

**Title 13A STATE BOARD OF EDUCATION
Subtitle 14 CHILD AND FAMILY DAY CARE**

Chapter 04 Administrative Hearings-Child Care Centers *

Authority: Family Law Article §§5-573 and 5-580; State Government Article, §10-204,
Annotated Code of Maryland

* The requirements of this chapter apply equally to Letter of Compliance facilities.

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.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, above. 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, § 10-215, 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, and an immediate limitation on the ages or numbers of children who may be admitted to care.

(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.

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 or another person at the hearing,

(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 and of COMAR 13A.14.02 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 Regulation .06D and E 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.

Administrative History

Effective date:

Regulations .01-.08 adopted as an emergency provision effective February 20, 1991 (18:5 Md. R. 589); emergency status expired August 20, 1991

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