

# **Title 13A STATE BOARD OF EDUCATION**

## **Subtitle 17 CHILD CARE—LETTERS OF COMPLIANCE**

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §§10-204 and 10-617; Human Services Article, §1-202; Education Article, §§2-206 and 2-303; 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.)

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**COMAR 13A.17.01 Scope and Definitions**

**.01 Scope.**

A. Applicability of Subtitle. Except as specified under §B of this regulation, this subtitle governs:

- (1) Nonparental care of children for part of a 24-hour day in nursery schools operated by tax-exempt religious organizations; and
- (2) Child care programs operated by tax-exempt religious organizations in school buildings used exclusively for children who are enrolled in those schools, by whatever name known.

B. Exemptions. This subtitle does not apply to:

- (1) A nonpublic kindergarten for children 5 years old or older during the hours in which an instructional program is offered;
- (2) A nonpublic elementary school during the hours in which an instructional program is offered;
- (3) A program that operates for 6 weeks or less in any calendar year;
- (4) The physical plant, including sanitary facilities, of a child care facility used exclusively for school age children, located in a currently operating nonpublic school building, if the application of a regulation would require modification of the physical plant; and
- (5) The instructional program, curriculum, and teacher, principal, and administrator qualifications of a:
  - (a) Nursery school operated by a tax-exempt religious organization which does not have a certificate of approval from the State Board of Education; or
  - (b) Child care program operated by a tax-exempt religious organization in a school building used exclusively for children who are enrolled in that school.

**.02 Definitions.**

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

B. Terms Defined.

- (1) Abuse.
  - (a) "Abuse" means 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.
  - (b) "Abuse" includes 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 accompanied by abnormal symptoms and signs, that has a short course of duration, as opposed to a chronic illness of long duration.
- (3) "Adolescent facility" means a child care facility that offers programs exclusively to children in middle school and junior high school.
- (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 to obtain a letter of compliance, either for an initial letter or for a continuing letter of compliance.
- (7) "Capacity" means the total number of children, specified by the letter of compliance of the facility, who may be in care at any one time.
- (8) "Child" means an individual:
  - (a) 6 weeks old or older and younger than 16 years old; or
  - (b) Younger than 21 years old who has a disabling condition or other emotional, developmental, physical, educational, or medical need necessitating child care beyond 16 years old.
- (9) Child Care.

(a) "Child care" means the care or supervision of a child when the child's parent has given the child's care over to another for some portion of a 24-hour day as a supplement to the parent's primary care of the child.

(b) "Child care" does not mean:

(i) Group lessons or classes providing specialized training in a specific subject, unless provided in a pattern indicating that a child care facility is being operated;

(ii) Scouting, sports, or youth club activities;

(iii) School-age recreational or supplementary education programs operated by a nonpublic school, if custodial supervision is not the primary purpose of the program;

(iv) Supervisory services to children provided by a church, health club, health provider, or similar sponsor in support of an occasional or intermittent parental activity or service offered by the sponsor while parents are on the same premises as the services to children and are immediately available to the children; or

(v) Programs primarily designed for the religious training of children, provided on a weekly basis or for a short period in the summer, commonly known as Sunday schools or Bible schools.

(10) Child Care Facility.

(a) "Child care facility" means a nursery school or a child care program operated by a tax-exempt religious organization.

(b) "Child care facility" may offer more than one type of program or care.

(11) "Child care program" means child care provided by a tax-exempt religious organization in a school building used exclusively for children who are enrolled in that school.

(12) "Combined preschool and school age facility" means a child care facility that serves both preschool children and school age children, whether in separate groups or mixed age groups.

(13) "Continuing letter of compliance" means a letter of compliance that does not expire.

(14) Custodial Supervision.

(a) "Custodial supervision" means parentally authorized oversight of a child by an individual other than the child's parent or guardian.

(b) "Custodial supervision" includes responsibility for:

(i) The well-being and the whereabouts of the child for a given period of time; and

(ii) Direct transfer of the custody of the child from and to an authorized person.

(c) "Custodial supervision" does not include the oversight of a child who is participating in a specific activity, such as scouting, sports, or youth clubs.

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

(16) "Educational program" means a program of instruction as defined by the State Board of Education.

(17) Employee.

(a) "Employee" means an individual:

(i) Who for compensation is employed by the facility operator to work at or for the facility; or

(ii) Whose work assignment involves the care or supervision of children in the facility or access to children who are cared for or supervised in the facility.

(b) "Employee" does not include an individual who:

(i) Is an independent contractor; or

(ii) Provides a consultative health service pursuant to COMAR 13A.17.06.06C.

(c) 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 any individual who:

(i) Is compensated by the operator to perform a service at the facility;

(ii) Has access to children in care; and

(iii) Does not clearly meet, or is not excluded from, the definition of independent contractor set forth in §B(21) of this regulation.

(18) "Group" means a unit of children together with the staff assigned to them.

(19) "Health officer" means the health officer in each of the 23 counties and the Commissioner of Health in Baltimore City, or the duly designated representative of the health officer, or both, and refers to the health officer in the jurisdiction where the child care facility is located.

(20) "Identified as responsible for child abuse or neglect" means being determined by a local department to be responsible for indicated child abuse or neglect under circumstances specified in Family Law Article, §5-714, Annotated Code of Maryland.

(21) Independent Contractor.

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

(i) That is hired by the child care facility operator or by another party, on the basis of a service contract or agreement, to perform a specialized service at the facility, including but not limited to food catering, child transportation, facility maintenance or repair, or supplemental 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 facility, but is available for hire by other customers.

- (b) "Independent contractor" does not include an individual who:
- (i) Provides a consultative health service pursuant to COMAR 13A.17.06.06C;
  - (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.
- (22) "Injurious treatment" means:
- (a) Deliberate infliction in any manner of any type of physical pain, 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, or ridiculing; and
  - (d) Using discipline methods which create undue discomfort, such as 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.
- (23) "Kindergarten" means an educational program for children who are 5 years old, or who will be 5 years old by September 1 of the year they enter the program, provided in a:
- (a) Public school or a nonpublic school approved by the State Department of Education; or
  - (b) Nonpublic school operated by a tax-exempt religious organization that holds a letter of exemption from approval by the State Board of Education under Education Article, §2-206, Annotated Code of Maryland.
- (24) "Letter holder" means the tax-exempt religious organization that has been issued a letter of compliance.
- (25) "Letter of compliance" means a letter issued by the Department to a tax-exempt religious organization that meets the requirements under Family Law Article, §5-574, Annotated Code of Maryland.
- (26) "Local department" means the local department of social services, by whatever name known, in any of Maryland's 24 local jurisdictions.
- (27) "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.
- (28) Neglect.
- (a) "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.
  - (b) "Neglect" does not include, for that reason alone, providing a child with nonmedical religious remedial care and treatment recognized by State law in place of medical treatment for a child's injuries or illnesses.
- (29) "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 exempted or 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.
- (30) "Office" means the central office or a regional office of the Agency.
- (31) "Operated by a tax-exempt religious organization" means that a letter holder has submitted a copy of the determination letter from the Internal Revenue Service that recognizes the organization as a bona fide church organization exempt from taxation under the Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3).
- (32) "Operator" means a letter holder or an agent of a letter holder.
- (33) "Parent" means the biological or adoptive parent or the legal guardian or custodian of a child who enrolls the child in child care.
- (34) 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.
- (35) "Preschooler" means a child who:
- (a) Is 2 years old or older; and
  - (b) Does not attend kindergarten or a higher grade.
- (36) "Preschool facility" means a child care facility that offers programs for children younger than 5 years old.
- (37) "Sanction" means an enforcement action under COMAR 13A.17.15.
- (38) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for a sufficient period of time to destroy vegetative cells of pathogenic bacteria and to reduce substantially the number of other microorganisms.
- (39) "School-age child" means a child younger than 16 years old who attends a public or nonpublic school in grades kindergarten or above.
- (40) "School-age facility" means a child care facility that offers programs to children who attend a public or nonpublic school in kindergarten or grades 1—12.

- (41) School Building.
- (a) "School building" means a facility that houses an instructional program for kindergarten, a higher grade or grades, or any combination of grades.
- (b) "School building" may include a facility that houses a nursery school as well as higher grades.
- (c) "School building" does not include a church or other facility which houses only a program for preschoolers.
- (42) "Small facility" means a child care facility that is licensed for 12 or fewer children.
- (43) "Staff member" means an individual 16 years old or older, whether paid or not, who is assigned responsibility for child care in a child care center and whose assignment helps to maintain the staff/child ratios required by COMAR 13A.17.08.03.
- (44) "Successfully passed" means, when used in connection with:
- (a) A criminal background check, that an individual:
- (i) Has not received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed at COMAR 13A.17.06.03A; or
- (ii) Has been assessed by the office as being suitable for employment, pursuant to COMAR 13A.17.06.03B; or
- (b) A review of records of abuse and neglect of children or adults, that if an individual is:
- (i) An employee of, or applying for employment by, a child care facility, the individual has been assessed by the office as being suitable for employment, pursuant to COMAR 13A.17.06.03B; or
- (ii) An independent contractor, the individual has not been identified as responsible for the abuse or neglect of a child.
- (45) "Superintendent" means the State Superintendent of Schools or the Superintendent's designee.
- (46) "Volunteer" means an individual who:
- (a) Is 13 years old or older;
- (b) Works in or for a child care facility but is not a compensated employee of the facility;
- (c) Is not counted by the child care facility toward maintenance of the staff/child ratios required by COMAR 13A.17.08.03; and
- (d) Is not enrolled as a child in care at the child care facility.

## **COMAR 13A.17.02 Letter of Compliance Application and Maintenance**

### **.01 Letter of Compliance—General Requirements.**

A. Requirement to be Licensed or Hold a Letter of Compliance. A tax-exempt religious organization that operates a nursery school or child care program in a school building used exclusively for children who are enrolled in that school, is required to be licensed under COMAR 13A.16 or to hold a letter of compliance in accordance with the requirements of this subtitle.

#### B. General Requirements.

- (1) A letter of compliance:
- (a) Is nontransferable; and
- (b) Remains the property of the office.
- (2) The operator shall surrender the letter of compliance to the office immediately if any of the following occurs or becomes effective:
- (a) The operator closes the facility permanently;
- (b) The letter of compliance is suspended;
- (c) The letter of compliance is revoked;
- (d) The operator has not applied for a continuing letter of compliance before the expiration date of the initial letter of compliance; or
- (e) The letter of compliance expires and an application for a continuing letter of compliance is denied.

### **.02 Initial Letter of Compliance.**

A. Application Requirements. An individual or organization that does not currently hold a letter of compliance and wishes to operate a nursery school or child care program under this subtitle shall:

- (1) File a notice of intent with the office before applying for permits in connection with construction or operation of a facility; and
- (2) File with the office at least 60 days before the proposed opening date a signed and completed application form supplied by the office.

B. Before the proposed opening date, the applicant shall submit the following items to the office, if not submitted at the time the written application form was submitted:

- (1) Documentation of application for criminal background checks for:

- (a) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;
  - (b) The director;
  - (c) Each employee, including paid substitutes; and
  - (d) Each individual 14 years old or older living on the same premises as the child care facility;
- (2) Signed and notarized permission to examine records of abuse and neglect of children and adults for information about:
- (a) The director;
  - (b) Each employee;
  - (c) Each individual 18 years old or older living on the same premises as the child care facility;
  - (d) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility; and
  - (e) Trustees, managers, or board members who may have frequent contact with children in care, if the applicant is a corporation, agency, association, or other organizational entity;
- (3) Evidence of compliance with all applicable zoning and building codes;
- (4) Site plans;
- (5) Floor plans with architectural details;
- (6) A written plan of operation;
- (7) Workers' Compensation insurance information;
- (8) Fire evacuation plan;
- (9) A complete personnel list, on a form supplied or approved by the office, and all related supporting documentation required by the office;
- (10) A complete staffing pattern, on a form supplied or approved by the office, which specifies by staff name all child care assignments;
- (11) Menu for 4 weeks;
- (12) A written child discipline policy; and
- (13) All other documentation required by law or regulation, including but not limited to:
- (a) Proof of an on-site inspection and approval by the local fire authority having jurisdiction; and
  - (b) Building use and occupancy permits.

### **.03 Continuing Letter of Compliance.**

A. Obtaining a Continuing Letter of Compliance. An operator shall submit to the office, before expiration of the initial letter of compliance:

- (1) A request for a continuing letter of compliance, on a form supplied by the office;
- (2) Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified at Regulation .02B(2) of this chapter; and
- (3) Any other documentation required by law or regulation.

B. The office may not approve a continuing letter of compliance until:

- (1) All items specified in §A of this regulation have been received and approved by the office; and
- (2) The facility has passed a fire safety inspection conducted by the local fire authority having jurisdiction.

C. Maintaining a Continuing Letter of Compliance.

- (1) The operator shall comply with all applicable requirements under this subtitle.
- (2) By the end of each 24-month period after the date of issuance of a continuing letter of compliance, the operator shall provide to the office:
  - (a) Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified in Regulation .02B(2) of this chapter; and
  - (b) Any other documentation required by law or regulation.
- (3) Each year after the date of issuance of a continuing letter of compliance, the child care facility shall pass a fire safety inspection conducted by the local fire authority having jurisdiction.

### **.04 Provisional and Conditional Status.**

A. Provisional Status.

(1) Except as provided in §A(2) of this regulation, to allow an applicant for an initial or a continuing letter of compliance additional time to meet all applicable requirements, the office may approve an initial or a continuing letter of compliance on a provisional basis for a period of up to 120 days after determining that the health and safety of the children in care are not in imminent danger.

(2) An initial letter of compliance may not be approved if the office has not yet received evidence that the applicant and each individual, as applicable, specified at Regulation .02B(1) and (2) of this chapter has successfully passed a federal and State criminal background check and a review of child abuse and neglect records.

(3) At the end of the provisional period, if all requirements for the initial or continuing letter of compliance are not met due to:

(a) Failure by the applicant to take an action necessary to achieve compliance, the office shall deny the application for the letter of compliance; or

(b) Circumstances beyond the control of the applicant, the office may continue the provisional status for one or more additional periods of up to 120 days per period, except that provisional status may not be continued for more than 24 months after the start of the first provisional period.

(4) If the office denies a letter of compliance at the end of the provisional period, the applicant or operator does not have a valid letter of compliance and shall cease operating.

**B. Conditional Status.**

(1) If an operator who holds a continuing letter of compliance fails to remedy a violation as required, the office may place the letter of compliance on conditional status for:

(a) A period of up to 120 days; and

(b) Upon approval by the Agency's central office, an additional period of up to 120 days.

(2) Upon placing a continuing letter of compliance on conditional status, the office shall issue to the operator a revised letter of compliance that states the:

(a) Placement of the letter of compliance on conditional status;

(b) Period of time of the conditional status; and

(c) Requirements for lifting the conditional status.

(3) If the operator satisfies all requirements for lifting the conditional status within the specified period of time, the office shall promptly:

(a) Discontinue the conditional status; and

(b) Reinstate the continuing letter of compliance.

(4) If the operator fails to satisfy all requirements for lifting the conditional status within the specified period of time, the office may suspend or revoke the continuing letter of compliance.

**.05 Response of the Office to Application.**

A. Upon receiving a completed application for an initial letter of compliance or a continuing letter of compliance, and all documentation required by law or regulation, the office promptly shall determine compliance with the requirements of this subtitle by:

(1) Evaluating the application and required documentation; and

(2) Inspecting the:

(a) Facility proposed for use as a nursery school or child care program, if the application is for an initial letter of compliance; or

(b) Nursery school or child care program, if the application is for a continuing letter of compliance.

B. Except as specified at §C of this regulation, the office shall, within 30 days after completing the procedures in §A of this regulation, promptly:

(1) For an initial letter of compliance application:

(a) Issue an initial letter of compliance;

(b) Issue an initial letter of compliance on a provisional basis; or

(c) Deny an initial letter of compliance; or

(2) For a continuing license application, issue or deny a continuing license.

C. The office may not issue an initial letter of compliance until child care staff, sufficient in number to meet the staff/child ratio and group size requirements of COMAR 13A.17.08.03 as they apply to the requested child capacity, have successfully passed federal and State criminal background checks and a review of child and adult abuse and neglect records.

**.06 Denial of Letter of Compliance.**

A. An office may deny an application for an initial letter of compliance or a continuing letter of compliance if:

(1) The applicant or the building in which child care is provided fails to meet the requirements of this subtitle;

(2) An evaluation of the application form by the office reveals that the applicant reported false information;

(3) The applicant has a history of regulatory violations that demonstrates an inability to provide for the health or safety of children;

(4) The applicant has previously had a family day care registration, child care center license, or letter of compliance denied or revoked by the office, unless the office is satisfied that the condition that was the basis for the denial or revocation has been corrected;

(5) The applicant prevents the office from completing its responsibilities for issuing a letter of compliance;

(6) An evaluation of criminal records or records of abuse or neglect of children and adults indicates, for those identified in Regulation .02B(1) and (2) of this chapter, behavior harmful to children; or

(7) The office concludes that the applicant cannot provide for the health, safety, or welfare of the children in care on the basis of:

(a) Substantial, credible evidence of the applicant's abuse of alcohol or a controlled dangerous substance, mental instability, or other condition; or

(b) Other pertinent information received by the office that creates reasonable doubt as to the applicant's ability to provide child care in accordance with this subtitle.

B. If the office denies an application, the office shall notify the applicant in writing by certified mail of the denial, stating the:

- (1) Reason for denial;
- (2) Specific regulation with which the applicant has failed to comply that is the basis for the denial;
- (3) Applicant's right to request a hearing; and
- (4) Procedure to be used if the applicant wishes to request a hearing to appeal the decision of the office.

C. Denial Before Complete Application.

(1) The office may deny an application for an initial or a continuing letter of compliance at any point during the application process if, following evaluation of information received to that point, the office determines that a basis for denial exists as set forth in §A of this regulation.

(2) If the office decides to deny the application before the application process is complete, the office shall send written notice of that decision to the applicant within 30 calendar days after making the decision.

## **COMAR 13A.17.03 Management and Administration**

### **.01 Multi-Site Facilities.**

A nursery school or child care program may have more than one location and may be treated as one facility for purposes of this subtitle only if:

A. The buildings:

(1) Function as one integrated center, are in close proximity such as across the street or on the same campus, and are connected by an intercom system; and

(2) Are under the supervision of one director; and

B. Two or more locations:

(1) Are administered by one central administration with one ownership; and

(2) Share common administrative policies and procedures and contracts.

### **.02 Admission to Care.**

A. An operator may not admit a child for care unless the operator has:

(1) Met the applicable requirements of this regulation; and

(2) Received the written records required by Regulation .04C—H of this chapter.

B. At or before the child's admission to care, the operator shall obtain:

(1) Written information from the parent about the child's individual needs; and

(2) If the child is enrolled in school, parental permission for the school to release the child's health information to the child care facility.

C. As part of the admission process, the operator shall:

(1) Give the parent, or advise the parent how to obtain, a consumer education pamphlet on child care that is supplied by the office; and

(2) Provide written evidence that the requirements of §C(1) of this regulation have been met.

D. If a child is younger than 6 years old at the time of admission, the operator may not allow the child to remain in care if the parent does not, within 30 days after the child's admission, submit evidence to the operator on a form supplied or approved by the office that the child has received an appropriate lead screening in accordance with applicable State or local requirements.

### **.03 Program Records.**

The operator shall:

A. Create and maintain, for at least 2 years after their creation, records of program:

(1) Enrollment, with each child's name, address, telephone number, date of birth, and dates and time periods for that enrolled; and

(2) Attendance, by groups of children which indicate the dates of attendance of each child in the facility; and

B. Maintain:

(1) Procedures to ensure that the whereabouts of each child in attendance is known at all times;

(2) A written child discipline policy as required in COMAR 13A.17.07.03C;

(3) Records of food actually served by the facility for the most recent 4 weeks as required by COMAR 13A.17.12.01G;

(4) A written record of the dates and times at which emergency safety drills were conducted pursuant to COMAR 13A.17.10.01B(3); and

(5) A current copy of Family Law Article, §5-570 et seq., Annotated Code of Maryland, and this subtitle on the premises and make them available to parents upon request.

#### **.04 Child Records.**

A. For each child admitted to, or continuing in care, the operator shall maintain written records, on forms provided or approved by the office, that meet the requirements of this regulation.

B. Each child's written records shall be:

- (1) Readily accessible to all staff members providing care to the child; and
- (2) Kept on file at the facility during the period of a child's enrollment and for 2 years after the child's disenrollment.

C. The operator shall obtain and maintain emergency information from the child's parent that:

- (1) Includes the child's name and date of birth;
- (2) Includes the parent's full name, current address, and home and work telephone numbers;
- (3) Includes the name and telephone number of the individual, if different from the child's parent, who is authorized to pick up the child each day;
- (4) Includes the name and telephone number of at least one individual who is authorized to pick up the child in an emergency;
- (5) Includes the name, address, and telephone number of the child's physician or other health care provider;
- (6) If the child has a special health condition, includes emergency medical instructions for that condition;
- (7) Is signed and dated by the child's parent;
- (8) Is updated as needed, but at least annually; and
- (9) Is readily accessible to each staff member supervising the child, including during an off-site activity.

D. Unless a parent objects to a child's medical examination because of bona fide religious beliefs and practices, a health assessment of the child shall be provided by the child's parent that:

- (1) Includes a parental statement of the child's health status;
- (2) If applicable, includes a statement of allergies; and
- (3) Includes a medical evaluation, signed and dated by a physician, that states the child is medically cleared to attend child care and is based on an examination completed by the physician within the last:
  - (a) 2 months before admission for a child younger than 9 months old;
  - (b) 3 months before admission for a child between 9 and 24 months old; or
  - (c) 12 months before admission for a child 2 years old or older.

E. If the child is younger than 6 years old, there shall be documentation that the child has received an appropriate lead screening as required by State or local law.

F. A medical evaluation and, if applicable, documentation of an appropriate lead screening that are transferred directly, without a gap in time longer than 3 months, from a registered family day care home, a licensed child care center, another facility operating under a letter of compliance, or a public or nonpublic school in Maryland may be accepted as meeting the requirements of §§D(3) and E of this regulation.

G. There shall be an immunization record showing that:

- (1) The child has had immunizations appropriate for the child's age which meet the immunization guidelines set by the Maryland Department of Health and Mental Hygiene;
- (2) The child has had at least one dose of each vaccine appropriate for the child's age before entry and is scheduled to complete the required immunizations;
- (3) A licensed physician or a health officer has determined that immunization is medically contraindicated according to accepted medical standards; or
- (4) The parent objects to the child's immunization because it conflicts with the parent's bona fide religious beliefs and practices.

H. If a parent objects to a child's immunization or medical examination, or both, because of the parent's bona fide religious beliefs and practices, an operator shall require the parent to provide a health history of the child and sign a statement indicating that to the best of the parent's knowledge and belief, the child is in satisfactory health and free from any communicable disease.

I. The operator shall record or maintain on file:

- (1) Each incidence of acute illness requiring exclusion of the child from care pursuant to COMAR 13A.17.11.01;
- (2) Each injury or accident required by Regulation .06B and C of this chapter to be reported;
- (3) Child medication records required by COMAR 13A.17.11.04;
- (4) If the child requires a modified diet, the prescription from the child's health practitioner or the written instructions from the child's parent, pursuant to COMAR 13A.17.12.02;
- (5) If program activities away from the center are provided, prior written permission from the child's parent to take the child to those activities; and
- (6) Documentation that the child's parent has received, or has been advised how to obtain, the consumer education pamphlet on child care supplied by the office.

J. Written information about the child's individual needs that is supplied by the parent by the time of the child's admission to care shall be reviewed by the operator and the parent at least every 12 months after the child's admission to care.

## **.05 Staff Records.**

The operator shall:

- A. Maintain for review by the office a current and complete:
  - (1) List of personnel, on a form supplied or approved by the office, that includes each individual, whether paid or unpaid, who works at the facility on a routine basis; and
  - (2) Staffing pattern, on a form supplied or approved by the office, that specifies:
    - (a) The number and ages of children enrolled;
    - (b) The staff/child ratio in relation to the daily schedule; and
    - (c) By staff name, all child care assignments;
- B. During an individual's employment at the facility and for 2 years after the date of the individual's last employment there, maintain a record for each individual that includes:
  - (1) Verification that an individual's age complies with the minimum required for the position held;
  - (2) Employment medical evaluation;
  - (3) Criminal background check; and
  - (4) Date on which the staff member received the information required by COMAR 13A.17.06.02;
- C. Maintain documentation required for:
  - (1) Substitutes, pursuant to COMAR 13A.17.06.05; and
  - (2) The adult available for emergencies, pursuant to COMAR 13A.17.08.02; and
- D. Maintain a calendar or other written record of the:
  - (1) Days on which a substitute provides care; and
  - (2) Staff member in whose place the substitute worked.

## **.06 Notifications.**

The operator shall:

- A. Upon adding a new employee or staff member:
  - (1) Provide to the office, within 5 working days after the date of hire, a signed and, if required by the office, notarized permission to examine records of abuse and neglect of children and adults for information about the individual; and
  - (2) Have on file in the nursery school or child care program the following information:
    - (a) The individual's assignment;
    - (b) Documentation that the individual meets the requirements of this subtitle for the assignment unless the documentation is already on file in the office; and
    - (c) If the individual is paid, proof of compliance with laws and regulations pertaining to criminal background checks;
- B. Notify or require that a staff member notify the office within 24 hours of:
  - (1) The death of a child if the child died while at the facility;
  - (2) The death of a child enrolled at the facility if the child died of a contagious disease; and
  - (3) Any injury to a child that occurs while the child is at the child care facility or on a field trip which results in the child's being:
    - (a) Treated by a medical professional; or
    - (b) Admitted to a hospital;
- C. If a child has an injury or accident while in attendance, notify the child's parent:
  - (1) Immediately, if the child's injury is serious; or
  - (2) Within the same day, about all other injuries and each accident which may result in injury;
- D. Immediately notify the office of an employee's criminal background check result received on or after October 1, 2005, that reports a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed at COMAR 12.15.02.07B; and
- E. Immediately notify the office of:
  - (1) An employee who is under investigation for:
    - (a) A criminal charge; or
    - (b) An allegation of child abuse or neglect; or
  - (2) A change at the child care facility which may affect the status of the letter of compliance, including but not limited to:
    - (a) Individuals living on the premises;
    - (b) Operation of the facility; or
    - (c) Telephone number.

## **.07 Change of Operation.**

A. Except when converting the facility to a summer camp, if an operator wishes to make any changes from the current letter of compliance, such as rooms not previously approved for child care, capacity, hours of operation, age

groups served, or the introduction of food service, the operator shall request and obtain written approval of the change from the office before implementing the change.

B. After determining whether the proposed change meets the requirements of this subtitle, the office shall approve or disapprove the proposed change. If the change is approved, the office shall issue a revised letter of compliance indicating the change.

C. If an operator wishes to convert to a summer youth camp, the operator shall:

- (1) Notify the office before implementing the change to a summer youth camp;
- (2) Upon request by the office, provide proof to the office of the facility's certification as a summer youth camp under Health-General Article, Title 14, Subtitle 4, Annotated Code of Maryland;
- (3) Remove the letter of compliance from display on the premises used for operating a summer youth camp during the period of summer youth camp operation; and
- (4) Notify parents of children in care and those applying for care that:
  - (a) A child care facility is not being operated during summer months; and
  - (b) State regulations for camps differ from those for child care facilities.

#### **.08 Variances.**

A. An office may grant a variance to a regulation under this subtitle:

- (1) If the safeguards to a child's health, safety, or well-being are not diminished;
- (2) When the operator presents clear and convincing evidence that the regulation is met by an alternative which complies with the intent of the regulation; and
- (3) For a limited period of time as specified by the office, or for as long as the letter of compliance remains in effect and the operator continues to comply with the terms of the variance.

B. Within 30 calendar days of receiving a completed request for a variance, the office shall notify the operator that the variance has been granted or denied.

C. If a variance request is denied by a regional office of the Agency:

- (1) The operator may appeal the denial to the Agency's central office; and
- (2) The Agency's central office has the final determination of whether or not a variance is granted.

D. A variance to sanitary facility requirements that is granted pursuant to COMAR 13A.17.05.08B does not apply to any subsequent additions or enlargements to the child care facility.

## **COMAR 13A.17.04 Operational Requirements**

#### **.01 Capacity.**

A. An office shall determine the capacity of the nursery school or child care program according to criteria established in:

- (1) This subtitle affecting floor space, outdoor play space, staffing, equipment, ages of the children to be enrolled, and sanitary facilities; and
- (2) Applicable codes, including zoning, building, and fire codes.

B. An operator shall limit the total number of children in care at one time to the capacity approved by the office.

#### **.02 Enrollment and Attendance.**

A. All children in care at any one time are counted as being in attendance for purposes of complying with the regulations governing capacity, group size, and staff/child ratios.

B. An operator may not enroll a child for more than 14 hours in a 24-hour period unless approved in advance by the office.

C. An operator shall maintain written records of:

- (1) Enrollment with the child's name, address, telephone number, date of birth, and dates and time periods for which enrolled; and
- (2) Attendance by groups of children which indicate the dates of attendance of each child in the child care facility.

D. An operator may enroll a child only if the office has given written approval for the facility to care for children of that child's age.

## **COMAR 13A.17.05 Physical Plant and Equipment**

#### **.01 Building Safety.**

A. An operator shall provide a building for a child care facility that is:

- (1) Soundly constructed;
- (2) Maintained in good repair;

(3) Free from health and safety hazards as identified by the office; and

(4) Clean and free from infestation of insects and rodents.

B. Except as set forth in §C of this regulation, the operator shall ensure that the child care facility complies with all applicable State and local codes, including but not limited to zoning, building, plumbing, gas, electrical, sewage disposal, drinking water, environment, health, and fire.

C. A child care facility for school age children that is located in a school building and operates before and after school hours is not required to comply with any regulation under this subtitle that relates to the physical plant of the facility if it exceeds requirements imposed by the county or the local board of education with respect to the school building.

### **.02 Accessibility.**

An operator shall ensure that an access road on facility property permits passage by emergency vehicles during times when children are in care.

### **.03 Indoor Space.**

A. In a nursery school that holds a certificate of approval to operate, or a letter of exemption from approval, that was issued by the State Board of Education before December 1, 1971, and is still in effect, a minimum of 30 square feet of floor space shall be provided for each child.

B. In a nursery school or child care program granted a letter of compliance after December 1, 1971, a minimum of 35 square feet of floor space shall be provided for each child.

C. The office may not approve a capacity increase for a child care program or a nursery school currently approved, and wishing to maintain approval, to operate with less than 35 square feet per child.

D. In calculating the square footage of floor space provided for each child, the following may not be included:

(1) Any floor space, rooms, or areas that are not suitable or available for the daily program activities of the children, such as but not limited to columns, vestibules, and corridors, food preparation areas, kitchens, bathrooms, adult work areas, permanently equipped isolation areas or sleeping rooms, storage units, and storage space; and

(2) Furniture, except for:

(a) Children's chairs and tables which are nonfixed and multipurpose;

(b) An adult-size rocking chair or other adult-size comfortable chair;

(c) Moveable play equipment;

(d) An adult-size couch; and

(e) Open shelves for children's daily activities.

### **.04 Building Repair and Maintenance.**

Building maintenance, repair, or renovation activity may not occur while a child in care is on the premises if the activity may present a significant risk to child safety or health.

### **.05 Lead-Safe Environment.**

A. A facility operator may not use paint with lead content on any:

(1) Exterior or interior surface of the facility; or

(2) Material or equipment used for child care purposes.

B. If the child care facility is a pre-1950 residential rental property, which is an affected property as defined by the Environment Article, §6-801(b), Annotated Code of Maryland, the operator shall submit a copy of the current lead risk reduction or lead free certificate.

C. If the facility was constructed before 1978 and not certified lead free pursuant to Environment Article, §6-804(a)(2)(i), Annotated Code of Maryland, the operator shall:

(1) Ensure there is no chipping, peeling, flaking, chalking, or deteriorated paint on any surface of an interior or exterior area of the facility that is used for child care;

(2) If deterioration of a surface in an area used for child care is noted, or if renovation of the premises occurs that disturbs a painted surface, arrange to have a lead dust test:

(a) Conducted by an accredited visual inspector pursuant to COMAR 26.16.02.03B to meet the risk reduction standard, if the facility is an affected property; or

(b) Conducted in areas used for child care by an accredited risk assessor pursuant to COMAR 26.16.05.11, if the facility is not an affected property; and

(3) If a lead dust test is required pursuant to §C(2) of this regulation, obtain:

(a) A passing score on that test; and

(b) Verification from the lead inspector performing the test that the requirements of §C(2) and (3)(a) of this regulation have been met.

D. In a facility constructed before 1978 and not certified lead free pursuant to Environment Article, §6-804(a)(2)(i), Annotated Code of Maryland, when performing renovation which disturbs the painted surface of an interior or exterior area used for child care or exterior areas the operator shall ensure that the work is performed by an individual

accredited to perform the lead paint abatement services using safe work practices as required by Environment Article, Title 6, Subtitle 10, Annotated Code of Maryland, and corresponding regulations.

#### **.06 Ventilation and Temperature.**

A room may be used for child care only if it:

- A. Has natural or mechanical ventilation that provides adequate exchange of air to protect a child's health and comfort;
- B. Is free of moisture and dampness; and
- C. Has a temperature at floor level of not less than 65°F.

#### **.07 Water Supply.**

- A. The facility shall have hot and cold running water, with hot water temperature not exceeding 120°F.
- B. For each 40 children in care, or fraction thereof, there shall be at least one drinking water source that is:
  - (1) Safely accessible to children 2 years old or older without assistance from an adult; and
  - (2) Not located in a toilet room or in a sink used for handwashing.
- C. Drinking water shall be supplied by:
  - (1) An angle-jet drinking fountain with mouthguard;
  - (2) Licensed bottled water in the original container;
  - (3) Running water supply with individual single service drinking cups; or
  - (4) Another method or source approved by the office.
- D. During meals and snacks, water may be served family-style from a pitcher if the water is poured into the pitcher directly from one of the supply sources listed at §C of this regulation.

#### **.08 Sanitary Facilities and Supplies.**

- A. For every 15 children in care, an operator shall provide one toilet and one sink that are:
  - (1) Maintained in good operating condition and in a sanitary manner;
  - (2) Easily accessible to the children; and
  - (3) Equipped with water-resistant, nonabsorbent platforms which are safely constructed at a height that allows children to use the toilet and sink unassisted.
- B. An operator which holds a certificate of approval to operate, or a letter of exemption from approval, that was issued by the State Board of Education before July 1, 1991, and is still in effect may receive a variance from the requirements of §A of this regulation if the office determines that:
  - (1) The requirements can be met only with substantial physical modifications to the child care facility; and
  - (2) Sanitary facilities are accessible to every child in the child care facility.
- C. In each toilet facility accessible to a school age child, the operator shall provide at least one toilet in an enclosed stall or other space affording privacy to the child.
- D. In a small facility approved for mixed age groups, only one toilet and sink are required.
- E. A facility licensed for the first time shall provide at least one toilet facility restricted to use by adults that is equipped with a toilet, sink, and toilet supplies, except that this requirement does not apply to:
  - (1) Small centers; or
  - (2) Programs that operate 2-1/2 hours or less per session per day.
- F. Each toilet room shall have:
  - (1) A floor with a water-resistant, nonabsorbent finish;
  - (2) Smoothly finished walls with a hard surface; and
  - (3) Approved and functioning natural or mechanical ventilation.
- G. Portable toilets, also known as potty-chairs, may not be used in a child care facility.
- H. Each toilet room shall contain individual paper towels, a trash receptacle, soap, and toilet paper.
- I. All sanitary supplies in a toilet room shall be available within reach of a child capable of using the toilet unassisted.
- J. Toiletry and grooming articles, drinking cups, towels, face cloths, brushes, and combs may not be shared.

#### **.09 Lighting.**

- A. There shall be sufficient natural and artificial lighting in all approved areas of the facility to allow proper child supervision and help ensure the safety of each child, employee, and visitor to the facility.
- B. An operator shall use light fixtures with bulbs, lamps, and tubes that are shatter-proof or protected by shields to prevent shattering.
- C. In a room approved for child care that does not have windows, an operator shall provide an approved source of lighting that will operate in case of a power failure.
- D. An operator shall provide adequate outdoor lighting to ensure the safety of individuals entering and leaving the facility when it is dark outside.

#### **.10 Telephone and Communication.**

- A. There shall be at least one operable telephone in the facility that is:
  - (1) Not battery-operated or rechargeable; and
  - (2) Freely and readily available to all facility staff during the approved hours of operation.
- B. In a facility with more than two rooms approved for child care, a staff member supervising a group of children in one room shall be able to communicate a request for assistance to a staff member in another room while maintaining continuous supervision of the group.
- C. The operator shall provide additional telephones or extensions in the facility as may be required to:
  - (1) Summon emergency fire and rescue services promptly; and
  - (2) Transmit and receive other emergency communications.

**.11 General Cleanliness and Disposal of Refuse.**

- A. The entire child care facility, including floors, walls, ceilings, fixtures, furnishings, materials, and equipment, shall be kept clean and free of infestation.
- B. Cleaning may not be conducted while children are present except in emergencies or as clean up activities that are part of the daily activity program.
- C. Disposal of Refuse.
  - (1) Each room used for child care shall have a trash container with a disposable liner.
  - (2) All trash containers in child care areas shall be emptied when full but at least daily.
  - (3) Refuse that is placed outdoors to await collection shall be stored in receptacles that are:
    - (a) Made of tight, nonabsorbent, easily washable materials;
    - (b) Covered with tightly fitting lids; and
    - (c) Washed and treated with disinfectant when necessary to combat odors and prevent infestation.

**.12 Outdoor Activity Area.**

- A. A child care facility shall have an outdoor activity area on the premises of, adjacent to, or near and safely accessible to the facility that provides adequate usable activity space for the approved capacity of the facility.
- B. A facility for which a notice of intent, filed pursuant to COMAR 13A.17.02.02A(1), is received by the office on or after January 1, 2009, shall have an outdoor activity area that provides at least 75 square feet of usable play space for:
  - (1) One half of the approved capacity of the facility; or
  - (2) Each child, if the facility has an approved capacity of 20 or fewer children.
- C. Usable activity space may include only the area and the activity equipment approved for use by children in care.
- D. The activity area shall be free from potential hazards to child health or safety.
- E. All outdoor activity equipment shall be safe, in good repair, clean, and nontoxic.

**.13 Swimming Facilities.**

- A. Only swimming facilities meeting applicable local standards of health, sanitation, and safety may be used.
- B. An above-ground swimming pool may not be used for swimming activities.

**COMAR 13A.17.06 Staff Requirements**

**.01 Minimum Staff Age.**

- In a nursery school or child care program:
  - A. Except as provided in §B of this regulation, staff members or substitutes shall be at least 18 years old; and
  - B. An aide and a substitute aide shall be 16 years old or older and shall work under the direct supervision of the staff member in charge of the group to whom the aide is assigned.

**.02 Staff Orientation.**

- On or before assignment, an operator shall ensure and document that each employee and staff member has been informed in writing about all areas pertinent to the health and safety of the children, including:
  - A. The location of the telephone and emergency telephone numbers;
  - B. The location of each child's emergency form;
  - C. Emergency evacuation procedures;
  - D. The identity of the staff members who have first aid and CPR training;
  - E. The identity of the adult who is required to be available to provide emergency coverage pursuant to COMAR 13A.17.08.02;
  - F. Handwashing procedures;
  - G. The facility's discipline procedures;

- H. The requirements and procedures for reporting suspected child abuse and neglect, according to Family Law Article, §§5-704—5-705, Annotated Code of Maryland;
- I. Signs and symptoms of abuse and neglect in children; and
- J. The content of the most current regulations in this subtitle.

### **.03 Suitability for Employment.**

A. A child care facility operator may not employ an individual who, as reported on or after October 1, 2005, has received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of:

- (1) A crime involving:
  - (a) A child;
  - (b) Cruelty to animals;
  - (c) Domestic violence; or
  - (d) A weapons or firearms violation of federal or state laws;
- (2) A sex offense;
- (3) A violent crime classified as a felony;
- (4) Abduction or kidnapping;
- (5) Abuse of a child or an adult;
- (6) Confinement of an unattended child;
- (7) Manufacturing, distributing, or dispensing a controlled dangerous substance;
- (8) Perjury;
- (9) Pornography;
- (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or
- (11) Reckless endangerment.

B. If, as reported on or after October 1, 2005, an individual has been identified as responsible for child abuse or neglect or received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime or offense listed under COMAR 12.15.02.07B that is not included in the list set forth at §A of this regulation, the office:

- (1) Shall assess, on the basis of the following factors, the individual's suitability for employment:
  - (a) The job position at the child care facility for which the individual is applying or in which the individual is currently employed;
  - (b) The nature and seriousness of the incident, crime, or offense;
  - (c) How long ago the incident, crime, or offense occurred;
  - (d) The age of the individual at the time the incident, crime, or offense occurred;
  - (e) The individual's probation or parole status, if applicable; and
  - (f) Any other information the office considers pertinent; and
- (2) Depending on the results of the assessment, shall permit or prohibit employment of the individual.

#### **C. Request for Reassessment.**

- (1) An individual who is prohibited from employment by the office pursuant to §B of this regulation may request the office to conduct a reassessment with respect to the incident, crime, or offense.
- (2) For a reassessment request to be eligible for consideration:
  - (a) The request shall be in writing and shall include documentation, such as but not limited to letters of support or evaluation reports, pertinent to the incident, crime, or offense; and
  - (b) The individual may not have submitted a reassessment request, whether for the same or a different job position, within the previous 12 months.
- (3) In order to reach a decision on the request, the office may request additional information from the individual, the child care facility operator, or any agency or entity cited by the individual or the operator in connection with the reassessment request.
- (4) Upon reaching a decision on the request, the office shall promptly notify the individual of that decision.
- (5) The operator may not permit the individual to begin or to resume employment until the office has notified the operator that the individual may be employed.

#### **D. Notification of Employment Prohibition.**

- (1) If the office, pursuant to this regulation, determines that an individual may not be employed at a child care facility, the office shall notify the individual and the facility operator in writing of that decision and its basis.
- (2) The written notification to the individual shall also:
  - (a) State that the individual may appeal the decision to the Office of Administrative Hearings (OAH); and
  - (b) Specify the requirements for submitting an appeal to the OAH.

#### **E. Upon notification that an individual may not be employed, the facility operator:**

- (1) Shall promptly terminate the individual from employment or from consideration for employment, as applicable; and
- (2) Unless the individual appeals the decision to the OAH and the appeal is concluded in favor of the individual, may not:

- (a) Reconsider the individual for employment;
- (b) Permit the individual to have any contact with an unrelated child in care; or
- (c) Allow the individual on the premises of the facility except to exercise parental responsibilities with respect to a related child in care.

#### **.04 Staff Health.**

##### **A. Medical Evaluation.**

(1) An operator shall obtain a medical evaluation, including a tuberculosis screen, if indicated, on a form supplied or approved by the office, that has been completed within 6 months before the individual begins work in the facility, from each prospective:

(a) Staff member; and

(b) Except for a health care professional serving as a consultant pursuant to Regulation .06C of this chapter, support staff who will be present at the facility while children are in care.

(2) The medical evaluation may transfer directly from one nursery school or child care program to another when there has been no gap in employment longer than 3 months.

**B. Exclusion from Work.** Except with the approval of the office and the health officer, an operator may not permit an individual with a serious transmissible infection or communicable disease listed on a chart supplied by the office to work at a nursery school or child care program during the period of exclusion from child care shown on the chart for that infection or disease.

#### **.05 Substitutes.**

**A.** When a staff member is absent, the operator shall provide a substitute as needed to maintain the staff/child ratios required by COMAR 13A.17.08.03.

**B.** A substitute shall be 18 years old or older, except that a substitute aide may be 16 years old or older.

#### **.06 Support Personnel.**

**A.** The operator or the director shall provide additional personnel for all duties not involving direct supervision of children, such as personnel for food preparation and service, housekeeping, transportation, clerical, and other duties, if necessary to maintain the correct staff/child ratios at all times.

**B.** In a small facility, the operator need not provide additional staff if children are involved in appropriate activities and supervised at all times while necessary duties, such as food preparation, are performed.

**C.** The operator of a facility that provides a service involving the regular use of specialized health care procedures or equipment shall use as a consultant to the facility in providing the service a registered nurse, nurse practitioner, physician's assistant, physician, or other licensed or certified service professional as appropriate.

#### **.07 Volunteers.**

**A.** Before permitting an individual who is 18 years old or older to begin volunteer duties at or for the child care facility, the operator shall:

(1) Obtain from the individual a signed and notarized release of information to examine records of abuse and neglect of children and adults for information about the individual; and

(2) Submit the release of information to the office.

**B.** A child care facility volunteer shall be under the close supervision of a staff member whenever the volunteer is in contact with an unrelated child in care at the facility.

**C.** The operator may not use as a volunteer an individual who has been prohibited, or automatically would be prohibited, from employment at the facility pursuant to Regulation .03A or B of this chapter.

## **COMAR 13A.17.07 Child Protection**

#### **.01 Prohibition of Abuse, Neglect, and Injurious Treatment.**

An operator, a staff member, substitute, volunteer, person residing on the premises of the facility, or anyone connected with the facility may not subject a child to child abuse, neglect, mental injury, or injurious treatment.

#### **.02 Abuse/Neglect Reporting.**

**A.** An operator or staff member who has reason to believe that a child has been:

(1) Abused, in a facility or outside of the facility, shall report that belief directly to the Child Protective Services unit of the local department or to a law enforcement agency, as required under Maryland law;

(2) Neglected, in a facility or outside of the facility, shall report that belief directly to the Child Protective Services unit of the local department as required under Maryland law.

**B.** When a child has been subjected to injurious treatment, it shall be reported to the office.

**C.** An operator shall:

- (1) Instruct the staff to monitor all children daily for signs and symptoms of child abuse and neglect;
- (2) Instruct staff about their legal obligations to report suspected child abuse or neglect directly to the local department or the appropriate law enforcement agency; and
- (3) Post, near each telephone in the facility, the telephone numbers of the Child Protective Services unit of the local department and the appropriate law enforcement agency.

D. An operator may not require a staff member to report through the operator or director, rather than directly to the local department or a law enforcement agency, when the staff member has reason to believe that a child has been abused or neglected.

### **.03 Child Discipline.**

A. Child discipline shall be:

- (1) Appropriate to the age, maturity, and physical condition of the child; and
- (2) Consistent with the requirements of this subtitle.

B. The operator may not:

- (1) Force a child to eat or drink;
- (2) Punish a child for refusing to eat or drink; or
- (3) Withhold food or beverage as punishment.

C. The operator shall:

- (1) Prepare a written child discipline policy that states the:
  - (a) Discipline methods used at the facility; and
  - (b) The circumstances under which the child discipline methods may be applied;
- (2) Make the child discipline policy available to:
  - (a) The parent of each child in care;
  - (b) Parents who are considering whether to enroll their children; and
  - (c) The office; and
- (3) Ensure that the child discipline policy is followed by each employee, volunteer, and other individual connected with the facility.

### **.04 Parental Access.**

An operator shall permit the parent of a child in care to:

- A. Freely observe all areas of the facility used for child care during operating hours; and
- B. Have access, without appointment, to the parent's child at any time during the nursery school's or child care program's hours of operation.

### **.05 Authorized Release.**

An operator shall ensure that a staff member releases a child only to the child's parent or to another individual, if directed by the parent, whose identity is verified. If the parent or identified individual is not available due to death, illness, emergency, or any other cause, or if requested by a Child Protective Services worker, the child may be released to Child Protective Services.

### **.06 Child Security.**

A. An operator shall ensure the safety and security of each child at all times.

B. Unless an employee or staff member has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records, the individual may not be alone with an unrelated child in care.

C. A facility employee or staff member who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records shall:

- (1) Accompany a child whenever the child is in the presence of another individual, unless the individual is:
  - (a) Another child in care;
  - (b) A health service consultant used by the facility operator pursuant to COMAR 13A.17.06.06C;
  - (c) An independent contractor hired to provide a transportation service to the facility who has successfully passed federal and State criminal background checks and a review of child abuse and neglect records;
  - (d) The child's parent, guardian, or other individual to whom the child may be released pursuant to Regulation .05 of this chapter;
  - (e) An individual who is authorized by the child's parent or guardian, and whose identity is verified, to provide a health care, educational, or other service to the child;
  - (f) Another child's parent or guardian who is designated by the facility operator to assist in transporting children to or from the facility;
  - (g) During an off-site activity, another child's parent or guardian, who is designated in writing by the facility operator to assist in transporting children to or from the facility; or
  - (h) If the facility is located at a school, an individual who for compensation is employed to work at the school; and

(2) Unless documentation is on file at the facility that an independent contractor performing a service at the facility has successfully passed federal and State criminal background checks and a review of child abuse and neglect records, remain within sight and sound of the contractor whenever the contractor is in an area of the facility where children are present.

## **COMAR 13A.17.08 Child Supervision**

### **.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.

### **.02 Staff Available for Emergencies.**

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.

### **.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
5 years old or older	1 to 15	30

E. Mixed Age Groups.

- (1) A mixed age group with preschool children may not exceed 20 children.
- (2) In a mixed age group with preschool children 3 years old or older, the staff to child ratio is 1 to 10.
- (3) A maximum of six 2-year-olds may be in a mixed age group of 13 to 20 children.
- (4) In mixed-age groups of varying sizes that include children who are 2 years old, the following minimum staffing levels apply:

Group Composition	Group Size	Minimum Staffing Level
Group includes one to three 2 year old children	7 to 10	1 Staff member
Group includes four or more 2 year old children	7 to 10	2 Staff members
Group includes one to three 2 year old children	13 to 20	2 Staff members
Group includes four to six 2 year old children	13 to 20	3 Staff members

F. When children who are 2 years old, 3 years old, 4 years old, and 5 years old are grouped together, the average age of all the children in the group as of September 1 of that school year is used to determine the group's maximum size and staff/child ratio.

#### **.04 Variations in Group Size.**

A. Group sizes for all ages may vary during outdoor play and special activities such as field trips and assemblies, only if the operator maintains the staff/child ratios required by this chapter.

B. Groups containing only school age children may be of any size, pursuant to a plan approved by the office, if the staff/child ratios required by this chapter are maintained.

#### **.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.

#### **.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 facility employee; or

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.

#### **.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 13A.17.09 Program Requirements**

#### **.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.

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.

## **.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.

## **.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 13A.17.10 Safety**

## **.01 Emergency Safety Requirements.**

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

B. An operator shall:

- (1) Prepare an emergency evacuation plan which is approved by the local fire authority having jurisdiction, including a:
  - (a) Diagram of safe routes by which the staff and children may exit each area of the facility used by a child in care in the event of a fire or other emergency requiring evacuation of the facility; and
  - (b) Location with a telephone, such as another child care facility, a school, or a public building, that can be used by the staff and children in the event of a fire or other emergency until the operator or director can contact the parents of the children in care;
- (2) Post a copy of the plan in each area and room in the facility;
- (3) Require that, at least once a month, the staff and the children practice the procedures to be used in the event of a fire or other emergency requiring escape from the facility; and
- (4) In the event of a declared emergency, be prepared to respond as directed by the local emergency management authority.

C. An operator shall ensure that, during an emergency evacuation or practice, a staff member takes attendance records out of the facility and determines the presence of each child currently in attendance.

## **.02 First Aid and CPR.**

A. An operator shall arrange the staffing pattern so that the nursery school or child care program has in attendance at all times at least one individual who is responsible for supervision of children, including children engaged in an activity away from the premises of the facility, 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. 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.

### **.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.

### **.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.

### **.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 13A.17.11 Health**

### **.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.

### **.02 Infectious and Communicable Diseases.**

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.

### **.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.

#### **.04 Medication Administration and Storage.**

A. Medication may not be administered to a child in care unless:

(1) 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 child care facility before the medication is administered;

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

- (a) The child's name;
- (b) The dosage; and
- (c) An expiration date that indicates that the medication is still useable; and

(3) If the medication is by prescription, at least one dose of the medication has been given to the child at home.

B. Except for acetaminophen and topical medications, an operator may administer only one dose of a nonprescription medication to a child per illness unless a licensed health practitioner approves the administration of the nonprescription medication and the dosage.

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. Except for application of a nonprescription diaper rash treatment, sunscreen, or insect repellent supplied by a child's parent, each administration of a medication to a child shall be noted in the child's record.

E. Medication Storage.

(1) Each medication shall be:

- (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 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.

#### **.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.

#### **.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 13A.17.12 Nutrition**

#### **.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.

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 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.

### **.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.

### **.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.

### **.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;

- (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;
- (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.

### **.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.

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 13A.17.13 Adolescent Facilities**

### **.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.

### **.02 Plan of Operation.**

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

- 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 13A.17.14 Educational Programs in Nonpublic Nursery Schools**

### **.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.

### **.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.17 that authorizes the recipient to operate a letter of compliance facility.
- (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 Development, Office of Child Care.
- (11) "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.
- (12) "State Board" means the Maryland State Board of Education.
- (13) "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.

### **.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 not 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:

- (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.

### **.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.

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.15 or COMAR 13A.16; 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.

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

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.

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

A. Educational Program Administrator.

(1) The operator shall have an educational program administrator who is responsible for the day-to-day 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, and social studies shall hold, at a minimum, one of the following credentials:

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

C. 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.

### **.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 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 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.16.03.04 or COMAR 13A.17.03.04, as applicable.

D. Age of Admission.

(1) Except as provided by §D(2) of this regulation, by the 2006—2007 school year and thereafter, 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. 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.

**.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 13A.17.15 Inspections, Complaints, and Enforcement**

**.01 Complaints.**

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.

**.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:
    - (a) Before the office issues an initial letter of compliance or a continuing letter of compliance; and
    - (b) At least once within each 24-month period after issuance of 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.

**.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;
  - (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.

**.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;
  - (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) Reinstatement the letter of compliance and return it to the operator; or
  - (2) Revoke the letter of compliance.

**.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 stop providing child care:

(a) If the date of the notice of emergency suspension is before October 1, 2008, within 72 hours of delivery of the notice unless the operator requests a hearing in writing within 72 hours of delivery of the notice; or

(b) Immediately upon delivery of the notice of emergency suspension, if the date of the notice is on or after October 1, 2008;

(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, the operator shall cease or continue to cease operations, as applicable, 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.

#### **.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;

(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.

#### **.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:

(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 13A.17.16 Administrative Hearings

### .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.

### .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 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.14.02.19-1D or 13A.14.05.19-1D.

(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.

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

### .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 revocation that immediately follows an emergency suspension period.

**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) In the case of an emergency suspension, a hearing request filed within 72 hours of the hand delivery of the notice of emergency suspension shall stay the emergency suspension until after a hearing decision is made. In all other emergency actions, the filing of a hearing request may not stay the 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.

**.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.

**.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

(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 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) 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.

#### **.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.

#### **.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 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 Rule B4.

## **COMAR 13A.17.17 Public Access to Licensing Records**

#### **.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;

(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 has 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 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:

- (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;
- (2) Be signed by the applicant; and
- (3) Reasonably identify by brief description the record sought.

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

- (1) Physical inspection of licensing records; or
- (2) Preparation of a written or electronic:
  - (a) Copy of licensing records; or
  - (b) Report of information from licensing records.

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

- (1) The reproduction of documents sought;
- (2) Official or employee time expended searching for requested records; or
- (3) Any time expended in preparing records for inspection or copying.

### **.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.

## **Administrative History**

**Subtitle effective date: October 20, 2008 (35:21 Md. R. 1827)**