

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION

NORTH CAROLINA CHILD CARE COMMISSION

**Special Rules Meeting
Tuesday, September 26, 2017**

Dix Grill
1101 Cafeteria Drive
Employee Center
Raleigh, NC 27603

Commission Members Present

**Zac Everhart, Vice Chairperson
Melissa Burroughs
Susan Butler-Staub
Dr. J. Lanier DeGrella
Dr. Sharon Foster
Melanie Gayle
Dr. Elizabeth Gilleland**

**Mitchell Gold
Brooke King
Kimberly J. McClure
Rhonda Rivers
William Walton, III
Nina Whitley-Artis**

Commission Members with an Excused Absence

**Dr. Glenda Weinert, Chairperson
Rev. Charles F. McDowell, III**

**Amelie Schoel
Donette Thomas**

Division of Child Development & Early Education Staff Present

**Anna Carter, Director
Heather Laffler, Administration/Policy
Dedra Alston, Administration/Policy
Rachel Kaplan, Administration/Policy
Branda Watford, Administration/Policy
Tammy Barnes, Regulatory Services
Lorie Pugh, Regulatory Services
Andrea Lewis, Regulatory Services**

**Melissa Stevenson, Regulatory Services
Kimberly Mallady, Regulatory Services
Alison Keisler, Regulatory Services
Elizabeth Everette, Subsidy
Lauren Davis, Subsidy
Heather Marler, Workforce
Jenine Gatewood, NC Pre-K**

Attorney General's Office Staff

**Bethany Burgon, Commission Attorney
Mercedes Restucha-Klem, DCDEE Attorney**

Alexi Gruber, DCDEE Attorney

Welcome—Vice Chairperson Everhart called the meeting to order, serving in place of Chairperson Weinert, at 9:03 a.m. and reviewed housekeeping items. Vice Chairperson Everhart read the conflicts of interest statement and asked whether there were any conflicts noted for today – none were noted. Vice Chairperson Everhart called for roll call and Ms. Dedra Alston performed roll call. Vice Chairperson Everhart listed the Commission members who were absent from this meeting who requested and receive excused absences.

Vice Chairperson Everhart reviewed the agenda for today's meeting.

Administrative Action Presentation—Alexi Gruber and Melissa Stevenson

Melissa Stevenson reviewed the administrative action process that was provided to the Commission members in a handout, and she and Alexi Gruber presented information to the Commission regarding the DCDEE Administrative Action process that takes place with facilities.

Following the presentation of information, Commission members asked a number of questions. Mr. Mitchell Gold asked whether the consultant must provide the rule that is being cited in violation to the provider at the time of the citation to demonstrate what the violation is? Ms. Stevenson stated that the rules – and the explanation of the violation - would be provided at the time of the citation. It was also noted that the consultant role is not only visiting a facility to cite violations, but also to work with programs to correct any issues, and to provide technical assistance.

Ms. Rhonda Rivers asked for examples of provider responses that might be provided at an internal review meeting to review an administrative action? Ms. Stevenson gave examples of providers stating that a licensing action or fine should not be taken because corrective actions have already been taken at the facility, or as a result of the program already having corrected the issue.

Dr. Lanier DeGrella asked whether a provider is likely to be surprised by receiving an administrative action letter or whether they are expecting it? Ms. Stevenson stated that it should not be a surprise to a provider to receive an administrative action, as the consultant would have alerted them that there was a violation during or by the end of the visit and that an administrative action may be considered.

Ms. Melanie Gayle asked about whether providers are alerted to the fact that they may ask for an extension of time to respond past the 15th day after receiving their administrative action notice? DCDEE staff responded that yes, that information is provided in the letter the provider receives.

Dr. Sharon Foster asked about the process for issuing a summary suspension that was not presented on the flow chart? Ms. Stevenson outlined that process which is detailed in Rule .2213 Summary Suspension.

Review of Administrative Action and Civil Penalties Rules

Section .2200—Rules .2201-.2209, .2213, .2216, .2217, .0401, .1904 and .4001

.2201-Administrative Actions and Civil Penalties: General Provisions

.2202-Written Reprimands

.2203-Written Warnings

.2204-Provisional License or Provisional Notice of Compliance

.2205-Probationary License or Probationary Notice of Compliance

.2206-Suspension

.2207-Special Provisional License or Special Provisional Notice of Compliance

.2208-Civil Penalties: Scope and Purpose

.2209-Revocation of a License or an Order to Cease Operation

.2213-Summary Suspension

.2216-Amount of Civil Penalties for Child Care Facilities

.2217-Schedule of Civil Penalties for Child Care Centers

.0401-Provisional Licenses for Facilities

.1904-Administrative Sanctions

.4001-Administrative Penalties for Child Care Trainers

Ms. Gruber presented the proposed changes to the rules listed above and noted that the changes presented are primarily clarifications. Ms. Gruber outlined for new Commission members the color-coded system that is reflected in the rule text for referencing how specific revisions were received or suggested. Blue indicates

new language that has been reviewed by the Commission prior, red indicates changes that are based on comments from the Commission, and green indicates recently proposed language by Division Staff.

Ms. Gruber proceeded to describe the changes to Rule .2201 Administrative Actions and Civil Penalties: General Provisions. She stated that the actions suggested are not new, they are just now all listed in the same rule. Ms. Gayle asked about the determination of “psychological harm” in Rule .2201(c)(3)(A) - “Serious Harm” means: (A) physical, psychological, or emotional injury to a child by a caregiver...”?

Ms. Gruber stated that typically this determination is made from documentation from a mental health professional that a child suffered trauma that would result in long-term impairment. Dr. Foster asked about distinguishing between the types of “serious harm”? Ms. Gruber stated that “serious harm” would fall under a child maltreatment investigation—e.g., distinctions made between when a child falls and breaks his arm versus when a child is abused.

Ms. Rivers asked whether a process exists whereby the number of incident reports from a single facility might raise alarm and would alert that there could be a supervision issue at the facility? Ms. Andrea Lewis stated that incident reports are tracked and whether they lead to further action is determined on a case by case basis.

Ms. Gayle asked whether language about providers having the option of requesting extensions for submitting written responses is included in the cover letter? Ms. Gruber stated that, yes in Rule .2201(f) “...the written response shall be submitted to the Division within 15 days of receiving the prior notice of administrative action. The owner or prospective owner may request an extension of time, not to exceed an additional 15 days, by submitting a written request to the Division before the initial response time has ended.”

Dr. Foster asked what is meant by “stayed” in Rule .2201(i) “immediate corrective action resulting from an investigation or determination of child maltreatment as set forth in G.S. 110-105.3 and restrictions that prohibit new enrollment shall not be stayed during the pendency of an appeal.” Ms. Gruber responded that “stayed” is when the action is stopped at the place it was in, before administrative action.

Vice Chairperson Everhart asked about his difficulty envisioning the practical implementation of Rule .2201(l). “Following the issuance of any administrative action against a child care owner, the operator shall post the **documents** received from the Division in a prominent location near the entrance of the child care facility as follows: (1) An administrative action shall remain posted during the pendency of an appeal and throughout the effective time period of an administrative action. (2) The effective time period shall end: (A) three months from receipt of a final notice of administrative action containing a written reprimand; (B) three months and upon receipt of a closure letter from the Division stating that the corrective action plan has been completed for a final notice of administrative action continuing a written warning...” Vice Chairperson Everhart asked specifically what would need to be physically posted? Ms. Gruber responded that the cover letter, administrative action and corrective action plan are to be posted. She also noted that per this question, Division staff will revisit language of Rule .2201(l) to clarify the rule.

Dr. Foster expressed concern about the number of violations occurring in a single visit that would lead to a written warning and corrective action plan per Rule .2203(2) “Citation of 8 or more rule violations in a single visit where the operator does not meet the criteria of other administrative actions described in this Section and has not been subject to an administrative action within the last three years...”? Conversation ensued about whether 8 was a considerable number of violations to receive in a single visit that should result in an administrative action.

Ms. Gayle asked about the purpose of restricted enrollment as a result of an administrative action? Ms. Gruber referenced Rule .2204(a)(1) “to allow a specific time period for correcting a violation of the

building, fire or sanitation requirements, provided that the appropriate inspector documented the violation is not hazardous to the health or safety of the children...” Mr. Walton stated concern over the potential for these limitations to financially affect centers. He expressed ambivalence over whether greater clarification would help and noted that clarifying may also result in unintended consequences. Ms. Gruber explained that last year, only 344 administrative actions were issued and only 4 restricted enrollments occurred regarding Special Provisional administrative actions, for approximately 6000 licensed child care facilities. Mr. Gold disputed Mr. Walton’s statements that 8 violations can be easy to accrue, stating that specific rules make it easy for providers to know how to set up facilities and keep them in compliance. Vice Chairperson Everhart asked whether the number of violations that result in administrative penalties should also consider licensing capacity, as certain violations would be more likely to occur in larger child care settings. Ms. Gruber stated that currently the size and capacity of a facility is not considered with regard to issuing an administrative action. Ms. Stevenson also clarified to the Commission that Administrative Actions are not intended to be punitive, but are intended to be corrective.

Ms. Butler-Staub inquired as to how parents learn about past actions of a facility, if the rule states that administrative actions only need to be posted during the time of the action? It was confirmed that the public can either research past actions at the DCDEE website or request paper information from the Division to learn of past actions.

**Vice Chairperson Everhart called for a 10-minute recess at 10:55 a.m.,
meeting reconvened at 11:05 a.m.**

Ms. Gruber provided information to the Commission regarding proposed changes to the Civil Penalties rules. Vice Chairperson Everhart asked whether the Commission has authority over professional development trainers for Section .4000 Child Care Trainers, and what the implications are for enforcement of those rules? Ms. Gruber stated that the Division will investigate this issue with the Rules Review Commission (RRC).

Vice Chairperson Everhart asked Ms. Alston about the timeline for these rules if the Commission were to vote to publish them today? Ms. Alston stated that a vote to publish today would require an accompanying fiscal note. For the rules to be published in the NC Register, the Commission would also need approval from both OSBM and the Department for that fiscal note. An October 24 submission date is *possible*; with the public hearing potentially being held on December 11 and the 60-day public comment period would end January 16. This would result in a February 2018 adoption date, filing with RRC and an effective date of April 1, 2018. Ms. Alston added that if the Commission waits until February to publish these rules, the public comment period would end March 19, leading to filing with RRC in May and an effective date in June. Dr. Elizabeth Gilleland clarified that the final deadline for the re-adoption of all rules is March 31, **2019**? Vice Chairperson Everhart expressed concerns over a December public comment period as people are distracted by the holidays and suggested that the Commission not pursue that timeline.

Vice Chairperson Everhart opened up the floor to any remaining discussion about the rules. Mr. Gold expressed first and foremost that he wants to protect kids, but he recognizes that some violations do not directly affect enrolled children, or their well-being. He asked if there had been consideration of a categorization of rules that considers the impact of the violation. Dr. DeGrella indicated that the language in Rule .2201(b) allows for discretion on the part of the Division, and Ms. Gruber agreed with this - “The Division shall consider the following factors when determining the type of administrative penalty to be issued: (1) the severity of the violation or incident...”. This, along with the flowchart that documents the process for issuing actions demonstrates that the Division has some flexibility with the outcomes of violations. Ms. Gruber also reminded members from the presentation that there are multiple layers of

review—consultants recommend to supervisor, then goes to internal review – before an action is formally administered.

Dr. Gilleland stated her feeling that the Commission could develop a greater understanding of the monitoring and administrative action process if Division staff would walk through an example of a visit summary, and the visit process, to help members understand the violation documentation process and how decisions about violations and actions are made, based on factors such as size of program and type of violation. Ms. Tammy Barnes stated that there is an expectation of compliance on the part of providers, and consultants are required to cite violations when they are aware of them. After a consultant writes up violations, there are three reviews that follow—Supervisor, Manager and Raleigh office.

Ms. Rivers also pointed out that there is a point system in place that is part of the compliance checklist that is completed during visits which demonstrates that there is a system in place that weighs the type of violation and its severity. Ms. Gruber stated that the difficulty with not specifying a specific number of violations that results in an action – such as 8 - potentially gives the Division too much discretion and leads to ambiguity for the public and providers about when they might receive an action. Ms. Melissa Burroughs noted that the consultant does have discretion about whether to recommend an administrative action if there are 8 violations, and that the consultant is not *required* to recommend issuance of an administrative action. Ms. Gruber stated that the consultant must cite the violations but is not required to recommend a reprimand.

Dr. Foster stated her feeling that ‘the devil is in the details.’ Standards set a bar and chances are, if a provider is attending to the details well, they are probably doing most everything well. In fact, she feels that it is better to be alerted to issues early, so they can be fixed and programs can become better. Ms. Rivers stated her feeling that she is comfortable with the language because consultants work with providers for the common goal of fixing problems to bring programs into compliance.

Following this discussion and returning to the topic of the approval and implementation timeline, Vice Chairperson Everhart and Mr. Walton both expressed trepidation with holding the public hearing during holiday time. Ms. Gayle asked when training for providers will occur, given that 138 new rules are going into effect on October 1? Ms. Gruber stated there will be a 6-month grace period where programs will not be cited for new rule violations as both staff and public are being trained.

Mr. Gold asked about how the public is informed about the opportunity for public comment and the public hearing on the rules? Ms. Alston stated that she sends out an email to persons who have asked to be on the Commission mailing list notifying them about the public hearing dates, locations, and times and where comments can be submitted in writing. Ms. McClure asked whether Commission members automatically receive all email correspondence that the public does, and the answer is yes. Ms. Burroughs asked if the Commission votes to publish today if they can delay the public hearing until after the holidays? This is possible and would simply extend the public comment period beyond the minimum required. Dr. Foster stated that she is comfortable with approving the presented rules because they can still be amended based on public comment. Dr. Gilleland stated that she is also comfortable with the language; however, she reiterated that she wants Commission members to really understand the monitoring and administrative action process. She will support a vote to publish, but still would like a presentation from Division staff about the process.

Review of Criminal Records Checks Rules

Section .2700—Rules .2701-.2704

.2701-Scope

.2702-Definitions

.2703-Criminal History Record Check Requirements for Child Care Providers

.2704-Criminal History Record Check Requirements for Non-Licensed Child Care Providers

Commission Action: **Dr. Elizabeth Gilleland made a motion to publish the Administrative Action and Civil Penalties rules including all changes proposed on September 26, 2017. She also made a motion to publish the Criminal Records Checks rules with changes proposed on September 26, 2017. Dr. Lanier DeGrella seconded the motion, which carried unanimously.**

Ms. Alston asked for clarification of when the Commission would like to schedule the public hearing, and how long to extend the public comment period. The public hearing for the published rules will occur on **February 12, 2018** and an extended public comment period will follow that.

The meeting adjourned at 12:20 p.m.

The next meeting of the North Carolina Child Care Commission is scheduled for December 11, 2017 from 9:00 a.m. – 4:00 p.m. (Second Quarter Meeting)

**Future Meeting Dates: December 12, 2017 (Special Rules Meeting)
February 12, 2017 (Third Quarter Meeting)**