

COMAR T. 13A, Subt. 15, Ch. 14, Refs & Annos

COMAR 13A.15.14.01

.01 Scope.

A. This chapter applies to hearings concerning actions taken by the Office of Child Care which adversely impact on family child care registrations, such as registration denials, revocations, suspensions, reductions in capacity, or limitations on the ages or numbers of children who may be admitted to a family child care home.

B. The Superintendent has delegated authority to administrative law judges of the Office of Administrative Hearings to make the final decisions of the Superintendent on those actions listed in §A of this regulation. A decision by an administrative law judge of the Office of Administrative Hearings in a family child care registration case is the final decision of the highest administrative authority in the case and thus is directly appealable to the circuit court in the jurisdiction where the family child care home is located, pursuant to State Government Article, §10-222, Annotated Code of Maryland.

COMAR 13A.15.14.02

.02 Definitions.

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

B. Terms Defined.

(1) “Administrative law judge” means a hearing officer designated by the Maryland Office of Administrative Hearings to render the final decision of the Superintendent in a hearing.

(2) “Appellant” means the individual requesting the hearing or appealing a decision, or that individual’s legal representative.

(3) “Applicant” means an individual applying for a registration to operate a family child care home.

(4) “Capacity” means the number of day care children who may be in care at a family child care home at the same time.

(5) “Days” means calendar days.

(6) “Department” means the State Department of Education.

(7) Emergency Action.

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- (a) "Emergency action" means an action which is effective immediately because of danger to children's health or safety.
- (b) "Emergency action" may include an emergency suspension, an immediate reduction in capacity, and an immediate limitation on the ages or numbers of children who may be admitted to care.
- (8) "Filed" means received in writing by the Office of Child Care.
- (9) "Filing date" is the date a hearing request is received by the Office of Child Care.
- (10) "Office" means the central office or a regional office of the Office of Child Care.
- (11) "Office of Administrative Hearings" means the administrative unit of Maryland government which is responsible for processing requests for hearings, for scheduling and conducting hearings, and for rendering decisions pursuant to State Government Article, §9-1601 et seq., Annotated Code of Maryland.
- (12) "Party" means the appellant and the Office of Child Care.
- (13) "Provider" means a person registered to provide family child care.
- (14) "Registration" means a certificate issued by the Department which gives a person legal permission to operate a family child care home.
- (15) "Superintendent" means the State Superintendent of Schools.

COMAR 13A.15.14.03

.03 Hearing Requests.

A. A hearing shall be held when an applicant or provider requests a hearing to contest:

- (1) The denial of an application for registration;
- (2) A revocation or suspension of a registration; or
- (3) Any other action that adversely impacts on registration, including, but not limited to:
 - (a) The setting of a provider's capacity at a number below that requested;

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(b) A reduction in capacity; or

(c) A limitation on the ages or numbers of children who may be admitted to the family child care home.

B. Non-emergency Action Hearing Requests.

(1) All non-emergency action hearing requests shall be forwarded in writing to the Office and shall state the name and address of the provider, and the effective date and nature of the action appealed from.

(2) A hearing request shall be filed not later than 20 days after the date of the notice of the action taken by the Office.

(3) The Office shall forward a hearing request to the Office of Administrative Hearings within 10 days of the filing date.

(4) A hearing decision shall be rendered by the Office of Administrative Hearings within 90 days of the filing date.

(5) Any non-emergency action is stayed if a hearing request is timely filed, unless the action is:

(a) A revocation which immediately follows an emergency suspension period; or

(b) A denial which follows the expiration of the provisional period of a registration that was issued on a provisional basis.

C. Emergency Action Hearing Requests.

(1) All emergency action hearing requests shall be filed with the Office within 30 days of the hand-delivery of the notice of the Office's action, and shall state the name and address of the provider, and the effective date and action appealed from.

(2) The Office shall notify the Office of Administrative Hearings at once upon receipt of an emergency action hearing request. Oral notification shall be followed by written notification within 24 hours.

(3) A hearing shall be conducted within 7 days of the filing date of the hearing request.

(4) A decision by the administrative law judge shall be rendered within 7 days after the conclusion of the hearing.

(5) The filing of a hearing request may not stay an emergency action.

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.04 Preliminary Conference.

- A. The Office shall hold a preliminary conference, on request of an appellant, before a hearing on an action.
- B. The conference is optional and does not replace the hearing process.
- C. The conference may be attended by a representative of the Office, the appellant, and the appellant's representative.
- D. The conference may lead to an informal resolution of the dispute. However, a hearing shall be held unless one of the parties submits a written withdrawal of the hearing request to the Office of Administrative Hearings.

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.05 Denial or Dismissal of a Hearing Request.

- A. The Office of Administrative Hearings may deny a request for a hearing if:
 - (1) The issue appealed is not one which adversely affects the registration of a family child care home; or
 - (2) The date of the request is not within the required time limits.
- B. The Office of Administrative Hearings may dismiss an appeal if the appellant:
 - (1) Withdraws the request in writing; or
 - (2) Without good cause, does not appear at the hearing.

COMAR 13A.15.14.06

.06 Hearing and Appeal Procedures.

- A. Notice to Appellant.
 - (1) For non-emergency hearings, the Office of Administrative Hearings shall, by regular mail, notify the Office and the appellant of the time, date, and place of the hearing at least 20 days in advance. For rescheduled non-emergency hearings, a 10-day notice is required. For all emergency action hearings, at least 3 days advance notice is required.

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(2) The notice to the appellant shall:

(a) Refer to the regulations governing the hearing procedure; and

(b) Advise the appellant of:

(i) The right to be represented by a lawyer;

(ii) The right to present documents and witnesses in support of the appeal;

(iii) Whom to call if the appellant cannot attend the hearing; and

(iv) The fact that failure to attend the hearing without good cause may lead to dismissal.

(3) The Office shall mail the appellant a copy of these administrative hearing regulations when the request for a hearing is filed.

B. Rescheduling of Non-emergency Action Hearings. The appellant, the Office, or the Office of Administrative Hearings may request a change in the hearing date. If the Office of Administrative Hearings finds that good cause for delay exists, another date shall be set. The time limit for rendering a decision established by Regulation .03B(4) is extended by the period of delay due to a postponement requested by the appellant.

C. Rescheduling of Emergency Action Hearings. Emergency action hearings may only be rescheduled by the Office of Administrative Hearings with the consent of both parties or on motion of a party, if substantial prejudice is demonstrated. Only one postponement of an emergency action hearing may be granted.

D. The appellant may examine the appellant's family child care registration record for the purpose of discovering information pertinent to the appeal before the hearing.

E. By agreement, the appellant and the Office may exchange witness lists and documents before the hearing.

F. The procedures in §§D and E of this regulation do not constitute good cause for delay of a hearing.

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.07 Conduct of Hearing.

A. The hearing shall be conducted by an administrative law judge.

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B. At the hearing, the appellant and a representative of the Office may present witnesses, documentary evidence, and oral argument and may cross-examine any witness. A document introduced into evidence by a party may be examined by the opposing party.

C. The transcript or tape of the proceedings, together with all documents filed in the hearing proceedings and the final decision of the administrative law judge, constitute the exclusive record of the hearing.

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.08 Decision.

A. The administrative law judge shall:

(1) Base the decision on the complete record; and

(2) Determine whether the Office correctly applied State regulations in effect at the time it reached its decision.

B. The final decision of the administrative law judge shall be accompanied by findings of fact and conclusions of law.

C. The final decision shall be binding upon the Department and shall be implemented immediately unless otherwise specifically indicated in the decision.

D. The decision of the Office of Administrative Hearings in cases under this chapter constitutes the decision of the Department.

E. A copy of the decision shall be delivered or mailed promptly to each party or the attorney of record.

F. A party dissatisfied with the decision of the administrative law judge may appeal that decision directly to the circuit court of the appropriate jurisdiction within 30 days from the date notice of the decision is sent to the party, or as otherwise provided in Maryland Rules 7-201 -7-211.

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.01 Definitions.

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B. Terms Defined.

(1) “Confirmed complaint” means a determination by the Department or office after an investigation that the violation of a regulation of this subtitle that was alleged in the complaint has occurred or is occurring.

(2) “Custodian of record” means an authorized individual employed by the Department or office who has physical custody and control of licensing records.

(3) “Licensing records” means all papers, computerized records, correspondence, forms, books, cards, photographs, photostats, films, microfilms, sound recordings, charts, maps, drawings, or other written documents, regardless of physical form or characteristics, maintained or stored by the Department or the office in connection with the registering of a person or a family child care home to provide child care.

(4) “Official custodian of record” means the Superintendent or the Superintendent’s designee who is responsible for the maintenance, care, and storage of the Department’s licensing records.

(5) “Requester” means an individual, business, corporation, partnership, association, organization, or governmental agency that requests inspection of, or information from, licensing records.

(6) “Sociological information” means any of the following information about a licensee or employee of a licensee:

(a) Social Security number;

(b) Personal address;

(c) Personal phone number;

(d) Information regarding marital status, dependents, or relatives; and

(e) Information regarding employment status, including employment application.

(7) “Unsubstantiated complaint” means a complaint of an alleged violation of a regulation of this subtitle that the Department or office, after an investigation, has been unable to confirm as having occurred or to rule out as not having occurred.

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.02 Disclosure of Information from Licensing Records.

A. Except as prohibited or restricted by applicable law or regulation, the custodian of record may make the following information from licensing records available to a requester:

Complete through Maryland Register Vol. 41, Issue 8, dated April 18, 2014.

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- (1) Findings of inspections conducted by the office in registered family child care homes;
- (2) Records of complaint forms pertaining to confirmed or unsubstantiated complaints;
- (3) Copies of certificates of registration, including those on provisional or conditional status;
- (4) Variances;
- (5) Correspondence and documents requiring abatement of noncompliances with the regulations of this subtitle, including compliance agreements;
- (6) Correspondence and documents pertaining to enforcement actions taken by the Department or office against a family child care provider or a family child care home, including denial letters, sanctions, emergency suspensions, and revocations; and
- (7) Correspondence regarding requests for inspection of licensing records under this regulation.

B. The custodian of record may not disclose sociological information to a requester, except that this information may be disclosed:

- (1) To public employees in the performance of their public duties;
- (2) To parties litigating claims for unemployment insurance to the extent the sociological information would be available to private parties in litigation; or
- (3) When required by a duly issued subpoena.

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.03 Request for Information from Licensing Records.

A. A written request shall be filed with the custodian of record in order to:

- (1) Conduct a physical inspection of licensing records; or
- (2) Obtain a written or electronic:
 - (a) Copy of licensing records; or

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(b) Report of information from licensing records that the official custodian of records does not already make available to the general public.

B. The written request shall:

(1) Contain the applicant's name, address, and telephone number;

(2) Be signed by the applicant; and

(3) Reasonably identify by brief description the record sought.

C. A request may be made in any form or format if it does not involve:

(1) Physical inspection of licensing records; or

(2) Preparation of a written or electronic:

(a) Copy of licensing records; or

(b) Report of information from licensing records.

D. The custodian of record may charge a reasonable fee for:

(1) The reproduction of documents sought;

(2) Official or employee time expended searching for requested records; or

(3) Any time expended in preparing records for inspection or copying.

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.04 Compelling Public Purpose.

A compelling public purpose shall exist for the custodian of record to permit inspection of licensing records other than the records specified under State Government Article, §10-617(h)(2), Annotated Code of Maryland.

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