

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter 01 Scope and Definitions

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, 9.5-321 and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act §418 (42 U.S.C. 618)

#### 01 Purpose.

The purpose of registration of family child care homes is to:

- A. Protect the health, safety, and welfare of children while they are in family child care; and
- B. Identify family child care homes.

#### 02 Definitions.

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

B. Terms Defined.

(1) "Abuse" means:

(a) The physical or mental injury of a child, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed, by:

- (i) A parent;
- (ii) An individual who has permanent or temporary care or custody or responsibility for supervision of a child; or
- (iii) A household or family member; or

(b) Sexual abuse of a child, whether physical injuries are sustained or not.

(2) "Acute illness" means an abnormal condition of the body with rapid onset that has a short course of duration, as opposed to a chronic illness of long duration.

(3) "Additional adult" means an individual 18 years old or older who assists a family child care provider in caring for children who are younger than 24 months old.

(4) "Agency" means the Office of Child Care, Division of Early Childhood Development, in the State Department of Education.

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

(6) "Applicant" means a person who has submitted to the office all of the required forms and documentation to request approval for initial registration or for continuing registration.

(7) "Approved training" means course work or a workshop provided by:

- (a) A regionally accredited college or university;
- (b) A State-approved private career school;
- (c) The Child Development Associate National Credentialing Program;
- (d) Other organizations or individuals approved by the office; or
- (e) The Agency.

(8) "Child" means an individual who is younger than:

- (a) 13 years old; or
- (b) 21 years old and has a developmental disability or other emotional, physical, educational, or medical need for child care beyond 13 years old.

(9) "Continuing registration" means a family child care registration that does not expire.

(10) "Core of knowledge" means the competencies identified by the office as essential for all individuals working in the child care delivery system, including:

- (a) Child development;
- (b) Curriculum;
- (c) Special needs;
- (d) Professionalism;
- (e) Community; and
- (f) Health, safety, and nutrition.

(11) "Department" means the Maryland State Department of Education.

(12) "Elective training" means training at a conference, seminar, or other event that is approved by the office but is not in a core of knowledge competency area.

(13) Employee.

(a) "Employee" means an individual who is employed to work in a family child care home and who:

- (i) Cares for or supervises children in the facility; or
- (ii) Has access to children who are cared for or supervised in the facility.

(b) "Employee" includes a substitute.

(c) "Employee" does not include an individual who is:

(i) An independent contractor; or  
(ii) A licensed or certified health care professional who is compensated by the family child care provider or the parent of a child in care to provide a specified health care service to the child.

(d) For the purpose of applying the criminal background check requirements and the child and adult abuse and neglect record review requirements set forth in this subtitle, "employee" includes an individual who:

(i) Meets the definition of an employee as set forth in this subsection; and

(ii) Does not clearly meet, or is not excluded from, the definition of independent contractor as set forth in §B(19) of this regulation.

(14) "Family child care" has the same meaning as family child care as defined in Education Article, §9.5-301(d), Annotated Code of Maryland, and means the care given to a child younger than 13 years old or to a developmentally disabled person younger than 21 years old in place of parental care for less than 24 hours a day, in a residence other than the child's residence, for which the provider is paid in cash or in kind.

(15) "Family child care coprovider" means an individual who shares responsibility with the family child care provider for the operation of the family child care home and who meets the requirements of this subtitle.

(16) "Family child care home" means the residence in which child care is given.

(17) "Family child care provider" means the adult who has primary responsibility for the provision of child care in the family child care home and who meets the requirements of this subtitle.

(18) "Identified as responsible for child abuse or neglect" means being determined by a local department of social services or other state agency to be responsible for indicated child abuse or neglect, or awaiting the local department's appeal hearing after the determination.

(19) Independent Contractor.

(a) "Independent contractor" means an individual or other entity:

(i) That is hired by the family child care provider, a resident, or the parent of a child in care, on the basis of a service contract or agreement, to perform a specialized service at the family child care home, including, but not limited to, home maintenance or repair, academic tutoring, or recreational programming, for a specified period of time or in order to achieve a specified result;

(ii) That determines how the specialized service shall be performed; and

(iii) Whose specialized service is not restricted to the family child care home, but is available for hire by other customers.

(b) "Independent contractor" does not include an individual who:

(i) Is a licensed or certified health care professional compensated by the family child care provider to provide a specified health care service to a child in care;

(ii) Under a private arrangement with the parent or guardian of a child or children in care, provides a health care, educational, or other service only to that child or those children; or

(iii) Is employed for compensation by a public school or by a private or nonpublic school required to report annually to the State Board of Education.

**[19-1] (20)** "Infant-toddler" means a child age group comprising children younger than 2 years old.

**[(20)] (21)** "Injurious treatment" means:

(a) Physical discipline, including but not limited to spanking, hitting, shaking, or any other means of physical discipline, or enforcement of acts which result in physical pain;

(b) Failure to attend to a child's physical needs and other physically damaging acts, excluding reasonable acts to protect the child from imminent danger;

(c) Subjecting a child to verbal abuse intended to cause mental distress, such as shouting, cursing, shaming, threatening, or ridiculing; and

(d) Utilizing discipline methods that are considered inappropriate by child care professionals and create undue discomfort, such as, but not limited to, washing a child's mouth with soap, putting pepper or other spicy or distasteful items in a child's mouth, requiring a child to stand on one foot as punishment, or tying a child to a cot or other equipment.

**[(20-1)] (22)** "Intimate partner" means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4-501(m)(1), (2), (6), or (7), Annotated Code of Maryland.

**[(21)] (23)** "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

**[(22)] (24)** "Neglect" means leaving a child unattended or otherwise failing to give proper care and attention to a child by the child's parents, guardian, or custodian under circumstances that indicate that the child's health or welfare is significantly harmed or placed at risk of significant harm.

**(25)** "Nursery school" means an educational program:

**(a)** For children who are 2 years old, 3 years old, 4 years old, or any sequence of these ages; and

**(b)** That, unless approved by the Department before July 1, 2007, to operate for more than 6 hours per day, may not operate in excess of 6 hours per day.

**[(23)] (26)** "Office" means the central office or a regional office of the Agency.

**[(24)] (27)** Overnight Care.

**(a)** "Overnight care" means family child care that is provided between the hours of 12 a.m. and 6 a.m.

(b) "Overnight care" does not include family child care provided to a child enrolled for care during daytime or evening hours who, because of the parent's schedule, must remain at the family child care home for up to 1/2 hour after 12 a.m. or arrive up to 1/2 hour before 6 a.m.

**[(25)] (28)** "Parent" means the biological or adoptive parent, or the legal guardian or custodian of a child, who enrolls the child in care.

**[(26)] (29)** Potentially Hazardous Food.

(a) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients capable of supporting rapid and progressive growth of infectious, toxigenic microorganisms.

(b) "Potentially hazardous food" does not include clean, whole, uncracked, odor-free shell eggs.

**[(30)] (30)** "Preschooler" means a child who:

(a) Is 2 years old or older; and

(b) Does not attend kindergarten or a higher grade

**[(27)] (31)** "Professional development plan" means the written instrument for tracking continued training that is:

(a) Distributed by the office to a provider; and

(b) To be completed annually by the provider.

**[(28)] (32)** "Provider" means the individual or individuals to whom a family child care certificate of registration is issued under this subtitle.

**[(29)] (33)** Relative.

(a) "Relative" means an individual related to a child by blood, marriage, or adoption.

(b) "Relative" includes a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, first or second cousin, great grandparent, great uncle, or great aunt.

**[(30)] (34)** "Resident" means a person who lives in the family child care home.

**[(31)] (35)** "Sanction" means an enforcement action under this subtitle.

**[(36)] (36)** "School age child" means a child younger than 13 years old who attends a public or nonpublic school in grades kindergarten or above.

**[(32)] (37)** "Substitute" means an adult who is responsible for the operation of a family child care home when the provider is absent.

**[(33)] (38)** "Successfully passed" means, when used in connection with a criminal background check or a review of records of abuse and neglect of children or adults conducted on an individual, that the individual:

(a) Has not received a conviction, a probation before judgment disposition, or a not criminally responsible disposition, or does not have a pending charge for the commission or attempted commission of a crime that:

(i) Is listed at COMAR 13A.15.02.07B(1)—(11); or

(ii) Indicates other behavior harmful to children; or

(b) Has not been identified as responsible for the abuse or neglect of a child or an adult.

**[(34)] (39)** "Superintendent" means the State Superintendent of Schools or the Superintendent's designee.

**[(35)] (40)** "Treatment foster care" means a 24-hour substitute care program, operated by a licensed child placement agency or local department of social services, for children with a serious emotional, behavioral, medical, or psychological condition.

**[(36)] (41)** Volunteer.

(a) "Volunteer" means an individual who:

(i) Is 13 years old or older;

(ii) Works in or for the family child care program but is not a compensated employee of the provider; and

(iii) Is not enrolled as a child in care at the family child care home.

(b) "Volunteer" does not mean an additional adult or a substitute.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter 04 Operational Requirements

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;  
General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland  
Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.);  
Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.);  
Social Security Act §418 (42 U.S.C. 618)

#### **.01 Hours of Care.**

A. The provider may not permit a child to remain in care for more than 14 hours in any 24-hour period on a regular basis without prior approval from the office.

B. A provider may not offer overnight care without prior written approval from the office.

C. A provider who wishes to provide overnight care shall:

(1) Submit to the office a written plan of operation that includes:

- (a) The number and ages of children to be served;
- (b) A meal and snack schedule;
- (c) The name of the overnight care substitute, if different from the daytime care substitute;
- (d) A child supervision plan;
- (e) A bedtime routine; and
- (f) An evacuation plan for each room where a child in care will sleep; and

(2) Obtain the written approval of each child's parent for the child's sleeping arrangements.

#### **.02 Age Group Enrollment.**

A provider may enroll a child for care at the home only if the child's age group is approved for care, as indicated on the provider's current certificate of registration.

#### **.03 Child Capacity.**

A. The number of children present in care at any one time may not exceed the child capacity number stated on the certificate of registration.

B. Care may not be provided at any one time to more than two children younger than 2 years old unless approved by the office.

*C. The maximum total capacity of a family child care home in which the provider also operates an educational program may not exceed eight (8) children, with no more than two (2) may be younger than 2 years old.*

**[C.] D.** Whenever more than two children younger than 2 years old are present in care, an additional adult shall be present who has met the applicable requirements of COMAR 13A.15.06.04.

**[D.] E.** The maximum total capacity of a family child care home may not exceed eight children, of whom not more than four may be younger than 2 years old.

**[E.] F.** The office:

- (1) Shall count as a child in care a resident who is younger than 6 years old; and
- (2) May count as a child in care a child who is visiting the home if the child:
  - (a) Is younger than 8 years old and unaccompanied by an adult; or
  - (b) Cannot be sent home immediately.

#### **.04 Restriction of Operations.**

A. Upon determining that any of the following is unsuitable for the home, the office may restrict or reduce the provider's approved:

- (1) Hours of care;
- (2) Child care age groups; or
- (3) Child capacity.

B. The office may base a restriction or reduction under §A of this regulation on any of the following factors:

- (1) Space available, indoors or outdoors;
- (2) Equipment available;
- (3) Number and ages of residents in the home;
- (4) Responsibility of the provider to care for another individual who may require special attention or care, including, but not limited to, an elderly resident or a child with a serious physical, emotional, or behavioral condition;
- (5) Applicable fire, zoning, health, environmental, or other codes;
- (6) Failure by a provider approved for a capacity of up to four children younger than 2 years old to meet the infant-toddler training requirement specified at COMAR 13A.15.06.02E; or
- (7) Other factors the office determines may cause a risk to a child's health, safety, or welfare.

C. A provider may appeal a restriction or reduction pursuant to §A of this regulation by filing a request for hearing:

- (1) Not later than 20 calendar days after the notification of the office's action; or
- (2) In the case of an emergency reduction in capacity, not later than 30 calendar days after the notification by the office of its decision to immediately reduce the number of children in care.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter 13 Educational Programs in Nonpublic Nursery Schools

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, 9.5-321 and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act §418 (42 U.S.C. 618)

#### **.01. Purpose and Scope.**

This chapter establishes requirements for approval to operate an educational program in a nonpublic nursery school located in a residence that is registered as a family child care home.

#### **.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 home registration" means the document issued by the Department pursuant to this subtitle that authorizes the recipient to operate a family child care home.

(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) "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.

(9) "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.

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

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

(12) "Teacher" means a family child care provider:

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

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

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

A. A family child care provider may be approved to operate an educational program in a nonpublic nursery school only if:

(1) The provider holds a valid registration to operate a family child care home;

(2) The educational program would not be operated in the living space of the residence where the child care home is located;

(3) The educational program would be operated in a room separate from the child care program for children under the age of two during the operating hours of the educational program; and

(4) If the provider has enrolled children under the age of two (2) the provider has a staff member that meets the requirements of .06.02A, E(2), and F of this subtitle.

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

(1) Child care home registration remains in effect;

(2) Educational program is operated according to the terms under which approval to operate was granted; and

(3) Provider remains in full compliance with all applicable requirements of this chapter.

C. 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 home registration is suspended or revoked and the provider:

(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.

D. A provider who has ceased operating an educational program subject to the requirements of this chapter shall promptly return to the office the child care home registration that certifies approval to operate the educational program.

E. A certificate of approval to operate an educational program that was issued to the provider prior to January 1, 2012, shall remain in effect.

#### **.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) A provider who is already approved to operate an educational program may not apply for approval to operate another educational program if the educational program for which the provider 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 home registration that certifies approval to operate an educational program.

C. The child care home registration 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 provider intends to change the terms under which approval has been granted, the provider 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 provider.

E. A provider 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 home registration; 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, a provider may seek approval of a change in the terms of the approval if approval of the change is the means for the provider to demonstrate compliance with this chapter.

G. A provider may not implement a change in the terms of approval until the office has issued a revised child care home registration that reflects the change.

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

#### **.05. Compliance and Inspections.**

A. Continued approval to operate an educational program is conditioned on the provider'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 provider, at any time during the approved hours of operation of the program.

C. During an inspection, the provider 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 provider 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 provider 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 provider 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 against an educational program located in a child care home may be severable.

#### **.06. Personnel Qualifications.**

##### **A. Educational Program Administrator.**

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

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

(3) The provider 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) The family child care provider shall serve as the teacher to implement the educational program in each class.

(2) A teacher, 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

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

(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 under §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 preservice training; or

(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) 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. The educational program shall have an approved additional adult, as specified in regulation COMAR 13A.15.06.04, to care and supervise for children not enrolled in the approved educational program.

**E. Written Statement of Teacher Qualifications. A provider shall:**

(1) Maintain a written statement of their qualifications; 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 family child care provider's qualifications.

**.07. Educational Program.**

A. Program. The provider 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 provider shall own and maintain the nonpublic nursery school instructional materials and equipment required to implement the written curriculum of the educational program specified in §A of this regulation.

**.08. Child Records.**

A. The provider 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. The requirements of §B(1)-(8) of this regulation are met by compliance with child record requirements set forth at COMAR 13A.15.03.04C.

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.

**.09. Health, Fire Safety, and Zoning.**

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

B. The requirements of §A of this regulation are met by complying with pertinent health, fire safety, and zoning requirements set forth under this subtitle.

**.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.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter **[14]** **15** Administrative Hearings

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;  
General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland  
Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.);  
Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.);  
Social Security Act §418 (42 U.S.C. 618)

#### **.01 Scope.**

A. This chapter applies to hearings concerning actions taken by the Office of Child Care which adversely impact family child care registrations, such as registration denials, revocations, and suspensions, reductions in capacity, limitations on the ages or numbers of children who may be admitted to a family child care home, and the imposition of civil penalties for providing or advertising unregistered family child care services without a valid family child care certificate of registration.

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.

#### **.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.

(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.

#### **.03 Hearing Requests.**

A. A hearing shall be held when:

(1) An applicant or provider requests a hearing to contest:

(a) The denial of an application for registration;

(b) A revocation or suspension of a registration; or

(c) Any other action that adversely impacts registration, including, but not limited to:

(i) The setting of a provider's capacity at a number below that requested;

(ii) A reduction in capacity; or

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

(2) An individual requests a hearing to contest the imposition of civil penalties for providing unregistered child care or advertising family child care services without a valid family child care certificate of registration.

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 or the individual contesting the imposition of a civil penalty, 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.

**.04 Preliminary Conference.**

A. A preliminary conference may be held before a hearing on an action if an appellant requests the conference.

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.

**.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.

**.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.

(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.

**.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 the hearing.

**.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.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter **[13]** **14** Inspections, Complaints, and Enforcement

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;  
General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland  
Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.);  
Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.);  
Social Security Act §418 (42 U.S.C. 618)

#### **.01 Inspections.**

A. The office shall inspect each family child care home:

- (1) On an announced basis before issuing a certificate of initial registration or continuing registration; and
- (2) On an unannounced basis, at least once within each 12-month period after the date that a certificate of initial registration or continuing registration was issued to the provider.

B. The provider or substitute shall permit inspection of all areas of the home by the agency representative during the provider's hours of operation.

C. The agency representative may make inspections, in addition to the announced and unannounced inspections specified in §A of this regulation, without prior notice to the provider.

D. Upon request, the provider or substitute shall make the records required by this subtitle available to the agency representative for inspection and copying.

E. A provider or substitute may request satisfactory identification from the agency representative before admitting the person for an inspection.

F. A provider may appeal a finding of noncompliance with this subtitle by requesting a review of findings by the regional office or the central office of the Agency.

#### **.02 Complaints.**

The office shall investigate:

A. Both written and oral complaints that relate to a potential violation of a regulation under this subtitle, including anonymous complaints; and

B. Complaints of providing or advertising unregistered family child care.

#### **.03 Warnings.**

If an investigation of a complaint or an inspection of a family child care home indicates a violation of this subtitle that does not present an immediate threat to the health, safety, and welfare of a child in care, the office [shall] may issue a warning in writing, on an inspection report or by separate letter, that states:

A. The violation found, citing the regulation;

B. The time period for correcting the violation; and

C. That failure to correct the violation may result in sanctions being imposed or in suspension or revocation of the registration.

#### **.04 Intermediate Sanctions.**

A. Upon determining that a provider has violated or a home fails to meet any of the regulations of this subtitle, the office may:

(1) Restrict the age or number of children accepted for care;

(2) Reduce the number of children in care;

(3) Require the provider to receive remedial instruction in a specified content area;

(4) Increase the frequency of monitoring of the home during a specified period of time;

(5) Enter into an agreement with the provider detailing requirements in addition to those above, including time limits for compliance; and

(6) Notify, or require the provider to notify, a parent of a child who may be affected by the situation for which a sanction has been imposed.

B. If the office determines that the provider has violated a condition or requirement of the intermediate sanction, the office may suspend or revoke the registration.

#### **.05 Nonemergency Suspension.**

A. The office may suspend the certificate of registration, for a period of not more than 60 calendar days, upon determining that:

(1) The provider or home is in violation of any of the regulations under this subtitle and that the health, safety, or welfare of a child in the home is threatened; or

(2) If the registration is a continuing registration that was placed on conditional status, the:

(a) Conditional status has lapsed; and

(b) Provider has failed to meet the requirements for lifting the conditional status.

B. The office shall suspend the certificate of registration upon notification that the provider is in noncompliance with Child Support Enforcement requirements pursuant to Family Law Article, §10-119.3, Annotated Code of Maryland.

- C. The office shall notify the provider in writing of the suspension at least 20 calendar days before the effective date stating:
- (1) The effective date and period of the suspension;
  - (2) The reason for suspension;
  - (3) The regulation with which the provider has failed to comply that is the basis for the suspension;
  - (4) Corrections required to ensure reinstatement of the certificate of registration;
  - (5) That the provider shall stop providing child care on the effective date of the suspension unless the provider requests a hearing;
  - (6) That the provider is entitled to a hearing if requested in writing within 20 calendar days of the delivery of the notice;
  - (7) The procedure to be used if the provider wishes to request a hearing to appeal the decision of the office;
  - (8) That the suspension shall be stayed if a hearing is requested;
  - (9) That, if the suspension is upheld following the hearing, the provider shall cease providing child care for the period of the suspension;
  - (10) That the suspension may lead to revocation; and
  - (11) That the provider is required to surrender the certificate of registration to the office when the suspension becomes effective.
- D. The office shall notify the parents of the children in care of the suspension.
- E. By the end of the suspension period, the office shall:
- (1) Reinstatement the certificate of registration and return it to the provider; or
  - (2) Revoke the certificate of registration.

**.06 Emergency Suspension.**

- A. The office may immediately suspend the certificate of registration for a period of not more than 45 calendar days upon finding that a child's health, safety, or welfare imperatively requires emergency action.
- B. The office shall hand deliver a written notice to the provider informing the provider of the emergency suspension, giving the reasons for the action, and notifying the provider of the right to request, within 30 days of the delivery of the notice, a hearing before the Office of Administrative Hearings.
- C. If unable to hand deliver a written notice to the provider, the Office may send the notice by regular and certified mail to the provider's address.
- D. When the certificate of registration is to be suspended immediately:
- (1) The office shall repossess the certificate of registration;
  - (2) The provider shall stop providing child care immediately; and
  - (3) The office shall notify the parents of the children in care of the suspension and make every reasonable effort to assist the parents of the children in making other child care arrangements.
- E. If a hearing is requested by the provider, the Office of Administrative Hearings shall hold a hearing within 7 calendar days of the date of the request.
- F. Within 7 calendar days of the hearing, a decision concerning the emergency suspension shall be made by the Office of Administrative Hearings.
- G. If the decision does not uphold the emergency suspension, the provider may resume providing child care.
- H. By the end of the suspension period, the office shall:
- (1) Reinstatement the certificate of registration and return it to the provider; or
  - (2) Revoke the certificate of registration.

**.07 Revocation.**

- A. The office may revoke a certificate of registration if the:
- (1) Provider or home is in violation of one or more of the regulations under this subtitle and the health, safety, or welfare of a child in the home is threatened;
  - (2) Provider misrepresented or offered false information on the application or on any form or report required by the office;
  - (3) Provider interferes with or obstructs the agency representative in the performance of the duties of the office;
  - (4) Provider fails to submit all documentation required to maintain the certificate of registration;
  - (5) Provider or substitute refuses to permit access to a child or to the space in the home used for child care by a parent or an agency representative during operating hours of the child care home;
  - (6) Terms or conditions of a sanction have been violated;
  - (7) Registration is a continuing registration that was placed on conditional status, and the:
    - (a) Conditional status has lapsed; and
    - (b) Provider has failed to meet the requirements for lifting the conditional status;
  - (8) Provider, an additional adult, a substitute, a volunteer, or a resident is identified as responsible for abuse or neglect of children or adults;
  - (9) Provider, an additional adult, a substitute, a volunteer, or a resident has a criminal conviction, a probation before judgment disposition, or a not criminally responsible disposition, or is awaiting a hearing on a charge for a crime that:
    - (a) Is listed at COMAR 13A.15.02.07B or C; or
    - (b) Indicates other behavior harmful to children;
  - (10) Provider fails to comply with the child security requirements set forth in COMAR 13A.15.07.07;
  - (11) Provider permits an individual to have child supervision responsibilities after being notified by the office that the individual has been disapproved for that purpose;

(12) Evaluation of information provided to or acquired by the office indicates that the provider is unable to care for the welfare of children;

(13) Provider who also provides treatment foster care in the home admits a child for treatment foster care in the home, unless the child is placed in the home in a preadoptive capacity; or

(14) Family child care home is no longer the primary residence of the provider.

B. If the office decides to revoke a certificate of registration, the office shall notify the provider in writing at least 20 calendar days in advance of the revocation, stating:

(1) The effective date of the revocation;

(2) The reason for the revocation;

(3) The regulation with which the provider has failed to comply that is the basis for the revocation;

(4) That the provider shall stop providing child care on the effective date of the revocation;

(5) That the provider is entitled to a hearing if requested in writing within 20 calendar days of the date of the notice;

(6) The procedure to be used if the provider wishes to request a hearing to appeal the decision of the office;

(7) The revocation shall be stayed if the hearing is requested, unless the revocation immediately follows an emergency suspension period; and

(8) That the provider is required to surrender the certificate of registration to the office when the revocation becomes effective.

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

#### **.08 Penalties.**

A. An individual found to be operating a family child care home without a valid family child care registration is guilty of a misdemeanor and on conviction is subject to a fine not exceeding:

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

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

B. The office may institute legal proceedings to:

(1) Enjoin any individual not registered who is providing family child care from continuing to operate; or

(2) Ask a court in the jurisdiction of the family child care home to impose a fine of up to the maximum amount permitted by law on an individual found to be operating in violation of this subtitle.

#### **.09 Civil Citations.**

A. The office may issue a civil citation imposing a civil penalty to an individual who provides or advertises unregistered family child care in violation of the requirements of this subtitle.

B. Assessment of Penalty.

(1) Subject to §B(3) of this regulation, an individual to whom a civil citation is issued is subject to a civil penalty in the amount of:

(a) \$250 for the first violation;

(b) \$500 for the second violation; and

(c) \$1,000 for the third and each subsequent violation.

(2) Each day that unregistered family child care occurs in violation of the requirements of this subtitle is a separate violation under this regulation.

(3) The total amount of civil penalty imposed against an individual in an action under this regulation may not exceed \$5,000.

C. An individual against whom a civil penalty has been imposed under this regulation shall pay the full amount of the penalty promptly to the Department, as instructed by the civil citation or as otherwise directed by the office.

D. Appeals.

(1) An individual may appeal the imposition of a civil penalty under this regulation by filing an appeal with the office as instructed by the civil citation or as otherwise directed by the office.

(2) Appeals are conducted in accordance with the provisions of COMAR [13A.15.14] 13A.15.15.

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 15 FAMILY CHILD CARE

### Chapter **[15]** **16** Public Access to Licensing Records

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;  
General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland  
Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.);  
Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.);  
Social Security Act §418 (42 U.S.C. 618)

#### **.01 Definitions.**

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

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.

#### **.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 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 noncompliance's 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.

#### **.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; and
- (2) Reasonably identify by brief description the record sought.

C. 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.

**.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 General Provisions Article, §4-333(b), Annotated Code of Maryland.