

13A.16.18.00

Title 13A STATE BOARD OF EDUCATION

Subtitle 16 CHILD CARE CENTERS

Chapter 18 Administrative Hearings

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

.01 Scope.

A. This chapter applies to hearings concerning actions taken by the Office of Child Care which adversely impact child care center licenses and letters of compliance. These actions include denials, suspensions, or revocations of licenses or letters of compliance, reductions in capacity or limitations on the ages or numbers of children who may be admitted to the child care center, and employment exclusions pursuant to COMAR 13A.16.06.03A or B.

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.

13A.16.18.03**(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, an employment exclusion pursuant to COMAR 13A.16.06.03A or B, or 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.

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.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.

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.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 Rules 7-201—7-211.