


TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., State Superintendent of Schools 

DATE: June 12, 2024

SUBJECT: Proposed Regulations for Outdoor, Nature-Based Child Care License Pilot Program
COMAR 13A.14.15 *Outdoor, Nature-Based Child Care License Pilot Program*

PERMISSION TO PUBLISH

Purpose

The purpose of this item is to request permission to publish a new chapter, COMAR 13A.14.15 *Outdoor, Nature-Based Child Care License Pilot Program*, to establish a pilot license program for outdoor child care in response to § 9.5-1102 of the Education Article, Annotated Code of Maryland.

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.

Executive Summary

Outdoor early care and education programs are crucial as they enhance children's physical health, support mental well-being, and foster social skills. They provide unique learning opportunities, stimulate creativity, and encourage problem-solving through hands-on experiences in natural environments. These programs also help children develop a strong connection with nature.

The proposed regulations for COMAR 13A.14.15 *Outdoor, Nature-Based Child Care License Pilot Program* establish a pilot program to license outdoor early care and education programs year-round and for a full-day. The proposed regulations use COMAR 13A.16 *Child Care Centers* for the foundational components of licensed programs but recognize that variances may be necessary to accommodate the unique nature of outdoor programs, particularly those with no indoor spaces. Any such variances are required to be identified in the pilot application. In addition, the proposed regulations address a number of topics that are specific to outdoor, nature-based environments where three- and four-year-old children would be outside in their learning environment all day with limited or no access to an indoor space. The proposed regulations set forth minimum standards as well as require comprehensive policies and procedures to be submitted with the pilot application.

Pursuant to Education Article § 9.5-1102, the Maryland State Department of Education (MSDE) established an Outdoor Early Care and Education (ECE) Work Group, which began meeting monthly in August 2023. The Work Group was engaged throughout the entire process of drafting the proposed regulations. The proposed regulations were informed by Washington State's regulations because, at the time, they were the only regulations in the country that had been implemented for outdoor ECE programs. The Work Group conducted research and shared their expertise and lived experiences to help inform the development of the regulations as well. MSDE and the Work Group reached consensus on nearly all topics, except two. MSDE's proposed regulations cap enrollment in pilot programs at 12 children and do not allow children to be outside at a wind chill or temperature of 30 degrees Fahrenheit and below. MSDE limited the number of children in each program for the pilot period to ensure that programs could manage active supervision for all children in outdoor space without physical boundaries. In addition, MSDE was concerned about three- and four-year-old children being outdoors in freezing temperature for long periods of time, particularly in programs that may not have any shelter onsite.

The Office of Child Care (OCC) Advisory Council members also reviewed these proposed regulations. During the OCC Advisory Meeting, MSDE received feedback to add information about the need for liability insurance for these outdoor programs. MSDE will provide guidance to pilot programs to strongly encourage them to have liability insurance as part of the application. There is also a requirement in the proposed regulations for each pilot to have the parent or guardian sign a risk waiver that acknowledges and accepts the potential hazards and risks associated with the pilot. Lastly, the OCC Advisory Council members inquired about Workers' Compensation Insurance; however, applicants are already required to submit Workers' Compensation Insurance information under COMAR 13A.16.02.02.

Action

Request the State Board grant permission to publish, COMAR 13A.14.15 *Outdoor, Nature-Based Child Care License Pilot Program*.

Attachments

COMAR 13A.14.15 Outdoor-Nature-Based Child Care License Pilot Program.doc

Outdoor Early Care and Education Work Group Members.doc

Title 13A STATE BOARD OF EDUCATION

Subtitle 14 CHILD AND FAMILY DAY CARE

13A.14.15 Outdoor, Nature-Based Child Care License Pilot Program

Authority: Education Article, §§2-205 and 9.5-1101—9.5-1104, Annotated Code of Maryland

.01 Purpose.

The purpose of the Outdoor, Nature-Based Child Care License Pilot Program is to license outdoor, nature-based early learning and child care programs to expand access to affordable, high-quality early learning and child care programs and investigate the benefits of outdoor, nature-based child care and learning environments.

.02 Authority.

The Outdoor, Nature-Based Child Care License Pilot Program is under the authority and supervision of the Department and shall operate for four years, beginning in the 2024-2025 school year.

.03 Definitions.

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

B. Terms Defined.

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

(2) "Hazard" means a source of harm that:

(a) Is not obvious to the child because the potential for injury is hidden; or

(b) Is obvious to the child but is greater than a child can manage to avoid.

(3) "Office" means the Office of Child Care within the Department.

(4) "Operator" means an individual or entity that establishes a pilot under the Program.

(5) "Pilot" means an early learning or child care program:

(a) That is primarily operated outdoors; and

(b) In which children are enrolled on a regular basis for three or more hours per day.

(6) "Program" means the Outdoor, Nature-Based Child Care License Pilot Program.

(7) "Risk Benefit Assessment" means a process used to identify and document hazards and risky play elements associated with childhood outdoor play and make plans to mitigate the risk of injury to children while maintaining developmental benefits for children.

(8) "Risky Play" means physical activity and play that is challenging and involves risk of physical injury or getting lost.

.04 Application.

Each pilot applicant shall submit:

A. An application on a Department approved form;

B. Any variances requested under Regulation .07 of this chapter;

C. Comprehensive policies and procedures for each of the program requirements set forth in Regulation .08 of this chapter; and

D. Any additional documents required by the Department to ensure the health, safety, and welfare of children in care.

.05 Considerations for Approval.

When considering whether to approve a pilot under this chapter, the Department:

A. Shall give priority to:

(1) Existing outdoor, nature-based early learning and child care programs that are licensed as camps by the Maryland Department of Health; and

(2) Existing licensed child care centers or registered family child care homes that participate in the Maryland EXCELS Program and are seeking to expand into outdoor, nature-based early learning;

B. Shall, to the extent practicable, select a mix of rural, urban, and suburban programs; and

C. May give priority to:

(1) Areas where there are few or limited licensed early child care programs; and

(2) Areas of need where licensed early child care programs are at or near full capacity, and where access may be restricted by enrollment waitlists.

.06 Approval.

A. Upon receiving a completed application under Regulation .04 of this chapter and all documentation required by law or regulation, the office shall determine compliance with the requirements of this chapter by:

- (1) Evaluating the application and required documentation; and
- (2) Inspecting the setting proposed to be used for the pilot.

B. Except as specified at §C of this regulation, the office shall, within 60 days after completing the procedures in §A of this regulation:

- (1) Issue the pilot a license;
- (2) Issue the pilot a license with provisional status; or
- (3) Deny the pilot a license.

C. The office may not issue the pilot a license until child care staff, sufficient in number to meet approved staff/child ratio and group size requirements 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.

.07 Operator Qualifications.

A. Except as provided in §D of this regulation, the operator of a pilot shall comply with the requirements for a child care center set forth in Subtitle 13A.16.

B. A pilot that seeks to operate an educational program shall comply with the educational program requirements of 13A.16.16.

C. An operator may not operate more than one pilot.

D. Variances. An operator shall specify in the application submitted under Regulation .04 any regulations for which the operator seeks a variance to operate the pilot pursuant to COMAR 13A.16.03.08.

.08 Program Requirements.

A. In addition to the applicable requirements set forth in Subtitle 13A.16, the pilot shall meet the requirements of this regulation.

B. Capacity.

(1) Notwithstanding any other provision under Subtitle 13A.16, the maximum total capacity of the pilot may not exceed twelve children at any one time.

(2) The office shall determine the capacity of the pilot based on:

- (a) An assessment of the hazards or risks present in the pilot's location;
- (b) The ability of staff to visually account for children in care;
- (c) The square footage of natural space per child; and
- (d) Applicable zoning, health, safety, and environmental standards or codes of the state and local jurisdiction in which the pilot is located.

(3) The pilot shall limit the total number of children in care at one time to the capacity approved by the office.

C. Minimum Age Requirement. A pilot shall enroll only children who are three years old or older.

D. Minimum Staff Requirements. Notwithstanding any other provision under Subtitle 13A.16, a pilot shall staff the program at all times with two child care teachers.

(1) The pilot shall staff the program at all times with one child care teacher who:

- (a) Meets the requirements of COMAR 13A.16.06.09A-B;
- (b) Holds a current certificate indicating successful completion of wilderness first aid training that includes cardiopulmonary resuscitation (CPR) training through the American Red Cross or a program with equivalent standards; and
- (c) Has completed 36-clock hours of training in an outdoor, nature-based teacher certification course or program approved by the Department.

(2) If the second child care teacher has not met the requirements of §D(1) of this regulation, the individual is eligible for employment as a child care teacher in the pilot program if the individual:

- (a) Meets the requirements of COMAR 13A.16.06.09-01;
- (b) Is enrolled in a wilderness first aid training that includes cardiopulmonary resuscitation (CPR) training through the American Red Cross, or a program with equivalent standards; and
- (c) Is enrolled in 36-clock hours of training in an outdoor, nature-based teacher certification course or program approved by the Department.

E. Staff Professional Development. Six of the twelve hours of the continuing professional development required by COMAR 13A.16.06.09C shall be related to outdoor, nature-based early learning and child care.

F. Location.

(1) A pilot shall:

- (a) Have a permanently located child care and learning environment; or
- (b) Be a roaming program, where resources are brought to the program each day.

(2) If the operator of the pilot does not own the land on which the pilot program is located, the pilot shall enter into a land use agreement with the property owner permitting the pilot's operation.

(3) A pilot shall comply with all applicable zoning, health, safety, and environmental standards or codes of the state and local jurisdiction in which the pilot is located.

(4) Prior to the arrival of any children, a pilot shall conduct and maintain a log of a daily visual inspection of the areas of the pilot that will be used that day.

(5) A pilot shall have a method of removing or mitigating any hazards discovered in the inspected areas such as but not limited to:

- (a) Overhead branches;
- (b) Hazardous materials or devices;
- (c) Wildlife or wildlife droppings; or
- (d) Other items that threaten the health, safety, or well-being of children.

G. Square Footage. The pilot shall:

- (1) Have access to at least 4,000 square feet of natural space; and
- (2) Within the 4,000 square feet of natural space, identify at least 75 square feet per child accessing the space, at any given time that is suitable for vigorous and active play and gross motor activity.

H. Communication System. A pilot shall maintain a communication system that enables staff to communicate at all times with:

- (1) Other staff;
- (2) Emergency services, including 911 and poison control;
- (3) The Department; and
- (4) Parents and Guardians.

I. Bathroom Use.

- (1) The pilot shall ensure that there is adequate supervision of all children when staff or children are using the toilet.
- (2) A pilot shall provide one of the following options for children and staff to meet their toileting needs:
 - (a) A portable chemical toilet designated for use by the pilot that is:
 - (i) Nontoxic and formaldehyde-free;
 - (ii) Emptied regularly as needed; and
 - (iii) Cleaned at least once a day and more often if needed;
 - (b) A toilet facility in a public park, nature center, or public facility if:
 - (i) Staff check the bathrooms for cleanliness and safety prior to each child's use; and
 - (ii) The pilot provides additional supplies as needed including toilette paper, paper towels, and fragrance free soap.
 - (c) If no other toilet options are available, backcountry toileting that complies with:
 - (i) The rules of the land use agreement with the landowner;
 - (ii) All applicable state and local health, environmental, and zoning standards; and
 - (iii) Leave no trace standards requiring the deposit of solid human waste in catholes dug 6 – 8 inches deep at least 200 feet from water, pilot usable play space, and trails.

J. Diapering.

- (1) A pilot shall have a diapering area that:
 - (a) Is separate from areas where food is stored, prepared, or served;
 - (b) Is separate from where children play or eat;
 - (c) Has an approved handwashing method readily available; and
 - (d) Has a sturdy surface or mat that:
 - (i) Is not torn or repaired with tape;
 - (ii) Is washable;
 - (iii) Has a moisture resistant surface that is able to be cleaned and sanitized; and
 - (iv) Is large enough to prevent the area under the diaper changing area from being contaminated with bodily fluids.
- (2) A pilot may not leave children unattended on a diaper changing surface or mat during the diaper changing process.
- (3) A pilot shall have and follow each step described in a diaper changing procedure to ensure diaper changing and disposal practices prevent cross-contamination.
- (4) A pilot shall prevent the viewing by members of the public of a partially or fully undressed child during diaper changes.

K. Safe Water Sources.

- (1) A pilot without access to hot or cold running water shall provide sufficient potable water from an approved source for drinking, food preparation, handwashing, dishwashing, and sanitizing.
- (2) A pilot shall offer drinking water multiple times throughout the day and be always readily available to children.

L. Rest Areas and Furnishings.

- (1) A pilot shall provide an approved and adequate area for children to rest;
- (2) The floor of the rest area shall be lined with a tarp made of waterproof material that can be cleaned and sanitized.
- (3) A pilot shall provide an age and developmentally appropriate mat for each child to use that is:
 - (a) At a minimum, one inch thick;
 - (b) Inspected daily before use to ensure that the mat is in good condition and free of:
 - (i) Tears;
 - (ii) Holes,
 - (iii) Repairs;
 - (iv) Mold or mildew; and
 - (v) Vermin, insect, or other infestation.

- (c) Cleaned, sanitized, and air dried at least once per week or more often as needed if used by only one child, or after each use if used by more than one child; and
- (d) Stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.
- (4) The mats shall be arranged so there is at least 18 inches on each side to reduce germ exposure and to allow staff access to each child during sleep time;
- (5) Each child shall have the following bedding:
 - (a) A clean sheet or blanket to cover the sleeping surface and a clean blanket to cover the child that is suitable given the child's size and outdoor temperature; or
 - (b) A sleeping bag suitable for outdoor temperatures.
- (6) All bedding shall:
 - (a) Be laundered at least once per week or more often as needed; and
 - (b) Stored separately from bedding used by another child unless it is cleaned and sanitized after each use.
- (7) The pilot shall use a tarp made of waterproof material to protect resting children from the sun, rain, or other elements.

M. Food Storage. A pilot shall:

- (1) Have approved, clean, and sanitary food preparation and eating areas; and
- (2) Maintain food at safe temperatures, as defined in COMAR 10.15.03, during storage, preparation, and transportation.

N. Medication. A pilot shall:

- (1) Require safe medication storage;
- (2) Require reasonable accommodations for giving medication; and
- (3) Maintain all required medication documentation and forms.

O. Outdoor Clothing and Equipment. A pilot shall provide families with a list of all clothing and equipment necessary to ensure all children:

- (1) Are dressed for weather conditions during outdoor program time; and
- (2) Have extra clothing to meet children's safety and comfort throughout the day.

P. Safe Operating Temperatures. The pilot program shall not operate on any day when the MSDE Child Care Weather Watch chart posted on the MSDE website is:

- (1) In the red zone for the Heat Index Chart; or
- (2) In the yellow or red zone for the Wind-Chill Factor Chart.

Q. Sheltering During Inclement Weather. A pilot shall take appropriate action to protect the health, safety, and welfare of the children and shall have:

- (1) Plans to relocate or seek shelter in any alternative locations during inclement weather conditions and other possible hazards including but not limited to:
 - (a) Earthquake;
 - (b) Lightning storm, tornado, hurricane, or flooding;
 - (c) Air quality emergency ordered by a public safety authority;
 - (d) Lockdown notification ordered by public safety authority; or
 - (e) Other similar incidents.
- (2) Plans for days when the MSDE Child Care Weather Watch chart posted on the MSDE website is in the yellow zones for the Heat Index Chart.

R. Accommodations. A pilot shall provide reasonable accommodations for children with disabilities or special health care needs.

S. Child Safety.

- (1) A pilot shall use developmentally and age appropriate practices to teach children about:
 - (a) Boundaries;
 - (b) Self-regulation for outdoor and risky play; and
 - (c) Encountering members of the public not affiliated with the pilot.
- (2) If a child goes missing, the pilot shall implement the steps of the emergency and safety plan required by COMAR 13A.16.10.01, including but not limited to:
 - (a) Immediately notifying 911 to summon fire, police, and rescue services;
 - (b) Immediately notifying the parent or guardian of any lost or missing child;
 - (c) Notifying child protective services as soon as practicable; and
 - (d) Notifying the Department as soon as practicable.

T. Risky Play. The risk benefit assessment shall:

- (1) Be submitted to the office on the approved form provided by the Department; and
- (2) Identify:
 - (a) The types of risk present at the site or sites, including all hazards, that will be used by the pilot on a regular basis and explain how risks may change throughout the different seasons of the year; and
 - (b) The potential benefits to children and the likelihood and severity of potential injury, and methods of mitigating hazards for risky play activities, including, but not limited to the following:
 - (i) Climbing natural features;
 - (ii) Water activities or supervision near bodies of water;

- (iii) Using sharp tools;
- (iv) Plant foraging;
- (v) Pilot program pets;
- (vi) Foraging or egg collection and consumption; and
- (vii) Activities near cliffs, steep slopes, or other natural features or hazards.

U. Campfire Activity Supervision and Safety.

- (1) A pilot shall have written permission from the landowner and any necessary permits before engaging in any campfire activities.
- (2) A pilot shall have a signed and dated written permission for campfire activities from each child's parent or guardian in the form of a fire hazard waiver. There may not be any campfire activities if the pilot does not have a fire hazard waiver for each child in attendance on that day.
- (3) A pilot shall train staff in the safe fire practices provided by the U.S. Forest Service and in this regulation.
- (4) A pilot shall ensure that all staff:
 - (a) Are able to properly build and extinguish a fire;
 - (b) Are properly trained in how to use an ABC fire extinguisher; and
 - (c) Are prepared to smother a fire on a child's clothing or hair using equipment including, but not limited to:
 - (i) Water;
 - (ii) A fire suppression blanket; or
 - (iii) A fire extinguisher, as permitted.
- (5) Before starting a campfire activity, a pilot shall have the necessary equipment and supplies to safely extinguish a campfire including but not limited to:
 - (a) Sufficient water;
 - (b) A shovel; and
 - (c) An ABC professionally certified fire extinguisher, as permitted.
- (6) A pilot shall have and properly maintain a first-aid kit near the campfire that contains first-aid supplies made specifically to treat fire related injuries including but not limited to:
 - (a) A fire suppression blanket; and
 - (b) Sterile, non-adhesive bandages.
- (7) A pilot shall create a clearly visible boundary at least three feet away from the outer edge of the fire pit or structure containing the fire.
 - (a) This boundary may be marked by:
 - (i) A rope;
 - (ii) Large rocks; or
 - (iii) A seating area made of logs or camp chairs.
 - (b) At all times, the area within the three-foot boundary shall:
 - (i) Be clear of tripping hazards such as bags or other materials; and
 - (ii) Have space in between the logs, camp chairs, or other seating so that children and adults may easily move into and out of the seating area.
- (8) Prior to any campfire activity, a pilot shall use developmentally appropriate teaching practices to ensure children understand safe behavior around a campfire.
- (9) A pilot shall require campfires to be built and extinguished according to safe fire practices provided by the U.S. Forest Service and the campfire:
 - (a) May not be built during periods of high fire danger in the area;
 - (b) May not be more than two feet in diameter;
 - (c) Shall be in a fire pit or structure that is designed for the express purpose of safely containing a campfire and, when applicable, the fire pit or structure shall contain an approved bottom; and
 - (d) May not use accelerant or burn materials that release toxic substances, such as chemically treated wood, rubber, or plastics.
- (10) While campfires are burning, a pilot staff member shall remain within the three-foot boundary around the fire to respond to any fire tending needs and to prevent children from coming into close contact with the fire.
- (11) Adults who tend to the fire must tie back long hair and secure loose clothing to reduce the risk of catching fire.
- (12) The pilot shall prevent children from:
 - (a) Entering the three-foot boundary around the campfire;
 - (b) Running and pushing within six feet of the edge of the firepit; and
 - (c) Inhaling campfire smoke.
- (13) A Pilot shall require completion of a campfire activity log on a Department approved form for each campfire activity.
- (14) Each pilot may not have more than one campfire activity at any time.

V. Handbook. A pilot shall provide each parent or guardian a handbook containing written policies and procedures for each of the requirements of this regulation.

W. Waivers. A pilot shall require parents or guardians to sign a risk waiver that acknowledges and accepts the potential hazards and risks associated with the pilot.

X. Records. A pilot shall store all records required under Subtitle 13A.16 and this regulation in a manner that protects the records from damage from the elements.

.09 Evaluation.

On or before October 1st of each year, the operator shall submit to the Department the following information for the prior school year:

- A. The number of children and families being served by the pilot;
- B. The number of participating providers who enrolled in the Maryland EXCELS Program;
- C. The number of children who participated in the Child Care Scholarship Program;
- D. The number of children served by the infant and early childhood mental health support services program; and
- E. The number of children who participated in State funded public prekindergarten program.

Members

- **Dr. Rose Brusafferro, Nature Forward**
- **Ana Jimenez, Montessori Luna Bilingual Macro School**
- **Megan Fink, Annapolis Maritime Museum & Park**
- **Louisa Engle, Annapolis Maritime Museum & Park**
- **Atiya Wells, Backyard Basecamp**
- **Monica French, Carrie Murray Nature Center**
- **Katie Rooney, Irvine Nature Center**
- **Lesley Romanoff, Takoma Park Cooperative Nursery School**
- **Lisa Poe, Little Bugs Nature Preschool**
- **Monica Wiedel-Lubinski, Eastern Region Association of Forest and Nature Schools**