**REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE: APPLICABILITY:** A child care program required to be licensed under 8.16.2.40 NMAC through 8.16.2.47 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before or after school or when school is not in regular session to children age five to 18 years, and not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

[8.16.2.39 NMAC - Rp 8.16.2.39 NMAC, 10/1/16]

**8.16.2.40               LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            LICENSING REQUIREMENTS:

                                (1)           APPLICATION FORM:  An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee.  Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application.  A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

                                (2)           A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

                                (3)           BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department’s background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history.  The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department’s background check and employment history verification provisions.  All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.  A request for a background check must be submitted prior to a staff member’s employment.  A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

                                (4)           ZONING, BUILDING AND OTHER APPROVALS: An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department’s requirements.  Acceptable documents will be provided to the licensing authority before licensure.  Otherwise, an applicant will have:

                                                (a)           current written zoning approval from the appropriate city, county or state authority;

                                                (b)           current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

                                                (c)           current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

                                                (d)           current written approval from the New Mexico environment department or other environmental health authority for:

                                                                (i)            a kitchen, if meals are prepared and served on site in the program;

                                                                (ii)           private water supply, if applicable;

                                                                (iii)          private waste or sewage disposal, if applicable; and,

                                                                (iv)          a swimming pool, if applicable.

                                (5)           ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES:  Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

                                                (a)           Main entry into the facility is level or has a ramp to allow for wheelchair access.

                                                (b)           Building layout allows for access to the main activity area.

                                                (c)           Access to at least one bathroom is required to have a door clearance of 32 inches.  The toilet unit also provides a 60-inch diameter turning radius.

                                                (d)           If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

                                                (e)           Ramps exceeding a six-inch rise are provided with handrails.

                                                (f)            Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

                                (6)           SCHEDULE: All applications for a new license will include a description of the programs proposed activities and schedule.

                                (7)           INITIAL SURVEY: The licensing authority will schedule a survey for a program when it receives a complete application with all supporting documents.

                B.            CAPACITY OF A PROGRAM:

                                (1)           The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.

                                (2)           The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site.

                                (3)           A program must meet the following space requirements:

                                                (a)           35 square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, and storage areas, and excluding offsets and built-in fixtures.

                                                (b)           A program must have an outdoor activity space.

                                (4)           The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

                C.            INCIDENT REPORTING REQUIREMENTS:

                                (1)           The licensee will report to the appropriate authorities the following incidents.  After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred.  A report should first be made by telephone and followed with written notification.  The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

                                                (a)           a lost or missing child;

                                                (b)           a serious injury;

                                                (c)           the abuse or neglect of a child;

                                                (d)           fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

                                                (e)           any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

                                                (f)            any legal action against a program or staff members;

                                                (g)           any incident that could affect the background check eligibility of any cleared person related to this license;

                                                (h)           the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

                                                (i)            any known  change in an educator’s health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

                                (2)           A program will notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program.  Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.40 NMAC.

                                (3)           Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement.  The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.40 NMAC - Rp, 8.16.2.40 NMAC, 10/1/16]

**8.16.2.41               ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

                                (1)           all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

                                (2)           the current child care regulations;

                                (3)           dated weekly menus for meals and snacks;

                                (4)           the guidance policy; and

                                (5)           the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

                B.            MISSION, PHILOSOPHY AND CURRICULUM STATEMENT:  All licensed facilities must have a:

                                (1)           mission statement;

                                (2)           philosophy statement; and

                                (3)           curriculum statement.

                C.            PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following.

                                (1)           GENERAL INFORMATION:

                                                (a)           mission statement;

                                                (b)           philosophy statement;

                                                (c)           program information (location, license information, days and hours of operation, services offered);

                                                (d)           name of director and how he/she may be reached;

                                                (e)           meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

                                                (f)            daily schedule;

                                                (g)           a statement supportive of family involvement that includes an open door policy to the classroom;

                                                (h)           appropriate dress for children, including request for extra change of clothes;

                                                (i)            celebrating holidays, birthdays and parties; and

                                                (j)            disclosure to parents that the licensee does not have liability or accident insurance coverage.

                                (2)           POLICIES AND PROCEDURES:

                                                (a)           enrollment procedures;

                                                (b)           disenrollment procedures;

                                                (c)           expulsion procedures;

                                                (d)           fee payment procedures, including penalties for tardiness;

                                                (e)           notification of absence;

                                                (f)            fee credits, if any (e.g. for vacations, absences, etc.);

                                                (g)           field trip policies;

                                                (h)           health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

                                                (i)            emergency procedures and safety policies;

                                                (j)            snow days and school closure;

                                                (k)           confidentiality policy;

                                                (l)            child abuse/neglect reporting procedure;

                                                (m)          guidance policy; and

                                                (n)           emergency procedures, safety policies, and disaster preparedness plan.

                D.            CHILDREN’S RECORDS:  A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child’s last day of attendance. Records will contain at least:

                                (1)           PERSONAL INFORMATION:

                                                (a)           name of the child; date of birth, gender, home address, mailing address and telephone number;

                                                (b)           names of the parents or guardians, the parents or guardian’s current places of employment, addresses, and pager, cellular and work telephone numbers;

                                                (c)           a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

                                                (d)           date the child first attended the program and the date of the child’s last day at the program;

                                                (e)           a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;

                                                (f)            written authorization from the child’s parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

                                                (g)           a record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and

                                                (h)           an enrollment agreement;  this form will be signed by a parent or guardian with an outline of the services and the costs; these forms may be kept at a central location.

                                (2)           EMERGENCY INFORMATION:

                                                (a)           information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

                                                (b)           the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

                                                (c)           a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

                                                (d)           if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children’s protective services.

                E.            PERSONNEL RECORDS:

                                (1)           A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children.  A program will keep the file for one year after the staff member’s last day of employment.  Unless otherwise indicated, a licensee may keep the items listed below in a central location.  Records will contain at least the following:

                                                (a)           name, address and telephone number;

                                                (b)           position;

                                                (c)           current and past duties and responsibilities;

                                                (d)           dates of hire and termination;

                                                (e)           documentation of a background check and employment history verification.  A background check must be conducted at least once every five years on all required individuals;

                                                (f)            an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC;

                                                (g)           documentation of first-aid and cardiopulmonary resuscitation training;

                                                (h)           documentation of all appropriate training by date, time, hours and area of competency;

                                                (i)            emergency contact number;

                                                (j)            universal precaution acknowledgement; and

                                                (k)           a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual’s goals.

                                (2)           A program will maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months.  The record will include the time the employee arrived at and left work and include breaks and lunch.

                F.             PERSONNEL HANDBOOK: The educator will give each employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

                                (1)           organizational chart;

                                (2)           job descriptions of all employees by title;

                                (3)           benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

                                (4)           code of conduct;

                                (5)           training requirements

                                (6)           procedures and criteria for performance evaluations;

                                (7)           policies on absence from work;

                                (8)           grievance procedures;

                                (9)           procedures for resignation or termination;

                                (10)         copy of licensing regulations;

                                (11)         policy on parent involvement;

                                (12)         health policies related to both children and staff;

                                (13)         policy on sexual harassment;

                                (14)         plan for retention of qualified staff; and

                                (15)         an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC).  The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

                                (16)         policies and procedures for expulsion of children.  Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five.  The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.

[8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 10/1/16]

**8.16.2.42               PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            PERSONNEL AND STAFFING REQUIREMENTS:

                                (1)           An employer will not allow any employee involved in an incident which would disqualify that employee under the department’s most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children;

                                (2)           All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

                                (3)           Educators (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

                                (4)           Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role.  Educators counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

                                (5)           Substitutes, volunteers and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements.  Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week, will complete half the required training hours.  Such employees working more than 20 hours a week will meet full training requirements.  See Paragraph (4) of Subsection C of 8.16.2.42 NMAC for additional training requirements.

                                (6)           Each site will have a site director.  The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program’s core hours of operation.

                                (7)           A program will maintain staff/child ratios and group sizes at all times.  Children must never be left unattended whether inside or outside the facility.

                                (8)           A program will have a minimum of two staff members present at all times, with one being an educator.  If the program has less than seven children, the second staff member may be engaged in other duties.

                                (9)           Each site will have one adult for every 15 children age five or older.  Maximum group size of 30.

                                (10)         The number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.16.2.42 NMAC.  More than one group of children may occupy a room, provided the following conditions are met:

                                                (a)           The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

                                                (b)           Each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed 30;

                                                (c)           Placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

                                                (d)           Individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

                                                (e)           A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

                                                (f)            The total number of children in the larger room must not exceed the room capacity based on activity space.  For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is “attended”.

                B.            STAFF QUALIFICATIONS:

                                (1)           Unless exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of a current copy of:

                                                (a)           a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

                                                (b)           a bachelor’s degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

                                (2)           Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

                                (3)           Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors.  Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

                C.            TRAINING:

                                (1)           The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities.  New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas:

                                                (a)           scope of services and activities offered by the program;

                                                (b)           emergency first aid procedures;

                                                (c)           indicators of child abuse and neglect;

                                                (d)           fire prevention measures, emergency evacuation plan and disaster preparedness plan;

                                                (e)           review of licensing regulations;

                                                (f)            review of policies regarding guidance;

                                                (g)           child abuse and neglect reporting;

                                                (h)           handling of incidents and complaints; and

                                                (i)            health and safety, including infection and injury prevention and control.

                                (2)           All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire.  All current educators will have three months to comply with the following training from the date these regulations are promulgated:

                                                (a)           prevention and control of infectious diseases (including immunization);

                                                (b)           administration of medication, consistent with standards for parental consent;

                                                (c)           prevention of and response to emergencies due to food or other allergic reactions;

                                                (d)           building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

                                                (e)           abusive head trauma;

                                                (f)            emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;

                                                (g)           handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

                                                (h)           precautions in transporting children (if applicable);

                                                (i)            first aid and cardiopulmonary resuscitation (CPR) certification; and

                                                (j)            recognition and reporting of child abuse and neglect.

                                (3)           A program will keep a training log on file with the employee’s name, date of hire and position.  The log must also include the date, hours of training, subject, training source and training certificate.

                                (4)           All educators are required to obtain at least 24 hours of training each year.  For this purpose, a year begins and ends at the anniversary date of employment.  Training must address all seven competency areas within two years.  Training shall be relevant to school age children.  Identical trainings shall not be repeated for the purpose of obtaining credit.  The competency areas are:

                                                (a)           child growth, development, and learning;

                                                (b)           health, safety, nutrition, and infection control;

                                                (c)           family and community collaboration;

                                                (d)           developmentally appropriate content;

                                                (e)           learning environment and curriculum implementation;

                                                (f)            assessment of children and programs; and

                                                (g)           professionalism.

                                (5)           The 24 hours of annual training will be waived for educators if employed by a program currently under FOCUS consultation.

                                (6)           Training must be provided by individuals who have education or experience in the competency area (or areas) in which they train.  Employees or relatives of employees who provide training must have prior approval by the department.

                                (7)           Program administrators may count hours in personnel and business training toward the training requirement.

[8.16.2.42 NMAC - Rp, 8.16.2.42 NMAC, 10/1/16]

**8.16.2.43               SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:**

                A.            GUIDANCE:

                                (1)           A program will have written policies and procedures clearly outlining guidance practices.  Facilities will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

                                (2)           Guidance will be consistent and age appropriate.

                                (3)           Guidance shall be positive and include redirection and clear limits that encourage the child’s ability to become self-disciplined.  The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

                                (4)           A program will not use the following disciplinary practices:

                                                (a)           physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child’s mouth;

                                                (b)           withdrawal of food, rest, bathroom access, or outdoor activities;

                                                (c)           abusive or profane language, including yelling;

                                                (d)           any form of public or private humiliation, including threats of physical punishment; or

                                                (e)           unsupervised separation.

                B.            PHYSICAL ENVIRONMENT:

                                (1)           Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

                                                (a)           dramatic play;

                                                (b)           creative art;

                                                (c)           books;

                                                (d)           blocks and accessories;

                                                (e)           manipulatives;

                                                (f)            music;

                                                (g)           science;

                                                (h)           math/number; and

                                                (i)            sensory.

                                (2)           Each center is clearly defined, using shelves and furniture.

                                (3)           Adults can visually supervise all centers at all times.

                                (4)           The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

                                (5)           Learning areas have adequate space and quiet areas are arranged so that children’s activities can be sustained without interruption.

                                (6)           Materials are well cared for and organized by type.  Where appropriate, materials are labeled with words or pictures.  Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

                                (7)           Examples of children’s individually expressed artwork are displayed in the environment at the children’s eye level.

                                (8)           The floor surface is suitable for activities that will occur in each learning area.

                                (9)           File and storage space is available for educators’ materials.

                C.            SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

                                (1)           Educators remain calm in stressful situations.

                                (2)           Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children’s questions and acknowledging their comments, concerns, emotions and feelings.

                                (3)           Educators help children communicate their feelings by providing them with language to express themselves.

                                (4)           Educators model appropriate social behaviors, interactions and empathy.  Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner.  Educators make appropriate physical contact to comfort children who are distressed.

                D.            EQUIPMENT AND PROGRAM:

                                (1)           A program will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

                                (2)           Each child at a program will have a designated space for storage of clothing and personal belongings.

                                (3)           A program will store equipment and materials for children’s use within easy reach of the children, including those with disabilities.  A program will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

                                (4)           A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child’s educational progress, creativity, social interaction, and a balance of individual and group activity.  Program staff must be onsite, available and responsive to children during all hours of operation.

                                (5)           A program will post a daily activity schedule.  A program will follow a consistent pattern for routine activities such as meals, snacks and rest.

                                (6)           Media viewing will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.

                                (7)           Children and family members shall be acknowledged upon arrival and departure.

                                (8)           Equipment and program requirements apply during all hours of program operation.

                E.            ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

                                (1)           Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age.  If staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate.  No referral for special needs services to an outside agency will be made without a parent’s consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

                                (2)           Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

                F.             OUTDOOR PLAY AREAS:

                                (1)           Outdoor play equipment used in out of school time programs shall be:

                                                (a)           intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or

                                                (b)           if intended for residential use, shall be safe and securely anchored.

                                (2)           A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

|  |
| --- |
| Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety. |
| Equipment Height | Wood Chips | Double Shredded Bark | Uniform Wood Chips | Fine Sand | Coarse Sand | Fine Gravel |
| Uncompressed Depths of Materials In Fall Zone |
| Five feet or less | 6 inches | 6 inches | 6 inches | 6 inches | 6 inches | 6 inches |
| Six feet | 6 inches | 6 inches | 6 inches | 12 inches | 12 inches | 6 inches |
| Seven feet | 6 inches | 9 inches | 9 inches | 12 inches | 12 inches | 9 inches |
| Eight feet | 9 inches | 9 inches | 12 inches | 12 inches | 12 inches | 12 inches |
| Nine Feet | 9 inches | 9 inches | 12 inches | 12 inches | N/A | 12 inches |
| Ten Feet | 9 inches | 9 inches | 12 inches | N/A | N/A | 12 inches |
| For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer. |
|  |  |  |  |  |  |  |  |

                                (3)           The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

                G.            SWIMMING, WADING AND WATER:

                                (1)           Each child will have written permission from a parent or guardian before the child enters the pool.

                                (2)           If a program has a portable wading pool:

                                                (a)           a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

                                                (b)           a program will empty a wading pool when it is not in use and remove it from areas accessible to children; and

                                                (c)           a program will not use a portable wading pool placed on concrete or asphalt.

                                (3)           If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

                                                (a)           the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

                                                (b)           the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

                                                (c)           when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

                                (4)           The following ratios shall be observed for swimming pools more than two feet deep:

|  |  |  |
| --- | --- | --- |
|  | Ratio for swimming pools more than two feet deep |  |
| Age of the youngest child | Number of educators, lifeguards or volunteers | Number of children |
| 5 years | 1 | 10 |
| 6 years and older | 1 | 12 |

                H.            FIELD TRIPS:

                                (1)           A program will ensure the children’s safety on field trips and excursions.  See Subparagraph (f) of Paragraph (1) of Subsection D of 8.16.2.41 NMAC for requirements concerning field trip permission slips.

                                (2)           Children will not go to a private residence unless accompanied by two adults.

[8.16.2.43 NMAC - Rp, 8.16.2.43 NMAC, 10/1/16]

**8.16.2.44               FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            MEAL PATTERN REQUIREMENTS:  All foods prepared by the program will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

                B.            MEALS AND SNACKS:

                                (1)           A program will provide a child a meal or snack at least every three hours.

                                (2)           A program will serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority.  Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

                                (3)           A program will serve snacks each day and will include a selection of two different food group components from the four food group components.

                                (4)           A program shall serve only one hundred percent fruit or vegetable juice. The use of fruit drinks that contain less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

                                (5)           A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

                                (6)           A program shall make water freely available to children.

                                (7)           Menus shall contain a variety of foods. The same menu must not be served twice in one week.

                C.            KITCHENS:

                                (1)           A program will not allow children in the kitchen except under careful supervision.

                                (2)           A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

                                (3)           A program will serve food promptly and refrigerate immediately after use.

                                (4)           A program will discard any leftover milk.

                                (5)           A program will keep food requiring refrigeration, at 41 degrees Fahrenheit or below and frozen food at 0 degrees Fahrenheit or below.

                                (6)           Refrigerators and separate freezers will have working internal thermometers.

                                (7)           A program will protect food and drink by properly storing items in an airtight container or by tightly wrapping them.  A program will label and date all leftover food.

                                (8)           A program will protect all food from insects, rodents and other vermin.

                                (9)           A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps:

                                                (a)           wash with soapy water;

                                                (b)           rinse with clean warm water; and

                                                (c)           sanitize

                                (10)         A program will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

                                (11)         A program will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

                                (12)         A program will provide sanitary cups or glasses or a drinking fountain for drinking water.  A program will not allow children to share drinking or eating utensils.

                                (13)         A program shall thoroughly sanitize food preparation surfaces before and after each use.

[8.16.2.44 NMAC - Rp, 8.16.2.44 NMAC, 10/1/16]

**8.16.2.45               HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            HYGIENE:  Children and staff members will wash their hands with soap and warm running water as needed.  Water basins shall not be used as an alternative to running water.  Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

                                (1)           after using a toilet;

                                (2)           before and after caring for a sick child;

                                (3)           before any food service activity, including setting the table;

                                (4)           before and after eating; and

                                (5)           after handling pets or animals or items used by animals such as water and food bowls.

                B.            FIRST AID REQUIREMENTS:

                                (1)           A program will have all educators certified in first aid and cardiopulmonary resuscitation (CPR).

                                (2)           A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults.  The first aid kit will contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

                                (3)           A program will treat blood spills cautiously and promptly decontaminate the area.  Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

                C.            MEDICATION:

                                (1)           A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary.   If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

                                (2)           Programs will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician.  In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

                                (3)           A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child’s name and the date the medication was brought to the program.  A program will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

                                (4)           The designated staff member will keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication.  This information will be provided to the parent or guardian who will initial/date acknowledgment of the information received on the day the medication is given.

                                (5)           When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed.  The program shall not administer expired medication.

                D.            ILLNESSES:

                                (1)           Children or staff members absent due to any notifiable disease will not return to the program without a signed statement from a physician.

                                (2)           A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child’s illness.

                                (3)           A program will send a child home when:

                                                (a)           the child’s oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

                                                (b)           an educator observes signs of contagious disease or severe illness.

                                (4)           The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.45 NMAC - Rp, 8.16.2.45 NMAC, 10/1/16]

**8.16.2.46               TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

                B.            A program will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program will ensure children do not cross a street unsupervised after leaving the vehicle.

                C.            No one will smoke in a vehicle used for transporting children.

                D.            A program will license all vehicles used for transporting children and will meet all applicable state vehicle laws.  A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.  School buses that are not equipped with passenger restraint devices are exempt from this requirement.

                                (1)           Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

                                (2)           Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

                E.            Vehicles used for transporting children will be enclosed and properly maintained.  Vehicles shall be cleaned and inspected inside and out at least weekly.

                F.             Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit.  If the outside air temperature falls below 50 degrees Fahrenheit the program will ensure the vehicle is heated.

                G.            Children may be transported only in vehicles that have current registration and insurance coverage.  All drivers must have current driver’s license and comply with motor vehicle and traffic laws.  Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

                H.            At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR).

[8.16.2.46 NMAC - Rp, 8.16.2.46 NMAC, 10/1/16]

**8.16.2.47               BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

                A.            HOUSEKEEPING:

                                (1)           A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

                                (2)           Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

                                (3)           All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, and constructed of materials that will not absorb liquids.

                B.            PEST CONTROL:

                                (1)           All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program’s buildings and grounds.

                                (2)           The applicator may not apply pesticides when children are on the premises.

                                (3)           Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

                                (4)           All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

                C.            MECHANICAL SYSTEMS:

                                (1)           A program will maintain comfortable temperatures (68 degrees Fahrenheit through 82 degrees Fahrenheit) in all rooms used by children.  A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards.  In the event air temperature in a program exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

                                (2)           A program must maintain all heating and cooling equipment so that it is in good working order.

                                (3)           A program will not use unvented heaters, open flame heaters or portable heaters.  A program will install barriers or take other steps to ensure heating units, are inaccessible to children.  Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

                                (4)           A program will provide fresh air and control odors by either mechanical or natural ventilation.  If a program uses a window for ventilation, it will have a screen.  If a door is used for ventilation, it must have a screen door.

                                (5)           Water coming from a faucet will be below 110 degrees Fahrenheit.  A program will install a tempering valve ahead of all domestic water-heater piping.

                                (6)           All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

                D.            LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

                                (1)           All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

                                (2)           A program will have emergency lighting that turns on automatically when electrical service is disrupted.

                                (3)           Use of electrical cords and outlets:

                                                (a)           A program will use U/L approved equipment only and will properly maintain this equipment.

                                                (b)           The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

                E.            EXITS AND WINDOWS:  When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet.  The minimum net clear opening for height dimension must be 24 inches.  The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

                                (1)           There must be at least two exits remote from each other in each activity area of the program.

                                (2)           Exit ways must be kept free from obstructions at all times.

                F.             TOILET AND BATHING FACILITIES:

                                (1)           All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children.  A program will not use a common towel or wash cloth.

                                (2)           All toilets and sinks must be located within 100 feet of the licensed area.  The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom until the child returns.

                G.            SAFETY COMPLIANCE:

                                (1)           A program will conduct emergency preparedness practice drills at least quarterly beginning of each school calendar year.

                                (2)           A program will conduct at least one fire drill each month.  A program will:

                                                (a)           hold the drills at different times of the day;

                                                (b)           use the fire alarm, detector system or a simulated fire alarm;

                                                (c)           emphasize an orderly evacuation rather than speedy; and

                                                (d)           a program will keep on file a record of the drills with the date, time, number of adults and children participating, and any problems encountered during the drills.  Records will be kept for one year.

                                (3)           A program shall request an annual fire inspection from the fire authority having jurisdiction.  If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom.  A copy of the latest inspection must be posted in the program.

                                (4)           A program will post evacuation plans for each room used by children in the appropriate room.

                                (5)           A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone.  A pay phone will not fulfill this requirement.  If cordless phones are used, emergency numbers shall be posted on the phone itself.  Facilities shall post the program’s telephone number and address in a conspicuous location next to the emergency phone numbers.

                                (6)           A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

                                (7)           A program must have a minimum of two 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

                                (8)           Fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on at least  a yearly basis;  fire extinguishers must be tagged noting the date of inspection;  see Paragraph (2) of Subsection D of 8.16.2.47 NMAC for emergency lighting requirements.

                H.            SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES:  A program will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms or non-prescription controlled substances (drugs) on the premises or in vehicles.  Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

                I.             PETS:

                                (1)           A program will inform parents or guardians in writing before pets are at the program site.

                                (2)           A program will not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

                                (3)           A program will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet’s presence at the program.

                                (4)           A program will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

                                (5)           Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

                                (6)           A staff member must be physically present during the handling of all pets or other animals.

[8.16.2.47 NMAC - Rp, 8.16.2.47 NMAC, 10/1/16]

**HISTORY OF 8.16.2 NMAC:**

Pre-NMAC HISTORY:  The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:

HSSD 76-8, Child Care Facilities, Licensing Rules, Regulations and Standards, 12-1-76

HED-82-4 (HSD), Regulations Governing Child Care Center Licensing, 8-11-82

HED-81-2 Regulations Governing Family Day Care Licensing, 6-16-81

HED 82-6 (HSD), Regulations Governing Family Day Care Licensing, 8-11-82

HED 87-1 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-16-87

HED 87-3 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-19-87.

**HISTORY OF REPEALED MATERIAL:**

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-99.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-00.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-01.

8.16.2 NMAC, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-01-02.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 2-14-05.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 6-30-10.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-30-12.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 10/1/16.