MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Before and After School Childcare Programs in Public Schools	Number 15-14 AMV
Originating Department Community Use of Public Facilities	Effective Date December 8, 2015

Montgomery County Regulation on

BEFORE AND AFTER SCHOOL CHILDCARE
PROGRAMS IN PUBLIC SCHOOLS

Issued by: County Executive
Regulation No. 15-14AMV
COMCOR No. 44.04.01
Authority: Montgomery County Code (2004) Sections 44-1(f); 44-3(a)(5)
Supersedes: Executive Regulation: 15-14AMIV
Council Review: Method (2) under Code Section 2A-15
Register Vol. 32 No. 11
Effective Date: December 8, 2015
Sunset Date: July 31, 2017
Comment Deadline: November 30, 2015

Summary: This regulation implements Resolution No. 19-13, which was adopted by the Board of Education of Montgomery County on January 8, 2013. Resolution No. 19-13 delegates to the Interagency Coordinating Board for the Community Use of Public Facilities the authority to schedule the before and after school childcare programs in Montgomery County Public School facilities.

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Background: Section 7-109 of the Maryland Education Article authorizes the local school boards to allow day care programs to operate in public school facilities before and after school hours. Section 7-109(a)(1) states that use of school property for day care programs shall give priority to nonprofit day care programs. Section 7-109(b) requires the local school boards to adopt regulations to implement the day care program in public school facilities. Section 7-108 of the Maryland Education Article authorizes Montgomery County to create an Interagency Coordinating Board that may regulate non-school use of school facilities. Chapter 44 of the County Code implements Section 7-108 of the Education Article. Code

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Sections 44-1(f) and 44-3(a)(5) authorize the Interagency Coordinating Board to issue regulations to implement Chapter 44.

By Resolution No. 19-13, the Montgomery County Board of Education delegated authority to the Interagency Coordinating Board for the Community Use of Public Facilities to schedule the before and after school childcare program in Montgomery County Public School facilities under a regulation approved by: 1) the Interagency Coordinating Board under Chapter 44 of the Montgomery County Code; and 2) the Montgomery County Board of Education.

When enacted by the County Council on January 3, 2015 a sunset date of one year from the effective date was passed and that regulation will sunset on January 3, 2016. This amendment will allow the sunset date for the regulation to be extended to July 31, 2017.

Section 1. Authority.

This Executive Regulation is authorized under Resolution 19-13 adopted by the Montgomery County Board of Education on January 8, 2013, and Sections 44-1(f) and 44-3(a)(5) of the Montgomery County Code.

Section 2. Purpose

This Executive Regulation is intended to implement Montgomery County Board of Education Resolution 19-13 and Chapter 44 of the Montgomery County Code. The Montgomery County Board of Education delegated authority to the ICB to schedule the before and after school childcare programs in Montgomery County Public School facilities.

Section 3. Definitions.

(a) Childcare Service Provider – an entity licensed by the Maryland State Department of Education (MSDE) under Title 13A, *State Board of Education*, Subtitle 16, *Child Care Centers*, Code of Maryland Regulations (COMAR).

(b) Community Use of Public Facilities (CUPF) – the office responsible for implementing Interagency Coordinating Board and County policies under Chapter 44 of the Montgomery County Code.

(c) Facility Use License Agreement (FULA) – means the CUPF licensing agreement signed by a community group or individual that states the terms and conditions governing the use of public space.

(d) Interagency Coordination Board (ICB) – the Board established under Section 44-3 of the County Code.

(e) Montgomery County Public Schools (MCPS) – the Board of Education for Montgomery County, Maryland.

(f) Selected Childcare Service Provider – the provider selected by the school selection committee to provide custodial before and after school childcare services in a MCPS facility in designated licensable spaces and afforded special placement considerations.

Section 4. Designation.

Pursuant to Code Section 44-4 of Montgomery County and Montgomery County Board of Education Resolution 19-13, the Community Use of Public Facilities (CUPF) must administer this Regulation pertaining to the before and after school childcare selection and scheduling processes under the direction of the Interagency Coordinating Board (ICB).

Section 5. Childcare Service Providers--Selection Process

(a) CUPF must establish a schedule that designates when each facility that MCPS designates for use by a Childcare Service Provider will be subject to a competitive selection process under this Regulation. The schedule will require that each designated facility be subject to the selection process at least once every seven (7) years. The schedule must be updated annually. CUPF will coordinate with DHHS and MCPS to administer the selection process. CUPF may include a facility in the competitive selection process, if there is no current Childcare Service Provider at the facility, or the current Childcare Service at the facility:

(1) is no longer able to provide the service in a manner acceptable to MCPS, as determined by MCPS;

(2) has not complied with the provisions of the FULA

(3) is no longer licensed as a Childcare Service Provider by the Maryland State

Department of Education (MSDE); or

(4) plans to discontinue providing services.

(b) Based on the schedule created by CUPF under subsection (a), CUPF must notify each school Principal and current Childcare Service Provider, if any, that the school facility's childcare program will be subject to the competitive selection process set out in this Regulation a minimum of 45 days in advance of posting a request for applications.

(c) The Principal of the school must then make a public announcement reasonably calculated to give staff, parents and the school community notice that the competitive selection process for a Childcare Service Provider has begun. Each incumbent Childcare Service Provider must notify the parents of children using their services at that facility that the competitive selection process to select a Childcare Service Provider has begun.

1) The Principal, Vice Principal or other MCPS Administrative Official must provide an opportunity for parents of the school to provide feedback regarding satisfaction with current childcare service providers, program features or services they would like to see, or similar information they would like to be considered for inclusion in the evaluation criteria addressing the provider's ability to address individual site needs.

2) The Principal, Vice Principal or other MCPS Administrative Official must distribute any feedback obtained from the school community within six months prior to the bid announcement for consideration by the selection committee.

(d) The Principal, Vice Principal or other MCPS Administrative Official must form a selection committee after receiving the notification under subsection (b). The childcare selection committee must evaluate the applications, conduct interviews, and select the next Childcare Service Provider for the facility. The childcare selection committee may be comprised of any combination of staff, parents or other responsible individuals chosen by the school principal. The committee must include a parent whose child(ren) use child care services, if possible, but the Principal holds the discretion to determine the number of parents to be included and the cross section of parents who use or do not use the incumbent services to be included. The committee should have a minimum of 5 members to review the applications and conduct interviews. The maximum number of committee members should be nine (9). Prior to reviewing an application, each committee

member must affirm in writing that he or she will exercise fair and impartial judgment in evaluating each applicant seeking to become a Childcare Service Provider. Committee members must also disclose any conflict of interest or prior/current relationship with any of the applicants. Committee members who fail to disclose a conflict of interest must be dismissed from the committee. CUPF will determine how a disclosed conflict of interest will be handled before the selection committee begins its work.

(e) The selection committee members will be required to participate in an orientation about the selection process after being selected to participate as a member of the selection committee. CUPF will assist the Principal in conducting the orientation that will include information about the selection process, timeline for the selection, responsibility of committee members, conflicts of interest and elements related to quality child care.

(f) CUPF will be involved in all selection committee meetings. CUPF will provide administrative support to the selection committee for the Principal and MCPS Staff. CUPF will assist the Principal in determining whether conflicts of interest disclosed by selection committee members require disqualification. CUPF will develop a conflict of interest policy that will be applied consistently across all MCPS schools during the child care selection process.

(g) The Principal, or designee, of each facility subject to the competitive childcare selection process shall give to CUPF, 30 days prior to advertisement of the bid, any site specific program requirements to be met by the Childcare Service Provider. The selection committee must consider the following criteria:

(1) Non-Profit status of the applicant;

(2) The applicant's organizational experience;

(3) The demonstrated ability of the applicant's proposed staff to deliver quality services;

(4) The applicant's proposed program and services;

(5) The applicant's proposed fees and policies;

(6) Opportunities for parent involvement and approach to conflict mediation;

(7) References from parents of children who use the services of the Childcare Service Provider;

(8) Any feedback obtained from the school community within the six month period prior to the bid announcement for consideration by the selection committee; and

(9) Any other criteria, relevant to that school facility, which has been approved by the Superintendent or designee.

(h) Once the Principal provides to CUPF the information identified in subsection (e), CUPF must notify the public, by any reasonable means, that it seeks applications for qualified, licensed entities to provide before and after childcare in the identified school facility. CUPF must include the evaluation criteria identified in subsection (e) and insurance requirements that CUPF requires the Childcare Service Provider to maintain.

(1) At the time of notification of intent to advertise a bid, CUPF will send a current account status report to all childcare service providers operating before and after school sites for the prior month.

(2) CUPF will notify the public that it seeks applications for qualified, licensed entities to provide before and after school childcare in the identified school facilities. The advertisement will include at least one newspaper of general circulation in the County. CUPF will also post the notice on its webpage.

(3) The notification period requesting applications from interested Before and After School Childcare service providers will be a minimum of 30 days, but not more than 45 days.

(i) The structured application will be used for all sites selected for a rebid. The application will include, but not be limited to, questions addressing:

1) Applicant information: legal name, contact information of the authorized representative
2) Tax Status: Non-Profit vs. For Profit and where applicable if female, minority or disabled-owned
3) Description of organizational experience and capability to deliver services
4) Description of program and services

5) Budget, Fee policy and schedule
6) Financial Responsibility (ownership, plan for financing program, etc)
7) Opportunities for parent involvement and approach to conflict mediation
8) Staffing Plan
9) Maryland Excels status
10) Contact information for a minimum of three current references

(i) Other components of the application will include

1) A statement that the representative submitting the application has the authority to make obligations on behalf of the organization and that the information included is true and correct.

2) Statements demonstrating agreement to:

a. Accommodate unannounced site visits by selection committees
b. Acknowledge disqualification from further consideration if the selection committee reports inappropriate efforts to influence the outcome of the Committee's decision.
c. Accept State and local childcare subsidy vouchers
d. Enroll in Maryland Excels
e. Participate in transition plan, if required
f. Identify which answers contain proprietary information and not public information
g. Maintain insurance and MSDE compliance if selected.

(ii) At the discretion of the childcare service Provider at the time of submission the applicant may include for distribution to the committee the following

1) Reference letters
2) Parent handbook
3) Link to website

(j) CUPF must forward to the principal applications received. An application must not be forwarded to the principal if it is received after the closing of the submission deadline or if applicant has an overdue account balance with CUPF greater than $500 for more than 60 days at the time of the submission closing date.

(k) The childcare selection committee must meet to evaluate the childcare applications based on criteria published in the solicitation.

(l) The childcare selection committee must come to a decision as to which Childcare Service Providers will be interviewed after each member has reviewed and rated each application. The Childcare Service Providers with the highest ratings will receive an interview. A minimum of three Childcare Service Providers must be interviewed, unless fewer applications are received or fewer applications are not deemed responsive by the committee. If fewer than five applications are received, all responsive applicants must be interviewed. In accordance with Section 7-109 (a) of the Maryland Education Code, the selection committee must give a non-profit entity at least a 5% (five percent) bonus in awarding of points to the application of a non-profit entity. In the case of a tie in the award of points between a non-profit and a for-profit entity, the selection committee must select the non-profit entity.

(m) The childcare selection committee must schedule each applicant interview. The selection committee must develop the interview questions. The selection committee must ask each applicant the same questions and give each applicant the same opportunity to answer. The selection committee must give the applicant a minimum of seven (7) business days' notice of the interview date, time and location.

(n) Using the criteria published in the solicitation, the child care selection committee must come to a majority decision based on the combined scores of the application review and interview to select the Childcare Service Provider.

1) Each application will be scored based on the advertised scale for each application reviewed. Ratings must be awarded in whole numbers. The Selection Committee must use the following criteria:

a) Description of organizational experience and capability to deliver services
b) Description of program and services
c) Budget, fee policy and schedule
d) Financial responsibility (ownership, plan for financing program, proposed budget and current Financial Statement)
e) Opportunities for parent involvement and approach to conflict mediation
f) Staffing plan
g) Tax Status (non-profit vs. for-profit)

h) Objective criteria representing evidence of the provision of quality child-care
   (i) Maryland Excels status;
   (ii) State Accreditation for Before and After Childcare
i) Any other criteria advertised

2) Optional - Members of the committee may visit sites operated by the applicant Providers. If the committee elects to make site visits, visits must be made to a site operated by all the applicant Providers during the application evaluation step or to sites operated by the Providers selected to proceed to the interview step. As a courtesy, the Principal(s) at the selected site(s) should be notified of the visit in advance

3) The combined total scores of all the raters will be used.

(o) Interview selection process shall consist of:

1) A minimum of the top three highest rated applicants based on the aggregated scores on the application step will be selected for an interview. In the event of a tie among the third highest score, both applicants should be interviewed.

2) The childcare selection committee must schedule each applicant interview and give the applicant a minimum of seven business days' notice of the interview date, time and location.

3) The selection committee must ask each applicant the same questions, in the same order and give each applicant the same opportunity to answer.

4) Each committee member will individually rate the interview.

5) Individual ratings will be anonymous and scores will only be reported in the aggregate.

6) Scores from each of the raters on both the application review and interview steps will be added. The Provider with the highest aggregate score will be selected.

7) In the event of a scoring tie, between a for-profit and non-profit childcare service provider, the non-profit must be selected.

8) In the event of a tie between two childcare service providers with the same tax status, a consensus decision, facilitated by the Principal is required. A stalemate may be resolved by majority vote.

(p) If only one Childcare Service Provider applies, the application must be reviewed by the childcare selection committee to determine if all of the requirements and qualifications are met. If so, the selection committee may select that Childcare Service Provider.

(q) A CUPF representative will be present to provide administrative support to the committee at the request of the Principal, but will not participate in the selection of any applicant.

(r) The decision of the childcare selection committee is final.

(s) The Principal must notify CUPF of the name of the Childcare Service Provider chosen by the selection committee, and forward to CUPF all documents used by the childcare selection committee. CUPF must post the name of the Childcare Service Provider on CUPF's web page. The posting should remain on CUPF's web page for 30 days.

(t) At the conclusion of the rating process, a summary of the scores will be prepared. The summary form will list for each applicant the combined scores of the raters on each application and interview (as applies), and scoring range and any additional comments recorded by the selection committee.

1) Where a range of scores significantly deviates more than 25 points above or below the average, a notation should be made on the form by the principal indicating that these deviations were discussed by the group and supported by the rater.

2) Raters cannot be forced to change their scores.

3) Applicants may review the summary sheet at the conclusion of the process.

(u) If not selected, the current childcare service provider must notify the impacted parents and staff immediately upon being notified of the selection committee's decision.

1) The current provider must provide 30 days notice to CUPF if they plan to leave before the last day of the school year. The new provider will be offered the

opportunity to begin services immediately and placement procedures will be expedited where feasible.

2) The principal will notify the school community via a notification in a visible site and through other available resources such as a school newsletter that a new provider has been selected. This notice should include:

(i) Name and contact information of the selected childcare service provider and the date as to when the change becomes effective

(ii) The Principal should also:

a) Allow MSDE access to the school for inspection and licensing of the space for the new childcare service provider and

b) Allow new provider to advertise their program

(v) CUPF must retain the records transmitted by the principal under section (o) for three (3) years.

Section 6. Space Reservation

(a) Once the selection committee has selected a Childcare Service Provider, the principal must designate space for the operation of the before and after school childcare program that satisfies the requirements of the Maryland State Board of Education's Child Care Licensing Division.

(b) The Childcare Service Provider must sign a FULA that is conditioned on the Childcare Service Provider: (1) maintaining insurance as set out in the solicitation under subsection 5(f); (2) maintaining a current MSDE License; (3) adhering to all applicable CUPF and MCPS policies, guidelines and procedures, including the authority of MCPS to change, after reasonable notice, the space in the school facility made available to the Childcare Service Provider; and (4) maintaining the space in a manner required by MSDE.

1) The selected childcare service provider must abide by MCPS closure procedures and CUPF guidelines during inclement weather days. The selected childcare service provider may also operate during MCPS professional staff days, winter and spring school breaks, administrative holidays, and student half-days.

2) Enrollment in the before and after school childcare program is only~~only~~ open for students of the school. Enrollment for students from another school requires approval from the principal.

(c) CUPF may then issue a Permit to the selected Childcare Service Provider. The Permit issued by CUPF to a Childcare Service Provider must be for the duration of the school year.

Section 7. Review of CUPF Process and Remedies

(a) An applicant may seek review of CUPF's compliance with its responsibilities under this Regulation by:

1) Submitting a written request for review within five (5) days after a selection decision is posted by CUPF.
2) The written request for review must include:

i) An identification of the solicitation, including the location of the school where the applicant sought to perform childcare services;
ii) The applicant's name, address, telephone number, and electronic mail address;
iii) A statement supporting the applicant's complaint that CUPF did not comply with this Regulation;
iv) Description of all grounds for the request for review, including:

(1) A submission of detailed facts and all relevant documents;
(2) A citation to relevant language in the solicitation, regulations, or law relied upon; and
(3) All other matters that the applicant contends supports the request for review.

v) Factual allegations regarding information not appearing on the face of the solicitation or application must be supported by an affidavit based on personal knowledge.

(b) Upon receipt of a request for review, CUPF must notify MCPS and other known applicants who may be affected by the review. This may occur by posting the notice on the website where the notice of selection was posted. Other affected applicants may submit written comments or documents regarding the request for review within five (5) days after the notice is issued by CUPF.

(c) Review and hearing:

1) After the applicant files a request for review, CUPF may submit to the ICB, or the designated Hearing Officer, a response to the request. The response must include all documents in support of it.
2) The ICB may consider the request as the entire Board or may designate a subgroup of the ICB to review the matter.
3) The ICB (or a subcommittee of the ICB) may hold a conference with all interested parties if the ICB believes a conference would contribute to a resolution of the matter.
4) The burden of production of all relevant evidence, data and documents and the burden of persuasion to support the complaint remains with the applicant who files the request for review.
5) The ICB may refer the matter to a hearing officer to accept evidence and testimony and make a recommendation to the ICB. If a hearing officer is designated by the ICB, the hearing officer must conduct the hearing and make proposed findings and a recommendation to the ICB.
6) After the hearing (if any) and based on the record, the ICB may accept, reject, or modify the hearing officer's proposed findings of fact and recommendation.
7) After considering the request for review based on the record received, or after a hearing, the ICB must make a determination and finding regarding the request for review.
8) The decision of the ICB is final and no further right to administrative appeal is available.
9) The final decision of the ICB must be mailed to the applicant seeking review and any other applicants who have participated in the review and hearing and posted on the website where the notice of selection was posted.

(d) Remedies

1) If CUPF has not awarded a license to an applicant under the solicitation, the ICB may:

   i) Require CUPF and MCPS to cancel the solicitation; or
   ii) Require CUPF and MPCS to issue a new solicitation that follows the process in this Regulation.

2) If CUPF has awarded a license to an applicant under the solicitation by the time of the decision of the ICB, the ICB may award the protesting applicant the actual cost of preparing its application. The protesting applicant is not entitled to any other damages.

Section 8. Miscellaneous

The service agreement for delivery of before and after school childcare services is between the Childcare Service Provider and the parent or guardian. Neither Montgomery County nor Board of Education is responsible for the Childcare Service Provider's adherence to the terms of the service agreement. Childcare Service Providers are directly responsible for compliance with MSDE regulations and other applicable local and state laws. Disputes between any parent or guardian and the Childcare Service Provider must be resolved in accordance with the service agreement and applicable State law.

(a) Major safety or security issues, or possible violations of the MSDE license or other applicable laws, must be reported to the appropriate authorities (i.e. police, protective services, MSDE). Notice of such reports should be given to CUPF as the Program Administrator for the relevant school location.

(b) Conflicts or issues regarding the terms of the shared space permit will be mediated by CUPF. Spaces which are licensed by MSDE are to be maintained at an acceptable level as required by the State. The school Principal will designate and maintain to an acceptable standard spaces which are licensed by MSDE. The school must provide adequate notification of not less than 10 business days to move childcare service Providers from the primary space to the alternate space(s) licensed by MSDE, except during emergency situations.

(c) Conflicts or issues regarding the quality or overall satisfaction with the program offered by a significant number of parents will be referred to the school's Principal. A parent satisfaction survey administered by the Provider may be requested by the Principal. The Provider must conduct the survey and must share the results with the Principal within 30 days of the request. The Principal may request a re-bid of the school for the next school year after review of the issues in the event that repeated conflict mediation efforts have not resolved the problem(s) and a majority of parents of enrolled children indicate a high level of dissatisfaction.

Section 9. Effective Date.

This Regulation becomes effective 30 days after adoption by the County Council and approval by the Board of Education.

Section 10. Sunset Date.

This Regulation will sunset July 31, 2017.

Isiah Leggett
County Executive

Approved as to form and legality:

Marc Hansen 12/7/15
Office of the County Attorney/Date