)

[(iii)] (c) A bachelor's degree equivalent as determined by an independent agency authorized to evaluate foreign credentials that is designated by the Department[.].

[(b) In addition to the requirement of §B(2)(a) of this regulation, a teacher in a Montessori school shall hold a Montessori teacher credential appropriate for the level of assignment.]

[(3)] (4) (text unchanged)

C. (text unchanged)

.07 Educational Program.

A. Program.

(1) (text unchanged)

(2) Based on the classification specified on the Certificate of Approval of a school, a school shall maintain at the school a written curriculum of its educational program for the following areas of instruction:

(a) English, language arts, mathematics, science, and social studies for kindergarten and each grade; and

(b) Secondary school courses for which credit is issued[; and].

[(c) Montessori areas of instruction.]

(3) (text unchanged)

B. — D. (text unchanged)

.10 Administrative Practices.

A. — B. (text unchanged)

C. Admissions.

(1) — (2) (text unchanged)

(3) Kindergarten.

(a) [By the 2006-2007 school year and thereafter, a] A child shall be 5 years old on or before September 1 of a school year to be age-eligible for admission during that school year to a kindergarten program approved under this chapter.

[(b) A school may develop a plan to meet the September 1, 2006 kindergarten age-of-eligibility date requirement.]

[(c)] (b) (text unchanged)

D. (text unchanged)

.12 Procedures and Sanctions for Noncompliance.

A. If a school has serious areas of noncompliance or demonstrates a pattern of noncompliance with the conditions or standards on which the Certificate of Approval was based, the Department may place the school on intensive monitoring, which may include:

(1) Announced and unannounced site visits;

(2) Monitoring at the Department; or

(3) Requests for documentation pertaining to requirements under this chapter.

B. Following placement on intensive monitoring, if a school continues to fail to meet the conditions or standards on which its Certificate of Approval was based, the State Board shall give the legal authority written notice of the deficiencies and order the legal authority to correct the deficiencies of the school within a period of not less than 30 calendar days.

C. Deficiencies; Hearings and Appeal Process.

(1) A legal authority may request a hearing to challenge the notice of deficiencies if the legal authority files a written request with the State Board within 20 calendar days of receipt of the notice.

(2) If a legal authority requests a hearing, the legal authority and the Department shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side.

(3) If the State Board reviews an appeal request, or hears oral argument, and finds that a genuine dispute of material fact exists, the State Board shall promptly refer the

case to the Office of Administrative Hearings for proceedings in accordance with Regulation .12E of this chapter.

(4) Following a hearing, if the State Board finds that the conditions or standards on which the Certificate of Approval was based are not met, the State Board may issue an order to the legal authority to cease operating the educational program.

(5) If a legal authority does not request a hearing and fails to correct the specified deficiencies of the school within the period set by the State Board, the State Board may issue an order to the legal authority to cease operating the educational program.

D. Revocation; Hearing and Appeal Process.

(1) The State Board shall revoke the Certificate of Approval of a nonpublic school that knowingly hires or retains an individual in violation of Education Article, §2-206.1, Annotated Code of Maryland.

(2) Before revoking a school's Certificate of Approval, the State Board shall notify the legal authority of the school of the charges, and advise the legal authority of the right to request a hearing within 20 calendar days following receipt of the charges.

(3) If the legal authority does not request a hearing, the State Board shall issue an order to the legal authority to cease operating the educational program.

(4) If the legal authority requests a hearing before the State Board, the legal authority shall include the reasons for the request and any evidence that supports it.

(5) The legal authority and the Department shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side.

(6) If the State Board reviews an appeal request, or hears oral argument, and finds that a genuine dispute of material fact exists, the State Board shall promptly refer the case to the Office of Administrative Hearings for proceedings in accordance with Regulation .12E of this chapter.

E. Office of Administrative Hearings.

(1) The hearing procedures for appeals referred by the State Board to the Office of Administrative Hearings are in accordance with the Administrative Procedure Act, State Government Article, §10-201 et seq., Annotated Code of Maryland, and with COMAR 28.02.

(2) The Office of Administrative Hearings shall prepare an official case record as provided in COMAR 28.02.01.23.

(3) The administrative law judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the written proposed decision to the parties.

F. Exceptions.

(1) A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 10 calendar days of receipt of the findings. A party may respond to the exceptions within 10 calendar days of receipt of the exceptions.

(2) If exceptions are filed, all parties shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side.

G. Final Decision. The State Board shall make the final decision in all cases dealing with the revocation of a Certificate of Approval. The final decision shall be in writing and contain findings of fact and conclusions of law.

H. The legal authority of a school has the right to judicial review of a State Board determination under this regulation

as provided by the Administrative Procedure Act, State Government Article, §10-222, Annotated Code of Maryland.

NANCY S. GRASMICK
State Superintendent of Schools

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.02 Development in the Critical Area

Authority: Natural Resources Article, §8-1806(d),
Annotated Code of Maryland

Notice of Proposed Action

[09-218-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to amend Regulation .03 under COMAR 27.01.02 Development in the Critical Area. This action was considered at an open meeting held on June 3, 2009.

Statement of Purpose

The purpose of this action is to provide clarification and flexibility to local governments implementing the new requirements resulting from HB 1253, Ch. 119, Acts of 2008. The proposed action will allow local governments to propose alternative standards to the minimum 20 acre requirement for locating new intensely developed areas in the Critical Area.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment


Comments may be sent to Lisa A. Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3478, or email to lhoerger@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through August 17, 2009. A public hearing has not been scheduled.

.03 Intensely Developed Areas.

- A. (text unchanged)
- B. Location of Features.

Office of the Attorney General
Maryland State Department of Education
200 St. Paul Place
Baltimore, Maryland 21202
PHONE: 410-576-6465
FAX: 410-576-6309

TO: Sarah Spross
Interim Chief, Nonpublic Schools Approval Branch

FROM: Demetria Titus 
Assistant Attorney General

DATE: August 24, 2006

SUBJECT: Revisions to June 30, 2006 NSAB Memo to Nonpublic Schools re: SB 111

As I have explained recently, Liz and I have discussed the June 30, 2006 memorandum and attachments from Virginia Cieslicki to the nonpublic schools regarding SB 111. We discovered an error that I did not catch when I met to discuss these materials with you and Virginia. Consequently, my advice is for the branch to send a correction in a revised memo.

The issue concerns this sentence near the bottom of page 1: "You will note that a school may not appeal the Department's revocation of the Certificate of Approval pursuant to a violation of SB 111." It is my understanding that it was Virginia's intent to not provide any appeal rights for nonpublic schools that violate SB 111. As a legal matter, however, appeal rights can arise, whether or not they are specifically granted in statute.

As you know, a non-public school may not operate in this State without a Certificate of Approval. Md. Code Ann., Educ. Art. § 2-206(e). Once a non-public school is granted a Certificate of Approval, it has a property interest¹ in the certificate. The United States Constitution prohibits a State from depriving a person or entity of a property interest unless it provides the person or entity with basic due process rights. *Coleman v. Anne Arundel County Police Dept.*, 369 Md. 108, 142 (2002). Basic due process rights are the right to notice and the opportunity to be heard. *New Bd. Of School Comm'n v. PSASA*, 142 Md.App. 61, 71 (2002).

¹ The U.S. Supreme Court has opined that "protected interests in property are normally not created by the Constitution. Rather, they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits." *Goss v. Lopez*, 419 U.S. 565, 572-72 (1975). Here, a school's property interest in the Certificate of Approval is conferred by Education Article §2-206.

The formality of the notice and opportunity to be heard depends on the severity of the deprivation. If the deprivation is significant - - such as losing one's right to operate a business - - the Constitution calls for a formal evidentiary hearing. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Maryland's Administration Procedure Act codifies that requirement by requiring a "contested case" hearing whenever the Constitution requires that a hearing be held before a license can be revoked. Md. Code Ann., State Gov't Art. § 10-202(d)(ii).

The bottom line is that before MSDE can take away a Certificate of Approval from a non-public school for hiring a criminal, it must provide the school with the opportunity for an evidentiary hearing.

The question arose in my discussion with Liz whether there currently exists in State law or regulation notice to the public of the appeal procedure that MSDE will follow in these types of revocation cases. I note here that SB 111 states that "The Department shall revoke the Certificate of Approval or Letter of Tentative Approval of a non-public school that violates this section." I have looked at the various appeal procedures set forth in the statute and regulations governing non-public schools. Each one requires that a notice of deficiency be provided to the school and that the school be given a certain amount of time to correct the deficiency. If the non-public school requests a hearing, MSDE must stay the order to correct deficiencies. Educ. Art. § 2-206(g). After a full hearing, the State Board may order the school to cease operations. *Id.* § 2-206(h); COMAR 13A.09.10.05.

I have concluded that those appeal procedures are not congruent with the mandate of SB 111; that statute provides no opportunity to "correct the deficiency." It states, essentially, that if a non-public school knowingly hires a criminal, its certificate shall be revoked - - no second chances; no opportunity to fix it. Under current appeal procedures, however, there is an opportunity to fix the problem. If they were cited as the appeal procedures MSDE would use when it sought to revoke a certificate under SB 111, the non-public school would have a right to expect that it could correct its "deficiency" by firing the employee at issue. It is my view that because SB 111 requires that a certificate be revoked if the non-public school knowingly hired a criminal, firing the employee cannot cure the illegal action.

You may wonder why MSDE must provide any hearing if there is no "second chance"? At the hearing, the fact of the hiring and whether it was done knowingly will be the contested issue; one that MSDE may win or lose. It is my view, however, if MSDE prevails at the hearing by proving that the non-public school knowingly hired a criminal, the school's certificate must be revoked, even if the school "corrected the deficiency" by firing the culpable person.

Therefore, it is my advice that MSDE promulgate a regulation providing adequate due

process for a non-public school whose certificate of approval will be revoked under SB 111. I am working on the proposed regulatory language, which I will send to you shortly.

In the meantime, I recommend that a corrective memorandum be sent to the non-public schools notifying them that some due process will be provided for a SB 111 violation.

**ADVICE OF COUNSEL
NOT AN OPINION OF THE ATTORNEY GENERAL**

cc: John Smeallie, Assistant Superintendent for Certification and Accreditation
Elizabeth Kameen, Principal Counsel

**ANALYSIS OF PUBLIC COMMENTS
CONCERNING PROPOSED CHANGES TO COMAR 13A.09.09
PROVIDED TO THE MARYLAND STATE BOARD OF EDUCATION
SEPTEMBER 21, 2009**

TOPIC: In favor of the newly proposed regulations.

Writer: Maggie Miller, Prospective Owner, Mid-Shore Montessori School

Comments: Is supportive of the newly proposed regulations.

Staff response: Staff concurs.

TOPIC: In favor of the newly proposed regulations.

Writer: Beth Rose

Comments: Is in favor of the new regulations for Montessori Schools.

Staff response: Staff concurs.

TOPIC: In favor of the newly proposed regulations.

Writer: Jeff Miller

Comments: Is favor of the new regulations.

Staff response: Staff concurs.

TOPIC: In favor of the newly proposed regulations.

Writer: Kelly Even

Comments: Is supportive of the newly proposed regulations.

Staff response: Staff concurs.

TOPIC: In favor of the newly proposed regulations.

Writer: Cheryl Woelfel

Comments: Is supportive of the regulations found in MD Register Vol. 26 Issue 15 – Subtitle 09 Nonpublic Schools.

Staff response: Staff concurs.

TOPIC: In favor of the newly proposed regulations.

Writer: Paul Evans, RE/MAX Allegiance

Comments: Is in favor of the de-regulation of Montessori Schools in Maryland and believes that the removal of governmental oversight is a good thing. Indicates that Maryland is the last state to regulate Montessori Schools.

Staff response: Staff concurs. There are established Montessori organizations, serving as experts in the field of Montessori education that would be better equipped to validate the authenticity of a Montessori educational program.

TOPIC: In favor of the newly proposed regulations.

Writer: Barclay Malick

Comments: Is supportive of the newly proposed regulations.

Staff response: Staff concurs.

TOPIC: Opposes the proposed changes to the regulations referencing Montessori.

Writer: Pamela Trumble, Head of Schools, Franklin Schools

Comments: Expresses concern that the requests of the Montessori Community to require Montessori Teachers to hold a legitimate Montessori Credential and that a Montessori School is required to have written Montessori Curriculum, instructional materials and equipment have been ignored. Is concerned that there is no Department recognized validating organization at this time and that the regulations require new schools to have this document by September 1, 2009.

Staff response: Staff does not concur. The department held six meetings over the past thirteen months with the Montessori community. It was determined and agreed upon by participants that Montessori teacher credentials, curriculum, and instructional materials and equipment are essential to a Montessori school and are appropriate as determinants of approved

validating organizations. Participants recognized that the MSDE is not in the practice of approving specific methodologies and therefore is not the best qualified organization to evaluate and approve Montessori schools.

At the last meeting in June, participants focused on the concept of validating organizations and the proposed requirement for any Montessori school in Maryland to hold a document from a department-recognized validating organization. There was consensus that the standards identified by the group would be considered as MSDE develops policies and procedures for recognizing these organizations.

Finally, while the proposed regulations do indicate that regulatory requirements would be effective September 1, 2009 for new schools, it is the policy of MSDE not to approve new schools after August. Thus, there is ample time to develop policies and identify organizations. Preliminary conversations have already taken place with two national Montessori associations regarding this process.

These regulations would not affect existing Montessori schools until September 1, 2015, giving existing schools 5 years to come into compliance with the regulation.

TOPIC: Opposes the removal of the all references to Montessori

Writer: Hilary Green, Director, Institute for Advanced Montessori Studies

Comments: States, "...that it is vital that teachers in Montessori classroom are well educated and trained in Montessori Philosophy and practice." Expresses concern that not requiring credentialed Montessori teachers in the classroom may potentially ruin the reputation and quality of Montessori programs throughout the state.

Staff response: Staff does not concur. Currently, regulation does not require a Montessori Diploma from an accredited program; therefore, there is no control on the quality of the program. Production of a teacher credential does not ensure high standards or adherence to the Montessori philosophy, since any credential is currently acceptable. This is a serious weakness in existing regulation that entails risks to public assurance.

TOPIC: Opposes the deletion of regulations referencing Montessori teacher credentials and curriculum.

Writer: Linda Grodin, Walden Montessori School

Comments: Writes that removing the Montessori teacher credentials and curriculum requirements is a tremendous disservice to the public and reduces the value of the school's license. "Parents are clueless as to how to choose and having no criteria for the definition is a serious omission."

Staff response: Staff does not concur. Montessori is not trademarked, and it is not appropriate for the MSDE to be the entity responsible for the use of this name. Currently, schools that do not have Montessori-credentialed teachers operate educational programs that incorporate the philosophy of Dr. Maria Montessori. They do this without using the word Montessori in their name.

Furthermore, the intent of the regulatory change is to actually strengthen protections for parents and students who are seeking high-quality Montessori programs, since the organizations responsible for the validation of Montessori programs would be considered experts in the field.

The department held 6 meetings over the course of a year with the Montessori community. It was determined and agreed upon by participants that Montessori teacher credentials, curriculum, and instructional materials and equipment are essential to a Montessori school. By establishing these standards for the Montessori validating organizations and requiring these organizations to demonstrate their Montessori expertise prior to becoming recognized by the department, the public will have increased validity in the designation of a Montessori school.

TOPIC: Opposes the removal of Montessori from the regulations.

Writer: Ellie Lichtash, Alefbet Montessori School

Comments: States that members from the Montessori community and MSDE staff agreed that "since the state was unable to verify which schools were authentic Montessori schools and which teacher credentials were valid, non-state 'validating organizations' would be set up to do this." Writes that the removal of the word Montessori from the regulations was not agreed upon and will interfere with the standard of Montessori education in the state. Expresses concern that without guidance as to what validating organizations must look for in a Montessori school, any non-Montessori program could apply to be a validating organization and validate a program based on the educational philosophy of Dr. Maria Montessori only; with disregard to teacher credentials and lack of Montessori materials and equipment.

Staff response: Staff partially agrees; concurring that at the last stakeholder meeting on June 18, 2009, there was consensus among those in attendance regarding the implementation of Department-recognized validating organizations. However, staff does not agree with the balance of the comments.

First, Montessori has not been removed from the proposed regulatory language. Montessori is defined as an educational program based on the philosophy of Dr. Maria Montessori that is validated by a Department-recognized Montessori validating Organization.

Secondly, in order for a program to be recognized by MSDE as a Montessori validating organization, the organization would be required to demonstrate compliance with the policies and procedures established by MSDE prior to becoming recognized.

MSDE staff met with various stakeholder groups over the course of the past thirteen months to discuss the standards found in Montessori educational programs. Standards that were identified include: teacher qualifications, instructional materials and equipment, and Montessori curriculum and methodologies. During this process MSDE staff also learned that there are long-standing and subtle philosophic differences in the implementation of Montessori education programs. At the last stakeholder meeting in June, participants agreed that the standards, identified by the group, would be considered as MSDE developed the policies and procedures for recognizing these organizations.

Finally, the creation of these validating organizations would provide more meaningful regulatory assurance to the public regarding Montessori educational programs, by identifying organizations that are considered experts in the field of Montessori education

TOPIC: Opposes the removal of Montessori from the regulations.

Writer: Josh Oboler, Montessori Schools of Maryland

Comments: States that members from the Montessori community and MSDE staff agreed that “since the state was unable to verify which schools were authentic Montessori schools and which teacher credentials were valid, non-state ‘validating organizations’ would be set up to do this.” Writes that the removal of the word Montessori from the regulations was not agreed upon and will interfere with the standard of Montessori education in the state. Expresses concern that without guidance as to what validating organizations must look for in a Montessori school, any non-Montessori program could apply to be a validating organization and validate a program based on the educational philosophy of Dr. Maria Montessori

only; with disregard to teacher credentials and lack of Montessori materials and equipment.

Further recommends the additional language changes (in bold italics):

3A.09.09.02B. (11) Definitions.

(11) “Montessori” means an educational program based on the educational philosophy of Dr. Maria Montessori ***as reflected in the qualifications of the teachers, written curriculum, instructional methods, and materials and equipment used to implement the instructional program*** as validated by a Department-recognized Montessori validating organization.

(12) “Montessori teacher credential” means the document that is evidence of successful completion of all academic course work, student internship, and all other requirements established by a Montessori teacher training program and that is validated by a Department-recognized Montessori validating organization.

13A.09.09.06B.(2)(b) Personnel Requirements.

A. (text unchanged)

B. Teachers.

(1) (text unchanged)

(2) A teacher, regardless of whether the employment status of the teacher is full-time, part-time, paid, volunteer, or substitute, shall meet the [following qualifications:] ***requirements of this regulation.***

(b) In addition to the requirement of §B(2)(a) of this regulation, a teacher in a Montessori school shall hold a Montessori teacher credential appropriate for the level of assignment as validated by a Department-recognized Montessori validating organization.

Staff response: Staff partially agrees, concurring that at the last stakeholder meeting on June 18, 2009, there was consensus among those in attendance regarding the implementation of Department recognized validating organizations. However, MSDE does not agree with the balance of the comments.

First, Montessori has not been removed from the proposed regulatory language. Montessori is defined as an educational program based on the philosophy of Dr. Maria Montessori that is validated by a Department-recognized Montessori validating Organization.

Secondly, in order for a program to be recognized by MSDE as a Montessori validating organization, the organization would be required to demonstrate compliance with the policies and procedures established by MSDE prior to becoming recognized.

MSDE staff met with various stakeholder groups over the course of the past thirteen months to discuss the standards found in Montessori educational programs. Standards that were identified include: teacher qualifications, instructional materials and equipment, and Montessori curriculum and methodologies. During this process MSDE staff also learned that there are long-standing and subtle philosophic differences in the implementation of Montessori education programs. At the last stakeholder meeting in June, participants agreed that the standards, identified by the group, would be considered as MSDE developed the policies and procedures for recognizing these organizations.

The creation of these validating organizations would provide more meaningful regulatory assurance to the public regarding Montessori educational programs, by identifying organizations that are considered experts in the field of Montessori education

Finally, the additional regulatory language proposed is unnecessary, since the standards for Montessori validating organizations and the standards that all agree are appropriate for Montessori programs were identified in consultation with meeting participants. The policy for implementing regulation, once approved, will clearly reflect these standards.

TOPIC: Opposes the elimination of the wording that state the credentials needed to be a Montessori Philosophy school.

Writer: Jodi Lupco, Montessori School of Westminster

Comments: Writes, "The Montessori philosophy has very specific guidelines and without the wording conveying this - this very specific philosophy could be manipulated to fit the needs of an individual school. By not being specific... the doors are being opened to people to claim that their program is something that it is not."

Staff response: Staff does not concur. The intent of the regulatory change is to actually strengthen protections for parents and students who are seeking high-quality Montessori programs. The creation of Montessori-validating organizations would provide more meaningful regulatory assurance to the public, since the organizations responsible for the validation of Montessori programs would be experts in the field.

TOPIC: Opposes the "spinning off" of Montessori Pre-K programs and the wording of the proposed regulatory language.

Writer: Susan Pugh, Easton Montessori School

Comments: Does not agree with the “spinning-off” of Montessori Pre-K programs and states that “the wording here puts every valid Montessori program in the state at risk.” Expresses concern that the current situation does not bode well for the high standards the Montessori Community has set for themselves and the young children of Maryland.

Staff response: Staff does not concur. The transfer of approval for Nursery School education programs (ages 2, 3, and 4) and the corresponding regulations were approved by the Maryland State Board of Education in March 2007, and those changes went into effect July 1, 2007. The stated concern over this transfer is not germane to the proposed changes to COMAR 13A.09.09.

Furthermore, the intent of the regulatory change is to strengthen the protections for parents and students who are seeking high-quality Montessori programs. The creation of Montessori-validating organizations would provide more meaningful regulatory assurance to the public because the organizations responsible for the validation of Montessori programs would be experts in the field.

Attachment IV

Change to legal authority citation for 13A.09.09:

Subtitle 09 NONPUBLIC SCHOOLS

13A.09.09 Educational Programs in Nonpublic Schools

Authority: Education Article, §§~~2-102~~ 2-205, 2-206, 2-206.1, 2-304, 7-301, and 7-302; Family Law Article, §§5-561 and 5-704;
Annotated Code of Maryland

Sarah Spross

From: Demetria Tobias [dtobias@oag.state.md.us]
Sent: Wednesday, September 02, 2009 4:38 PM
To: Charlene Necessary; Sarah Spross
Subject: Re: FW: Preparation for September Board Meeting

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

The State Board is adding Maryland Code, Education Article section 2-102 to its citation of legal authority for COMAR 13A.09.09. This addition does not change any language in the proposed regulatory changes, nor does it decrease any benefits achieved by or increase any burdens imposed by the proposed changes.

Please contact me if you need additional information.

Demetria Titus Tobias
Assistant Attorney General
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Maryland State Department of Education
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(410) 576-6460 - phone
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dtobias@oag.state.md.us

>>> "Sarah Spross" <sspross@msde.state.md.us> 9/1/2009 3:16 PM >>>

Please note that Charlene indicated that an Attorney General's Certification needs to be completed for the addition of 2-201. Please reference her email below.

Thanks,

Sarah

Sarah Spross

Chief

Nonpublic School Approval Branch

200 W. Baltimore Street

Baltimore, Maryland 21201

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410-767-0407