

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Nature's Classroom

Docket No.: INS 13-033-AP

FINAL ORDER on HEARING

Pursuant to the provisions of INS 204.26(a)(4), the **Proposed Decision and Order On Hearing June 9, 2014, Findings and Order** by Hearing Officer Catherine Bernhard, in its entirety and without any modifications, is hereby **ACCEPTED as a FINAL ORDER and DECISION**.

This is the final action of the Department. You have the right to appeal by requesting reconsideration of this final action within 30 days in accordance with RSA 541.

SO ORDERED.

9-4-14
Date



Roger A. Sevigny, Commissioner

NEW HAMPSHIRE INSURANCE DEPARTMENT

IN RE: NATURE'S CLASSROOM
INS. 13-033 AP

PROPOSED DECISION AND ORDER
ON HEARING JUNE 9, 2014
FINDINGS AND ORDER

I. Procedural History

Nature's Classroom, LLC is a nonprofit organization that designs and provides environmental educational programs for middle school students grades 5 -8. (Nature's Classroom) Nature's Classroom operates at sites in New Hampshire at Sargent Center for Outdoor Education in Hancock, and Camp Cody in Freedom. Nature's Classroom carries workers compensation and employers liability insurance through the worker's compensation assigned risk plan offered by Travelers Property and Casualty Company of America (Travelers) and administered by National Council on Compensation Insurance (NCCI). After an audit and an inspection in March of 2013, NCCI reclassified Nature's Classroom's operations changing its designation from "College Professional Employees & Clerical" (Class. Codes 8868 and 9101) to "Camp Operation - NOC " (Class. Codes 9015 and 9012). Nature's Classroom disputed this reclassification. NCCI attempted to resolve the dispute between the parties unsuccessfully. Nature's Classroom appealed the reclassification to the NH Workers Compensation Rating and Classifications Appeal Board (Appeal Board). A hearing was held on September 26, 2013. Afterwards the Appeal Board upheld the reclassification in an order dated October 3, 2013. Nature's Classroom filed an appeal with the NH Insurance Department (Department) requesting a due process hearing on October 13, 2013. The Notice of Hearing issued from the Department on October 29, 2013 and a *de novo* administrative hearing was held on June 9, 2014.

II. Prehearing Issues

In addition to challenging the propriety of its reclassification, Nature's Classroom challenged the authority under which NCCI operates, promulgates the rules in the Basic Manual governing the dispute resolution process and the classification descriptions compiled in the Scopes Manual. Nature's Classroom argued that the rules were the equivalent of administrative rules, and should therefore be subject to the rule-making authority set forth in the NH Administrative Procedures Act RSA 541-A. Nature's Classroom argued that process under which the NCCI rules are established was a violation of its due process rights. Nature's Classroom also asserted that both the term "our" manuals used in Item 4 of the Information Page and Part Five of the policy language, and the classifications and descriptions in the Scopes Manual were ambiguous

and should be strictly construed against NCCI and Travelers. Finally, Nature's Classroom objected to the participation of the NCCI Administrator in the Appeal Board non-public deliberations.¹ These issues were argued and addressed in prehearing orders dated May 27, 2014 and June 8, 2014 which denied Nature's Classroom's requests for relief. The parties have filed proposed Findings of Fact and Rulings of Law, Nature's Classroom filed a supplement to those requests. The record of the hearing in this matter is now closed.

III. Proceeding on June 9, 2014

The parties: Nature's Classroom, Travelers, and NCCI appeared for the final hearing on June 9, 2014. Live witness testimony was offered by from Laura Graff, Phillip Johnson, PhD and Maureen Longanacre.² The deposition of Kathryn Pond, an investigator for NCCI, was submitted in lieu of her testimony. All exhibits, Tr. Exhibits 1-17, and NC. Exhibits 1-41 filed were without objection. Nature's Classroom as the moving party bears the burden of proof by a preponderance of the evidence. *See* Ins. 204.05.

The rules of the Basic Manual and the descriptions of classifications in the Scopes Manual control the determination about the reclassification of the operations of Nature's Classroom. These manuals are approved for use by NCCI, by the department. NCCI is a licensed advisory organization authorized to assist insurers and provide customer service under RSA 412:3 and 412:23. The department is authorized to license NCCI and approve the Basic Manual and the Scopes Manual for use in rate making and dispute resolution.

IV. Classification of Nature's Classroom

A. The Basic Manual

The purpose of the classification system is found in Rule 1 and 2 of the Basic Manual. Part A 1. states in part,

The purpose of the classification system is to group employers with similar operations into classification so that the assigned classification reflects the exposure common to those employers and the rate charged reflects the exposure loss common to those employers.

It is relevant therefore to look at the classifications of other employers with similar operations in making a classification determination.

Rule 1 A. 2. states in part,

¹ Effective June 1, 2014 the department approved NCCI Circular Item 01-NH-2014 - Revisions to the New Hampshire Dispute Resolution Process that redefines the duties of the Administrator to the appeal board and limits the Administrator's communications with the appeal board.

² Maureen Longanacre was present at the hearing and also briefly answered questions, the bulk of her testimony was offered through her deposition.

It is the business of the employer within a state that is classified. It is not the separate employments, occupations or operations within a business which are classified.

In this case, the inspector, Kathryn Pond stated in her deposition that in determining the operation of Nature's Classroom's "the programs were the main thing" the "types of programs, the overnight accommodations, the meals and transportation" that helped define the operation to be classified. (Deposition of Kathryn Pond at p. 77.) The question raised by the appeal is whether the reclassification of Nature's Classroom as a 9015 Camp Operations-NOC was an appropriate classification of its operation.

The Basic Manual C. 2. Words and Phrases, Subparagraph (g) "NOC", or "Not otherwise classified" reads, "If the classification wording uses the term NOC, that classification applies only if no other classification more specifically describes the insured's business."

B. The Scopes Manual Classification Codes 8868 and 9015

Through deposition and hearing testimony witnesses testified that the two primary classification codes in this matter are 8868 and 9015. These are very broad classifications inclusive and encompassing a wide variety of employer operations.

The Scopes Manual Classification Code 8868 reads in part,

College: Professional Employees & Clerical
Cross-Ref. School: Professional Employees & Clerical (N/A OR) Religious
Organization: Professional Employees & Clerical-includes clergy , assistants,
organists and choir members (N/A AZ, OK, OR). [...] The Scope reads in part

Code 8868 is applied to professional employees of academic, trade or vocational institutions of learning. The classification includes professors, administrators, teachers, guidance counselors, social workers, therapists, nurses, athletic coaches and clerical employees. Employees who assist these professionals by performing similar or related duties to those in which these professionals engage are additionally assigned to Code 8868. It is recognized that these assistants may not be considered "professional" to the extent that they may be unlicensed or not have the necessary academic credentials. Nevertheless, we consider these employees to be professional for classification purposes as their exposure is similar to those they are assisting. Examples of this type of employee include, but are not limited to, teacher's or nurse's aides or assistant athletic coaches. Refer to 9101 for classification assignment of non professional employees of these institutions.
[...]

Auxiliary operations undertaken by schools where independent revenue is earned under a separate commercial enterprise are not within the scope of Codes 8868 and 9101. For example, a school is open ten months during the year. During the summer months, the school closes but operates a camp. The camp operation is

classified to the appropriate camp classification, not Codes 8868 and 9101. A bookstore operated by a school on the school campus is not considered a separate commercial enterprise for purposes of this interpretation. Professionals employed by this operation are classified to Code 8868 and nonprofessionals are classified to Code 9101. Bookstores operated at locations away from the school campus are classified to Code 8072. This interpretation is per **Basic Manual** rules, which permit stores at separate locations to be classified as independent units.

The Scopes Manual Classification 9015 (updated 06/01/2012) reads in part,

State's Not Applicable

State Exceptions to the National Code: CA,[...] HI,[...] MA, NH, NY, OR, [...]

Phraseology

Building or Property Management - All Other Employees

(N/A [...] MA, OR, [...])

Note: Applies to the care, custody, and maintenance of premises or facilities. Not applicable to an owner or lessee of a building who occupies the entire or principal portion of the premises for manufacturing or mercantile purposes. Includes doormen, security desk personnel, elevator operators, gatekeepers, and concierges. Separately rate maintenance or repair work at any location where the owner or lessees does not also perform janitorial services. Includes real estate management companies and real estate investment trusts. Clerical and sales employees are assigned to Code 9012, including those that operate at a separate location from the properties managed. Employees working exclusively for a country club operation run by a hotel, resort, condominium, or other community association are assigned to Code 9060.

Description:

Code 9015 is applicable to owners, lessee or real estate management firms that operate office, apartment, tenement, mercantile or industrial buildings. It encompasses all superintendents, custodial and maintenance operations conducted by an owner or lessee of a building except those performed by an insured occupying the entire or a major portion of the building for manufacturing, mercantile or other commercial purposes.

Camp operations contemplated by Code 9015 provide overnight accommodations and offer a wide range of activities such as swimming, boating, archery, fishing, hiking arts and crafts, and sports such as tennis and softball as well as other traditional camping activities. These camps may employ counselors, cooks, grounds and maintenance personnel, nurses, housekeepers, guards and lifeguards. Due to the varied nature of activities that take place in these camps no one classification describes their operations. As such, these camps are assigned to the not otherwise classified (NOC) classification, Code 9015.

Nature's Classroom's operation prepares and presents educational programs and activities for and to school groups. Nature's Classroom at both New Hampshire sites uses the outdoors and a camp like environment to operate an experiential learning business. This gives Nature's Classroom some of the hallmarks included both in classification 8868 (school) and 9015 (camp).

When looking at its operation for classification purposes, however, it is important to note the Basic Manual Words and Phrases, C. 2. Subparagraph (g) caution that class code 9015 Camp Operations-NOC is the best classification of Nature's Classroom's operations, *"only if no other classification more specifically describes the insured's business."*

C. Evidence of Operation of Nature's Classroom³

Evidence of Nature's Classroom's operation was submitted by both Travelers and Nature's Classroom. Traveler's supports the reclassification by focusing on the audit and loss run of Nature's Classroom's claims (**Tr. Exhibit 7** and **Tr. Exhibit 10**), the testimony and Inspection Report of Kathryn Pond (**NC Exhibit 33** and Exhibit to the deposition **Pond 1**), the testimony and expert report of Maureen Longanacre (**NC Exhibit 32** and **Tr. Exhibit 17**), and portions of the Nature's Classroom's printed materials advertising and describing its programs. Nature's Classroom offered evidence of its operation and objections to reclassification through the written materials documenting the program lesson plans and its links to the Core Curriculum and academic standards in the public schools, printed materials advertising and describing its programs, the testimony of Laura Graff, Associate Director of Nature's Classroom, and Phillip Johnson, PhD, written materials relating the qualifications of their instructors and affidavits of teachers and principals who have participated in the program with their students.

Classification and change of classification is anticipated in the provisions of Nature's Classroom's Workers Compensation and Employers Liability Policy 6JUB-6B09126-9-13 Renewal of 6KUB-0719C86-3-12 (Policy). (**Tr. Exhibit 11 Policy Part Five B**) The policy authorizes audits and inspections, but indicates that an inspection of the business is optional. (**Tr. Exhibit 11 Policy Part Six A**). Maureen Longanacre, CWCP, CISR, the NCCI administrator for the WCIP for Travelers and an employee of NCCI testified in her deposition that the reclassification was the result of an audit and inspection of Nature's Classroom performed by NCCI.

1. Deposition of Kathryn Pond

NCCI Quality assurance specialist Kathryn Pond, stated that she was sent to inspect the operation of Nature's Classroom on March 18, 2013. Ms. Pond testified that she conducted 540 inspections a year. When assigned to the inspection of Nature's Classroom she said she waited until Nature's Classroom reopened for the spring session before making her inspection of its operation. She visited and inspected the Sargent

³ References to Traveler's Exhibits are noted as Tr. Exhibit. References to Nature's Classroom Exhibits are noted as NC Exhibits.

Center site only, but applied her observations and assessment to both New Hampshire Nature's Classroom operations. In her deposition testimony, Ms. Pond said she expected to meet an employee "Kobe," but in his absence, she interviewed the director of Sargent Center Larry Chambers. In addition to speaking with Larry Chambers, Ms. Pond observed a twenty minute staff meeting and reviewed written materials about Nature's Classroom provided to her on site. Ms. Pond inspected the Sargent Center operation as it was preparing for the arrival of a group of students, teachers and chaperones. She was at the site for approximately one hour forty-five minutes. Ms. Pond's statement left the impression that a school group was scheduled to arrive at Sargent Center on the same day as her inspection. No explanation was provided as to why she waited to conduct the inspection until after the spring session commenced, but did not remain at Sargent Center until the school group arrived so that she could observe the actual operation of Nature's Classroom.

Ms. Pond did not visit the Nature's Classroom at the Camp Cody site, but said she may have spoken to someone by phone about its operation. Ms. Pond said she was familiar with Camp Cody, as she previously performed a classification for the summer camp that operated at that location which was unrelated to Nature's Classroom.

With some difficulty she articulated what she believed was the operation of Nature's Classroom. Ms. Pond defended her reclassification stating that Nature's Classroom was not an "academic institution of learning" as required by Code 8868. She defined "academics" by way of example, as the curriculum requirements necessary for graduation or a high school diploma. (Deposition Kathryn Pond at p. 57.) Her impression of Nature's Classroom's operation was that it was "hands-on educational." (Deposition Kathryn Pond at p. 83.) Ms. Pond indicated that before she wrote her report on Nature's Classroom, she looked at other business operations classified as 8868 for comparison. Based on her inspection of Sargent Camp she reported Nature's Classroom was more an "educational camp" and Camp Cody was more of a "traditional recreational camp." (Deposition of Kathryn Pond at p. 115.)⁴

Ms. Pond also discussed and answered questions about why the operation of Nature's Classroom excluded it from being a school and classified as code 8868. She noted two areas during her discussion, providing overnight accommodations and the temporary duration of the Nature's Classroom programs. She also, however, admitted that there could be colleges or boarding schools that housed students overnight, and that driving schools which offered temporary, short term or periodic courses, and agricultural schools conducted at least part of their operations outdoors, were included under classification code 8868. Based on her testimony these aspects of Nature's Classroom's operations in and of themselves that would exclude Nature's Classroom from the Classification Code 8868.

Ms. Pond admitted that she had never observed the operation of Nature's Classroom anywhere in New Hampshire although she had the opportunity to do so. She did not

⁴ This characterization was not supported by the testimony of Laura Graff at the hearing or the printed materials describing Nature's Classroom. No basis for this opinion was offered during the deposition.

compared the lessons or offerings at Nature's Classroom with the NH State Curriculum Requirements. She did not consider the level of Nature's Classroom's educational component in its programs. She did not investigate whether it met with the NH Core curricular requirements, although she thought those things would be important in defining the term "academic." (Deposition of Kathryn Pond at p. 128-129.)

Another area that Ms. Pond did not consider relevant to the classification determination was credit for school day attendance. Student attendance at Nature's Classroom is credited day for day toward a student's mandatory attendance in public school. Ms. Pond did not know this to be true, but when informed, she responded the fact that the school sends the students does not make Nature's Classroom a school. (Deposition of Kathryn Pond p. 132.)

Of note, when Ms. Pond was asked if her decision in this case was a "close call" in terms of whether to reclassification Nature's Classroom. She responded,

I definitely thought about it for a while. I mean it has that educational aspect to it and you just -- a lot of times, you really have to think and you have to look at different things. And when in doubt you know, ask, or not even when in doubt, just check it with one of the managers.

(Deposition of Kathryn Pond p. 123)

Ms. Pond indicated that her report was revised by her managers, but she did not know what if any changes were made. There was testimony from Maureen Longanacre that the inspection report and reclassification of Nature's Classroom were discussed by a group whose role is to resolve contentious classifications.

Ms. Pond testified that as an inspector,

You have to find the one classification that best fits the operation. [...] a school is a building, it's a classroom, you're in a controlled environment, classroom type. [...] hiking through the woods, you're in the streams, gathering aquatic life and going through the mountains and building catamarans. I think that aspect is just putting it towards a camp operation than it is we all know what a traditional school is.

(Deposition of Kathryn Pond pp. 126-127.)

She said that "camp" to her was an operation that had outdoor-based activities. (Deposition of Kathryn Pond at p. 133.)

2. Inspection Report of Kathryn Pond

Ms. Pond completed an Inspection and Classification Report for NCCI with an inspection date of March 18, 2013, (Report), In the report she documented the decision to reclassify

Nature's Classroom from Code 8868 to a new Code 9015 Camp Operations -NOC and the results of her inspection. The report does not list the sources and documentation relied upon in making the reclassification. For example, the report does not document with whom she spoke at the Camp Cody site, it documents only that she spoke with Larry Chambers. It does not state that no direct observation of the operation of Nature's Classroom was made. It does not indicate her previous inspection of the Camp Cody site in the summer time while it was operated by an unrelated summer camp organization.

The inspection report includes a series of what appear to be preprinted questions, One asks "Has there been a change in the business operations in the last four years that would affect a basic classification change?" The typed answer is "No." A disclaimer listed on page one and two of the form states in part, "The information on this form is not a representation of coverage but is solely based on observation of operations visible on the date of inspection or audit."

As she noted in her testimony, Ms. Pond observe a small part of the operation of Nature's Classroom. She made her decision on the basis of speaking with Larry Chambers about the operation of one of the Nature's Classroom sites, and her observations at a staff meeting. She reviewed printed material and compared this information, and possibly her own impressions, with the classification reports that NCCI had completed of other 8868 business operations and she conferred with managers or colleagues about the reclassification. Her information about Camp Cody being a traditional camp, seemed to reflect more on her prior inspection of the summer camp than on the operation of Nature's Classroom at that location.

Kathryn Pond's inspection report refers to Nature's Classroom as a "camp", or an "educational camp."

Based on the information obtained from our contact, Nature's Classroom of Mass, Inc. operates two camp locations within the state of New Hampshire. This report will address the operations of the New Hampshire camps only.⁵ The organization operates the camps on a seasonal basis. They offer educational camps, summer camps and weekend conferences. The educational camps are all overnight and run in three day sessions or five day sessions. The educational camps are open to schools at varying locations for children mainly in grades fifth through eight. The summer camp is an adventure camp for children mainly twelve years old to sixteen years old. The conference space is open to organizations and individuals for corporate events and special events.

The educational camps consist of academics through hands on learning in an outside environment. The students learn about ecology, wildlife, natural history

⁵ In her deposition Ms. Pond refers to her inspection of a Nature's Classroom in Maine, and of the inspection of a Nature's Classroom in Massachusetts or Rhodes Island by one of her colleagues. She testified that information gained from her inspection of the Maine site, and her inspection of Camp Cody summer camp and her discussion about the MA or Rhodes Island Nature's Classroom did not influence her decision.

and geological history as they hike in the woods and explore their surroundings. The students will work in groups with an instructor to learn about subjects that include: mathematics, science and social studies. They will learn these subjects by: scientific field investigation, navigation using maps and compasses, stargazing via a telescope and building fires with natural elements. A few examples of the programs include: bug collection, bug identification and building a catamaran and then navigating the boat on the waters with an instructor. The camp also offers team building events such as: low ropes, high ropes and a climbing wall. Meals are provided in the lodge and cabins are used for group overnight accommodations. The educational camps run during the school year from March through June, and the start up in September and run through the fall.

(Deposition Kathryn Pond **Exhibit Pond -1** p. 3.)

Although she stated in her deposition that "the programs were the main thing," in determining the operations, the report itself did not describe the content of the programs or describe their parallel structure or link with the New Hampshire and Massachusetts Common Core State Standards for Mathematics, Social Studies, Science or Language Arts. Perhaps because Ms. Pond did not observe the operation of Nature's Classroom, her report fails to document more than a passing description of the "academic" elements of the program. It is the alignment of the Nature's Classroom programs with the core curriculum which makes the classes and programs designed and taught at Nature's Classroom an "academic institution of learning" or a school offering more than a camp like opportunity to participate in an activity which touches on math or science or social science concepts.

In another section of the inspection report, there is a description of employees' duties and responsibilities. The Basic Manual Rule 1.A.2. states, "Subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments occupations or operations within the business." The descriptions of the program directors, instructors, medics, maintenance and kitchen staff for each location which are included in the inspection report are not determinative of which classification code should be applied. The descriptions are general in nature, and could be duties and responsibilities expected employees working at an 8868 classified school. For example, the description of the medic the duties include, "administering first aid, treating cuts and bruises and minor illnesses." These are school type injuries which any school nurse might encounter. The employee descriptions do not add any specificity to reclassifying Nature's Classroom as a 9015 Camp Operation- NOC.

The inspection report's conclusion that Nature's Classroom is a Camp Operation-NOC is not well supported. Although the inspections are optional under the policy, an inspection was conducted in this case of one location and in order to be afforded the weight it was given in determining the reclassification, it should have included more substantial documentation for the opinion it presented. One of the key parts of Nature's Classroom's operation was not even considered in the inspection. As noted in her deposition, Ms.

Pond did not investigate the level of academic material offered by Nature's Classroom in its the classes or lessons.

3. Hearing Testimony of Laura Graff

Much of Ms. Pond's testimony was refuted by Nature's Classroom Associate Director Laura Graff, who testified at the hearing. Ms. Graff testified about the operation of Nature's Classroom and in support of reclassifying it as an 8868 school. Ms. Graff explained that most schools or school districts meet with Nature's Classroom administrators in advance of school program's attendance. In consultation with the school principals, and teachers, Nature's Classroom's program directors determine what programs that they offer will best meet the educational goals and standards that the school or school district wants taught and presented by Nature's Classroom's teachers and programs. These pre-participation choices establish which of the educational standards and which academic programs or lessons will be presented to the students during the three or five day session.

Ms. Graff agreed that Nature's Classroom had "camp-like" attributes. Nature's Classroom used the surroundings as a mechanism for learning, and being outdoors was a big part of Nature's Classroom's experiential approach to learning. It was part of how the programming was able to excite interest in students, enhance the school district experience and provide tangible real life examples of the subjects the children were learning in school. Using the outdoor environment did not mean that the lessons or classes were unstructured or less academic in content. She noted that students were not allowed to roam unsupervised.

Ms. Graff stated that Nature's Classroom curriculum capitalizes on the camp-like quality of being outside and participating in outdoor activities in part because students associate being outside with having fun. The novelty of the teaching style and the location infuses students with an engagement that is difficult for "brick and mortar" classrooms to replicate. Students are keen to learn and use what they learn in the Nature's Classroom programs. The curriculum supports and even may introduce subjects or standards that are included in the core curriculum standards taught in the public, private or parochial schools.

On more than one occasion she noted that hikes and exploration of the field and streams on the property were not random, but planned, with potential hazards and risk management concerns addressed. Ms. Graff described a night hike listed in the materials. She said this would be offered weather permitting, and might include an astronomy segment, an analysis and experiencing of how the student's senses work at night, and which nocturnal animals are observed in the area. This activity would be structured and would not be a random night hike which would expose students and employees to unknown hazards in unexplored locations. The Nature's Classroom teacher offering this lesson would become familiar with the location, and lesson plan in advance and offer a supervised walk in a segment of the woods, or in a field.

Ms. Graff testified at length about the Nature's Classroom curriculum and its "ties" to the standards of the State or National Core Curriculum in Massachusetts and New Hampshire. *See (NC Exhibits 36-41.)*

Ms. Graff discussed the differences between the programs at the two New Hampshire sites.⁶ In Addition to offering a school based program, Sargent Center offers a convention and a summer adventure camp. The "high ropes" course, is one team building approach used in all three Sargent Center offerings. The Freedom, NH Nature's Classroom is the more traditional Nature's Classroom program, and it operates only a school based program at Camp Cody during the school year. The Sargent Center location was designed by Larry Chambers and has a distinct emphasis on survival and outdoor education. Under his direction the programming at Sargent Center, although part of Nature's Classroom's curriculum, centers around 12 academic programs that utilize more "scientific testing" and wilderness activities as the platforms for the lessons in each discipline. Another example of a program offered only at Sargent Center are the "high ropes" and climbing wall courses offered as team building options. Ms. Graf stated that use of this specialty equipment is taught and supervised by specially trained and certified instructors. The convention and summer adventure camp programs hosted by Sargent Center, are completely separate from Nature's Classroom.

Another program offered at the Sargent Center, is a program called pioneering. Ms. Graf explained that this program includes observing and learning blacksmithing and hatchet skills, wilderness skills, matchless fire building and shelter building skills. She said it is an excellent social studies program.

Ms. Graff testified about the structure of the typical Nature's Classroom day. There are three or four class periods: (1) two-hour field group in the morning, (2) one-and-one-half hour special interest classes, that might be in geometry, biology, social studies, or physics for example, and (1) evening period which lasts two hours during which the Nature's Classroom teachers may present special science fairs or cultural programs for the students to observe. Meal times also include an element of experiential learning, about conservation or energy and waste.

Ms. Graff indicated that chaperones and teaching staff participated in the programs mostly as observers while the Nature's Classroom teachers present the lessons. The school chaperones and teaching staff supervised the children at times when the children were not engaged in one of the programs offered by Nature's Classroom, (breaks, i.e. recess) and at night after the formal programming ends. Staff members had some time off during the day, although one staff member was always on call at night in case of an emergency. It was not specified whether this was part of a regular assignment or a special duty for which separate reimbursement was made.

Important to the operation of Nature's Classroom is the staff or teachers. Ms. Graff described teachers who were all college graduates, many of whom had a background in

⁶ Ms. Graff's testimony did not comport with Ms. Pond's recollection of the differences between the two sites.

science or environmental science. *See (NC Exhibit 20)*. Teachers were provided with financial incentives for have a math or science degree, or a teaching degree in science. Further incentives were offered for teaching the science curriculum. She said that although the teachers may not be experienced in teaching, they are interested in working with children and in using a nontraditional experiential method to inspire and to teach students. She approximated that roughly 50% of the teaching staff sought certification after teaching at Nature's Classroom. Some teachers only taught one session, others taught for six to eight months in the year.⁷ The staff were trained for one week before the beginning of the session on the Nature's Classroom curriculum, lesson plans, and general teaching guidelines. Part of the instruction was designed to familiarize the teachers with the property, so that they were familiar with the conditions of the various outdoor locations for appropriate for various classes.

Ms. Graff also explained that as a modification for school districts that did not permit overnight programming, Nature's Classroom also offered limited one day programs. As described these sounded more like the "field trip" experiences that Ms. Longanacre described in her deposition. These sounded very different from the three to five day long Nature's Classroom experience.

4. Expert Report, Deposition, and Hearing Testimony of Maureen Longanacre

Ms. Longanacre's testified through a deposition taken prehearing, and provided NCCI and Traveler's an expert report prepared in anticipation of the hearing. In addition she offered limited testimony at the hearing. Ms. Longanacre relied on and quoted extensively from Kathryn Pond's NCCI Inspection Report. She adopted the term "educational camp" to describe the operation of Nature's Classroom. She admitted in her testimony that she would not be surprised if the term did not exist in the classification descriptions of the Scopes Manual approved for use in New Hampshire. She interpreted Camp Operations - NOC as including so many types of camps that they could not all be specified and did not need to be.

The term "educational camp" was found in the Scopes Manual, in only a few entries. The term was noted under the description for "Code 9048 Sate Special: applies in CA, NY. CA-Camps-Recreational or Educational-all operations-including clerical office employees at camp locations." The only states that appear in the Phraseology section are NY and CA. The SCOPE indicates, "The scope for this classification is reflected in each state's phraseology for this code." According to the note, it does not appear that the code is in use in New Hampshire.

A second reference to the term was found in an exclusion in classification code 9063 which states it is not applicable in MA or TX or VT. The notes under the section heading, Related Operations Not Classified to Code 9063 read, "Code 9063 does not apply to recreational or educational camps run by insureds classified to this code. Their camp operations are separately rated under Code 9015 - Camp Operation NOC. refer to Code 9015 for an in-depth review of camp classification assignments."

⁷ Nature's Classroom teachers teaching both sessions work about four weeks shy of a public school teacher.

As stated earlier, the Words and Phrases section of the Scopes Manual reference cautions that use of the 9015 catch-all NOC, applies "only if no other classification more specifically describes the insured's business."

Ms. Longanacre's expert report began with a quote from Kathryn Pond's NCCI Inspection and Classification Report. Ms. Longanacre's Expert Report states, "NCCI asked me to prepare this report to address a dispute submitted by Natures Classroom to the New Hampshire Insurance Department. " It does not note her participation in the dispute resolution process or her knowledge of Nature's Classroom except in a procedural way as she recites the stages of the process leading up to the appeal before the appeal board and the department.

Ms. Longanacre reported, that "Nature's Classroom agreed and conceded to the Board on September 26, 2013 that proper classification for the Sargent Center location is Code 9015. " (Deposition of Maureen Longanacre at p. 7.) The evidence produced at the hearing by Ms. Graff and the printed materials submitted by the parties support that Sargent Center operates a summer camp which should be appropriately classified as Code 9015, but that the Sargent Center operation during the school year is a school based Nature's Classroom program. And in its letter of Appeal dated October 13, 2014, Nature's Classroom states, Nature's Classroom operate in differing capacities at the Sargent Center location and at 9 Cody Road."

Ms. Longanacre's report contends,

To determine the proper classification for Nature's Classroom, one must be knowledgeable about the insured's operations. NCCI conducted its inspection and completed a description of the operations. To date, neither the insured nor any of its representative, have challenged this description.

Nature's Classroom has appealed the reclassification. If it has not specifically refuted the description set out in Kathryn Pond's report, it is because in general terms, it describes part of the operation of Nature's Classroom. This description significantly, however, the description omits any mention of the link with the core curriculum or the preparation and review of the Nature's Classroom by the school districts whose students attend their programs. This is an essential characteristic of the operation of Nature's Classroom.

In much the same argument presented by Kathryn Pond, Ms. Longanacre's expert report cites to the overnight responsibilities of the Nature's Classroom teachers as a factor to be considered in the school's reclassification. Testimony at the hearing described a different situation. Ms. Graff stated one staff member is on emergency call and that chaperones and teachers from the school district are responsible for the "supervision" of students at night. As conceded by Ms. Pond, this part of the business's operation could not in itself be a disqualifying attribute. There are overnight facilities at boarding schools and colleges where house parents, and resident assistants also provide supervision over night. Likewise Laura Graff testified preparing for the next day's classes during the evening was a common practice by many teachers especially inexperienced teachers in the public

school districts. It was not an additional burden just placed on teachers at Nature's Classroom. The conclusion reached that these were exposures for staff at a camp operation was not strongly supported by the examples provided in the report.

Ms. Longanacre stated that Nature's Classroom was not listed as a private or public school in New Hampshire, it required no certification for its teachers and was not accountable to the regulations, rules or standards of the New Hampshire Department of Education. (Maureen Longanacre Expert Report at page 10.) While this may be true these credentials do not affect the operation of Nature's Classroom as a school or as an 8868 business. There is no requirement under the code for certification of teachers, or any other credentialing required under 8868. Nature's Classroom's operation presents a curriculum which is closely aligned with the local school district requirements, and the teaching of the state mandated core curriculum standards in Massachusetts and in New Hampshire. *See (NC Exhibits 36 -41).*

Ms. Longanacre included a section from the Scopes Manual regarding camp operations.

The Cross Reference Description of the Scope Camp Operation NOC, reads, Camp operations that are not otherwise classified are assigned to Code 9015. A camp, for classification purposes, *is generally considered to be an enterprise providing recreational activities that are principally outdoor in nature for individuals who partake of the camp's services on a temporary basis.* With the exception of "day camps," a camp will generally provide sleeping accommodations of a permanent nature (such as a log cabin) or a temporary nature (such as a tent). (Emphasis added.)

(Maureen Lonanacre Expert report p. 9). Some of this description applies to Nature's Classroom: activities are outdoors, and it provides overnight accommodations. The description however, applies only to "recreational activities." The Scopes Manual descriptions have to be somewhat general to allow for the classification of multiple businesses. However, given the cautionary language associated with a Camp Operation NOC, and the idea that the camp operation is recreational in nature, Nature's Classroom is better suited as a code 8868 classification.

Evidence and testimony at the hearing substantiated that "learning" activities do take place at what are considered traditional "recreational" camps. But Nature's Classroom presented testimony and documentation of how its programs are more than just tangentially educational. Their programs are linked to common core standards and curricula of the schools who attend the program. The educational quality of these programs is noted by the affidavits, and the longevity of the program as it has been a part of the public and private schools in the area. A question posed of Ms. Graff as to why a parent would send a child to the woods of NH to learn math, was answered, because in its application, in an experiential or tangible form, the math the child learns at Nature's Classroom and learns in the classroom will make more sense and have more context

5. Affidavits

Nature's Classroom presented 10 affidavits from school principal and teachers with backgrounds including both Bachelors degrees and Masters in Education degrees. The affidavits vary in detail and in the experience of the affiant. One principal and former teacher, had run a recreation program for his town, and continued to run summer recreation programs. He wrote based on his experience that Nature's Classroom was not a recreational camp.

Many of the affidavits observed similarities between Nature's Classroom and their own school system: students are given day for day attendance credit, there is a strong educational value of the programming, the focus of the materials is academic closely linked with and designed to further school districts' Core Curriculum standards. Also noted was the educational enrichment for students which many believed continued long after the attendance at the program ended. Teachers noted that the Nature's Classroom experiences were often referred to in later lessons to remind and reinforce the curriculum. There was high praise for many of the teachers, their expertise and drive. One affiant stated they were "driven teach in a non-conventional setting." Three of the affidavits contained identical content, but each bore a signature and the name and address of the affiant. There was no challenge to their authenticity or content.

One affiant, Peter Hutchins, MS, PhD a lecturer in Behavioral Management at BU School of Management offered, "On a superficial level outdoor education programs may resemble summer camps, but the reality is that they have far more in common with school science laboratories and physical education programs than they do recreational summer programs."

Philip Ross, the Executive Director of the summer Camp Cody the owner of Nature's Classroom's site in Freedom, NH described Nature's Classroom as a

[N]on-profit environmental educational organization that has been leasing the facility since 1995. [September - December] "Camp Cody provides lodging, food and maintenance support to the Nature's Classroom program. Each school brings selected parents and teachers to provide supervision to the students. The Nature's Classroom staff then provides instruction to the students while they are on site. The Nature's Classroom teaching staff is instructed about areas they can have access to and those they don't. They have a comprehensive training before students arrive. [...] from our experience of nearly 20 years with Nature's Classroom participant or staff accidents or incidents are uncommon and in the great majority of cases, minor in nature. Mr. Ross also indicated that parent and teacher chaperones supervise students when they are not in the educational programs offered by Nature's Classroom. The basis of this information is not clear, as he is not a participant in Nature's Classroom program. **NC Exhibits 17-19.**

6. Audit Nature's Classroom Exhibit 30 and Travelers Exhibit 7

Ms. Longanacre's Expert Report state's that the importance of proper classification as it is imperative to understand the impact of placing payroll exposure in the correct classification. Payroll issues were not raised in this appeal and will not be addressed. Both Nature's Classroom and Travelers submitted portions of the Travelers Audit of Nature's Classroom. The Audit identifies the professional injured, the injury, the state in which the report or claim was made, but it does not list the value of the claim. Because the data listed in the two exhibits does not appear to be entirely consistent, the claims relevant to the NH Nature's Classroom are listed below.

2005	teacher	poison ivy
2007	teacher	tick bite contracted Lyme Disease
	counselor/teacher	peanut allergy contact with peanut
2008	RN	Hike on Mt. Manadnock fall foot caught
	counselor/teacher	hiking slipped on a rock
2011	maintenance	stepped off a tractor twisted knee
	teacher/counselor	jammed fingers in luggage door pos. fx
	teacher	struck while spotting student pos. fx nose
	teacher	tripped on root walking
	teacher	hit self in head with wrench repairing
2012	teacher	inj. helping student build shelter

When the relevant information from the Loss Run sheet is added in the claims history reveals the following claims or medical expenses listed as the Total were paid by Travelers as documented in **Nature's Classroom Exhibit 30 and Travelers Exhibit 7.**

7. Totals of NH Loss Run from Traveler's Exhibit 10

2005	teacher	poison ivy	\$ 89.61
2007	teacher	tick bite contracted Lyme Disease	5,934.94
	counselor/teacher	peanut allergy contact with peanut	744.44
2008	RN	hike on Mt. Manadnock fall foot caught	835.08
	counselor/teacher	hiking slipped on a rock	997.55
2011	maintenance	stepped off a tractor twisted knee	27,986.91
	teacher/counselor	jammed fingers in luggage door pos. fx	567.58
	teacher	struck while spotting student pos. fx nose	151.27
	teacher	tripped on root walking	00.00
	teacher	hit self in head with wrench rope course	1,693.49
2012	teacher	injured helping student build shelter	834.47

The biggest loss appears to have involved a maintenance worker injured stepping off a tractor. Maintenance is part of a wide range of business operations. The second largest loss is likewise not indicative of one type of operation. The ropes course is specific only to the Sargent Camp location, and it was noted that this particular loss occurred during a school session season, and not during the summer months. Given the broad nature of classifications 8868 and 9015, the types of injuries or losses highlighted in the loss history and the audit include injuries that could take place in a camp or school setting.

8. Printed Materials

In her deposition, Maureen Longanacre indicated that she often found Internet research about a business useful when she was involved in a dispute over the classification of a businesses operation. Her colleague, Kathryn Pond, did not find it very reliable. During the hearing, several witnesses were asked about descriptive, and promotional materials geared toward selling Nature's Classroom to different groups: employees, parents, teachers or school districts. Reliance on these materials does not offer meaningful evidence of the operation of Nature's Classroom at either location. It's purpose is not to explain the business operation, it's purpose is to promote the programs to one of those groups. Unlike the program materials describing what is taught, these materials seemed to mean something different to whoever presented them as evidence.

V. Conclusion and Findings

Based on all of the evidence presented at the hearing, in deposition and in the exhibits submitted by the parties, the hearing officer finds that Nature's Classroom has met its burden of proving by a preponderance of the evidence that its operation meets the description of a school, as set forth in the Scopes Manual and should be classified under codes 8868 and 9101. The reclassification by NCCI to classification codes 9015 and 9012 is not upheld after appeal.

Despite its inspection, NCCI did not observe the operation of Nature's Classroom. It did not review the academic rigor of the materials which Nature's Classroom taught in its programs. It appeared as if these characteristics of its operation, the experiential academic program and the outdoor aspects of Nature's Classroom's program manifested the greatest classification issue for NCCI. Nature's Classroom presented compelling documentation from school district participants, its program materials and analysis of the standards present in both Nature's Classroom's teaching materials and the Massachusetts and New Hampshire Core Curriculum requirements. Nature's Classroom's tailors which program will best fulfill the school district's educational goals for a particular age group or class. This planning takes place advance of the schools program participation, when the school year goals are being established, and it is done in addition to Nature's Classroom's own preparation of the lesson plans and program materials used by Nature's Classroom. These factors showed the operation to be an academic institution, focused on furthering educational standards of the Core Curriculum, and not an operation focused on providing

a recreational outlet with a passing exposure to a particular academic subject. Nature's Classroom presented meaningful information about the qualifications and specific training of its teachers. The loss statistic overview of the New Hampshire losses over a five year period were not such that it distinguished Nature's Classroom losses from other school business operations that could be classified under 8868.

Nature's Classroom's proved by a preponderance that its program presentation is not recreational but academic in focus. Nature's Classroom does employ experiential teaching methods and utilize the out door surroundings of its two locations in order to promote interest and enthusiasm in the students for the academic subjects. In addition, especially at Sargent Center there is a practical emphasis on outdoor activities an survival. Other characteristics, such as housing students overnight and offering programs short in duration do not disqualify Nature's Classroom operation from being a classified as school under 8868.

VI. Further Action

Pursuant to Ins. 204.26(a), this proposed decision is hereby submitted to the Insurance Commissioner and the parties. Any party wishing to file exceptions and supporting memoranda of law for review by the Commissioner, or to request oral argument before the Commissioner, must do so within 20 days of the date of this proposed decision.

So Ordered.

Dated: June 19, 2014



Catherine L. Bernhard, Hearing Officer