

North Carolina Office of State Fire Marshal
Engineering Division: Building Codes and Interpretations
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Guidance Paper: Out of School Child Care Within a Group E Public School by a Third-Party Provider

Code: 2018 and 2024 North Carolina Building Code
Section: 102.6, 305.2 and 305.2.2

Date: 1/14/2025

Question:

If a third-party provider such as a YMCA or other organization contracts with a local public school system to provide out of school child care services within an existing public school for students that attend the same school, does this qualify as a “change of use” as defined within the North Carolina State Building Code, and thus require the portion(s) of the school used for child care to be modified (if required) to comply with all the applicable requirements of the current North Carolina State Building Code for child care use?

Definitions:

The legal occupancy of any structure existing on the date of adoption of the code under which it was built shall be continued without change, with exceptions as per 2018 and 2024 North Carolina Building Code, Section 102.6:

[A] **102.6 Existing structures.** The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as otherwise specifically provided in this code, the *International Existing Building Code*, or the *International Fire Code*.

A public school is an Educational Group E occupancy within the 2018 and 2024 North Carolina Building Code and portions of public schools thereof occupied by children older than 2-1/2 years of age for fewer than 24 hours are considered Educational Group E day care facilities as per Sections 305.2 and 305.2.2:

305.2 Group E, day care facilities. This group includes buildings and structures or portions thereof occupied by more than five children older than 2-1/2 years of age who receive educational, supervision or *personal care services* for fewer than 24 hours per day.

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305.2.2 Five or fewer children. A facility having five or fewer children receiving such day care shall be classified as part of the primary occupancy.

The guidance and opinions contained herein are not legal advice and may not necessarily reflect the most current statutory or code language. References to the International Codes mean the North Carolina State Building Code.

The 2018 North Carolina Existing Building Code defines “change of occupancy” as follows and a change of use is included within this definition:

[A] CHANGE OF OCCUPANCY. A change in the use of the building or a portion of a building. A change of occupancy shall include any change of occupancy classification, any change from one group to another group within an occupancy classification or any change in use within a group for a specific occupancy classification.

The definition of “change of occupancy” is modified in the 2024 North Carolina Existing Building Code as follows:

CHANGE OF OCCUPANCY. Any of the following shall be considered as a change of occupancy where the current *International Building Code* requires a greater degree of safety, accessibility, structural strength, fire protection, means of egress, ventilation or sanitation than is existing in the current building or structure:

1. Any change in the *occupancy classification*.
2. Any change from one group to another group within an occupancy classification.
3. Any change of use within a group for which there is a change in application of the requirements of this code.

A definition of “change of use” is added to the 2024 North Carolina Existing Building Code as follows:

CHANGE OF USE. A change in the use of a building or a portion of a building, within the same group classification, for which there is a change in application of the code requirements.

Opinion:

If an existing public-school building was built and is maintained in accordance with the applicable code requirements of the edition of the North Carolina State Building Code under which it was built, the life safety systems are maintained and operational, the building is current in its periodic inspections for fire hazards, identified fire hazards are remediated in accordance with N.C.G.S. § 115C-525, and the public school building is in compliance with all other applicable laws, the school is safe for its intended use by the public school occupants. Child care is already allowed in Group E occupancies for children older than 2-1/2 years of age within the North Carolina State Building Code. North Carolina Administrative Code 10A NCAC 09 .2503 notes that any building that is approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house a facility providing care to school-age children as defined within N.C.G.S. § 115C-364. The school system may contract with a third-party to provide out of school child care for the students that attend the school without this contractual arrangement constituting a change of use because this child care arrangement does not meet the definition of change of use as outlined in the North Carolina State Building Code. Child care in this arrangement is similar to any other extracurricular program that is already allowed in the public school. Within the terms of this contract with the school system, if the third-party child care provider pursues licensure, they shall obtain and submit copies of all applicable inspections required under North Carolina Administrative Code 10A NCAC 09 .2503 and the most recent fire prevention reports required under N.C.G.S. § 115C-525 to the North Carolina Division of Health and Human Services: Division of Child Development and Early Education.

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References:

https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-525.html

Keywords:

Group E, change of use, change of occupancy, day care, child care, public school, certificate of compliance, certificate of occupancy, out of school