

Maryland Regulations Currentness _Title 13A State Board of Education _Subtitle 17 Child Care -Letters of Compliance _Chapter 08 Child Supervision

Regulations for Tax-Exempt Religious Organization Child Care Programs

COMAR T. 13A, Subt. 17, Ch. 08, Refs & Annos

COMAR 13A.17.08.01

.01 Individualized Attention and Care.

An operator shall ensure that:

A. Each child receives:

- (1) Attention to the child's individual needs; and
- (2) Adequate supervision and care at all times that is:
 - (a) Provided only by individuals who are designated by the operator to provide supervision and care; and
 - (b) Appropriate to the individual age, needs, and capabilities of the child;

B. Each staff member providing care to a child is:

- (1) Oriented to the child's individual care needs; and
- (2) Prepared to provide the appropriate individual care;

C. Written information about the child's individual needs that was supplied by the parent by the time of the child's admission to care is used by the operator to meet the child's individual care needs;

D. A child is under close and continuous supervision whenever using potentially dangerous activity materials or equipment such as, but not limited to, scissors, sharp tools, or knives; and

E. A child is allowed to travel to or from school or a school transportation site without adult supervision only if:

- (1) The child is in the first or a higher grade; and
- (2) The child's parent and the operator agree in writing that the child can travel safely without adult supervision.

COMAR 13A.17.08.02

.02 Staff Available for Emergencies.

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In case of an emergency, during periods when only one staff member is required to be present to meet the staff/child ratio, an operator shall obtain a written, signed, and dated agreement from an adult who:

A. Has successfully passed a federal and State criminal background check and a review of child abuse and neglect records; and

B. Is willing and able to be at the nursery school or child care program within 15 minutes of notification.

COMAR 13A.17.08.03

.03 Group Size and Staffing.

A. Assignment of Staff. One or more staff members shall be assigned to each group of children as needed to meet the requirements for group size and staffing set forth at §§C-E of this regulation.

B. Age of a Child. For purposes of determining group size and staff required under this chapter, the age of a child is determined solely according to the date of the child's most recent birthday.

C. Same-Age Groups in Nursery Schools. In groups of children of the same age in a nursery school, the following requirements apply:

Child Age Group	Staff/Child Ratio	Maximum Group Size
2 years old	1 to 6	12
3 years old	1 to 12	24
4 years old	1 to 15	30

D. Same-Age Groups in Before-School and After-School Child Care Programs. In groups of children of the same age in a before-school or after-school child care program, the following requirements apply:

Child Age Group	Staff/Child Ratio	Maximum Group Size
2 years old	1 to 6	12
3 or 4 years old	1 to 10	20

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staff/child ratios required by this chapter are maintained.

COMAR 13A.17.08.05

.05 Supervision During Water Activities.

A. An operator shall have prior written approval from a child's parent for the child's participation in a water activity.

B. If a wading or swimming area is 4 feet or less in depth, each child engaged in a water activity shall receive continuous supervision by a staff member.

C. If the water exceeds 4 feet in depth, there shall be a lifeguard present who:

(1) Holds a current certificate of approval for lifeguarding from the American Red Cross, YMCA, or other organization acceptable to the office or the local health department;

(2) Is present at waterside during the swimming activity; and

(3) May not be included in the required staff/child ratio.

D. Except during a swimming lesson conducted by a certified water safety organization, such as the American Red Cross, that is acceptable to the office or the local health department, whenever water is over the chest of a child who cannot swim, the child shall receive one-to-one supervision by a staff member who is in the water with the child.

COMAR 13A.17.08.06

.06 Supervision During Transportation.

When child transportation is conducted to or from:

A. The child care facility by the facility operator, there shall be at least one adult other than driver present in the vehicle if:

(1) More than eight preschoolers are being transported as a group; or

(2) At least one child is being transported and the driver of the vehicle is not:

(a) A facility employee; or

(b) The parent of a child in care who is authorized by the operator to assist in transporting children in care; or

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B. An off-site activity by an independent contractor or a local school district and at least one child in care is being transported, the facility operator shall ensure that there is at least one adult other than the driver present in the vehicle.

COMAR 13A.17.08.07

.07 Playground Supervision.

When a group of children is engaged in a playground or outdoor activity, staff members assigned to the group shall:

A. Station themselves near the children so that immediate intervention can occur if necessary; and

B. If a child expresses or shows signs of discomfort due to over-activity, temperature or weather conditions, or other physical or environmental factors, take immediate and appropriate steps to alleviate the discomfort.

COMAR T. 13A, Subt. 17, Ch. 08, Administrative History

COMAR T. 13A, Subt. 17, Ch. 09, Refs & Annos

COMAR 13A.17.09.01

.01 Materials and Equipment.

A. An operator shall provide to each group of children in care a sufficient quantity and variety of materials and equipment for indoor and outdoor activities according to the number and ages of the children.

B. Activity materials and equipment provided to a child shall be:

(1) Appropriate to the child's age and developmental status;

(2) Safe;

(3) In good repair;

(4) Clean;

(5) Nontoxic; and

(6) Free from hazards, including lead paint.

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C. Furnishings used by a child shall be scaled in proportion to the child's size.

D. The operator shall provide multipurpose tables and chairs.

COMAR 13A.17.09.02

.02 Rest Furnishings.

A. There shall be:

(1) A suitable cot or mat for each child 2 to 5 years old present in the facility for more than 4 hours, and for children 5 years old or older who regularly take rest periods in the facility;

(2) A suitable bed for each child who is present in the facility during those hours that are usual nighttime sleep hours for that child; and

(3) An adequate supply of clean bedding provided for each child who takes rest periods at the facility.

B. When in use, all cots, mats, and beds shall be appropriately spaced to facilitate safe movement and evacuation of staff and children.

COMAR 13A.17.09.03

.03 Storage.

There shall be appropriate storage for:

A. Materials and equipment;

B. Mats, cots, beds, and bedding;

C. Portable equipment intended for outdoor use;

D. Each child's clothing and possessions in an individual space; and

E. Materials, equipment, furnishings, and supplies being held in reserve.

COMAR T. 13A, Subt. 17, Ch. 09, Administrative History

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COMAR T. 13A, Subt. 17, Ch. 10, Refs & Annos

COMAR 13A.17.10.01

.01 Emergency Safety Requirements.

A. Emergency and Disaster Plan.

(1) At least one facility employee shall:

(a) Complete emergency preparedness training that is approved by the office; and

(b) As part of the approved emergency preparedness training, prepare a written emergency and disaster plan for the facility.

(2) The operator shall maintain the emergency and disaster plan prepared in accordance with §A(1)(b) of this regulation.

(3) The emergency and disaster plan shall:

(a) Establish procedures for:

(i) Evacuating the facility, including an evacuation route;

(ii) Relocating staff and children to a designated safe site;

(iii) Sheltering in place in the event that evacuation is not feasible;

(iv) Notifying parents of children in care; and

(v) Addressing the individual needs of children, including children with special needs;

(b) Contain:

(i) The name of, and contact information for the local emergency operations center;

(ii) Assignment of staff responsibilities during an emergency or disaster;

(iii) A list of local emergency services numbers; and

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- (iv) The radio station call sign and frequency for the local Emergency Alert System;
- (c) Be practiced by staff and children at least:
 - (i) Once per month for fire evacuation; and
 - (ii) Twice per year for other emergency and disaster situations; and
- (d) Be updated at least annually.
- (4) A copy of the emergency escape route floor plan shall be posted in each area and room in the facility.
- (5) Each employee shall be oriented to the contents of the written emergency and disaster plan required at §A(2) of this regulation.
- (6) In the event of a declared emergency, the operator shall be prepared to respond as directed by the local emergency management agency through sources of public information.
- (7) During an emergency evacuation or practice, a staff member shall take attendance records out of the facility and determine the presence of each child currently in attendance.

B. If the child care facility is included within a comprehensive emergency and disaster plan, the facility operator shall ensure that:

- (1) The comprehensive plan contents meet all emergency and disaster plan requirements set forth at §A(2)(a) and (b) of this regulation; and
- (2) A copy of the comprehensive plan is available to all staff.

C. An operator shall post, immediately accessible to each telephone in the facility, a notice stating the:

- (1) 9-1-1 emergency telephone number to summon fire, police, and rescue services;
- (2) Facility's name, address, and telephone number;
- (3) Telephone number of the Child Protective Services unit of the local department of social services;
- (4) Telephone number of a poison control facility;
- (5) Name and telephone number of the local health department or a physician to consult about issues regarding health and illnesses;

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(6) Name and telephone number of the available adult as required by COMAR 13A.17.08.02; and

(7) Telephone number of the office.

COMAR 13A.17.10.02

.02 First Aid and CPR.

A. At all times, including during an off-site activity, at least one individual who is responsible for supervision of children shall be present who holds a current certificate indicating successful completion of approved:

(1) Basic first aid training through the American Red Cross, or a program with equivalent standards; and

(2) Cardiopulmonary resuscitation (CPR) training through the American Heart Association, or a program with equivalent standards, which is appropriate to all child age groups for which the facility is approved.

B. A facility with an approved capacity of more than 20 children shall have in attendance, in a ratio of at least one staff member for every 20 children present, staff members who are currently certified in approved first aid and CPR as specified in §A of this regulation.

C. Whenever a child in care is being transported under child care facility auspices to or from the facility, there shall be at least one adult present in the vehicle who is currently certified in approved CPR and first aid. This requirement may be met by the driver of the vehicle.

D. §C of this regulation does not apply if the driver of the vehicle is a parent of a child in care who is designated by the child care facility operator to assist in transporting children in care.

E. An operator shall maintain first aid supplies as required by the office, conveniently accessible for each group of children at the facility and at an off-site activity.

COMAR 13A.17.10.03

.03 Safe Use of Materials and Equipment.

The operator shall ensure that furnishings, activity materials, and equipment, whether intended for indoor use or outdoor use, are used:

A. In a safe and appropriate manner by each employee and each child in attendance; and

B. If applicable, in accordance with manufacturer instructions or recommendations.

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COMAR 13A.17.10.04

.04 Potentially Hazardous Items.

A. An operator shall store all potentially harmful items, including but not limited to the items described in §§B-E of this regulation, in locations which are inaccessible to children in care.

B. Petroleum and flammable products shall be stored in an approved manner.

C. Cleaning and sanitizing agents and poisonous products shall be stored apart from food and beverages.

D. Containers of poisonous products may not be kept on the premises unless they are labeled clearly as to nature, content, and approved purposes.

E. A pesticide may be used only if it is:

(1) Approved by the U.S. Environmental Protection Agency;

(2) Used according to the manufacturer's instructions;

(3) Used only when children are not in care; and

(4) Stored apart from food, beverages, and cleaning agents.

F. Each electrical socket that is accessible to children in care shall be plugged or capped as required by the applicable fire code.

G. Except in a small facility located in a residence, a firearm may not be kept on the premises.

H. In a small facility located in a residence where a firearm is maintained, a firearm shall be kept:

(1) In a location not used by children in care; and

(2) Unloaded and partially disassembled in a locked container with ammunition stored in its own separate locked container.

I. Window Coverings. A window covering installed:

(1) Before October 1, 2010, shall not have unsecured cords, beads, ropes, or strings that are accessible to a

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child in care; or

(2) On or after October 1, 2010, shall be cordless.

COMAR 13A.17.10.05

.05 Transportation.

A. Unless being transported in a licensed school bus or contract motor coach, each child who is transported in a vehicle while in care is separately secured in a child car seat or seat belt which is appropriate for the child's age and weight, as specified by Maryland Law.

B. A vehicle used to transport a child in care shall comply with all applicable state and federal safety requirements.

COMAR T. 13A, Subt. 17, Ch. 10, Administrative History

COMAR T. 13A, Subt. 17, Ch. 11, Refs & Annos

COMAR 13A.17.11.01

.01 Exclusion for Acute Illness.

A. Child care staff shall:

(1) Monitor a child for signs and symptoms of acute illness;

(2) Notify a child's parent or other designated person upon observing a sign or symptom of acute illness; and

(3) Provide temporary isolation for the affected child in a suitably equipped separate area within sight and hearing of an adult.

B. An operator may not admit a child to care or allow a child to remain in care when the child is exhibiting symptoms of acute illness.

C. A child may not be readmitted to care after an absence of 3 days or more due to illness without a written statement from the parent or physician that the child may return to a regular schedule.

COMAR 13A.17.11.02

.02 Infectious and Communicable Diseases.

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A. An operator shall immediately transmit to the health officer a report of the name and address of a child or a staff member who appears to be infected with a reportable communicable disease or who has been exposed to a reportable communicable disease as indicated in COMAR 10.06.01.03.

B. Except in facilities for children with acute illness, an operator may not knowingly admit to care or retain in care a child with a transmissible infection or a communicable disease during the period of exclusion recommended for that infection or disease as shown on a chart provided by the office, unless the health officer grants approval for the child to attend child care during that period.

COMAR 13A.17.11.03

.03 Preventing Spread of Disease.

A. A written handwashing procedure approved by the office shall be posted at each sink used for washing hands.

B. Hands shall be washed according to the posted approved procedure by a facility employee, volunteer, or child in care at least

(1) After toileting or diapering;

(2) Before food preparation or eating; and

(3) After an outdoor activity or handling an animal.

C. Diapering shall be performed in accordance with a written diapering procedure approved by the office.

COMAR 13A.17.11.04

.04 Medication Administration and Storage.

A. Medication Administration.

(1) Medication, whether prescription or nonprescription, may not be administered to a child in care unless:

(a) Parental permission to administer the medication is documented on a completed, signed, and dated medication authorization form, provided by the office, that is received at the center before the medication is administered; and

(b) A licensed health practitioner has approved the administration of the medication and the medication dosage.

(2) A prescription medication may not be administered to a child unless at least one dose of the medication has

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been given to the child at home.

(3) If medication is by prescription, it shall be labeled by the pharmacy or physician with:

(a) The child's name;

(b) The date of the prescription;

(c) The name of the medication;

(d) The medication dosage;

(e) The administration schedule;

(f) The administration route;

(g) If applicable, special instructions, such as "take with food";

(h) The duration of the prescription; and

(i) An expiration date that states when the medication is no longer useable.

B. Topical Applications. A diaper rash product, sunscreen, or insect repellent supplied by a child's parent may be applied without prior approval of a licensed health practitioner.

C. Medication shall be administered according to the instructions on the label of the medication container or a licensed health practitioner's written instructions, whichever are more recently dated.

D. Recording Requirements.

(1) Each administration of a prescription or nonprescription medication to a child, including self-administration of a medication by the child, shall be noted in the child's record.

(2) Application of a diaper rash product, sunscreen, or insect repellent supplied by a child's parent shall be noted in the child's record.

E. Medication Storage.

(1) Each medication shall be:

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- (a) Labeled with the child's name, the dosage, and the expiration date;
 - (b) Stored as directed by the manufacturer, the dispensing pharmacy, or the prescribing physician; and
 - (c) Discarded according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency, or returned to the child's parent upon expiration or discontinuation.
- (2) All medications shall be stored to make them inaccessible to children in care but readily accessible to each employee designated by the operator to administer medication.

F. Effective July 1, 2011:

- (1) Whenever children in care are present, there shall be at least one center employee present who has completed medication administration training approved by the office.
- (2) Medication may be administered to a child in care only by an employee who has completed approved medication training.

G. Section F of this regulation does not apply if:

- (1) The center employs a registered nurse, licensed practical nurse, or medication technician certified by the Maryland Board of Nursing to administer medication to children in care; or
- (2) Responsibility for administering medication to children in care is delegated to a center employee by a delegating nurse in accordance with COMAR 10.27.11.

H. Self-Administration of Medication.

- (1) Before a child may self-administer medication while in care, the operator shall:
 - (a) Have a written order from the child's physician and the written request of the child's parent for the child's self-administration of medication;
 - (b) In consultation with the child's parent, establish a written procedure for self-administration of medication by the child based on the physician's written order; and
 - (c) Authorize the child to self-administer medication.
- (2) Revocation of Authorization to Self-Administer.
 - (a) An operator may revoke a child's authorization to self-administer medication if the child fails to follow the written procedure required by §H(1)(b) of this regulation.

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(b) Immediately upon revoking the child's authorization to self-administer medication, the operator shall notify the child's parent of that revocation.

(c) The operator shall document the revocation of authorization to self-administer and the notification to the child's parent in the child's record.

COMAR 13A.17.11.05

.05 Smoking.

Smoking is prohibited:

A. At all times in any indoor area of the child care facility; and

B. During the facility's hours of operation, in any outdoor area of the facility which is approved for child care use.

COMAR 13A.17.11.06

.06 Alcohol and Drugs.

An operator may not allow the consumption of alcoholic beverages or use of illegal or nonprescribed controlled dangerous substances:

A. On the child care facility premises during the facility's hours of operation; or

B. By an employee or a volunteer during an off-site program activity.

COMAR T. 13A, Subt. 17, Ch. 11, Administrative History

COMAR T. 13A, Subt. 17, Ch. 12, Refs & Annos

COMAR 13A.17.12.01

.01 Food Service.

A. Food and beverages which are furnished by an operator for meals or snacks, or both, shall comply with the guidelines of the Child and Adult Care Food Program of the U.S. Department of Agriculture, as indicated on a chart supplied by the office.

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B. Hours of Operation. If a facility operates:

(1) 4 or more consecutive hours a day, the operator shall furnish either:

(a) All meals and snacks; or

(b) Snacks; or

(2) Less than 4 consecutive hours a day, the operator shall either:

(a) Furnish food and beverages for meals or snacks, or both; or

(b) Make arrangements with the parent of a child to provide food and beverages for meals or snacks, or both.

C. The operator shall furnish and serve milk with all meals.

D. An operator shall serve meals and snacks at intervals of not more than 3 hours apart according to the following schedule:

If a child is at a facility for:

The child shall receive at least:

Less than 4 consecutive hours

1 snack

4 to 7 consecutive hours

1 meal and 1 snack

7 to 11 consecutive hours

1 meal and 2 snacks or 2 meals and 1 snack

11 to 14 consecutive hours

2 meals and 2 snacks or 3 meals and 1 snack

E. If an operator chooses not to provide meals, the operator shall make arrangements with the parent of each child to provide food for meals.

F. An operator shall keep a supply of nutritious food on hand in order to provide food to a child whose parent has not supplied food or beverages for meals or snacks.

G. Menus. An operator shall:

(1) Post in a conspicuous place a weekly planned menu of foods and beverages furnished by the facility for

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meals and snacks; and

(2) Keep a dated record of food actually served in the facility, and to each child on a modified diet, on file for at least 4 weeks, correcting the planned menu if necessary.

COMAR 13A.17.12.02

.02 Modified Diet.

When an operator agrees to accept a child who requires a modified diet for:

A. Medical reasons, the operator shall obtain from the child's parent a written prescription for the diet signed and dated by the child's licensed health practitioner within the previous 6 months; or

B. Cultural or religious reasons, the operator shall obtain written, dated instructions for the diet signed by the child's parent.

COMAR 13A.17.12.03

.03 Food Sources.

A. An operator shall furnish food at the facility only if it is wholesome and free from spoilage, filth, or other contamination and obtained from sources that comply with all laws relating to food, food processing, food handling, and food labeling.

B. When an operator contracts to have food furnished from an outside source, such as a catering service, the operator shall ensure that the food:

(1) Has been prepared and processed in a licensed food service facility or in a licensed food processing plant; or

(2) Consists of a snack or party food which is not potentially hazardous and does not present a significant risk of transmitting food-borne disease.

C. An operator may not provide to the children home-canned goods or any other hermetically sealed food prepared in a place other than a licensed food processing establishment.

D. An operator:

(1) Shall provide only fluid milk and fluid milk products that are:

(a) Pasteurized Grade A;

(b) Except as provided by §D(3) of this regulation, served from the original container; and

(c) Not more than 4 days older than the expiration date marked on the original container;

(2) May use dry milk, dry milk products, or reconstituted dry milk only for cooking purposes; and

(3) For meals and snacks, may serve milk family-style from a pitcher or similar container into which the milk has been poured from the original container.

COMAR 13A.17.12.04

.04 Food Storage and Preparation.

A. An operator shall:

(1) Protect all food from contamination while it is being stored, transported, or displayed; and

(2) Prepare and serve food in a safe, sanitary, and healthful manner.

B. There shall be sufficient storage areas for all food brought from home and all food held in reserve for service by the operator.

C. Food shall be stored:

(1) In an area that is dry, cool, well-ventilated, well-lighted, and equipped with easily cleanable shelving; and

(2) At least 6 inches off the floor, to facilitate cleaning.

D. In a small facility, the operator may store food:

(1) Separately from family food; or

(2) With family food if the operator chooses to have the entire family food storage area inspected.

E. When food is transferred for storage from its original container, the operator shall provide a secondary storage container that is:

(1) Easily cleanable;

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(2) Nontoxic;

(3) Nonabsorbent;

(4) Tightly closed; and

(5) Clearly labeled as to its contents.

F. An operator:

(1) May not store food below overhead waste lines;

(2) Shall maintain cooked, potentially hazardous hot food at or above a temperature of 140°F;

(3) Shall refrigerate potentially hazardous food at or below a temperature of 40°F;

(4) Shall keep frozen food at or below 0°F; and

(5) Shall restrict the movement of pets and other animals so that food and food contact surfaces are not contaminated.

G. Single service items such as paper and plastic cups, containers, lids, plates, knives, forks, spoons, and placemats shall be:

(1) Used only once; and

(2) Stored, handled, and dispensed to protect them from contamination.

H. During an activity in which the children prepare food, the activity shall be planned and carried out in a manner consistent with the safety and health practices required in this subtitle.

I. An operator shall discard:

(1) All spoiled fruits, vegetables, or other food;

(2) Refrozen food;

(3) Potentially hazardous frozen food that has been thawed and not immediately cooked and served;

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(4) Swelled, rusty, or leaky canned foods;

(5) Foods exposed to fire, smoke, or water damage;

(6) After a child finishes eating, any remaining food that has come into contact with:

(a) The child's mouth; or

(b) An eating utensil that has been used by the child; and

(7) After being left out for consumption by children during a meal or snack, any milk remaining in an opened original container, a pitcher or similar container, or a drinking vessel.

J. The operator shall send home or discard at the end of each day all opened containers of food brought from home for a child.

COMAR 13A.17.12.05

.05 Food Preparation Area and Equipment.

A. Appliances and equipment in the food preparation area shall be:

(1) Cleaned and sanitized;

(2) In good repair;

(3) Capable of normal operation; and

(4) Not conducive to the harboring of insects and rodents.

B. Food contact surfaces shall be nontoxic, smooth, in good repair, and free of breaks, open seams, cracks, pits, and similar imperfections.

C. Refrigeration shall be:

(1) Of sufficient capacity to store all food and beverages that require refrigeration;

(2) Operated at or below 40°F; and

(3) Equipped with an indicating thermometer graduated at 2°F intervals.

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D. Frozen food units shall be operated at or below 0°F and shall be equipped with an indicating thermometer.

E. Facilities operating more than 4 consecutive hours shall provide refrigeration.

F. Except in a small facility or when only snacks are provided by the operator, a separate handwashing sink which is equipped with soap and paper towels shall be provided in or adjacent to each food preparation area. Food preparation and utensil washing sinks may not be used for handwashing.

G. A cooking exhaust hood shall be provided when routine cleaning does not eliminate condensation or greasy film.

H. Utensils and equipment used for the preparation and service of food and beverages shall be cleaned, sanitized, air dried, and stored in a manner approved by the office.

I. Floors and walls in a food preparation area shall be easily cleanable and maintained in a clean condition.

COMAR T. 13A, Subt. 17, Ch. 12, Administrative History

COMAR T. 13A, Subt. 17, Ch. 13, Refs & Annos

COMAR 13A.17.13.01

.01 Requirements for Approval.

An applicant for a child care program offering care to children attending a middle school or a junior high school shall:

A. Meet the requirements of this subtitle; or

B. Do both of the following:

(1) Submit to and receive prior approval from the office of a written plan of operation for the program that meets the intent of the requirements of this subtitle; and

(2) Operate according to the approved plan.

COMAR 13A.17.13.02

.02 Plan of Operation.

A plan of operation submitted pursuant to Regulation .01 of this chapter shall include:

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- A. A definition of the population to be served and the criteria for admission;
- B. Staffing information and a staffing pattern for the program;
- C. The space, materials, equipment, and furnishings to be used;
- D. The days and hours of operation;
- E. Locations other than the facility which will be used for activities;
- F. Activities to be held at locations other than the facility;
- G. A method of accounting for children's whereabouts;
- H. A method for assuring parental approval for activities held at locations other than the facility;
- I. A method for having a consistent staff member available to each child;
- J. A transportation plan if necessary; and
- K. A nutritional plan as required.**

COMAR T. 13A, Subt. 17, Ch. 13, Administrative History

COMAR T. 13A, Subt. 17, Ch. 14, Refs & Annos

COMAR 13A.17.14.01

.01 Purpose and Scope.

A. Purpose. This chapter establishes requirements for approval to operate an educational program in a nonpublic nursery school.

B. Scope. This chapter does not apply to an educational program in a nonpublic nursery school operated by:

(1) The federal government or any State, county, or municipal agency or division of these; or

(2) A bona fide church organization that is exempt from holding a certificate of approval by the State Board under Education Article, §2-206, Annotated Code of Maryland.

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COMAR 13A.17.14.02

.02 Definitions.

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

B. Terms Defined.

(1) "Certificate of approval" means the document issued by the State Board to the legal authority responsible for governing and operating a school if the school has met the requirements of this chapter.

(2) "Child care center license" means the document issued by the Department pursuant to COMAR 13A.16 that authorizes the recipient to operate a child care center.

(3) "Class" means a group of students scheduled to report regularly to a teacher at a particular time and place for the implementation of an educational program.

(4) "Department" means the State Department of Education.

(5) "Department representative" means an individual designated by the Department to determine compliance with this chapter.

(6) "Educational program" means an organized program of instruction that:

(a) Is provided by a teacher; and

(b) Meets the requirements of Regulation .07 of this chapter.

(7) "Institution of higher education (IHE)" means a college or university that is accredited by an accrediting commission of one of the regional associations of colleges and schools.

(8) "Letter of compliance" means a document issued by the Department pursuant to COMAR 13A.16 that authorizes the recipient to operate a letter of compliance facility.

(9) "Montessori program" means an educational program based on the pedagogical philosophy of Dr. Maria Montessori, as reflected in the program's teacher qualifications, curriculum, instructional methods, and materials and equipment.

(10) "Nursery school" means an educational program for children who are 2 years old, 3 years old, 4 years old, or any consecutive sequence of these ages.

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(11) "Office" means the central office or a regional office of the Department's Division of Early Childhood Development, Office of Child Care.

(12) "Operator" means:

(a) The nonpublic entity registered as active with the State Department of Assessments and Taxation that is responsible for governing and operating a school;

(b) The individual or entity to which a child care center license or a letter of compliance has been issued by the Department; or

(c) A bona fide church organization that is approved by the State Board to operate an educational program.

(13) "State Board" means the Maryland State Board of Education.

(14) "Teacher" means an individual who:

(a) Provides instruction to children enrolled in an educational program; and

(b) Meets the requirements of Regulation .06B of this chapter.

COMAR 13A.17.14.03

.03 Approval to Operate an Educational Program -General Requirements.

A. An individual or entity may operate an educational program in a nonpublic nursery school only if the individual or entity holds a valid child care license or letter of compliance issued by the Department.

B. A bona fide church organization may be approved to operate an educational program without holding a child care center license or a letter of compliance.

C. The operator of a licensed small center may not be approved to operate an educational program if:

(1) The small center is located in a private residence; and

(2) The program would be operated in the living space of the residence.

D. Unless an operator chooses to cease operating an educational program, approval to operate the program, once granted, shall continue as long as the:

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- (1) Operator's child care center license or letter of compliance, as applicable and if required, remains in effect;
- (2) Educational program is operated according to the terms under which approval to operate was granted; and
- (3) Operator remains in full compliance with all applicable requirements of this chapter.

E. Approval to operate an educational program in a nonpublic nursery school becomes void if the nonpublic nursery school's approval is suspended or revoked, or the child care center license or letter of compliance, as applicable, is suspended or revoked and the operator:

- (1) Does not appeal the suspension or revocation action; or
- (2) Appeals the suspension or revocation action and the action is upheld through the administrative hearing process or notice of deficiencies hearing before the State Board in accordance with Education Article, §2-206, Annotated Code of Maryland.

F. An operator that has ceased operating an educational program subject to the requirements of this chapter shall promptly return to the office the child care center license, letter of compliance, or other approval document, as applicable, that certifies approval to operate the educational program.

G. Any educational program that is solely educational that is approved prior to the effective date of this regulation shall continue to operate under its current certificate of approval in accordance with this chapter.

COMAR 13A.17.14.04

.04 Approval to Operate an Educational Program -Specific Requirements.

A. Application for Approval.

- (1) Application for approval shall be made in a manner and form and according to timelines established by the office.
- (2) The applicant shall submit all information that the office considers necessary in order to ascertain compliance with the requirements of this chapter.
- (3) An operator approved to operate an educational program may not apply for approval to operate another educational program if the educational program for which the operator is currently approved is not in full compliance with all applicable requirements of this chapter.

B. When the office is satisfied that the requirements of this chapter have been met, the office shall issue to the applicant a child care center license, letter of compliance, or other approval document, as applicable, that certifies approval to operate an educational program.

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C. The child care center license, letter of compliance, or other approval document, as applicable, shall specify the terms under which approval to operate an educational program has been granted, including the:

- (1) Hours, days, and months of approved operation; and
- (2) Ages of children who may be enrolled in the program.

D. If the operator intends to change the terms under which approval has been granted, the operator shall:

- (1) Notify the office in writing at least 60 days before the occurrence of any change or changes; and
- (2) Furnish any information the office considers necessary to approve the change or changes planned by the operator.

E. An operator may not seek approval of a change in the terms of the approval under any one or combination of the following circumstances:

- (1) The educational program demonstrates an area or areas of noncompliance;
- (2) The office has received and is investigating a complaint alleging that the educational program is in violation of one or more regulations under this chapter;
- (3) The office is implementing a sanction or an enforcement action against the child care center license, the letter of compliance, or other approval document, as applicable, pursuant to COMAR 13A.16 or COMAR 13A.17; or
- (4) A deficiency hearing is pending before the State Board in accordance with Education Article, §2-206, Annotated Code of Maryland.

F. Notwithstanding the requirement established in §E of this regulation, an operator may seek approval of a change in the terms of the approval if approval of the change is the means for the operator to demonstrate compliance with this chapter.

G. An operator may not implement a change in the terms of approval until the office has issued a revised child care center license, letter of compliance, or other approval document, as applicable, that reflects the change.

H. An operator shall inform the office in writing at least 30 days before the operator ceases operating an educational program.

COMAR 13A.17.14.05

.05 Compliance and Inspections.

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A. Continued approval to operate an educational program is conditioned on the operator's maintaining compliance with this chapter.

B. To evaluate compliance with this chapter, the office may inspect the educational program, with or without prior notice to the operator, at any time during the approved hours of operation of the program.

C. During an inspection, the operator shall permit the Department representative access to any activity, person, material, document, or other information or source of information connected with the educational program that is considered necessary by the Department representative for the purpose of the inspection.

D. Following each inspection of the educational program, the office shall provide the operator with a written report of all findings of the inspection.

E. If the educational program fails to demonstrate compliance with the requirements of this chapter, the office shall notify the operator in writing of the:

(1) Regulation or regulations with which the program does not demonstrate compliance;

(2) Fact or facts that demonstrate the program's noncompliance with each regulation;

(3) Action or actions the operator is required to take to demonstrate compliance with each regulation; and

(4) Date by which the program is required to demonstrate compliance with each regulation.

F. Sanctions.

(1) Failure to maintain compliance with applicable requirements of this chapter may result in a sanction by the office, including restriction, suspension, or revocation of the approval to operate the educational program.

(2) Sanctions may be severable against an educational program located in a licensed child care center or a letter of compliance facility.

COMAR 13A.17.14.06

.06 Personnel Qualifications.

A. Educational Program Administrator.

(1) The operator shall have an educational program administrator who is responsible for the day-to-day

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administration of the educational program.

(2) An individual hired as the educational program administrator at a minimum shall meet the standards established in §B(3) of this regulation.

(3) The operator shall have a written position description that states the duties and responsibilities of the educational program administrator.

(4) The educational program administrator shall have sufficient time during each educational program day to carry out the duties and responsibilities stated in the written position description of the educational program administrator.

B. Teachers.

(1) An educational program shall have a teacher to implement the educational program in each class.

(2) A teacher, regardless of whether the employment status of the teacher is full-time, part-time, paid, volunteer, or substitute, shall meet the requirements of §B(3) of this regulation.

(3) A teacher who provides instruction in language and literacy development, mathematical and scientific thinking, or social studies shall hold or have completed:

(a) A bachelor's degree from an IHE;

(b) 120 semester hours of college credit from an IHE; or

(c) A foreign credential that is determined by the Department to be equivalent to a bachelor's degree from an IHE.

(4) In addition to meeting the requirements of §B(3) of this regulation, a teacher employed in a Montessori program shall also hold a Montessori diploma for the level of the individual's assignment.

(5) If the degree, college credit, or foreign credential required at §B(3) of this regulation does not include at least 6 semester hours of approved early childhood coursework, the teacher shall, in addition:

(a) Hold or have completed:

(i) The Child Development Associate Credential issued by the Child Development Associate National Credentialing Program; or

(ii) 6 semester hours, 90 clock hours or their equivalent of approved pre-service training; or

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(b) Be certified by the Department as a teacher for early childhood in nursery through third grade.

(6) An individual approved as a teacher by the Department before July 1, 2010, shall remain qualified for that position as long as the individual is continuously employed as a teacher.

(7) Effective July 1, 2010, a teacher in an educational program shall complete at least 12 clock hours of approved continued training per full year of employment, measured from date of hire, in that position.

C. An individual who provides assistance to a teacher in a class is not required to meet the requirements of §B(3) or (7) of this regulation.

D. Written Statement of Teacher Qualifications. An operator shall:

(1) Maintain a written statement of the qualifications of each teacher who implements the educational program; and

(2) On request by a parent or legal guardian of a child enrolled, or being considered for enrollment, in the educational program, give to the parent or legal guardian a written statement of the qualifications of each teacher who implements the educational program.

COMAR 13A.17.14.07

.07 Educational Program.

A. Program. The operator shall implement and maintain at the nonpublic nursery school a written curriculum of the nonpublic nursery school's educational program for the development of skills for each approved nursery school age in the following areas:

(1) Personal and social development;

(2) Language and literacy development;

(3) Mathematical and scientific thinking;

(4) Social studies;

(5) The arts; and

(6) Physical development and health.

B. Instructional Materials and Equipment. The operator shall own and maintain the nonpublic nursery school

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instructional materials and equipment required to implement the written curriculum of the educational program specified in §A of this regulation.

COMAR 13A.17.14.08

.08 Child Records.

A. The operator of an educational program in a nonpublic nursery school shall maintain a cumulative record for each child enrolled in the educational program.

B. Each child's record shall include the:

- (1) Nonpublic nursery school's name;
- (2) Nonpublic nursery school's address;
- (3) Nonpublic nursery school's telephone number;
- (4) Child's first, middle, and last names;
- (5) Child's month, day, and year of birth;
- (6) Child's home address;
- (7) Month, day, and year the child initially entered the educational program;
- (8) Age on enrollment in the educational program;
- (9) Month, day, and year the child withdrew from the educational program, if applicable;
- (10) Child's performance information in each curricular area;
- (11) Code for the meaning of performance information; and
- (12) Number of days the child attended in each school year.

C. In a licensed child care center or a letter of compliance facility, the requirements of §B(1)-(8) of this regulation are met by compliance with child record requirements set forth at COMAR 13A.16 or COMAR 13A.17, as applicable.

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D. Age of Admission.

(1) Except as provided by §D(2) of this regulation, a child shall be 2 years old, 3 years old, or 4 years old on or before September 1 of a school year to be age-eligible for admission during that school year to a nonpublic nursery school program approved under this chapter.

(2) A nonpublic nursery school may adopt policies and procedures permitting, on request by a child's parent or guardian, and if a nonpublic nursery school determines that a child demonstrates capabilities warranting early admission, a:

(a) 2 year old child to be admitted to a 3 year old nursery school program; or

(b) 3 year old child to be admitted to a 4 year old nursery school program.

COMAR 13A.17.14.09

.09 Health, Fire Safety, and Zoning.

A. An operator shall obtain and maintain documentation verifying current compliance with health, fire safety, and zoning regulations applicable to a nonpublic nursery school.

B. In a licensed child care center or a letter of compliance facility, the requirements of §A of this regulation are met by complying with pertinent health, fire safety, and zoning requirements set forth under COMAR 13A.16 or COMAR 13A.17, as applicable.

COMAR 13A.17.14.10

.10 Procedures and Sanctions for Noncompliance -Educational Programs.

If the Department believes that a nonpublic nursery school does not meet the conditions or standards on which the certificate of approval of the school was based, the Department shall implement procedures and sanctions for noncompliance approved by the State Board.

COMAR T. 13A, Subt. 17, Ch. 14, Administrative History

COMAR T. 13A, Subt. 17, Ch. 15, Refs & Annos

COMAR 13A.17.15.01

.01 Complaints.

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The office shall investigate both written and oral complaints that relate to a violation of a regulation, including anonymous complaints, and prepare a written report of the findings.

COMAR 13A.17.15.02

.02 Inspections.

A. An operator shall permit inspection by the agency representative of all areas of the facility regulated by this subtitle during the nursery school's or child care program's hours of operation without prior notice to the operator.

B. An operator may request satisfactory identification from the agency representative before admitting the representative for an inspection.

C. During an inspection, and upon request, an operator shall make the records required by this subtitle available to the agency representative for inspection and copying.

D. An agency representative shall inspect each facility:

(1) On an announced basis before the office issues an initial letter of compliance or a continuing letter of compliance; and

(2) On an unannounced basis, at least once:

(a) Within each 12-month period after the date that an initial letter of compliance or a continuing letter of compliance was issued; or

(b) If the facility is currently operating on a renewed letter of compliance, during the 12-month period following the calendar year in which the renewed letter was issued.

E. An operator may contest a finding of noncompliance with this subtitle by requesting a review of findings by the regional office or the central office of the Agency.

COMAR 13A.17.15.03

.03 Intermediate Sanctions.

A. Upon a determination that an operator has violated the regulations of this subtitle, placing the health, safety, or welfare of children in care at risk, the office may:

(1) Restrict the ages or number of new children enrolled;

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- (2) Reduce the number of children in care;
- (3) Require the operator or facility staff to participate in training in a specified content area;
- (4) Increase the frequency of monitoring of the facility during a specified period of time;
- (5) Enter into an agreement with the operator detailing requirements for remedying violations and achieving compliance; and
- (6) Notify, or require the operator to notify, a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

B. If the office determines that an operator has violated a condition or requirement of a sanction, the office may suspend or revoke the letter of compliance.

COMAR 13A.17.15.04

.04 Suspension.

A. The office may suspend a letter of compliance for a period of not more than 60 calendar days:

- (1) Upon determining that the:
 - (a) Regulations in this subtitle have been violated; and
 - (b) Health, safety, or welfare of children in the facility is threatened; or
- (2) If the letter of compliance is a continuing letter of compliance that was replaced by a conditional letter of compliance, and the:
 - (a) Conditional letter of compliance has lapsed; and
 - (b) Operator has failed to meet the requirements for reinstatement of the continuing letter of compliance.

B. The office shall notify the operator in writing of the suspension by certified mail 20 calendar days in advance, and the notice shall specify:

- (1) The effective date and period of the suspension;
- (2) The reason for suspension;

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(3) The regulatory violation which is the basis for the suspension;

(4) That the operator shall stop providing child care on the effective date of the suspension unless the operator requests a hearing in writing within 20 days of the date of the suspension notice;

(5) That the operator may request a hearing;

(6) That the suspension shall be stayed if a hearing is requested within 20 days of the date of the suspension notice;

(7) That, if the suspension is upheld by the Superintendent's designee following the hearing, the operator shall cease providing child care until the office determines that the health, safety, or welfare of a child in the facility no longer is threatened;

(8) That the suspension may lead to revocation; and

(9) That the operator is required to surrender the letter of compliance to the office when the suspension becomes effective.

C. The office shall notify the parents of the children in care of the suspension.

D. By the end of the suspension period, the office shall:

(1) Reinstate the letter of compliance and return it to the operator; or

(2) Revoke the letter of compliance.

COMAR 13A.17.15.05

.05 Emergency Suspension.

A. The office may suspend a letter of compliance on an emergency basis when it is determined that this action is required to protect the health, safety, or welfare of a child in the facility.

B. The office shall hand deliver written notice of the emergency suspension to the operator stating:

(1) The regulatory basis for the suspension;

(2) That the operator shall immediately stop providing child care;

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(3) That the operator is entitled to a hearing before the Superintendent within 7 calendar days of the operator's request for a hearing;

(4) That the Superintendent shall issue a decision concerning the emergency suspension within 7 calendar days of the hearing;

(5) That if the emergency suspension order is upheld, stoppage of child care at the center shall continue until it is determined that the health, safety, or welfare of a child in the facility is no longer threatened;

(6) That the suspension may lead to revocation; and

(7) That the operator is required to surrender the letter of compliance to the office when the suspension becomes effective.

C. The office shall notify the parents of the children in care of the emergency suspension.

COMAR 13A.17.15.06

.06 Revocation.

A. The office may revoke a letter of compliance if:

(1) The operator or facility is in violation of this subtitle and the health, safety, or welfare of children in the facility is threatened;

(2) The operator misrepresented or offered false information on the application or on any form or report required by the office;

(3) The operator interferes with the agency representative in the performance of the duties of the office;

(4) The operator fails to comply with the:

(a) Prohibitions on the use of an individual as an employee or as a volunteer as set forth, respectively, in COMAR 13A.17.06.03A and B and .07C; or

(b) Child security requirements set forth in COMAR 13A.17.07.06;

(5) The terms or conditions of an intermediate sanction have been violated;

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(6) Violations required to be corrected during a period of suspension have not been corrected and the period has ended; or

(7) The letter of compliance is a continuing letter of compliance that was replaced by a conditional letter of compliance, and the:

(a) Conditional letter of compliance has lapsed; and

(b) Operator has failed to meet the requirements for reinstatement of the continuing letter of compliance.

B. If the office decides to revoke a letter of compliance, the office shall notify the operator in writing 20 calendar days before the effective date of the revocation, stating:

(1) The effective date of the revocation;

(2) The reason for revocation;

(3) The regulatory violation which is the basis for the revocation;

(4) That the operator shall stop providing child care unless a hearing is requested in writing within 20 days of the date of the revocation notice;

(5) That the operator may request a hearing;

(6) That the revocation shall be stayed if a hearing is requested within 20 days of the date of the revocation notice;

(7) That, if the revocation is upheld by the Superintendent following the hearing, the operator shall cease providing child care; and

(8) That the operator is required to surrender the letter of compliance to the office when the revocation becomes effective.

C. The office shall notify the parents of the children in care of the revocation.

COMAR 13A.17.15.07

.07 Penalties.

A. Criminal Penalty. A person that maintains and operates a nursery school or a child care program without a license or a letter of compliance, if convicted, is guilty of a misdemeanor and subject to a fine not exceeding:

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(1) \$1,500 for the first violation; and

(2) \$2,500 for a second or subsequent violation.

B. Civil Penalty.

(1) A person who maintains and operates a nursery school or child care program without a license or letter of compliance, or who violates any regulation in this subtitle, is subject to a civil penalty imposed in a civil action of not more than \$1,000 for each violation, and each day a violation occurs or the facility operates illegally is considered a separate violation.

(2) The total amount of the civil penalties imposed in a civil action under this section may not exceed \$5,000.

COMAR T. 13A, Subt. 17, Ch. 15, Administrative History

COMAR T. 13A, Subt. 17, Ch. 16, Refs & Annos

COMAR 13A.17.16.01

.01 Scope.

A. This chapter applies to hearings concerning actions taken by the Office of Child Care which adversely impact on child care center licenses and letters of compliance. These actions include denials, suspensions, or revocations of licenses or letters of compliance, as well as reductions in capacity or limitations on the ages or numbers of children who may be admitted to the child care center.

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 the actions listed in §A of this regulation. A decision by an administrative law judge of the Office of Administrative Hearings in a child care center 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 child care center is located pursuant to State Government Article, §10-222, Annotated Code of Maryland.

COMAR 13A.17.16.02

.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.

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- (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 license or letter of compliance to operate a child care center.
- (4) “Capacity” means the number of day care children who may be present at a child care center at the same time.
- (5) “Days” means calendar days.
- (6) “Department” means the State Department of Education.
- (7) Emergency Action.
- (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, an immediate limitation on the ages or numbers of children who may be admitted to care, and an appeal filed by an individual pursuant to COMAR 13A.16.06.03D or 13A.17.06.03D.
- (8) “Filed” is 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) “Letter of compliance” means a letter issued by the Department to a religious organization which meets the requirements of Family Law Article, §5-573, Annotated Code of Maryland.
- (11) “License” means a document issued to a person by the Department which gives permission to operate a child care center in accordance with State regulations.
- (12) “Licensee” means an individual or a partnership group, association, cooperative, or corporation which has the legal authority and responsibility for the governing and operating of a child care center and which has been issued a license by the Department.
- (13) “Office” means the central office or a regional office of the Office of Child Care.
- (14) “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.
- (15) “Party” means the appellant and the Office of Child Care.

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(16) "Superintendent" means the State Superintendent of Schools.

COMAR 13A.17.16.03

.03 Hearing Requests.

A. A hearing shall be held when an applicant, licensee, or holder of a letter of compliance requests a hearing to contest:

- (1) The denial of an application for a license or letter of compliance;
- (2) A revocation or suspension of a license or letter of compliance; or
- (3) Any other action that adversely impacts on the licensee or holder of the letter of compliance, including, but not limited to:
 - (a) The setting of capacity at a number below that requested;
 - (b) A reduction in capacity; or
 - (c) A limitation on the ages or numbers of children who may be admitted to the child care center.

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 licensee or holder of the letter of compliance, 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 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 that immediately follows an emergency suspension period; or

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(b) A denial which follows the expiration of the provisional period of a letter of compliance 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 licensee or holder of the letter of compliance, 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 request shall not stay an emergency action.

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

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

COMAR 13A.17.16.04

.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 and the appellant.

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.

COMAR 13A.17.16.05

.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 licensee or holder of the letter of compliance; or

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(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.17.16.06

.06 Hearing and Appeal Procedures.

A. Notice to Appellant.

(1) For non-emergency action 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 action hearings, a 10-day notice is required. For all emergency action hearings, at least 3 days advance notice is required.

(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)

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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 licensing 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.

COMAR 13A.17.16.07

.07 Conduct of Hearing.

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

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 hearing.

COMAR 13A.17.16.08

.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 the Office reached the Office's 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

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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.

COMAR T. 13A, Subt. 17, Ch. 16, Administrative History

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COMAR 13A.17.17.01

.01 Definitions.

In this chapter, the following terms have the meanings indicated:

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

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

C. “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 issuance of a letter of compliance under this subtitle.

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

E. “Requester” means an individual, business, corporation, partnership, association, organization, or governmental agency which requests inspection of, or information from, licensing records.

F. “Sociological information” means any of the following information about a licensee or employee of a licensee:

(1) Social Security number;

(2) Personal address;

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- (3) Personal telephone number;
- (4) Information regarding marital status, dependents, or relatives; and
- (5) Information regarding employment status, including employment application.

G. “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.

COMAR 13A.17.17.02

.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:

- (1) Findings of inspections conducted by the office in letter of compliance facilities;
- (2) Record of complaint forms pertaining to confirmed or unsubstantiated complaints;
- (3) Copies of letters of compliance, 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 under this subtitle by the Department or office against a letter holder or child care facility, including denial letters, sanctions, emergency suspensions, and revocations; and
- (7) Any correspondence regarding requests for inspection of licensing records under this chapter.

B. Except as provided by other law, the custodian of record shall permit the licensee, or an authorized representative of the licensee, to inspect the licensee’s own record.

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

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- (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.

COMAR 13A.17.17.03

.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
 - (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

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(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.

COMAR 13A.17.17.04

.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.

COMAR T. 13A, Subt. 17, Ch. 17, Administrative History