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MEMORANDUM

TO: Superintendents, Principals and Curriculum Coordinators
FROM: Rebecca Holcombe, Ed.D., Secretary of Education (RH)
SUBJECT: Extended Learning Guidance
DATE: September 13, 2017

We have received a number of inquiries from districts and supervisory unions regarding expanded learning programs operated by public schools, such as homework clubs, tutorial centers, enrichment programs and other before and after school programs. Specifically, public school leaders want to know if extended learning programs are subject to the Licensing Regulations for Afterschool Child Care Programs (Child Care regulations) promulgated by the Child Development Division (CDD) to cover the activities of childcare. This memo explains when public school-based extended learning programs are and are not subject to regulation by CDD.

First, we commend you for offering such a valuable service to our children. Extended learning programs enable schools to provide enrichment and learning activities that narrow the achievement gap. In addition, as a secondary benefit, many provide vulnerable children with access to food support outside the regular school day.

With respect to whether these programs are regulated by CDD, the CDD regulations were promulgated for the protection and promotion of the health, safety, well-being and positive growth of children who receive services in after school programs in community-based centers or schools. The rules were promulgated under authority given to CDD in 33 V.S.A § 3502 to license child care facilities.

“Child care facility” is defined in 33 V.S.A § 3511(2) to mean:

“any place or program operated as a business or service on a regular or continuous basis, whether for compensation or not, *whose primary function is protection, care, and supervision of children under 16 years of age outside their homes for periods of fewer than 24 hours a day* by a person other than a child's own parent, guardian, or relative, as defined by rules adopted by the Department for Children and Families, but not including a kindergarten approved by the State Board of Education.” (emphasis added)

Therefore, whether these regulations apply to a program depends upon the primary function of the program. If the primary function and purpose of the program is education, enrichment or social programs, it is not subject to CDD's Child Care regulations. Those programs are subject to other regulations – such as health and safety inspections - and Agency of Education oversight. If the primary purpose of your program is protection, care or supervision, the CDD regulations apply to your program.

Moreover, it is clear that the law contemplates public schools operating educational programs outside of regular school hours. The term public school as defined in 16 V.S.A § 11(a)(7) includes evening or summer schools:

“Public school” means an elementary school or secondary school operated by a school district. **A public school may maintain evening or summer schools for its students and it shall be considered a public school.**

An afterschool program that serves students in one or more grades from kindergarten through secondary school, that receives funding through the 21st Century Community Learning Centers Program, and that is overseen by the Agency of Education is specifically exempted from the Child Care regulations *unless* the afterschool program asks to participate in the Child Care Financial Assistance Program. In that case, the program will be subject to the Child Care regulations promulgated by CDD.

Recreation Programs are also expressly exempted from the Child Care regulations if they are: not more than thirteen consecutive weeks for children that have completed kindergarten or will reach six years of age by September 1st of the year enrolled; not more than four hours one day per week or not more than two hours two days per week; or provide a single skill based activity for children ages three years or older.

If you have questions regarding specific programs offered by your district, you should consult with your attorney.