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**To:** Members of the State Board of Education

**From:** Dr. Sylvia Lawson, Acting State Superintendent of Schools 

**Date:** October 24, 2023

**Subject:** COMAR 13A.16.06.09 *Child Care Center*, COMAR 13A.16.06.10 *School Age Centers*, and COMAR 13A.18.06.06 *Family Child Care*  
**PERMISSION TO ADOPT**

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### **Purpose**

The purpose of this item is to request permission to adopt proposed action to implement regulations COMAR 13A.16.06.09-1 Probationary Child Care Teachers in Preschool Centers, COMAR 13A.16.06.10-1 Probationary Child Care Teachers in School Age Centers, and COMAR 13A.18.06.06-1 Probationary Family Child Care Teachers. These regulations are required by House Bill 597/Senate Bill 436 from the 2021 legislative session.

### **Regulation Promulgation Process**

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

### **Background/Historical Perspective**

Section 9.5-404 of the Education Article, Annotated Code of Maryland, requires the State Board to adopt rules and regulations for licensing and operating child care centers or homes in Maryland. During the 2021 legislative session, the General Assembly passed House Bill 597/Senate Bill 436 requiring the State Board to adopt regulations that establish certain qualifications for employment for a six-month probationary period for an individual applying for the first time to be a child care teacher in a child care center or home in the State. The legislation also requires a child care center or home, at the end of a six-month probationary period, to terminate or reassign to a nonteaching

position any probationary teacher who fails to complete the requisite semester hours or training required during the six-month period.

### **Executive Summary**

The proposed regulations for COMAR 13A.16.06.09-1, COMAR 13A.16.06.10-1 and COMAR 13A.18.06.06-1 provide that an individual is eligible for employment as a child care teacher for children ages three and older in a Maryland center or home for a probationary period of six months if the individual is applying for employment for the first time in Maryland and meets certain age, education, and training qualifications. The proposed regulations further provide that a Maryland center or home must terminate or reassign to a nonteaching position any probationary teacher who fails to complete the requisite semester hours or training required during the six-month probationary period.

The regulations were presented to the State Board on September 27, 2022, with a request for permission to publish. The amendments were published in the Maryland Register for August 25, 2023, through September 25, 2023. MSDE received two comments. One was in support of the proposed regulations and one was against them. The comment against the proposed regulations requests that all teacher qualifications are removed. However, both the Maryland General Assembly and MSDE agree that baseline levels of quality for early childhood educators must be in place to ensure child safety and well-being. A copy of the comments is attached.

### **Action**

Request permission to adopt:

COMAR 13A.16.06.09-1 Probationary Child Care Teachers in Preschool Centers

COMAR 13A.16.06.10-1 Probationary Child Care Teachers in School Age Centers

COMAR 13A.18.06.06-1 Probationary Family Child Care Teachers

### **Attachments**

COMAR 13A.16.06.09-1 Probationary Child Care Teachers in Preschool Centers

COMAR 13A.16.06.10-1 Probationary Child Care Teachers in School Age Centers

COMAR 13A.18.06.06-1 Probationary Family Child Care Teachers

## Subtitle 16 Child Care Centers

### Chapter 06 Staff Requirements

Authority: Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act §418 (42 U.S.C. 618)

#### **.09-1 Probationary Child Care Teachers in Preschool Centers.**

A. An individual who has not met the requirements specified in Regulation .09 of this chapter is eligible for employment as a child care teacher for children ages 3 and older in a preschool center for a probationary period of up to 6 months if the individual:

- (1) Is applying for employment as a child care teacher for the first time in a Maryland center or home;
- (2) Is 19 years old or older;
- (3) Is enrolled in 3 clock hours of approved training in complying with the Americans with Disabilities Act;
- (4) Is enrolled in the approved basic health and safety training; and
- (5) Meets the requirements of §B or C of this regulation.

B. An individual meets the requirements of §A(5) of this regulation, if the individual:

- (1) Holds an associate degree or a bachelor's degree in:
  - (a) Early childhood education;
  - (b) Elementary education;
  - (c) Child development;
  - (d) Home economics;
  - (e) Nursing;
  - (f) Social work;
  - (g) Special education; or
  - (h) A related field approved by the Department; and
- (2) Is enrolled in 90 clock hours or 6 semester hours of approved preservice training;

C. An individual meets the requirements of §A(5) of this regulation, if the individual:

- (1) Holds an associate degree or a bachelor's degree in a field other than the fields specified in §B(1) of this regulation;
- (2) Has successfully completed at least 45 clock hours of the 90 clock hours or 3 semester hours of the 6 semester hours of approved preservice training; and
- (3) Is enrolled in the remaining 45 clock hours or 3 semester hours of the approved preservice training.

D. A probationary employee shall complete:

- (1) The approved basic health and safety training required in §A(4) of this regulation within 90 days of employment;
- (2) The approved training in complying with the Americans with Disabilities Act required in §A(3) of this regulation within 6 months of employment; and
- (3) The approved preservice training required in §B(2) or C(3) of this regulation within 6 months of employment.

E. Except as provided in §F of this regulation, a preschool center shall either terminate or reassign a probationary employee to a non-teaching position at the center if the probationary employee fails to complete any of the training requirements of this regulation within the time periods designated in §D of this regulation.

F. If a preschool center requests an extension of time for a probationary employee to complete any of the training requirements of this regulation, the Department may:

- (1) Without further cause, deny the request and direct the preschool center to either terminate or reassign the probationary employee to a non-teaching position at the center; or
- (2) Upon a showing of good cause, grant the request and allow the probationary teacher to remain in a teaching position at the center for a period of time determined by the Department and approved by the Superintendent.

#### **.10-1 Probationary Child Care Teachers in School Age Centers.**

A. An individual who has not met the requirements specified in Regulation .10 of this chapter is eligible for employment as a child care teacher in a school age center for a probationary period of up to 6 months if the individual:

- (1) Is applying for employment as a child care teacher for the first time in a Maryland center or home;
- (2) Is 19 years old or older;
- (3) Is enrolled in 3 clock hours of approved training in complying with the Americans with Disabilities Act;
- (4) Is enrolled in the approved basic health and safety training; and
- (5) Meets the requirements of §B or C of this regulation.

B. An individual meets the requirements of §A(5) of this regulation, if the individual:

- (1) Holds an associate degree or a bachelor's degree in:
  - (a) Early childhood education;
  - (b) Elementary education;
  - (c) Child development;

- (d) Home economics;
  - (e) Nursing;
  - (f) Social work;
  - (g) Special education; or
  - (h) A related field approved by the Department; and
- (2) Is enrolled in 90 clock hours or 6 semester hours of approved preservice training;
- C. An individual meets the requirements of §A(5) of this regulation, if the individual:
- (1) Holds an associate degree or a bachelor's degree in a field other than the fields specified in §B(1) of this regulation;
  - (2) Has successfully completed at least 45 clock hours of the 90 clock hours or 3 semester hours of the 6 semester hours of approved preservice training; and
  - (3) Is enrolled in the remaining 45 clock hours or 3 semester hours of the approved preservice training.
- D. A probationary employee shall complete:
- (1) The approved basic health and safety training required in §A(4) of this regulation within 90 days of employment;
  - (2) The approved training in complying with the Americans with Disabilities Act required in §A(3) of this regulation within 6 months of employment; and
  - (3) The approved preservice training required in §B(2) or C(3) of this regulation within 6 months of employment.
- E. Except as provided in §F of this regulation, a school age center shall either terminate or reassign a probationary employee to a non-teaching position at the center if the probationary employee fails to complete any of the training requirements of this regulation within the time periods designated in §D of this regulation.
- F. If a school age center requests an extension of time for a probationary employee to complete any of the training requirements of this regulation, the Department may:
- (1) Without further cause, deny the request and direct the school age center to either terminate or reassign the probationary employee to a non-teaching position at the center; or
  - (2) Upon a showing of good cause, grant the request and allow the probationary teacher to remain in a teaching position at the center for a period of time determined by the Department and approved by the Superintendent.

## Subtitle 18 Large Family Child Care Homes

### Chapter 06 Provider and Staff Requirements

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

#### **.06-1 Probationary Family Child Care Teachers.**

A. An individual who has not met the requirements specified in Regulation .06 of this chapter is eligible for employment as a family child care teacher for children ages 3 and older in a child care home for a probationary period of up to 6 months if the individual:

- (1) Is applying for employment as a family child care teacher for the first time in a Maryland center or home;
- (2) Is 19 years old or older;
- (3) Is enrolled in 3 clock hours of approved training in complying with the Americans with Disabilities Act;
- (4) Is enrolled in the approved basic health and safety training; and
- (5) Meets the requirements of §B or C of this regulation.

B. An individual meets the requirements of §A(5) of this regulation, if the individual:

- (1) Holds an associate degree or a bachelor's degree in:
  - (a) Early childhood education;
  - (b) Elementary education;
  - (c) Child development;
  - (d) Home economics;
  - (e) Nursing;
  - (f) Social work;
  - (g) Special education; or
  - (h) A related field approved by the Department; and
- (2) Is enrolled in a 90-hour or 6 semester hours of approved preservice training;

C. An individual meets the requirements of §A(5) of this regulation, if the individual:

- (1) Holds an associate degree or a bachelor's degree in a field other than the fields specified in §B(1) of this regulation;
- (2) Has successfully completed at least 45 clock hours of the 90 clock hours or 3 semester hours of the 6 semester hours of approved preservice training; and

*(3) Is enrolled in the remaining 45 clock hours or 3 semester hours of the approved preservice training.*

*D. A probationary employee shall complete:*

*(1) The approved basic health and safety training required in §A(4) of this regulation within 90 days of employment;*

*(2) The approved training in complying with the Americans with Disabilities Act required in §A(3) of this regulation within 6 months of employment; and*

*(3) The approved preservice training required in §B(2) or C(3) of this regulation within 6 months of employment.*

*E. Except as provided in §F of this regulation, a family child care home shall either terminate or reassign a probationary employee to a non-teaching position at the child care home if the probationary employee fails to complete any of the training requirements of this regulation within the time periods designated in §D of this regulation.*

*F. If a family child care home requests an extension of time for a probationary employee to complete any of the training requirements of this regulation, the Department may:*

*(1) Without further cause, deny the request and direct the family child care home to either terminate or reassign the probationary employee to a non-teaching position at the child care home; or*

*(2) Upon a showing of good cause, grant the request and allow the probationary teacher to remain in a teaching position at the child care home for a period of time determined by the Department and approved by the Superintendent.*

MOHAMMED CHOUDHURY  
State Superintendent of Schools

Comments regarding **COMAR 13A.16.06** Child Care Center and **COMAR 13A.18.06** Large Family Child Care Homes

Published in the Maryland Register August 25, 2023, through September 25, 2023

(Volume 50, Issue 17, p. 19)

<b>Public Comment on proposed regulation changes pertaining to Child Care Centers and Large Family Child Care Homes</b>		
<p style="text-align: center;"><b>Amendment Summary:</b></p> <p>The proposed amendments will allow child care programs to hire an individual that is eligible for employment as a child care teacher for children ages 3 and older in a Maryland center or home for a probationary period of 6 months; if the individual is applying for employment for the first time in Maryland and meets certain age, education and training qualifications. The proposed regulations further provide that child care centers must terminate or reassign to a nonteaching position any probationary teacher who fails to complete the requisite semester hours or training required during the 6-month probationary period.</p>		
<b>1) Michelle Green on behalf of Montgomery Child Care Association, Inc. @ <a href="mailto:Michelle.Green@mccaedu.org">Michelle.Green@mccaedu.org</a></b>	<b>Date Received:</b> 9/12/2023	<b>Stance:</b> Oppose
<b>MSDE Response:</b> Thank you for submitting your public comment. It has been received and will be reviewed.		
<p>Montgomery Child Care Association, Inc. (MCCA) is licensed in the State of Maryland to provide child care to children aged birth to 12 at its ten locations throughout Montgomery County. In continuous operation since its inception as a nonprofit child care provider in 1968, MCCA delivers high quality, play-based programming to the 600+ children in its care.</p> <p>MCCA does not support the proposed regulations as published in the August 25, 2023 Maryland Register pertaining to Subtitle 16 Child Care Centers, 13A.16.06 Staff Requirements, Sections .09-1 and .10-1 Probationary Child Care Teachers in Preschool Centers and School Age Centers, respectively. The requirements that a “probationary” Preschool or School Age Teacher must possess an associates or bachelor’s degree in order to qualify for the probationary exemption does not reflect the current applicant pool for employment. Very few, if any, applicants that MCCA screens have an associates or bachelor’s degree in any discipline. The</p>		

qualification for a probationary teacher should only be that the individual has the required experience for their position and is enrolled in the 90 hour approved preservice training and completes that training within the 6 month period.

There is a severe workforce shortage in child care. The requirements, as written in the proposed regulations, will do little to increase the workforce pool for child care. We strongly urge that these regulations be revised to better reflect the employment shortage and assist child care providers in filling teacher positions while staff are actively working to complete their required trainings.

2) **Cheryle Johnson @**  
[mrscher@comcast.net](mailto:mrscher@comcast.net)

**Date Received:** 9/20/2023

**Stance:** In Support

**MSDE Response:** In reference to your question, the proposed regulations do not alter the personnel qualifications for approved education programs under COMAR 13A.16.16.06. Nevertheless, we appreciate your feedback. Have a great day!

**RE: Public Comment on proposed regulation changes pertaining to Child Care Centers and Large Family Child Care Homes**

Regarding the new proposal for Probationary Child Care Teachers in Preschool Centers, does it include Non-public school Teachers in Child Care/Preschool Centers for children 3 years old and older?

We are a non-public school approved by MSDE for ages infants through school-age (before/aftercare). Currently, our 3 and 4 year olds programs have teachers with a bachelor degree in any field of study in addition to 90 clock hours of approved training. We are operating under the same guidelines as other child care teachers.

Since teacher shortages have impacted public and private sectors, please make sure we are included in the regulations regarding probationary child care teachers in Preschool Centers. Thank you.