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Lutheran Synod Schools
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Organizations

February 19, 2016

(Submitted via Federal eRulemaking Portal)

Office of Child Care
Administration for Children and Families
330 C Street SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking (NPRM), Child Care and Development Fund (CCDF)
Docket ID AFC–2015–0011

The Council for American Private Education (CAPE) welcomes the opportunity to comment on the “Notice of Proposed Rulemaking” (NPRM) for the Child Care and Development Fund (CCDF) to implement provisions in the *Child Care and Development Block Grant Act of 2014*. The NPRM was published in Vol. 80, No. 247, of the *Federal Register* on December 24, 2015, starting at 80 FR 80454.

We present first our highest priority amendment to the proposed regulations, followed by additional amendments sequenced as they would appear in the proposed rules.

80 FR 80576; §98.50(a)(3)

Action: Delete this paragraph, which requires states to include “some use of grants or contracts for the provision of direct services.”

Rationale: The NPRM notes on p. 80518 that preliminary data from FY 2013 show that “approximately 90 percent of children receiving CCDF-funded child care were served through certificates.” Moreover, “only 20 states and territories provide services through grants or contracts for child care slots.” Given that states are already free to use grants and contracts to provide child care, the evidence is overwhelming that they prefer to do so through certificates. States have spoken on this matter, and the message is clear.

Moreover, the *Child Care and Development Block Grant Act of 2014* states that nothing in the act shall be construed in a manner “to favor or promote the use of grants and contracts for the receipt of child care services...over the use of child care certificates; or to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers” (42 USC §9858o(b)). Plainly, the proposed paragraph “promotes the use of grants and contracts” in that it *requires* their use. Clearly, the proposed regulation “disfavors or discourages the use of certificates” in that every dollar used for the newly mandated grants and contracts would mean a dollar less for certificates.

Thus, quite astoundingly, the proposed paragraph not only lacks authority in statute, it actually violates the statute, both in spirit and in letter. Further, and equally astounding, the proposed paragraph not only ignores the will of states on this matter, it actually thwarts that will by requiring all states to do something that most of them so far have chosen not to do.

Finally, with respect to faith-based organizations, which are explicitly referenced and protected in 42 USC §9858o(b), it must be noted that those that want to incorporate religious instruction and worship into their programs—programs that are freely chosen by parents—would effectively be excluded from grants and contracts, since no direct funds may be used for religious purposes. By contrast, child care

certificates may be expended by providers “for any sectarian purpose or activity that is part of the child care service, including sectarian worship or instruction” (45 CFR §98.30(c)(5)). The insistence that states use some funds for grants and contracts would diminish the participation of these respected and valued providers of high quality child care services and would consequently diminish the “variety of distinctive approaches to early childhood education and care” (42 USC §9858e(b)(3)(G)) that was clearly a goal of lawmakers in writing and approving the act.

The paragraph in question should be deleted before the final rules are published.

80 FR 80564; §98.14(a)(1)

Action: Amend this paragraph to read as follows: “Coordinate the provision of services funded under this part with other Federal, State, and local child care and early childhood development programs, including those in faith-based settings and those representing other distinctive approaches to early childhood education and care, such as Montessori and Waldorf programs, (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services....”

Rationale: The statute’s purposes include promoting “parental choice to empower working parents to make their own decisions regarding the child care services that best suit their family’s needs” as well as assisting states “in delivering high-quality, coordinated early childhood care and education services to maximize parents’ options...” (42 USC §9857(b)). Moreover, the statute contains numerous specific calls to include “faith-based and community-based” providers in the delivery of child care (42 USC §9858c(c)(2)(P); §9858c(c)(3)(B)(iii)(II)(aa)&(ee); §9858o(b)(2)). In addition, to the extent that states chose to use funds to develop, enhance, or improve quality rating systems for child care, those rating systems may accommodate a variety of distinctive approaches, including “those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development” (42 USC §9858e(b)(3)(G)). The point is that safeguarding distinctive approaches to early childhood education and care is a clear priority within the statute and should be reflected in this section as well as several other sections of the regulations as noted below.

80 FR 80564; §98.15(a)(9)(i)

Action: Amend this clause to read as follows: “Be research-based and accommodate a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, and be developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;”

Rationale: See the rationale for the proposed change to §98.14(a)(1).

80 FR 80564; §98.15(a)(9)(ii)

Action: Amend this clause to read as follows: “Be implemented in consultation with the State educational agency, providers of child care, including those with distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and”

Rationale: Providers of early childhood education and care are in the best possible position to understand the practical ramifications of early learning guidelines, and should be part of the process for developing those guidelines. Further, it is essential that representatives of distinctive approaches to early childhood education (e.g., faith-based, Montessori, Waldorf) be among those developing the guidelines, since the unique characteristics of those settings—which account for their effectiveness and appeal—are often overlooked by policymakers who sometimes have a single vision of what constitutes quality early education. Additional support for this change may be found in the rationale provided above for the proposed change to §98.14(a)(1).

80 FR 80564; §98.15(b)(1)

Action: Amend this paragraph to read as follows: “The State has developed the CCDF Plan in consultation with providers of child care, including those with distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, the State Advisory Council on Early Childhood Education and Care...”

Rationale: Providers of early childhood education and care should be involved in the development of the CCDF Plan to the same extent, and for the same reasons, expressed in the rationale provided above for the proposed change to §98.14(a)(1).

80 FR 80565; §98.16(e)

Action: Amend this subsection to read as follows: “A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of coordination with providers from faith-based settings and those representing other distinctive approaches to early childhood education and care, such as Montessori and Waldorf programs, and including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14;”

Rationale: The description of the coordination and consultation process within the CCDF plan should include explicit reference to the involvement of providers that represent distinctive approaches to early childhood education and care for the same reasons expressed in the rationale provided above for the proposed change to §98.14(a)(1).

80 FR 80565; §98.16(i)(1)

Action: Delete this paragraph to conform with our proposal above (80 FR 80576; §98.50(a)(3)) to eliminate the requirement that states make some use of grants and contracts.

Rationale: See the rationale for the proposed change to §98.50(a)(3).

80 FR 80566; §98.16(l)

Action: Amend this subsection to read as follows: “A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, that accommodate a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);”

Rationale: Health and safety requirements must be sensitive to the practices of particular pedagogies. For example, Montessori classrooms encourage children to work with containers and jars made of glass, rather than plastic. The banning of glass containers and other breakable materials from such classrooms in the name of safety would violate a longstanding and proven practice. Also, the overall rationale for accommodating a variety of distinctive approaches to early learning is presented above in connection with the proposed change to §98.14(a)(1).

80 FR 80566; §98.16(m)

Action: Amend this subsection to read as follows: “A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors that accommodate a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs;”

Rationale: Child care standards, including group size limits and child-staff ratios must respect the practices of particular pedagogies. In order to encourage children to learn from one another, Montessori classrooms generally

have a greater number of children per classroom than other settings and a higher child-teacher ratio. The Montessori approach is respected throughout the world and should not be stifled through arbitrary class size caps. Also, please see the overall rationale for accommodating a variety of distinctive approaches to early learning as presented above in connection with the proposed change to §98.14(a)(1).

80 FR 80566; §98.16(p)

Action: Amend this subsection to read as follows: “A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with §98.44 that accommodate a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs.”

Rationale: Certain programs with distinctive approaches to early childhood education have rigorous and effective preparation programs and professional development programs for their teachers that do not necessarily track mainstream child care training programs. These highly respected alternative approaches to teacher preparation should be recognized and allowed to flourish. Also, please see the overall rationale for accommodating a variety of distinctive approaches to early learning as presented above in connection with the proposed change to §98.14(a)(1).

80 FR 80569; §98.30(g)

Action: Delete this subsection since it advances a policy interpretation not supported in the statute.

Rationale: The purpose of child care certificates is to permit parents to choose from a variety of child care settings, and quality rating systems are supposed to “accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development” (42 USC §9858e(b)(3)(G)). In the name of “higher standards” and without reference to the need to “accommodate a variety of distinctive approaches,” the subsection in question has the effect of encouraging a Lead Agency to have all providers conform to its particular interpretation of what constitutes quality child care. In so doing, the proposed subsection potentially eliminates essential distinctions among providers and thus robs parents of choice. If the Lead Agency's standards, policies, and practices run afoul of a provider's essential mission, the provider could be eliminated from participation, potentially denying parents a valuable option.

80 FR 80569; §98.30(h)

Action: Delete this subsection since it advances a policy interpretation not supported in the statute.

Rationale: By encouraging a Lead Agency to incentivize certain types of choices in child care over others, the proposed subsection in effect substitutes the Lead Agency's interpretation of what constitutes “high quality” child care for the parent's interpretation, thus thwarting the intent of child care certificates, which allow parents—who know their children best and love the children most—to decide freely what is the best child care setting for their children.

80 FR 80570; §98.33(b)(1)

Action: Amend this paragraph to read as follows: “The availability of the full diversity of child care services, including those with distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, to promote informed parental choice...”

Rationale: The change is consistent with the statute's requirement that states develop partnerships among various entities, “including faith-based and community based organizations” (42 USC §9858c(c)(2)(P)). Also, see the rationale for the proposed change to §98.14(a)(1).

80 FR 80571; §98.41(a)

Action: Amend this subsection to read as follows: " Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services, for which assistance is provided under this part and must accommodate a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs. Such requirements, which are subject to monitoring pursuant to § 98.42, shall: "

Rationale: See the rationale for the proposed change to §98.16(l).

80 FR 80571; §98.41(d)

Action: Amend this subsection to read as follows: "Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to promoting the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that accommodate a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs, and that address:..."

Rationale: Quality rating systems and the standards they reflect are supposed to “accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development” (42 USC §9858e(b)(3)(G)). Also, regarding group size and child-staff ratios identified in §98.41(d)(1)&(2), see the rationale for the proposed change to §98.16(m). Finally, regarding qualifications for caregivers identified in §98.41(d)(3), see the rationale for the proposed change to §98.16(p).

80 FR 80574; §98.44(a)(1)

Action: Amend this paragraph to read as follows: “Is developed in consultation with providers of child care, including those with distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, and the State Advisory Council on Early Childhood Education and Care...”

Rationale: Providers of early childhood education and care should be involved in the development of the Lead Agency’s framework for training, professional development, and postsecondary education to the same extent and for the same reasons expressed in the rationale provided above for the proposed change to §98.14(a)(1).

80 FR 80574; §98.44(a)

Action: Amend this subsection by adding paragraph (8) to read as follows: “Accommodate a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs.”

Rationale: See the rationale for the proposed change to §98.16(p).

80 FR 80574; §98.44(b)

Action: Amend this subsection to read as follows: “The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (i.e., to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that accommodate a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs, and that, to the extent practicable, align with the State framework:”

Rationale: See the rationale for the proposed change to §98.16(p).

80 FR 80575; §98.45(c)(2)

Action: Amend this paragraph to read as follows: “Organizations representing child care caregivers, teachers, and directors, including those representing a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs.”

Rationale: The market rate survey should be developed after consultation with a variety of child care providers. This approach is consistent with the statute's requirement that states develop partnerships among various entities, "including faith-based and community based organizations" (42 USC §9858c(c)(2)(P)). Also, see the rationale for the proposed change to §98.14(a)(1).

80 FR 80577; §98.53(a)

Action: Amend this paragraph to read as follows: “The Lead Agency must expend funds from each fiscal year’s allotment on quality activities pursuant to §98.50(b) in accordance with an assessment of need by the Lead Agency. Such funds must be used in a manner that accommodates a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs, and must be used to carry out at least one of the following quality activities to increase the number of low-income children in high-quality child care:

Rationale: Depending on which area(s) the Lead Agency chooses to expend funds to improve the quality of child care, it should do so in a way that accommodates a variety of distinctive approaches to early childhood education. The reasons have been set out in connection with various proposals above.

As an alternative approach to the catchall amendment we propose in the lead sentence in §98.53(a), each paragraph within the subsection could be separately amended specifically to identify the need to accommodate “distinctive approaches” in the activities identified in the paragraph (i.e., professional development in paragraph (1), early learning guidelines in (2), quality rating systems in (3), improving the supply of programs in (4), resource and referral systems in (5), compliance in (6), evaluation in (7), accreditation in (8), health standards in (9), or other activities in (10). An example of how to do this is provided below with sample language relating to paragraph (8).

80 FR 80578; §98.53(a)(8)

Action: Amend this paragraph to read as follows: “Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body, including those representing distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs, with demonstrated, valid, and reliable program standards of high-quality.”

Rationale: To the extent that states choose to use funds to support providers in the voluntary pursuit of accreditation by a national accrediting body, they should be encouraged to include accrediting bodies that reflect a distinctive approach to early education (e.g., faith-based, Montessori, Waldorf). Also, see the rationale for the proposed change to §98.14(a)(1).

By way of background, the Council for American Private Education (CAPE) is a coalition of 19 national organizations (listed on p. 1) and 36 state affiliates serving private elementary and secondary schools. There are 31,000 private schools in the United States; one in four of the nation’s schools is a private school. About 5.3 million students (10 percent of all PK-12 students) attend them. CAPE member organizations represent about 80 percent of private school enrollment nationwide.

According to the National Center for Education Statistics, in 2012 over 16,300 private schools had nursery or pre-K programs, enrolling over 709,000 children. NCES estimates that of children enrolled in pre-primary school programs in 2012, including nursery school, preschool, and kindergarten, 45 percent of three-year-olds and 36 percent of four-year-olds were enrolled in private programs.

Thank you for considering the above proposals. The CAPE community stands ready to assist with their interpretation, clarification, or implementation.

Sincerely,

A handwritten signature in black ink that reads "Joe McTighe". The signature is written in a cursive style with a large, stylized "J" and "M".

Joe McTighe
Executive Director