

10-148 CMR Ch. 36, Refs & Annos

EFFECTIVE DATE:

July 30, 1976 (Filed 1-15-80)

REPEALED & REPLACED: May 14, 1995

September 27, 2004 - filing 2004-271. Also changed the title of the chapter from “Rules for Approval to Operate A Nursery School or A Registered Baby-Sitting Service” to “Rules for the Licensing of Nursery Schools”

NON-SUBSTANTIVE CORRECTIONS:

March 2, 2005 - spelling, spacing and capitalization only

10-148 CMR Ch. 36, § I

**Sec. I STATEMENT OF PURPOSE**

The purpose of these Rules is to establish licensing standards for Nursery Schools. The Rules support Nursery School programs, which meet children’s psychosocial and developmental needs while providing a safe, healthy and secure environment.

10-148 CMR Ch. 36, § II

**Sec. II DEFINITIONS**

A. **“Abuse or neglect”** means a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.

B. **“Adult”** means a person eighteen (18) years of age and over.

C. **“Corporal punishment”** means actions against a child, including, but not limited to:

1. Slapping;
2. Striking;
3. Shaking;
4. Shoving;
5. Spanking;

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6. Pinching;

7. Twisting;

8. Kicking;

9. Biting;

10. Ear pulling or ear twisting;

11. Hair pulling;

12. Forcing a child to taste or eat spicy, bitter or otherwise distasteful products for the purpose of discipline;

13. Spraying with water as a means of controlling behavior;

14. Placing tape over a child's mouth;

15. Mechanical restraints, such as tying a child to a chair;

16. Other forms of aggressive contact; or

17. Requiring or forcing a child to take an uncomfortable position such as:

- Squatting;

- Kneeling;

- Standing holding arms outstretched at sides or overhead;

- Bending; or

- Requiring or forcing a child to repeat physical movements.

D. **“Department”** means the Department of Health and Human Services.

E. **“Developmentally appropriate”** means activities and interactions that recognize and address the physical, emotional, social, and cognitive stages of each child.

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F. **“Director”** means the individual having responsibility for carrying out policy and administering the Nursery School. In a corporation or trust the individual delegated to carry out or enforce policies developed by the governing body or trustees.

G. **“Field trip”** means any excursion off the property of the Nursery School.

H. **“Governing body”** means a person or persons ultimately responsible for the operation of a Nursery School. The governing body has authority over the policies and activities of a Nursery School.

I. **“Group”** means a specific number of children assigned to specific staff using the same room or identifiable activity space. The space shall be an individual room or a specific area within a large room. The area shall be defined by a visible barrier, partition or other room divider having a height above the eye level of the children who will use that area.

J. **“Group leader”** means the person having responsibility for a group of children in a Nursery School licensed for thirteen (13) or more children.

K. **“Head teacher”** means the individual having overall program responsibility for children enrolled at the nursery school.

L. **“Legal guardian”** means the parent or other person who has legal decision-making authority for the child.

M. **“License”** means written permission, whether provisional, conditional or full by the Department which authorizes the licensee to operate a Nursery School.

N. **“Licensee”** means the person to whom a license has been issued.

O. **“Nursery School”** means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three (3) or more children, who are between the ages of thirty-three (33) months and under eight (8) years of age, provided that:

1. No session conducted for the children is longer than three and one half (3 ½) hours in length;

2. No more than two (2) sessions are conducted per day;

3. Each child in attendance at the nursery school attends only one session per day; and

4. No hot meal is served to the children.

P. **“Operator”** means the person operating a Nursery School.

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Q. **“Parent”** means the birth or adoptive mother or father, legal guardian or legal custodian of the child.

R. **“Person”** means any individual, partnership, association, organization, corporation, trust or other entity.

S. **“Provider”** means any person, partnership, agency, voluntary association or corporation who owns/leases building and conducts a Nursery School program for children in that building.

T. **“Staff”** means any individual who provides care and protection for a child(ren) in a Nursery School.

U. **“Substitute”** means an individual who takes the place of an absent staff member.

V. **“Volunteer”** means a person who helps or provides service without compensation in a Nursery School.

10-148 CMR Ch. 36, § III

Sec. III LICENSING REQUIREMENTS and PROCEDURES

A. **License required.** Any person operating a Nursery School, as defined in Section II.P. of these Rules, shall be required to have a license from the Department of Health and Human Services to operate this Nursery School.

B. **Unlicensed Nursery Schools.** No person or entity shall operate a Nursery School for more than two (2) children without a license from the Department in force, authorizing such operation.

C. **Responsibility for compliance.** The person or entity applying for the license shall be responsible for complying with Maine Laws and rules and regulations adopted pursuant thereto.

D. **Qualifications of the applicant and director.** The applicant and proposed director must demonstrate their willingness and ability to operate and manage the Nursery School with mature judgment, compassionate regard for the best interests of children and consistent compliance with these Rules and all relevant laws. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant to the proposed Nursery School, ownership interest and/or employment:

1. History and reputation for honest and lawful conduct in business and personal affairs. The applicant shall, as part of the license application and renewal process, authorize the Department to review the records of professional licensing boards or registers, any criminal record, child protective record, institutional abuse record or adult protective record necessary to determine compliance with these Rules;

2. Management and supervisory experience, including the capacity to manage the financial operations and staff of the Nursery School for which the license is sought;

3. Experience in the field of nursery schools, childcare, child development or areas related to the provision of childcare or nursery school services;

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4. Conduct which demonstrates an understanding of, and compliance with, *Rights for Children in Nursery Schools* (see Section XII of these Rules);

5. Information which relates to the ability or willingness to comply with all applicable laws and rules; and

6. Any information reasonably related to the ability to provide safe and developmentally appropriate services at the level of care for which the license is sought.

**E. Changes in children served and licensed capacity.** No person shall care for more children or for children who are older or younger than the license allows. At the discretion of the Department the license may be amended or reissued to increase or decrease the number of children allowed.

**F. Application for initial license.** Application for an initial license shall be made to the Department of Health and Human Services, Childcare Licensing Unit, State House Station #11, Augusta, Maine 04333, on forms furnished by the Department, and the appropriate fee must be included.

**G. Application for renewal of license.** At least sixty (60) days prior to the expiration of a license to operate a Nursery School, an application and the required fee for a renewal thereof shall be submitted to the Department on a form supplied by the Department, and accompanied by such additional information as may be required.

Upon receipt and review of applications and determination of compliance with the requirements of the Maine Revised Statutes Annotated and any regulations adopted pursuant thereof, the Department shall renew such license for a period of one (1) year, unless it finds that there are specific and sufficient grounds either for denial of the application for renewal or for renewal of the license on a temporary or conditional basis. If timely application for renewal is made, the existing license shall continue until a final decision on the renewal is made.

**H. Fees.** Fees for license application and annual renewal will be established based on an analysis of the Department's costs for issuing the license. Fees will not exceed the cost of issuing licenses.

**I. Requirement for references.** At the time of initial application, references will be required from three (3) persons who are acquainted with but not related to the Nursery School operator. If the Nursery School is operated by other than an individual, said references will pertain to the director who has primary responsibility for the operation of the Nursery School.

**J. Licenses are only effective at the location for which they are issued.** If the program moves to another location, a new license must be issued prior to operation.

**K. Single license for two buildings.** When two (2) or more buildings are or will be utilized to accommodate Nursery Schools operated by the same person, the person shall apply to the Department for a single license covering all the Nursery Schools, provided that:

1. The buildings are on the same or contiguous properties; and

2. The Department determines that the issuance of a single Nursery School license would not be detrimental to the health, safety, well-being, and development of the children served.

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The programs shall have the same director.

**L. One license per single family residence.** No more than one Nursery School, Child Care Facility license or Home Day Care certification shall be issued in any residence occupied by a single family.

**M. Dual licensure.** No license to operate a Nursery School shall be issued to anyone holding a license to provide foster care for children without prior approval from the Director of the Division of Licensing or designee.

**N. Initial inspections.** Following receipt of a complete application for a license to operate a Nursery School, a representative of the Department will conduct an inspection of the Nursery School, its policies and program to evaluate compliance with applicable Rules adopted by the Department.

**O. Determining compliance with these Rules.** In some instances, there are no common definitions as to degree of compliance with Rules. When such instances occur in these Rules, the determination of compliance or non-compliance shall be made at the discretion of the Department.

**P. Right of entry.**

1. The Department shall have the right to enter upon and into the premises of any licensed program site pursuant to these rules at any reasonable time, in order to determine the state of compliance with the provisions of these Rules and applicable laws.

2. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained as Nursery School without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from the court of jurisdiction authorizing the same.

**Q. Application constitutes permission for entry.** Any application for a license made pursuant to these Rules shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted or in connection with such application.

**R. Fire safety inspection.** No license to operate a Nursery School at any location can be issued until such Nursery School passes a satisfactory inspection for fire safety and fire protection. A written statement must be furnished annually by the State Fire Marshal's Office to the Department and must indicate that the Nursery School has complied with the requirements of the *Life Safety Code of the National Fire Protection Association* that are specified in:

1. The family day care homes section, if the Nursery School has at least three (3) but no more than six (6) children per session;

2. The group day care homes section, if the Nursery School has at least seven (7) but no more than twenty (20) children per session; or

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3. The child day care centers section, if the Nursery School has more than twenty (20) children per session.

**S. Increases in Licensed Capacity.** Requests for any increase in the number of children the Nursery School is licensed to serve shall be made in writing to the Department. No increases in the number of children a program is licensed to serve shall be made without written prior approval from the Department.

**T. Private water supplies.** Water, which is used for drinking and cooking purposes must be obtained from a municipal water system or other satisfactory supply which meets the standards of the Division of Health Engineering of the Department of Health and Human Services. Water shall be tested for the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, lead, and arsenic. If a satisfactory supply cannot be provided, a license or renewal of a license cannot be issued.

**U. Criminal history and child protection reports.** Criminal history, out of home abuse investigation reports and child protection reports shall be obtained for each individual applicant for a license, and for each paid, unpaid, temporary or regular staff member, director, or volunteer, in a Nursery School. Criminal history, out of home abuse investigation reports and child protection reports shall also be obtained for governing body members, trustees, partners, corporate officers, owners or operators who serve in a child caring capacity at the Nursery School.

10-148 CMR Ch. 36, § IV

Sec. IV TYPES OF LICENSES

The Department shall issue the following types of licenses:

**A. Provisional license.** A provisional license shall be issued by the Department to any applicant who meets all of the following:

1. Has not previously operated the Nursery School for which the application is made or is licensed but has not operated during the time of that license;
2. Complies with all applicable laws and Rules, except those which can only be complied with once clients are served by the applicant; and
3. Demonstrates the ability to comply with all applicable laws and Rules by the end of the provisional license term.

**B. Full license.** The Department shall issue a full license to an applicant who, in the Department's determination, complies with all applicable laws and Rules.

**C. Conditional license.** A conditional license may be issued by the Department when the licensee or applicant fails to comply with the applicable law and Rules and, in the judgment of the Commissioner, the best interest of the public would be so served by issuing a conditional license. The Department shall specify in writing when and what corrections must be made during the term of the conditional license.

**D. Temporary license.** A temporary license may be issued by the Department whenever a licensed Nursery School

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moves to a new location. The Department may issue a temporary license, valid pending final action on the application for the new location when:

1. All applicable standards have been met except a requirement that is dependent on the action of an agency of state government or a contractor of that agency; and
2. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor.

10-148 CMR Ch. 36, § V

Sec. V TERM OF LICENSE

A. **Term of provisional license.** The provisional license shall be issued for a minimum period of three (3) months or a longer period, as deemed appropriate by the Department, not to exceed twelve (12) consecutive months.

B. **Term of full license.** The term of a full license shall be for one (1) year.

C. **Term of conditional license.** The conditional license shall be issued for a specific period, not to exceed one (1) year, or the remaining period of the previous full license, whichever the Department determines appropriate based on the laws and Rules violated.

D. **Term of temporary license.** The temporary license shall be issued for a specific period, not to exceed six (6) months.

E. **Monitoring for compliance.** Regardless of the term and type of the licenses, the Department shall monitor for the continued compliance with applicable laws and Rules on at least an annual basis.

10-148 CMR Ch. 36, § VI

Sec. VI FAILURE TO COMPLY WITH APPLICABLE LAWS AND RULES

A. **Failure to comply with applicable laws and rules.** When an applicant fails to comply with applicable laws and rules, the Department may refuse to issue or renew the license. The notice of a refusal to issue or renew and a statement indicating the reasons for refusal shall be formulated in writing and mailed to the applicant.

B. **Other sanctions for failure to comply.**

1. **Conditional license.** If, at the expiration of a full or provisional license or during the term of a full license, the facility fails to comply with applicable laws and rules and, in the judgment of the Commissioner, the best interest of the public would be served, the Department may issue a conditional license, or change a full license to a conditional license. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Department to void the conditional license or refuse to issue a full license. The conditional



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license shall be void when the Department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility.

2. **Refusal to issue a license.** The Department shall refuse to issue a license to the applicant identified in the application if it finds any representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant or director of the program does not meet all requirements of law and rules.

3. **Suspension or revocation of a license.** The Department may suspend or revoke any license for violation of applicable laws and rules; for committing, permitting, aiding or abetting any illegal practices in the operation of the program or for conduct or practices detrimental to the welfare of children participating in the program.

a) **Emergency suspension.** Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of children attending the Nursery School, the Department may request the District Court for an emergency suspension pursuant to [Title 4 M.R.S.A. §184\(6\)](#).

b) **Administrative suspension.** Whenever conditions exist that immediately jeopardize the health and safety of children, the Commissioner of the Department may issue an order of closure, which suspends the Nursery School license for up to ten (10) days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The Department shall require that an order of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

4. **Intermediate sanctions.**

a) **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

1) Operation of a Nursery School without a license;

2) Impeding or interfering with the enforcement of laws or regulations governing the licensing of a Nursery School, or giving false information in connection with the enforcement of such laws and rules; and/or

3) Failure to comply with *Rights for Children in Nursery Schools*, Section XII of these Rules.

b) **Intermediate sanctions.** The Department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section VI.B.4 are present and the Department determines that a sanction is necessary and appropriate to ensure compliance with State licensing rules to protect the children of a Nursery School or the general public:

1) The Nursery School may be directed to stop all new admissions until such time as it determines that corrective action has been taken.

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2) The Department may impose a financial penalty upon a Nursery School.

**5. Financial penalties.**

a) The amount of any penalty to be imposed shall be calculated as follows:

1) Operation of a Nursery School without a license: Not to exceed \$100.00 per child per day.

2) Impeding, interfering or giving false information in connection with the enforcement of laws or rules governing licensure: \$500.00 per incident.

3) Violation of Rules governing child-to-staff ratios outlined in these Rules is a violation for which an administrative penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.

4) Violation of Rules governing records disclosure and confidentiality outlined in these Rules commits a violation for which an administrative penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.

5) Violation of *Rights for Children in Nursery Schools*, Section XII: not to exceed \$50.00 per incident.

b) If the Department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe each violation found to have been committed by the Nursery School, the rule or law that has been violated and any scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the Department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The Department will schedule an informal conference to resolve the dispute and a written decision based on this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section VIII.

c) Any Nursery School that is unable to immediately pay penalties may apply to the Department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

1) In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the Department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to children.

2) In order to have a fine reduced, a provider must supply sufficient information to the Department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to children.

d) The Department has the authority to determine whether a provider has supplied sufficient information

to the Department.

**10-148 CMR Ch. 36, § VII**

**Sec. VII SUBSEQUENT APPLICATION FOR A FULL LICENSE**

Subsequent to any of the following actions, a subsequent application for a full license may be considered by the Department when the deficiencies identified by the Department at the time the action was taken have been corrected:

- A. Issuance or voiding of a conditional license;
- B. Refusal to issue or renew a full license;
- C. Revocation or suspension of a full license; or
- D. Refusal to issue a provisional license.

**10-148 CMR Ch. 36, § VIII**

**Sec. VIII APPEAL PROCEDURE**

Any person aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedure Act, Title 5, Chapter 375. Administrative hearings will be held in conformity with the Department's Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Director of the Division of Licensing, and must specify the reason for the appeal. Any request must be mailed within ten (10) working days from receipt of the Department's decision to:

- A. Issue a conditional license;
- B. Amend or modify a license;
- C. Void a conditional license;
- D. Refuse to issue or renew a full license; or
- E. Refuse to issue a provisional license.

**10-148 CMR Ch. 36, § IX**

**Sec. IX WAIVERS**

**A. Request for waiver.** The Commissioner or designee may upon written request of any licensee or applicant waive or modify a provision of these Rules, which is not mandated by Maine Statute. The licensee or applicant shall provide clear and convincing evidence, including at the request of the Commissioner or his/her designee, expert opinion which satisfies the Commissioner or his/her designee that the applicant's or licensee's alternative method will comply with the intent of the rule for which waiver or modification is sought. Application for a waiver or modification shall be made on forms supplied by the Department and must include:

1. A statement of the provision for which waiver or modification is requested;
2. An explanation of the reasons why the provisions cannot be met and why a waiver or modification is being requested; and
3. A description of the alternative method proposed for meeting the intent of the provision sought to be waived or modified.

**B. Granting of Waivers.** All requests will be answered in writing and a record of them will be maintained. Such waiver or modification shall be granted for a specific period of time not to exceed the period of the license. Prior to the expiration of the license, if the waiver or modification continues to be necessary, a new application for waiver or modification must be made. Extensions will only be granted where the best interest of the child(ren) is served.

#### 10-148 CMR Ch. 36, § X

#### Sec. X GENERAL RULES FOR NURSERY SCHOOLS

**A. Length of session.** No session conducted for the children shall be longer than three and one half (3 ½) hours in length.

**B. Number of sessions per day.** No more than two (2) sessions shall be conducted per day.

**C. Attendance of each child.** Each child shall attend only one (1) session per day.

**D. Limitation of hot meals.** No hot meal shall be served to the children.

#### 10-148 CMR Ch. 36, § XI

#### Sec. XI ORGANIZATION and ADMINISTRATION

##### A. Administration

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1. Nursery Schools may be operated as for-profit or not-for-profit operations.
2. A corporation, partnership, association, or trust shall identify the names and addresses of its officers, partners, trustees, or directors and shall provide, where applicable, the charter, partnership agreement, constitutions, articles of incorporation and by-laws or trust document.
3. **Licensee responsibility for the Nursery School.** The licensee is responsible for the overall operation of the Nursery School.
4. **Other administrative responsibilities.** The applicant or licensee shall:
  - a) Define the purpose of the service;
  - b) Within one hundred and twenty (120) days of the effective date of these Rules, develop policies and provide for their implementation. This shall include, at a minimum, policies for the following:
    - 1) Child abuse reports;
    - 2) Child behavior guidance;
    - 3) Children who are ill;
    - 4) Financial policies for families;
    - 5) Fire drill procedures;
    - 6) Emergency procedures;
    - 7) Business hours;
    - 8) Staff qualifications and training;
    - 9) Supervision of staff;
    - 10) Reporting licensing violations;
    - 11) Inclusionary practices for children with disabilities; and
    - 12) Admission policy as outlined in Section XI.C.2 of these Rules.

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c) The licensee is responsible for assuring that the Nursery School's policies are followed. This includes:

1) Responsibility for establishing and maintaining a sound financial structure; and

2) Being qualified to administer the Nursery School or have a qualified person to administer the Nursery School.

**5. Administrative and other records.**

a) The licensee shall maintain complete and accurate fiscal accounts, and required personnel records.

b) The licensee shall maintain children's records as required by Section XIII.A.

c) Records required by Sections XIII.A and XIII.B shall be retained by the Nursery School for a minimum of six (6) months after the child leaves care or the staff leaves.

d) The licensee shall keep a daily attendance list of all children. The list shall be available for inspection by the Department and be kept on site for six (6) months.

**6. Insurance**

a) The Nursery School shall carry a minimum liability insurance of \$100,000 per person and \$300,000 per occurrence.

b) A certificate of liability insurance must be submitted prior to the issuance of a license.

**7. Posting of license.** The licensee shall post, in a conspicuous place, in the Nursery School any current license issued by the Department.

**8. Posting of other notices.** The licensee shall post, in a conspicuous place in the Nursery School, notice of the existence of environmental lead hazards and any other letters, notices or correspondence required by the Department to be posted.

**9. Notification of legal proceedings.** The licensee shall report, in writing, to the Department any legal proceeding whether criminal or civil (within 10 days of initiation of such proceedings) brought against him/her or any person employed by the Nursery School or residing therein if such proceedings arise out of circumstances related to the care of children in the Nursery School or may affect the continued operation of the Nursery School or call into question the suitability of the director, operator, or staff members to care for children.

**10. Notification of change of owner/operator.** The licensee shall provide prior notification, in writing, to the Department upon any change in ownership of the Nursery School.

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11. **Notification of change in director.** The licensee shall provide notification, in writing, to the Department of any change in the person designated by the owner or the governing body as qualified director of the Nursery School.

12. **Notification of change in location.** The licensee shall provide notification, in writing, to the Department of any change of location of the Nursery School. The licensee needs to submit an application for licensure of the new location. In order to operate a Nursery School, the licensee needs a new license for the new location.

13. **Notification for physical plant changes.** The licensee shall provide written notification to the Department for any changes to the heating system, any structural alterations or any plans to use existing space in the Nursery School that have not been inspected and approved.

14. **Availability of Rules.** The Nursery School shall have a copy of these Rules on the premises and shall make them available to any person upon request.

15. **Transfer of license.** A license shall not be transferred from one licensee to another, from one Nursery School to another, from one location to another, or from one owner to another.

16. **Notification of closure.** The licensee shall provide written notification of closure and expected date of closure of a Nursery School to the Department.

**B. Responsibility of the Nursery School to Parents/Parent Involvement**

1. **Responsibility to encourage parents to visit.** The Nursery School shall permit and encourage parents/legal guardians to visit the child, to observe the program at any time that the child is present and provide opportunities to participate in activities.

2. **Responsibility to exchange information with legal guardians.** The licensee shall regularly exchange information with the legal guardian(s) about the child.

3. **Responsibility to advise regarding field trips.** The Nursery School shall advise a child's legal guardian prior to taking children on field trips and shall require the legal guardian's written permission.

4. **Accessibility by telephone.** The Nursery School must be directly accessible to parents by telephone at all times when children are present.

5. **Availability of these Rules to parents.** The licensee shall make available to parents and legal guardians a copy of these Rules. For new enrollees, these Rules shall be made available at the time of the child's admission to the Nursery School.

**C. Admission and Intake**

1. **Pre-admission visits.** The licensee shall encourage the parent(s) to visit the Nursery School prior to admission.

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2. **Admission policy.** All Nursery Schools shall adopt a written description of admissions policies and criteria which shall include:

- a) Age range;
- b) Services offered;
- c) Fees (if any) including charges for late pick-up of children;
- d) Vacation policy;
- e) Terms of any contract or placement agreements; and
- f) Hours of operation.

3. **Immunization records.** The Nursery School shall require immunization records for enrolled children in accordance with Section XIX.A.1.

4. **Compliance with Americans with Disabilities Act standards** All Nursery Schools shall be in compliance with Americans with Disabilities Act (ADA) standards.

- a) The licensee cannot require that the parent(s) of children with physical, emotional and/or mental disabilities furnish the Nursery School with information pertaining to the child's disabilities, but is encouraged to ask pertinent developmental questions of all children prior to entrance to ensure appropriate and successful programming.
- b) A Nursery School must ensure that all staff are adequately trained and/or have sufficient experience to meet the needs of all children for whom they are responsible.

**D. Confidentiality**

1. Information about children in care (or formerly in care) and services provided to them by the Nursery School shall be kept confidential and shall be disclosed only upon written authorization of a child's legal guardian, except as otherwise specified by law.

2. Information about children in care (or formerly in care) shall be shared with the Department and the child's legal guardian upon request.

3. All personnel records shall be confidential but shall be provided to the Department upon request.

**E. Employees with communicable diseases.** No Nursery School shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease which would threaten the health and safety of the children, unless Standard Precautions reduce or eliminate exposure or risk to the



children.

**F. Biennial declaration by physician.** Each licensee, administrator or other staff member of the nursery school who provides care for the children, shall be declared, biennially (every two years), by a licensed physician to be free from communicable disease.

## 10-148 CMR Ch. 36, § XII

### Sec. XII RIGHTS FOR CHILDREN IN NURSERY SCHOOLS

**A. Right to freedom from abuse and neglect.** Children shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation.

**B. Right to confidentiality.** Children's records and information kept by the Nursery School is confidential. Nursery Schools shall follow the rules regarding confidentiality as outlined in Section XI.D of these Rules.

**C. Right to freedom from harmful actions or practices.** Each child has the right to freedom from harmful actions or practices that are detrimental to his/her welfare and to practices that are potentially harmful to the child.

**D. Right to a safe and healthy environment.** Each child has a right to an environment that meets the health and safety standards in these Rules.

**E. Right to be free from discrimination.** A child shall be provided Nursery School's services without regard to race, age, national origin, religion, disability, sex or family composition.

**F. Right to consideration and respect.** Children shall be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of developmentally appropriate practices by the Nursery School.

**G. Right to be informed of services provided by the Nursery School.** A child's legal guardian shall be fully informed of items or services which are included in the rate they pay for Nursery School services.

**H. Right to information regarding the Nursery School's deficiencies.** A child's legal guardian has the right to be fully informed of findings of the most recent licensing review conducted by the Department. The Nursery School shall inform children's legal representatives that the licensing review results are public information and available for examination upon request. Legal representatives shall be notified in a timely manner by the Nursery School of any actions proposed or taken against the Nursery School by the Department, including but not limited to, decisions to issue Conditional licenses, refusal to renew a license or to impose other sanctions.

**I. Right to a service plan.** Each child has the right to expect the provider to assist him/her in implementing any reasonable plan of service developed with community or state agencies.

**J. Right to a variety of appropriate activities, materials and equipment.** Each child has a right to a variety of activities, materials and equipment that meets the child's interests and capabilities.

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**K. Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a Nursery School program who believes that the rules pertaining to children's rights and the conduct of child care have been violated, shall report this information to the Department of Health and Human Services, Child Care Licensing Unit. Any person reporting suspected abuse and neglect shall report this information to Child Protective Intake Services, pursuant to [Title 22 M.R.S.A. § 4011-A](#) and Section XXIII of these Rules. Documentation shall be maintained in the facility that a report has been made.

**L. Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to participate in a Nursery School program, the Nursery School shall act as follows:

1. The Nursery School must make reasonable modifications to their policies and practices to include children, parents and guardians with disabilities, unless to do so would be a fundamental alteration of their program.
2. The Nursery School must make the Nursery School accessible to people with disabilities. Existing Nursery Schools must remove any readily achievable barriers, while newly constructed Nursery Schools and any altered portions of existing Nursery Schools must be fully accessible. If existing barriers can be easily removed without much difficulty or expense, providers must remove those barriers immediately even if there are no children with disabilities using the program.

(Rearranging tables, chairs or other furniture are all examples of readily achievable barrier removal).

**10-148 CMR Ch. 36, § XIII**

**Sec. XIII RECORDS and REPORTS**

**A. Child's Record**

Within one hundred and twenty (120) days of the effective date of these Rules, a record shall be completed for each child attending the Nursery School and at the time of admission for new enrollees. These records shall be maintained for each child in the program and shall include:

1. Name, birth date, street address and mailing address of the child;
2. Name, street address, mailing address and telephone number of parent(s) or legal guardian(s);
3. Places of employment of parent(s) or legal guardian(s), if employed;
4. The telephone number and street address and mailing address of employers;
5. A method of contacting the parent(s) or legal guardian(s) while the child is at the Nursery School;

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6. The name, street address and telephone number of a person other than the parent(s) or legal guardian(s) to contact in case the parent(s) or legal guardian(s) cannot be reached in an emergency;
7. Copy of financial agreement (if any) with parent(s) or legal guardian(s);
8. Dates of enrollment and termination;
9. Record of immunizations (as per Section XIX.A.1);
10. Names, addresses and telephone numbers of the child's physician and dentist, if available;
11. Written authorization to obtain emergency medical care;
12. Names of persons who are permitted by the parent(s) or legal guardian(s) to remove the child from the Nursery School;
13. A record of injuries sustained while in care of the Nursery School, significant changes in appearance and/or hygiene, or significant changes in behavior (such as: increased aggression, withdrawal, sexual acting out, and/or prolonged tantrums);
14. Allergies and other health conditions if known; and
15. Special needs, if any.

**A. Personnel Records**

Within one hundred and twenty (120) days after the effective date of these Rules, the following shall apply regarding personnel records:

1. A personnel record shall be kept for each paid or unpaid, temporary or regular staff member, director, owner or administrator employed in the Nursery School. Parents who volunteer on a regular weekly basis working in the capacity of a paid staff member shall be included.
2. The Nursery School shall maintain a personnel record on volunteers with the exception of 3.b, 3.d, and 3.e below.
3. The personnel record shall contain:
  - a) Name, street and mailing address, birth date, social security number and telephone number;
  - b) Training, education, experience and other qualifications;

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- c) For all new employees, written references or clear documentation of verbal contact, to include evaluation of employee's and volunteer's ability, character and suitability for work with children;
- d) An annual evaluation of each employee's performance by the director or immediate supervisor signed by the employee and evaluator;
- e) Dates of employment and termination. Reasons for termination shall be kept in the employee record for a minimum of one year;
- f) A statement signed by each employee certifying that the licensing Rules, including rules regarding Mandated Reporting of Child Abuse, have been read and understood;
- g) Record of SBI (State Bureau of Identification) criminal history report. The provider shall submit a request for this report prior to or at the time of employment;
- h) Annual motor vehicle check for all persons employed in any Nursery School in a capacity involving the transporting of minors as stated in the Child Protection Act, [17 M.R.S.A. § 2872](#);
- i) Documentation of disciplinary action;
- j) Immunization records as required by Section XIX.A.4; and
- k) Biennial declaration signed by a licensed physician that the employee is free from communicable disease.

4. These personnel records shall be available for inspection for licensing purposes by the Division of Licensing and Child Protective Services staff of the Department.

**10-148 CMR Ch. 36, § XIV**

**Sec. XIV PERSONNEL**

**A. Staff Requirements For All Nursery Schools**

1. Students of at least sixteen (16) years of age serving as assistants or volunteers in a child caring capacity need not be counted as children in care and shall not be counted as staff.
2. Students in Section XIV.A.1 above shall be under the direct supervision and observation of a staff member.
3. Effective within one hundred and twenty (120) days of the effective date of these Rules, there must be present at all times a staff member in each Nursery School who is currently certified in first aid and child and adult Cardio Pulmonary Resuscitation (CPR).

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4. Administrative and Nursery School staff must be able to perform their assigned tasks and meet all staff requirements in these Rules.

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5. Staff responsible for or assisting with the care of children in the Nursery School and other paid or unpaid staff and volunteers shall be emotionally stable and mature, able to exercise good judgment in the handling of children and shall not engage in any action or practice that may be deemed detrimental to the welfare of the children.

Actions or practices that may be deemed detrimental to the welfare of children or that are potentially harmful to children are strictly prohibited. Such actions or practices as defined by the Department include but are not limited to the following:

a) Corporal punishment (as defined in Section II.C of these Rules);

b) Use of a stick or other instrument in disciplining a child;

c) Sexual abuse;

d) Lack of supervision;

e) Neglect in any form;

f) Withholding food or drink;

g) Derogatory remarks to or about children or parents;

h) Name calling;

i) Shaming or embarrassment;

j) Unusual confinement; or

k) Rough handling.

6. The applicant or licensee shall immediately report to the Department the following information regarding themselves and information known to them about other persons residing or employed in the Nursery School:

a) Any convictions for sexual or violent crimes involving adults or activities which could have resulted in convictions for such crimes if prosecuted;

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Any crimes involving children or activities which could have resulted in convictions for such crimes if prosecuted;

b) Any admission to a substance abuse treatment facility, or conviction within the past five (5) years of OUI (operating a motor vehicle under the influence of intoxicants or with an excessive blood-alcohol level) or conviction within the past five (5) years for any other activity which involves substance abuse;

c) Any serious physical or mental health problems that have required admission to a hospital or other inpatient facility;

d) Whether or not Child Protective Services or the Institutional Abuse Unit (IAU) has ever investigated the provider or other individuals who may have contact with the children in care for allegations of child abuse or neglect;

e) Any prior conditional licenses, license suspension, fine and/or revocation regarding a child or adult care license or approval issued to the applicant;

f) The removal of children from their care or custody by court order; and

g) Any other information regarding their circumstances or treatment of children which is relevant to the Department's decision to issue a license.

If such information as described above exists, the Nursery School license applicant or licensee shall furnish the Department with written releases permitting the Department to obtain information regarding any of the above from appropriate officials or persons to determine whether there is a present threat to the health, safety and welfare of children.

In deciding what action to take regarding a license under the foregoing circumstances, the Department shall make a determination if sufficient evidence has been presented by the applicant or licensee to indicate that the problems which resulted in any of the above have been adequately resolved so that the applicant or licensee or other persons residing in or employed in the Nursery School will be in compliance with applicable law and Rules.

10-148 CMR Ch. 36, § XV

Sec. XV STAFF CHILD REQUIREMENTS

**A. Staff-child ratios and group sizes.**

1. **Staff-child ratios.** During any Nursery School session there shall be at least one (1) adult present for every twelve (12) children.

2. **Maximum group size.** Effective one (1) year from the effective date of these Rules, maximum group size shall be thirty (30) children.

**B. Children of staff members.** Children of staff members shall be counted in the child to staff ratios and groups when in care at the Nursery School.

**C. Supervision**

1. **Supervision for each child.** Each child, during both indoor and outdoor times, shall be supervised by a staff member who is aware of and responsible for the ongoing activity of each child and who is near enough to the child to intervene when needed.

2. **Crying children.** A child crying or crying out shall be attended to.

3. **Emergency plan.** When only one provider or staff member is present at the Nursery School there shall be a plan for obtaining help in an emergency.

**D. Other Staffing Requirements and Responsibilities**

1. **Responsibility for compliance with these Rules.** The on-site Director or Head Teacher shall be responsible for the Nursery School's daily operation in compliance with these Rules.

a) If the Director is absent from the Nursery School, a responsible staff member shall be designated to be in charge and be given authority to administer the Nursery School in compliance with these Rules.

b) In a Nursery School licensed for fifty (50) or more children, if the Director is absent, a staff member who meets Director/Head Teacher qualifications shall be designated to be in charge and be given authority to administer the Nursery School in compliance with these Rules.

2. Effective one (1) year from the effective date of these Rules, the Nursery School licensed for thirteen (13) to twenty-six (26) children shall employ at least one (1) group leader (see Section II.J) who may be the same person as the Director/Head Teacher. Aides or assistants may be employed to complete the ratios.

3. Effective one (1) year from the effective date of these Rules, the Nursery School licensed for twenty-seven (27) or over shall employ one (1) group leader (see Section II.J) per group of children. Aides or assistants may be employed to complete the ratios.

**10-148 CMR Ch. 36, § XVI**

**Sec. XVI TRAINING**

**A. Pre-Service Orientation**

1. **Orientation.** Within one hundred and twenty (120) days of the effective date these Rules, Nursery Schools shall orient all staff, including volunteers, in the areas listed below (a. through c.). Thereafter, all Nursery

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Schools shall orient new staff, including volunteers, prior to or during the first week of services in the following:

- a) Rules for the Licensing of Nursery Schools;
- b) The Nursery School's programs and policies; and
- c) Fire drill and other emergency procedures.

**B. Ongoing training for all Nursery School staff.** All Nursery Schools shall provide for ongoing training for all Nursery School staff as below:

1.	Employee hours	Clock Hours of Training per year
a)	Staff scheduled to work 20 hours or less per week	18 hours per year
b)	Staff scheduled to work more than 20 hours per week	30 hours per year

**C. Documentation of training.** The Nursery School shall document pre-service training and show documented evidence of ongoing training for all staff.

**D. Volunteers and Substitutes.** The Nursery School shall provide orientation to volunteers and substitutes to enable them to carry out their assigned tasks.

10-148 CMR Ch. 36, § XVII

Sec. XVII PROGRAM DESCRIPTION, SCHEDULE, MATERIALS AND EQUIPMENT

**A. Program Description and Schedule**

Effective one hundred and twenty (120) days from the effective date of these Rules, the Nursery School shall describe its program in writing. The following shall be included:

Current with updates received through May 14 , 2014 (Maine Weekly Rule Notice dated April 30, 2014).



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1. Ages of children served;
2. Hours of operation;
3. Numbers of children served;
4. A description of the program;
5. Opportunities for parent involvement;
6. A description of the child guidance methods used by staff;
7. A sample daily activities schedule which shall be posted at the Nursery School. The schedule shall include the following as appropriate to the hours of operation:
  - a) Times for snacks;
  - b) Time for rest or quiet time; and
  - c) A period of time for indoor and outdoor activities.

**B. Indoor and Outdoor Activities**

1. There shall be a period of rest or relaxation for at least ten (10) minutes.
2. Television, video viewing and/or use of the computer shall be educational and age appropriate. Television viewing shall be limited to one (1) hour or less per classroom per day.
3. Indoor and outdoor activities shall be developmentally appropriate.
4. Toileting shall take place based upon individual needs.

**C. Materials and Equipment**

1. **Toys and play equipment.** The Nursery School shall provide toys and equipment for activities appropriate to the ages and the numbers of the children. Materials provided and employed shall include items from the following areas:
  - a) blocks;

- b) housekeeping and dress-up;
- c) books and language;
- d) arts and crafts;
- e) puzzles, games and manipulatives;
- f) sensory activities (such as sand and water);
- g) science and nature;
- h) music; and
- i) toys, equipment and space that encourage gross motor development.

2. **Extra clothing for children.** The Nursery School shall have access to extra children's clothing in the event that clothes become soiled or damaged during the activities of the day.

3. **Materials and equipment for children.** Materials and equipment shall be appropriate for children enrolled, including those with special needs.

#### 10-148 CMR Ch. 36, § XVIII

#### Sec. XVIII CHILD GUIDANCE

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#### A. Child Guidance

1. **Positive methods of child guidance.** Staff shall use positive methods of child guidance which encourage self-control, self-direction, self-esteem and cooperation. Child guidance shall meet the individual needs of each child.

2. **Consistent and reasonable application of rules.** Rules, expectations and limits shall be applied consistently and carried out in a manner consistent with a child's developmental ability.

3. **Constructive methods of guidance.** The Nursery School shall use only constructive methods of guidance. This may include, but is not limited to interventions such as conflict resolution, encouraging the use of language skills, redirecting, providing choices, using praise or positive reinforcement, recognizing of a child's strengths, and allowing for individual differences.

**4. Corporal punishment prohibited.** Corporal punishment as defined in Section II.C in these Rules is strictly prohibited.

**5. Shaming and embarrassment.** Shaming and embarrassment shall not be used.

**6. Withholding of food, drink or rest.** The withholding of food, drink or rest shall not be used as punishment or threat of punishment.

**7. Forcing food or drink.** No child shall be forced to eat or drink against his/her will.

**8. Soiling or wetting.** No child shall be punished for soiling, wetting or not using the toilet.

**9. Cruel or severe punishment.** No child shall be subjected to cruel or severe punishment, humiliation, verbal abuse or unusual confinement.

**10. Withholding of any adaptive equipment.** The withholding of any adaptive equipment that would result in loss of a child's independence shall not be used.

**11. Actions or practices detrimental to the welfare of children.** No child shall be subjected to an action or practice detrimental to the welfare of children as defined by the Department in these Rules, Section XIV.A.5.

#### 10-148 CMR Ch. 36, § XIX

#### Sec. XIX. HEALTH/MEDICAL

##### A. Immunization

**1. Certificate of immunization for children.** For each child who is not attending public or private school, the facility shall require and have on file, within thirty (30) days of the child's first admission to the facility, and updated annually thereafter, a Certificate of Immunization which clearly illustrates each child's present immunization status. Each child's record must reflect an up-to-date status according to the Day Care Immunization Standards set forth by the Maine Bureau of Health Immunization Program (based on recommendations made by the Centers for Disease Control's Advisory Committee on Immunization Practices). Dates of immunization (month/day/year) and vaccine type shall be on file for each of the following vaccine-preventable diseases:

- a) Measles;
- b) Mumps;
- c) Rubella;

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- d) Diphtheria;
- e) Pertussis;
- f) Polio;
- g) Tetanus;
- h) Haemophilus influenzae Type b;
- i) Varicella;
- j) Hepatitis B; and
- k) Pneumococcal conjugate;

2. **Blood test demonstrating immunity.** A blood test demonstrating immunity to measles, mumps, and rubella can be provided as proof of immunity. Evidence of this shall be kept on file, and updated in a timely manner.

3. **Exceptions to proof of immunity.** No child shall be required under this rule to have any such immunization if his/her parent(s) states in writing a sincere religious or philosophical belief that it is contrary to the immunization requirements of this subsection or if the child's physician submits documentation that immunization against one or more of the diseases is medically inadvisable. A written statement must be included in the record of any child for whom such an exemption is being claimed. In the event of a disease outbreak, children or staff not vaccinated for religious, philosophical, or medical reasons must be excluded from the program until the outbreak no longer exists, or until the child receives the necessary immunization.

4. **Certificate of immunization for staff.** For staff born after 1956, the Nursery School shall obtain and have available a Certificate of Immunization for measles, mumps, rubella, tetanus and diphtheria. A laboratory blood test proving immunity may also be accepted. Documentation of immunity against measles, mumps and rubella is not required for staff born prior to 1957. No person shall be required to provide such documentation if she/he provides in writing the opposition for sincere religious or philosophical reasons or provides written documentation from a physician that such immunization is medically inadvisable.

5. **Documenting exemptions to immunization.** The Nursery School shall maintain a list of enrollees and staff exempted for religious, philosophical or medical reasons.

6. **Immunization records and reporting requirements.** The facility shall make immunization records available to the Department of Health and Human Services, Bureau of Health upon request, and is responsible for the timely completion of the Annual Immunization Assessment Report as requested by the Department.

## B. Medical Statement

1. **Request for physician's or psychologist's report.** When the Department has reasonable cause to believe

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that the applicant, or a person employed or residing in the Nursery School may have a physical or mental health problem which would have a detrimental impact on the care of children, which may include, but is not limited to substance abuse and/or addiction, or chronic or contagious illness, the Department may request the applicant or licensee to provide the Department with a physician's or psychologist's report. This report shall include a diagnosis of any physical or mental conditions and the professional's assessment of the impact or the effect of the condition and its treatment on the functioning of such individual.

**2. Exceptions to undergoing evaluations.** No person shall be required to undergo a physical examination or other evaluation if he or she states in writing that it is contrary to his or her sincere religious or philosophical teachings and practice, unless there is probable cause to suspect that he or she manifests the symptoms of a disease or illness which may affect the health, safety, or welfare of a child in care.

### C. Health Care Consultation

#### 1. Health consultation requirements for Nursery Schools licensed for thirteen (13) or more children:

a) Within one hundred and twenty days of the effective date of these Rules, the Nursery School shall have a written agreement with a physician, a nurse practitioner, physician's assistant, or nurse with pediatric or child care experience to serve as a health consultant.

b) The Nursery School shall have a written health care plan approved by the health care consultant which shall include:

1) Evidence of access to emergency medical services;

2) Prevention and control of communicable diseases;

3) Policy on administration of medication in compliance with Section XIX.F, including identification of staff members permitted to dispense medication and procedures for documentation of the administration or dispensing of medication; and

4) Provision of training to all Nursery School staff in the Nursery School's health care plan.

**2. Health consultation requirements for Nursery Schools licensed for three (3) to twelve (12) children.** Within one hundred and twenty days of the effective date of these Rules, the Nursery School licensed for 3-12 children shall ensure that a manual of written guidelines for the prevention and control of communicable diseases and other appropriate health practices for Nursery Schools of this size be available to and read by all staff.

### D. Disease Surveillance

**1. Daily observation.** The Nursery School shall observe the child each day at the time of arrival and throughout the child's stay for obvious signs of illness such as fever, diarrhea, vomiting, or skin rashes.

**2. Apparent illness of a child.** In the event of an apparent illness of a child, the Nursery School shall follow

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appropriate health practices.

- a) The Nursery School licensed for three (3) to twelve (12) children shall follow written recommendations according to Section XIX.C.2, above.
- b) The Nursery School licensed for thirteen (13) or more children shall follow its written health care plan.

**E. Accidents and Sudden Illness**

**1. Notification of parent or legal guardian.** The Nursery School shall immediately notify the child's parent or legal guardian of any illness, serious injury or accident involving their child. An adult designated by the parent shall be notified immediately should the parent be unavailable at the time of emergency.

**2. Documentation of incidents.** The Nursery School shall document all accidents, injuries, or emergencies in the child's record on the day of the occurrence and make such reports available to the parent or legal guardian.

**F. Administration of Medication**

**1. Written orders required.** The Nursery School shall administer prescription medication only upon written order from a physician or according to the labeled instructions on the original medicine container and with a written, signed and dated request from the parent.

**2. Recording the administration of medications.** The Nursery School shall record the administration of all medications, including the amount, time, date and signature of the administrator of the medication.

**3. Nonprescription medications.** The Nursery School shall not administer any nonprescription medications to a child without written, signed and dated parental permission naming the medication and dosage. Verbal permission is allowed in emergencies if the provider makes a written note and then gets written permission from the parent as soon as possible.

**10-148 CMR Ch. 36, § XX**

**Sec. XX. ENVIRONMENT AND SAFETY**

**A. General condition of the Nursery School and surrounding premises.**

1. The Nursery School and surrounding premises shall show evidence of routine maintenance. Repair of wear and tear shall be made in a timely fashion.

2. The Nursery School shall take immediate steps to correct any condition in the physical Nursery School or on the premises, which poses a danger to children's life, health or safety.

**B. Code Compliance** green and purple

1. **Local codes and ordinances.** Within ninety (90) days of the effective date of these Rules, the Nursery School shall provide documentation that indicates that the Nursery School complies with local codes and ordinances, including zoning.

2. **State Fire Marshal's Office approval.** Prior to initial operation and on an annual basis, the Nursery School shall receive approval from the State Fire Marshal's Office or designee.

3. **Satisfactory water.** The Nursery School shall, prior to initial operation and annually thereafter, submit a written satisfactory water analysis report completed by the Department of Health and Human Services, Division of Health Engineering or other approved laboratory, if the Nursery School's water is from any source other than an approved public water supply.

4. **Satisfactory lead levels.** Nursery Schools shall have an annual screening for potential lead hazards. A Nursery School may be exempt from this screening if:

a) The Nursery School was constructed in 1978 or later;

b) The Nursery School has been certified as lead-safe within the previous twelve (12) months; or

c) The Nursery School has been certified as lead-free.

**C. Sanitation, Health And Safety**

The premises, toys, and equipment must be kept in a state of cleanliness and maintained in a condition ensuring health and safety.

**D. Buildings, Space, Furnishings and Equipment**

1. **Minimum usable space.** Within ninety (90) days of the effective date of these Rules, the facility shall provide a minimum net area of thirty-five (35) square feet of usable space per child.

a) Areas not to be calculated as usable space include but are not limited to: hallways, lockers, cubbies, door swings, closets, supply cabinets, corridors, bathrooms, teachers' spaces, food preparation areas, and offices.

b) The maximum child occupancy of any play room shall not exceed the usable space per child requirement at any time, except for large group activities as reflected in the written program schedule, XVII.A.7.

**2. Heating**

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- a) A minimum temperature of at least sixty-eight (68) degrees measured within two (2) feet of the floor shall be maintained for children's playrooms during the heating season.
- b) Heating units shall be safeguarded in a manner to prevent injuries and burns.
- c) Portable heaters, except those approved by the Department of Public Safety, State Fire Marshal's Office, are prohibited.

### 3. General Safety

- a) All stairs used by children shall be equipped with a solidly mounted handrail.
- b) All stairs in areas used by children shall be enclosed by walls or railings or protected by a gate or door.
- c) Electrical outlets in areas used by children shall be protected by safety caps, plugs, or other means.
- d) Lead paint shall not be used on toys, furniture or any interior surfaces.
- e) All medications, cleaning supplies, toxic substances, matches, lighters, power tools, and items dangerous to children shall be stored in such a way as to be inaccessible to children, even in rooms which are not used by children.
- f) Weapons, firearms and ammunition are prohibited in Nursery Schools.

### 4. Lighting and Ventilation

- a) Every room, hallway and stairway used by children shall be well-lighted.
- b) Doors and windows used for ventilation shall be equipped with securely fastened screens.
- c) Every room, hallway, and stairway used by children shall be adequately ventilated.
- d) Smoking is prohibited on the premises when children are present. This includes all indoor and outdoor areas used by the Nursery School, where children may be present.

### 5. Furnishings

- a) Easily accessible and individual space shall be made available for children's outside clothing and personal possessions.
- b) A telephone (non coin-operated) in working condition must be available in the Nursery School.



- c) If used, mats, cots, and blankets shall be assigned and labeled for each child or disinfected prior to use by a different child.
- d) If used, cots, mats, and blankets shall be kept clean.
- f) The Nursery School shall assign each child his/her own toilet articles (toothbrush, brush, comb, etc.) and personal items (towel, drinking glass) when the use of such is offered.

## 6. Toilet Facilities

- a) One toilet and wash basin is required for every twenty (20) children.
- b) A step, low platform or other means shall be provided to children needing assistance in reaching toilets or wash basins.
- c) Disposable paper products shall be utilized. Alternatively, clean individually assigned wash cloths and towels may be distributed for a maximum of one day's use.
- d) Washing and toilet facilities with both hot and cold running water and soap shall be provided.

e) Water supply and sewage disposal shall meet the standards of the Division of Health Engineering.

f) The Nursery School shall provide a means of maintaining a water temperature of 120° Fahrenheit or less in taps available for use by children.

g) Drinking water shall be available to the children.

7. **First aid.** The Nursery School shall be equipped with at least one easily accessible first aid kit and a current manual of first aid measures. The type and quantity of supplies is to be determined by current guidelines of the American Red Cross or other recognized health organization or by the Nursery School's Health Consultant.

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## E. Outdoor Play Area

1. **Access to sufficient outdoor space.** Within one (1) year of the effective date of these Rules, the Nursery School must have access to an outdoor play area with sufficient space for safe play for all children.

2. **Hazardous outdoor conditions.** Where hazardous conditions exist in the outdoor play area, the children shall be protected from those conditions by fencing or other appropriate barriers.

3. **Outdoor supervision.** All parts of the playground must be under constant view of the supervising staff.

4. **Playground exits.** There shall be an exit from the playground other than through a building.
5. **Surfaces.** Surfaces used under climbers, swings and at the bottom of slides shall be energy absorbing material such as mulch, sand, or bark.
6. **Safe outdoor play equipment.** Outdoor play equipment shall be safely constructed and of a size suitable to the age and needs of all children.
7. **Drainage.** Play areas shall be well drained.
8. **Hazard free play area.** The play area shall be free of hazards and inspected by staff daily, prior to children having access to the area.
9. **Sand or sawdust.** Sand or sawdust boxes or piles shall be in a safe and sanitary condition.
10. **Sun and shade.** Outdoor play areas shall provide both shade and sun.
11. **Safe equipment.** All swings, climbing equipment, and slides shall be securely fastened to the ground.  
  
Commercially manufactured indoor/outdoor equipment specifically designed to be stable and safe without being fastened to the ground or floor shall be allowed under this rule.
12. **Swimming pool cleanliness.** Swimming or wading pools shall be cleaned and emptied daily or equipped with a filtration and/or treatment system.
13. **Swimming pools when not in use.** Swimming or wading pools must be emptied or removed from play areas when not in use or otherwise protected by fencing or suitable barriers to prevent access by children without staff approval, observation and supervision.

#### F. Fire Evacuation Drills

1. **Monthly fire drills.** Fire evacuation drills shall be conducted at least once a month for all children and adults present using at least two (2) means of exit.
2. **Fire drill procedures.** Drills shall be conducted according to policies and procedures which are posted in each room utilized by children.
3. **Record of drills.** A record of drills shall be available for inspection by the State Fire Marshal's Office and local fire inspectors.

**G. Animals in the Nursery School.** When animals are in a Nursery School, supervision must be such to ensure that neither children nor the animals are injured. There shall be proof of rabies vaccinations for household dogs and cats. Pets must not present a danger to children or guests. The Nursery School shall be free of pet odors and waste shall

be disposed of regularly.

10-148 CMR Ch. 36, § XXI

**Sec. XXI. FOOD AND KITCHEN NURSERY SCHOOLS**

**A. Food**

**1. Well balanced snacks.** Any snacks served in the Nursery School shall be well-balanced and nutritious.

a) Snacks shall be simple and nourishing and include items such as milk, fruit or fruit juice and crackers.

b) Fruit juice or a milk substitute shall be offered to children prohibited from drinking milk for medical reasons.

c) Information regarding children's allergies will be readily accessible to staff, who will prepare food accordingly.

**2. Food supplied from outside the Nursery School.** Food supplied from outside the Nursery School shall be kept refrigerated if required.

**3. Hand washing.** The Nursery School shall be responsible for hand washing of all adults and all children immediately prior to snacks.

**4. Supervision during snacktimes.** Children shall be under direct visual observation during snacktimes.

**B. Kitchen Facilities**

**1. Kitchen areas shall be well-lighted, clean and orderly.**

**2. Perishable food.** All readily perishable food shall be kept at room temperature for no more than one hour while being prepared or served.

**3. Refrigerator temperature.** Refrigerators used by the Nursery School shall be kept at a temperature not to exceed forty-one degrees (41°) Fahrenheit. A thermometer shall be kept in the refrigerator at all times.

**4. Freezer Temperature.** Freezers used by the Nursery School shall be kept at a temperature not to exceed zero (0°) Fahrenheit. A thermometer shall be kept in the freezer at all times.

**5. Milk products.** All milk products shall be pasteurized.

**6. Preparation and eating surfaces.** All food preparation and eating surfaces shall be washed before and after use.

**7. Staff hand washing.** Staff shall wash their hands both before and after food handling or preparation.

**8. Dish washing.** Dishes shall be washed in an automatic dishwasher or thoroughly washed in warm soapy water and rinsed in hot water.

**9. Paper products.** Paper products shall have a single use and shall be disposed of immediately after use.

**10. Use of the food preparation area.** The food preparation area shall not be used for other activities when food or drink is being prepared or served.

10-148 CMR Ch. 36, § XXII

Sec. XXII. TRANSPORTATION

A. **Vehicle Requirements**

1. **Licensed driver.** Any person authorized by the Nursery School to transport children shall be properly licensed to operate that class of vehicle.

Effective six (6) months after the effective date of these Rules, all staff and volunteers who transport children as part of their regular duties shall complete the Department approved children's transportation training.

2. **Number of passengers.** The number of persons transported in any vehicle shall not exceed the seating capacity of the vehicle.

3. **Safety in vehicles.** No child shall be permitted to remain in any vehicle while it is unattended. Children must be seated with seat belts fastened or in child safety seats (when applicable according to State law) while vehicle is in motion.

4. **The driver shall wear a seat belt.**

5. **All children shall ride in the back seat.**

6. **One child per seat belt.** The buckling of more than one child in a single seat is prohibited.

7. **Adult to child ratios in vehicles.** There shall be one (1) adult present for up to six (6) children transported. Additional children shall be supervised in accordance with staff/child ratios, Section XV.A. In addition one (1) staff person or adult volunteer per every three (3) non-ambulatory children must be present in the vehicle.

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8. **Child Safety Seats.** The following standards shall be met regarding the use of car safety seats:

	<b>TODDLER</b>	<b>YOUNG CHILDREN (up to 8 years old)</b>
<b>WEIGHT</b>	Over 1 year and over 20 lbs. - up to 40 lbs.	Over 40 lbs. - up to 80 lbs.
<b>TYPE of SEAT</b>	Convertible/forward-facing	Belt positioning booster seat
<b>SEAT POSITION</b>	Forward-facing	Forward-facing
<b>ALWAYS MAKE SURE:</b>	<p>Harness straps should be at or above shoulders</p> <p>Most seats require top slot for forward-facing</p>	<p>Belt positioning booster seats must be used with both lap and shoulder belt.</p> <p>Make sure the lap belt fits low and tight across the lap/upper thigh area and the shoulder belt fits snug crossing the chest and shoulder to avoid abdominal injuries</p>

**B. Limitations of vehicle requirements.** The vehicle requirements above shall not apply to vehicles not operated by the Nursery School, such as school buses, taxis and vehicles operated by parents or public transportation agencies.

**C. Weapons in vehicles.** Weapons shall not be transported in any vehicle in which children are riding.

**10-148 CMR Ch. 36, § XXIII**

**Sec. XXIII. REPORTING CHILD ABUSE AND NEGLECT**

**A. Mandatory reporting.** The Nursery School shall make all childcare personnel aware of their status and responsibility as mandated reporters to the Department when there is reasonable cause to suspect abuse or neglect of a child under the age of eighteen (18).

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When reports are made in good faith, reporters are immune from civil or criminal liability for the act of reporting or participating in the investigation or proceeding.

The Department will respect a reporter's request for confidentiality to the extent possible. The identity of reporters will not be revealed unless required to protect the child from serious harm.

**B. Policy for handling suspected instances of child abuse or neglect.** The Nursery School shall adopt written policy for handling suspected instances of child abuse or neglect in accordance with Maine law.

**C. Nursery School cooperation in investigations.** The Nursery School staff shall cooperate in the investigation of allegations of abuse and neglect.

10-148 CMR Ch. 36, § XXIV

Sec. XXIV. PERSONNEL

**A. Staff Qualifications for Nursery Schools Licensed for three (3) to twelve (12) Children.**

**1. Director and/or head teacher qualifications.** The Director and/or Head Teacher shall be at least twenty-one (21) years of age, have a high school diploma or equivalent, hold a current certification in first aid and CPR.

a) Effective three (3) years from the effective date of these Rules, the director and/or head teacher shall meet the following:

Twelve (12) hours of training in healthy, safe environments; child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity or business and professional development; childcare; and have at least six (6) months experience working in a childcare program, Nursery School or other children's program.

**2. Qualifications of other staff.**

a) All staff shall be at least eighteen (18) years of age.

b) All staff shall have a high school diploma or equivalent or be attending high school or be enrolled in a GED preparation program.

c) All staff shall demonstrate the following:

1) The ability and willingness to comply with all applicable laws and rules;

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- 2) The ability to provide safe and compassionate services; and
- 3) A history of honest and lawful conduct.

**B. Staff Qualifications for Nursery Schools Licensed for thirteen (13) to twenty (20) Children**

**1. Director and/or head teacher qualifications.** The Director and/or Head Teacher shall be at least twenty-one (21) years of age, have a high school diploma or equivalent, hold a current certification in first aid and CPR.

a) Effective three (3) years from the effective date of these Rules, the director and/or head teacher shall meet one of the following:

- 1) Graduation from an accredited high school or its equivalent and twelve (12) months of employment in a licensed Nursery School or Child Care Facility licensed for thirteen (13) or more children or twelve (12) months experience as the operator of a Nursery School or Child Care Facility licensed for three to twelve (3-12) children (including Family Day Care), and twelve (12) hours training in healthy, safe environments; child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity or business and professional development childcare, early childhood education, topics related to operating a Nursery School, or other subjects related to the age or characteristics of children for whom care is planned.

- 2) Thirty (30) credit hours of college courses including six (6) credit hours in childcare, child development, childcare administration, behavioral sciences or closely related subjects and six (6) months experience (employment or college practicum) in a Nursery School or Child Care Facility licensed for thirteen (13) or more or six (6) months experience (employment or college practicum) operating a Nursery School or Child Care Facility for three (3) to twelve (12) children.

- 3) Child Development Associate (CDA) as awarded by the CDA National Credentialing Program.

**2. The Nursery School shall employ a minimum of one (1) Director/Head Teacher.** The Director/Head Teacher may be the operator or licensee.

**3. Qualifications of other staff.**

a) All staff shall be at least eighteen (18) years of age.

b) All staff shall have a high school diploma or equivalent or be attending high school or be enrolled in a GED preparation program.

c) All staff shall demonstrate the following:

- 1) The ability and willingness to comply with all applicable laws and rules;

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2) The ability to provide safe and compassionate services; and

3) A history of honest and lawful conduct.

**4. Group leader qualifications.** Group leader qualifications shall be in accordance with Section XXIV.E.2 below.

**C. Staff Qualifications for Nursery Schools Licensed for twenty-one (21) to forty-nine (49) children.**

**1. Director and/or head teacher qualifications.** The Director and/or Head Teacher shall be at least twenty-one (21) years of age, have a high school diploma or equivalent, hold a current certification in first aid and CPR.

a) Effective three (3) years from the effective date of these Rules, the director and/or head teacher shall meet one of the following:

1) Graduation from an accredited high school or its equivalent and twelve (12) months of employment in a licensed Nursery School or Child Care Facility licensed for thirteen (13) or more children or twelve (12) months experience as the operator of a Nursery School or Child Care Facility licensed for three to twelve (3-12) (including Family Day Care), and twelve (12) hours training in healthy, safe environments; child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity or business and professional development, childcare, early childhood education, topics related to operating a Nursery School or Child Care Facility, or other subjects related to the age or characteristics of children for whom care is planned;

2) Thirty (30) credit hours of college courses including six (6) credit hours in childcare, child development, childcare administration, behavioral sciences or closely related subjects and six (6) months experience (employment or college practicum) in a Child Care Facility licensed for thirteen (13) or more children or six (6) months experience (employment or college practicum) operating a Child Care Facility for three (3) to twelve (12) children;

3) Child Development Associate (CDA) as awarded by the CDA National Credentialing Program;

4) An Associate in Arts/Associate in Science (AA/AS) in Early Childhood Education;

5) An AA/AS with twelve (12) credits in Early Childhood Education or a related field and two (2) years direct childcare experience;

6) Thirty (30) college credits in Early Childhood Education with one (1) year direct childcare experience;

7) Child Development Associate (CDA) as awarded by the CDA National Credentialing Program with three (3) years direct childcare experience;



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8) Five (5) years direct childcare experience and one hundred and thirty-five (135) hours training in healthy, safe environments; child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity or business and professional development; childcare; early childhood education; topics related to operating a Nursery School or Child Care Facility; or other subjects related to the age or characteristics of children for whom care is planned.

**2. Qualifications of other staff.**

- a) All staff shall be at least eighteen (18) years of age.
- b) All staff shall have a high school diploma or equivalent or be attending high school or be enrolled in a GED preparation program.
- c) All staff shall demonstrate the following:
  - 1) The ability and willingness to comply with all applicable laws and rules;
  - 2) The ability to provide safe and compassionate services; and
  - 3) A history of honest and lawful conduct.

**3. Group leader qualifications.** Group leader qualifications shall be in accordance with Section XXIV.E.2 below.

**D. Staff Qualifications for Nursery Schools Licensed for Fifty (50) or More Children.**

**1. Director and/or head teacher qualifications.** The Director and/or Head Teacher shall be at least twenty-one (21) years of age, have a high school diploma or equivalent, hold a current certification in first aid and CPR.

- a) Effective three (3) years from the effective date of these Rules, the director and/or head teacher shall meet one of the following:
  - 1) A Bachelor of Arts/Bachelor of Sciences (BA/BS) in Early Childhood Education;
  - 2) An Associate in Arts/Associate in Science (AA/AS) in Early Childhood Education and three (3) years direct childcare experience;
  - 3) AA/AS in a related field with eighteen (18) credit hours in Early Childhood Education and three (3) years direct childcare experience;
  - 4) BA/BS in a related field with eighteen (18) credit hours in Early Childhood Education and three

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(3) years direct childcare experience;

5) Child Development Associate (CDA) as awarded by the CDA National Credentialing Program with five (5) years direct childcare experience; or

6) Seven (7) years experience and one hundred and eighty (180) hours training in healthy, safe environments, child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity or business and professional development; childcare, early childhood education, topics related to operating a Nursery School; or other subjects related to the age or characteristics of children for whom care is planned.

**2. Qualifications of other staff.**

a) All staff shall be at least eighteen (18) years of age.

b) All staff shall have a high school diploma or equivalent or be attending high school or be enrolled in a GED preparation program.

c) All staff shall demonstrate the following:

1) The ability and willingness to comply with all applicable laws and rules;

2) The ability to provide safe and compassionate services; and

3) A history of honest and lawful conduct.

**3. Group leader qualifications.** Group leader qualifications shall be in accordance with Section XXIV.E.2 below.

**E. Other staff requirements for Nursery Schools licensed for thirteen (13) or more children.**

1. If the Nursery School provides a kindergarten program, it must be staffed by a certified teacher.

2. Effective one (1) year from the effective date of these Rules, the group leader or person having the primary responsibility for a group of children in a Nursery school with thirteen (13) or more children shall be at least eighteen (18) years of age and meet one of the following:

a) Child Development Associate (CDA) as awarded by the CDA National Credentialing Program;

b) Six months experience working in a Nursery School or Child Care Facility licensed for 13 or more children; or

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- c) One year (30 credit hours) of college work including a course in a child related subject.