



Mohammed Choudhury
State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Mohammed Choudhury, State Superintendent of Schools
DATE: July 25, 2023
SUBJECT: Nonpublic Nursery School Proposed Regulations for:
COMAR 13A.15
Family Child Care
PERMISSION TO PUBLISH

Purpose

The purpose of this item is to request permission to publish amendments to COMAR 13A.15 *Family Child Care* to authorize family child care providers to operate an approved nonpublic nursery school to serve Pre-K children.

Standard 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 be recommended 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

Proposed Regulation: Approved Nonpublic Nursery School in Registered Family Child Care

The proposed regulations allowing for registered family child care providers to operate an approved nonpublic nursery school were originally brought to the Maryland State Board of Education (MSBE) in Fall 2022. These proposed regulations are being brought before the MSBE again because MSDE made substantive changes to

the proposed regulations based on feedback from the early childhood community and the Administrative, Executive, and Legislative Review (AELR) Committee.

The Maryland State Department of Education (MSDE) recommends the following actions based on the feedback received:

- MSDE has removed the part of the originally proposed regulation requiring the Pre-K program to be operated in a separate room from the child care program for children under age two. Although MSDE had initially included this provision to account for the unique needs of infants including, for example, napping that may occur while older children are receiving educational instruction, MSDE also recognizes the benefits of mixed-age learning environments for early childhood development.
- MSDE has maintained the prohibition on operating the Pre-K program in the living space of the residence, with the clarification that construction of an addition to the home is not required. This prohibition, which also exists in the large family child care home regulations, has been interpreted by MSDE to mean that child care must occur in areas of the home that family members are not accessing during child care hours. In other words, family members in the living space who are not a part of the family child care program should be physically separated from the space used to operate the child care and/or pre-K program.
- MSDE has maintained the requirement for an additional staff member for children under age two to ensure adequate supervision.
- Similarly, the requirement for an Educational Program Administrator remains intact, with the clarification that there is flexibility for the family child care providers themselves to fulfill this role. The re-proposed regulations aim to address the concerns of the early childhood community while upholding standards of basic quality.

Stakeholder Engagement

MSDE met with early care and education stakeholder groups to discuss this new version of the proposed regulation. Stakeholders were supportive of the proposed regulations. MSDE met with the following stakeholders to discuss this proposed regulation and receive feedback.

- Office of Child Care (OCC) Advisory Council Member Meeting (July 18, 2023)

Executive Summary

The proposed nonpublic nursery school regulations for family child care are needed to authorize family child care providers to operate an approved nonpublic nursery school within their family child care setting, to educate and care for Pre-K children, and also to have their teacher practicum take place in their family child care home to lead to teacher certification. When a family child care program becomes an approved nonpublic nursery school, the program can be used for a practicum for a State-approved teacher practicum. After careful consideration, MSDE has adjusted the regulations based on the feedback received from early childhood stakeholders and the AELR Committee. This memorandum outlines the changes made in response to the public comments.

1. **Prohibition of operating the Pre-K program in the living space of the residence:** The proposed regulations maintain the prohibition of operating the Pre-K program in the living space of the residence.

This regulation ensures that child care takes place in designated areas of the home that are separate from the living space accessed by family members. The intent is not to require the construction of additional physical structures but rather to establish physical separation between family members and the space used for child care and/or Pre-K program operations.

2. **Requirement for the Pre-K program to be operated in a separate room for children under age two:** MSDE has considered the feedback and, in these new proposed regulations, has decided to remove the requirement for the Pre-K program to be operated in a separate room from the child care program for children under age two. This change recognizes the research on the value of mixed-age learning environments for early childhood development and promotes greater flexibility in program operations.
3. **Requirement for one additional staff for children under age two:** The proposed regulations acknowledge the concerns raised by the family child care provider community regarding the requirement for an additional staff member for children under age two. However, after careful consideration, MSDE continues to recommend maintaining this requirement to ensure appropriate supervision based on the developmental needs of children. Additional funding from the Blueprint Pre-K initiative should support small family child care homes in hiring the necessary additional staff, as is already required in large family child care homes.
4. **Requirement for an Educational Program Administrator:** The proposed regulations retain the requirement for an Educational Program Administrator in family child care homes. This requirement allows the family child care provider to fulfill the role of the Educational Program Administrator, ensuring administrative oversight and accountability within the program.

MSDE has carefully reviewed the concerns expressed by stakeholders. The new proposed regulations strike a balance between addressing the feedback received and maintaining the necessary standards for child care and Pre-K programs in Maryland.

Action

Request that the State Board grant permission to publish amendments to COMAR 13A.15 *Family Child Care*.

Attachments

COMAR 13A.15.13.01 *Purpose and Scope*.
 COMAR 13A.15.13.02 *Definitions*.
 COMAR 13A.15.13.03 *Approval to Operate an Educational Program-General Requirements*.
 COMAR 13A.15.13.04 *Approval to Operate an Educational Program-Specific Requirements*.
 COMAR 13A.15.13.05 *Compliance and Inspections*.
 COMAR 13A.15.13.06 *Personnel Qualifications*.
 COMAR 13A.15.13.07 *Educational Program*.
 COMAR 13A.15.13.08 *Child Records*.
 COMAR 13A.15.13.09 *Health, Fire Safety, and Zoning*.

COMAR 13A.15.13.10 *Procedures and Sanctions for Noncompliance-Educational Programs.*

Title 13A STATE BOARD OF EDUCATION

Subtitle 15 FAMILY CHILD CARE

Chapter 13 Educational Programs in Nonpublic Nursery Schools

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

.01. Purpose and Scope.

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

.02. Definitions.

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

B. Terms Defined.

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

(2) "Child care home registration" means the document issued by the Department pursuant to this subtitle that authorizes the recipient to operate a family child care home.

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

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

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

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

(a) Is provided by a teacher; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Child care home registration remains in effect;

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

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

C. Approval to operate an educational program in a nonpublic nursery school becomes void if the nonpublic nursery school's approval is suspended or revoked, or the child care home registration is suspended or revoked and the provider:

(1) Does not appeal the suspension or revocation action; or

(2) Appeals the suspension or revocation action and the action is upheld through the administrative hearing process or notice of deficiencies hearing before the State Board in accordance with Education Article, §2-206, Annotated Code of Maryland.

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

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

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

A. Application for Approval.

(1) Application for approval shall be made in a manner and form and according to timelines established by the office.

(2) The applicant shall submit all information that the office considers necessary in order to ascertain compliance with the requirements of this chapter.

(3) A provider who is already approved to operate an educational program may not apply for approval to operate another educational program if the educational program for which the provider is currently approved is not in full compliance with all applicable requirements of this chapter.

B. When the office is satisfied that the requirements of this chapter have been met, the office shall issue to the applicant a child care home registration that certifies approval to operate an educational program.

C. The child care home registration shall specify the terms under which approval to operate an educational program has been granted, including the:

(1) Hours, days, and months of approved operation; and

(2) Ages of children who may be enrolled in the program.

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

(1) Notify the office in writing at least 60 days before the occurrence of any change or changes; and

(2) Furnish any information the office considers necessary to approve the change or changes planned by the provider.

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

(1) The educational program demonstrates an area or areas of noncompliance;

(2) The office has received and is investigating a complaint alleging that the educational program is in violation of one or more regulations under this chapter;

(3) The office is implementing a sanction or an enforcement action against the child care home registration; or

(4) A deficiency hearing is pending before the State Board in accordance with Education Article, §2-206, Annotated Code of Maryland.

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

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

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

.05. Compliance and Inspections.

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

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

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

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

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

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

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

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

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

F. Sanctions.

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

(2) Sanctions against an educational program located in a child care home may be severable.

.06. Personnel Qualifications.

A. Educational Program Administrator.

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

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

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

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

B. Teachers.

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

(2) A teacher, shall meet the requirements of §B(3) of this regulation.

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

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

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

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

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

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

(a) Hold or have completed:

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

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

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

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

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

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

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

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

(1) Maintain a written statement of their qualifications; and

(2) On request by a parent or legal guardian of a child enrolled, or being considered for enrollment, in the educational program, give to the parent or legal guardian a written statement of the family child care provider's qualifications.

.07. Educational Program.

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

(1) Personal and social development;

(2) Language and literacy development;

(3) Mathematical and scientific thinking;

(4) Social studies;

(5) The arts; and

(6) Physical development and health.

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

.08. Child Records.

A. The provider shall maintain a cumulative record for each child enrolled in the educational program.

B. Each child's record shall include the:

(1) Nonpublic nursery school's name;

(2) Nonpublic nursery school's address;

(3) Nonpublic nursery school's telephone number;

(4) Child's first, middle, and last names;

(5) Child's month, day, and year of birth;

(6) Child's home address;

(7) Month, day, and year the child initially entered the educational program;

(8) Age on enrollment in the educational program;

(9) Month, day, and year the child withdrew from the educational program, if applicable;

(10) Child's performance information in each curricular area;

(11) Code for the meaning of performance information; and

(12) Number of days the child attended in each school year.

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

D. Age of Admission.

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

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

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

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

.09. Health, Fire Safety, and Zoning.

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

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

.10. Procedures and Sanctions for Noncompliance -Educational Programs.

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