

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

**NORTH CAROLINA CHILD CARE COMMISSION
2014-15 FIRST QUARTER MEETING MINUTES**

August 11, 2014
5605 Six Forks Road, Cardinal Room
Raleigh, NC

Commission Members Present

Elliott Blades

Sue Creech – Vice Chairperson

April Duvall

Zac Everhart

Melanie Gayle

Robin Kegerise

Kay Lowrance

Janice Price

Linda Vandevender

William Walton, III

Glenda Weinert – Chairperson

Commission Members with an Excused Absence

Jonathan Brownlee, Sr., MD

Elizabeth Gilleland

Laurie Morin

Blake Fricks

Charles F. McDowell, III

Division of Child Development & Early Education Staff Present

Rob Kindsvatter, Director

Melissa Stevenson, Licensing Enforcement

Sarah Buckner, Education & Quality

Dedra Alston, Administration/Policy

Cindy Wheeler, NC Pre-K

Heather Laffler, Administration/Policy

Alexi Gruber, Attorney General

Tammy Barnes, Regulatory Services

Andrea Lewis, Regulatory Services

Laura Hewitt, Regulatory Services

Sharon Spigner, NC Pre-K

Janice Fain, Administration/Policy

Welcome – Chairperson Glenda Weinert called the meeting to order at 9:05 a.m. and reviewed housekeeping items. She welcomed everyone and discussed the meeting agenda. She read the conflict of interest statement and asked whether there were any conflicts noted for today. Mr. Elliot Blades noted that a potential conflict was being reviewed for him. Mr. Wellons noted that that issue could be discussed later in the meeting. The Commission members who were absent from this meeting requested and received excused absences.

Ms. Weinert introduced Mr. James Wellons, of the Attorney General's Office, General Counsel to the Child Care Commission. Mr. Wellons addressed the Commission and noted his history with them and noted he was pleased to be representing the Commission once again.

Ms. Weinert noted that the minutes from February and May meetings were in their folders. Ms. Creech discussed her concern about the amount of detail in the minutes from her previous experiences. Mr. Wellons noted that at a minimum, the minutes must include actions taken by the Commission, but it is the Commission's discretion as to how much detail is included. Ms. Vandevender felt the minutes should be more detailed; William Walton agreed.

Commission Action: **Chairperson Weinert moved to adopt the initial February meeting minutes, in full content version versus the condensed version. The motion was seconded by William Walton. The motion carried unanimously.**

Commission Action: **Ms. Price moved to approve the May 12, 2014 meeting minutes as presented. The motion was seconded by Ms. Gayle. The motion carried unanimously.**

Division of Child Development and Early Education (DCDEE) Report – Rob Kindsvatter, Division Director

Mr. Rob Kindsvatter, Division Director, reviewed legislative changes from the recent session that impacted DCDEE.

- Subsidized child care income eligibility changes:
 - The current income eligibility of up to 75% of State Median Income will shift to align with a percentage of the Federal Poverty Level (FPL) effective October 1, 2014.
 - For children ages 0-5 and for children with special needs, income eligibility will be up to 200% FPL.
 - For children ages six and older, income eligibility will be up to 133% FPL.
 - Children currently in program will remain income eligible until their next redetermination period.
 - This does not impact families who are eligible for subsidized child care without regard to income.
- Subsidized child care parent fee changes:
 - Effective October 1, 2014, all families who are required to have a co-payment will pay 10% of their gross monthly income instead of the current range of 8% - 10%.
 - Family co-payments will no longer be pro-rated for part-time care.
 - Families who are eligible without regard to income, such as families receiving subsidized child care to support Child Protective Services or Child Welfare Services, will continue to receive services without a co-payment required.
- Definition for subsidized child care income unit changing effective January 1, 2015
 - Step parent income will be counted in the unit, and the step parent's children will be counted in the unit.
 - A non parent relative caretaker's income will count in income unit.
- Market Rate increase for child care facilities with 3-5 stars that participate in the subsidized child care program
 - New Market Rates will be effective January 1, 2015.
 - Market Rates have not increased since 2007.

- A Market Rate survey is required by federal funding regulations to ensure that payment rates make subsidized child care accessible.
- The 2013 Market Rate survey results were shared with the legislature, and 25% of the recommended market rate adjustments will be implemented.
- Subsidized child care allocation formula changes
 - The subsidized child care allocation formula estimates the number of children eligible for services by county. A cost to serve those children is estimated, and then counties receive a pro-rated share of available funds.
 - The new income eligibility levels described above are now included in the allocation formula.
 - The allocation formula was revised to phase in more recent Census economic data. Previously, the same 2000 Census economic data had been used in the formula for past 12 years.
 - Increases for Market Rates were distributed within allocation formula process.
 - DCDEE will be working with counties to monitor spending levels, with an earlier reallocation process this year anticipated.
- DCDEE is required to submit a legislative report on subsidized child care for children ages 11-12. The report is due November 30, 2014.
- NC Pre-K expansion
 - \$5,040,000 was appropriated for SFY 14-15 to cover the average slot cost increase due to teacher salary raises and possibly additional enrollment in the NC Pre-K program.
 - DCDEE will request information from NC Pre-K contractors in order to allocate these expansion funds.

Nanny's Korner Case Update – Ms. Alexi Gruber, DCDEE Attorney, Attorney General's Office

Ms. Gruber provided the following update to the Commission. DCDEE got an opinion regarding a child care provider whose husband was substantiated by the department of social services (DSS) for child sexual abuse. Under DCDEE's long term interpretation of the statute, a written warning was issued which prohibited the spouse of the provider from being at the facility. The provider appealed and DCDEE won at the trial court level and in Superior Court, but the Court of Appeals reversed this and held that DCDEE had misinterpreted the law as written. DCDEE is working on a proposed statute to clarify this that it intends to submit during the next long legislative session. DCDEE will not appeal the decision. This statutory interpretation by the Superior Court is now the law.

The case is known as Nanny's Korner and is a published opinion on the NC Court of Appeals website. Under the Nanny's Korner decision, DCDEE must determine if abuse or neglect occurred in child care facilities.

DCDEE has been very busy rewriting policy and procedure around child care investigations to conform with the Court of Appeals' decision. DSS will still be involved in investigations of abuse and neglect at child care facilities along with DCDEE.

The proposed law would take DSS out of the process. The new statute has DCDEE determining whether abuse and/or neglect has occurred, and if so, does it meet statutory definitions of abuse and/or neglect, determining whether conduct that happened rose to the level of abuse and/or neglect. The provider won't notice a lot of changes during an investigation, but at conclusion DCDEE will notify the provider whether abuse and/or neglect occurred and the reason for findings.

The Nanny's Korner decision made it clear that DCDEE can use evidence DSS gathers as part of the DCDEE investigation (medical records, etc.). There could possibly be a case where DCDEE substantiates abuse and/or neglect but DSS does not. DCDEE may not substantiate abuse and/or neglect but may find child care requirements that result in administrative action.

Ms. Creech asked if DCDEE staff have the same training and education background as DSS investigators. Almost all DCDEE abuse and/or neglect investigators are former Child Protective Services staff. DCDEE staff will have the same opportunity for training as DSS investigators. While the CPS training and education background are valued by DCDEE, it isn't required for DCDEE staff.

DCDEE has a statutory duty to protect a child in childcare. DCDEE has a dual role to substantiate abuse and/or neglect while also looking at child care requirements.

Chairperson Weinert noted that DSS and DCDEE are always encouraged to share information during investigations. Will DCDEE wait until DSS closes out its investigation before DCDEE issues determination? This would be dependent upon the case, delays and etc. because DSS doesn't look at child care requirements. The final decision will be made at the Raleigh level so that determinations are consistent across the state.

A provider can still appeal the findings. The appeals process hasn't changed and the information of filing an appeal is posted on the website. DCDEE is clarifying website information to make the transition seamless when new statute is passed.

Ms. Gruber along with other attorneys from DSS helped draft the proposed new statute.

The question was raised as to whether proposed statute addresses actions of an individual staff member if the owner did everything right. Is the responsibility for an action divided between staff and owner? Ms. Gruber explained that the law presumes employer has control over employees, even a "rogue" employee. The new statute will allow DCDEE to create the equivalent of the Responsible Individuals List so individual abusers or neglecters would be prohibited from working in child care ever again. The individual could still appeal placement on the list.

In issuing administrative actions based on substantiations, DCDEE will consider whether proper policies/procedures/training in place at the childcare facility, and whether a corrective action plan was followed.

Ms. Gruber reminded the Commission that providers subject to administrative action can request an informal meeting or settlement conference to discuss the action with Division staff. These meetings are often successful at reaching settlement and preventing a trial at the Office of Administrative Hearings.

G.S. 110, Article 7 Update – Mr. Jim Wellons, Attorney General’s Office

Mr. Wellons reviewed the effects of House Bill 712 – An Act to Revise and Clarify Special Education Scholarships for Children with Disabilities; and Exempt Certain Schools from Childcare Licensure Requirements. This bill was passed June 29, 2014 and became effective on and after July 1, 2014.

HB 712 is now known as S.L. 2014-49. Most of the bill doesn’t relate to child care or the Commission, only Section 8 is relevant. Section 8 deals with definitions and exceptions for licensed child care, including: Nonpublic schools (described in Part 2 of Article 39 of Chapter 15C) that are accredited by national or regional accrediting agencies with early childhood standards and that operate a child care facility as defined in Subdivision 3 of this section.

Prior to July 1st, the statute provided an exemption from licensure requirements for non-public schools accredited by national or regional accrediting agencies that have early childhood standards and operate less than 6.5 hours per day. The new bill added an allowance for exemption for non-public school child care facilities that operate more than 6.5 hours per day but do not receive Pre-K or child care subsidy funds. Very few facilities are impacted by this and are now exempt from licensing.

Review and Approval of the Periodic Review of Existing Rules by Category – Jim Wellons and Dedra Alston

The Commission is first charged with reviewing all 173 rules in 10A NCAC 09 and making a determination of which of three categories each rule fits into in accordance with G.S. 150B - 21.3A(c)(1): (1) unnecessary (rule goes away); (2) necessary without substantive public interest (hasn’t received comment within past 2 years – rule remains in effect without being readopted); or (3) necessary with public interest (rules in this category must be readopted; could be amended or deleted at that time).

Through this legislation the General Assembly provided a way to sunset rules not needed, every 10 years. The General Assembly wants to make all agencies review their rules and make a present day determination if each of those is still necessary. If rule is not necessary, it will be stricken from the North Carolina Administrative Code. The assumption is that most rules are probably necessary but may need amending for improvement or to ensure that they are current and necessary.

Staff has completed a proposed categorization for the Commission. Most rules will be necessary, and substantive public interest means unless the rule contains an address or some other technical process, it is of substantive public interest. It was suggested that the Commission err on the side of inclusion for substantive public interest.

Ms. Alston referred to the Periodic Review of Existing Rules report for the Child Care Licensing Rules that the Commission had received. Some rule determinations are highlighted because their initial determinations have changed since the report was last discussed. She reviewed the changes, which were:

1. .0206 - Unnecessary – duplicates statute
2. .0305 - Unnecessary – duplicates statute
3. .1001 – Necessary with substantive public interest
4. .2206 - Necessary with substantive public interest
5. .2207 – Necessary with substantive public interest
6. .2210 – Unnecessary - APA
7. .2211 – Unnecessary -APA
8. .2212 – Unnecessary - APA no longer allows final agency decision
9. .2401 – Necessary with public interest
10. .2501 – Necessary with public interest
11. .2701 – Necessary with public interest

Mr. Wellons explained the reasons for the preliminary determination of rules as unnecessary or necessary with substantive public interest or without substantive public interest. The rules report will be posted on the Office of Administrative Hearings (OAH) and the Department of Health and Human Services (DHHS) websites and public comments will be solicited for 60 days. A response from the Commission is required for all comments objecting to a rule that is received from the public. The Commission will have the opportunity to review each rule line by line and make edits before readopting them potentially around June 2015, when the periodic review process is completed.

Ms. Alston explained that if the Commission agrees with the determinations, they can vote to publish the report and accept comments. After the comment period has ended, the Commission will review all comments received and respond to comments objecting to a rule and the initial determinations of the rules. The Commission will make adjustments to the report, if needed, and then file the report, the comments, and their responses to the comments with the Rules Review Commission (RRC) by February 16, 2015. The RRC will review the report and the written comments. If they agree with the report, they will submit it to the Administrative Procedures Oversight Committee (APO). The APO has 60 days to meet and approve the report. Once approved, the rules will remain in effect until they have been readopted, all ‘unnecessary’ rules will expire and the history note will be amended for rules that are necessary without public interest.

Commission Action: **Ms. Creech moved to accept the classification as amended; Ms. Kegerise seconded. The motion carried.**

Schedule 2015 meeting dates (including extra dates for the Periodic Review of Existing Rules by Category)

Chairperson Weinert discussed the Commission meeting needs in proceeding with the Periodic Review of Rules process.

After discussion the FY 2015 meeting schedule was set as follows:

<u>Date</u>	<u>Purpose</u>	<u>Location</u>
September 26, 2014	Special Meeting	DPH
October 13, 2014	Special Rules Meeting	DPH
November 17, 2014	Second Quarter Meeting	Nature Research Center
November 18, 2014	Special Rules Meeting	Nature Research Center
December 8, 2014	Special Rules Meeting	Nature Research Center
January 12, 2015	Special Rules Meeting	DPH
February 9, 2015	Third Quarter Meeting	DPH
May 11, 2015	Fourth Quarter Meeting	DPH
August 10, 2015	First Quarter Meeting	DPH

Mr. Wellons reminded the Commission that they must provide a written response to each negative comment received. Mr. Campbell asked if the rules were in a format to where members could edit them, and Ms. Alston confirmed this was available.

Ms. Weinert asked how Commissioners’ comments on the rules may be considered. Mr. Wellons advised that Commissioners could comment on them during the meetings, and that Commissioners could also submit written comments if they wanted them included in the list that is sent to the RRC. It was noted that the Commission is not required to set aside time for public comments during the extra meetings where they are working on rules. Time for the public to comment will continue to be available during the regular quarterly Commission meetings.

The Commission took a break for lunch at 11:30 p.m.

Chairperson Weinert asked Rob Kindsvatter to give an update on SEEK. Mr. Kindsvatter noted there were some issues with parents using and swiping the SEEK cards consistently. Reports have noted significant improvements from February to April in the pilot counties. Five more counties have been added to the pilot, for a total of nine at this time.

Rulemaking Report and Discussion

Emergency Preparedness and Response (EPR) Rules

A public hearing was held on May 12, 2014 on the proposed EPR rules and comments were received until June 2, 2014. It was noted that the Commission could now vote to adopt the EPR rules.

The Commission received one comment, a letter from the NC Licensed Child Care Association (NC LCCA). Chairperson Weinert read the letter aloud. Requests in the letter included:

- Consider a delayed effective date to allow time for training to be ready
- Consider requiring EPR plans to be completed within 60 days of completing training
- Consider expanding pool of authorized trainers
- Consider removing “and includes subsequent editions” from the rule about Environment Rating Scale publications

Laura Hewitt, DCDEE Policy Consultant provided information on the EPR rules.

- Train the Trainer will not be available until October 1, 2014. DCDEE agrees with a delay in the effective date to December 1, 2014 to allow trainers to be ready.
- Successful completion of the template is a requirement of course ‘completion’. Child care providers have two years to complete the course if they are a current administrator and 6 months to complete the course if they are a new administrator.
- Regulatory staff and Health and Safety Resource center staff will meet to determine required qualifications of trainers, potentially allowing additional trainers.

Fiscal note update (NCADD-NC Association of Directors of Developmental Day Centers- Rulemaking Petition)

DCDEE staff continues to work on the fiscal note for the developmental day rule-making petition. The fiscal note is now at the Office of State Budget and Management for their input, having already received input from DCDEE and the Department of Public Instruction. OSBM will return the note to DCDEE and then it will be forwarded to NC ADD for their feedback before it is finalized for the Commission to review.

See & Hear Rules Discussion for Family Child Care Homes

Lorie Pugh, DCDEE will bring this issue back for discussion at the Commission’s next quarterly meeting.

Public Comment

- Tori Scuderi – Owner Primrose, West Cary for 10 years; prior teacher for six years at Primrose. She has two children. She was here to speak about the curriculum and review process, as a parent. Her children are opposites of each other. Parents need choices for curriculum best suited for their children. Please consider needs of children and parents as they make informed decisions. Parents know what is best for their children.
- Bill Mitchell – Primrose School, Charlotte NC – He attended the Commission subcommittee meeting regarding curriculum and felt that Commissioners worked very hard as they reviewed the eleven criteria. He got a fresh perspective from Mr. Wellons who explained the process should be clear and in writing and have an appeal process. He noted it should be an on-going process instead of occurring every three years, within the Commission or DCDEE instead of being outsourced.

- April Cox – Ms. Cox asked about the timeline for the monitoring tool and Ms. Hewitt stated that has been tabled for now. Ms. Cox asked about the NC Pre-K expansion, and if that mean re: teacher raises? Mr. Kindsvatter stated that DCDEE will be surveying Pre-K contractors to obtain feedback on teacher pay raises in both private and public sectors.
- Chad Studdard - Mr. Studdard had questions about the market rate increase. Mr. Kindsvatter explained the increase was based on data from each county on what is charged for child care, with the 75th percentile of this data used as a basis for calculations. The Market Rate report posted on DCDEE’s website can be referenced for more information on this methodology.
- Linda Piper, Executive Director of NC LCCA – spoke to the effective date on EPR rules and the number of trainers available to cover the state and making sure all the pieces are in place prior to the roll out.
- Kateri Carver-Akers, Executive Director of the Montessori Association of North Carolina, addressed the Commission. She asked to be included in any further curricula review discussion and not to wait for another three years.
- Anna Carter, President, Child Care Services Association spoke about the new exemption for nonpublic schools with child care; she has a strong concern about the number of programs on the nonpublic school list. She also spoke about curriculum. She noted on curriculum subcommittee notes that some discussion around what may already be on the Environment Rating Scales and that not all items need to be met.
- Ms. Weinert read a letter for Public Comment from Irene Wortham Center Board Members, which has two Five Star Developmental Day centers. The letter voiced the Board’s concern over recruiting and retaining lead teachers with a Birth-Kindergarten certification add on.

Rulemaking Petition from Generations Preschool and Child Care

Ms. Manita Broaddus, owner, Generations Preschool and Child Care, spoke to the Commission about her Rulemaking Petition. She stated her concerns about once being considered a large family care home, and now being considered a center in a residence. She stated that her consultant found her center out of compliance with the staff/child ratio for infants since they have an open floor plan and infants are included in the group. In order to keep 12 children, she will need three employees in order to meet the staff/child ratios for infants. She explained she would have to hire someone and raise prices. Infant care is badly needed in her community.

It was noted that the Commission has 120 days to respond to the rulemaking petition. Chairperson Weinert had asked for the petition to be on today’s agenda, but noted the Commission needed time to review the entire packet of materials. They will be able to revisit this in November.

Ms. Duvall had some questions about the current status of Ms. Broaddus’ situation. Ms. Broaddus felt that depended on how the Commission proceeded regarding staff/child ratios for infants in centers in a residence. She compared how requirements that applied to her facility were different from requirements for Family Child Care Homes (FCCH), even though they were both located in residences. Centers in a residence meet all center requirements, except a Family Day Care Rating Scale can be used instead of the Early Childhood Environment Rating Scale. Ms. Broaddus pointed out that the FCCH rules allow a 1:8 staff/child ratio (1:5 for preschoolers plus 3 school-age children).

Mr. Wellons suggested that the Commission may want to consider this situation as a declaratory ruling instead of a rulemaking petition; he will review the materials.

Mr. Campbell asked how many shifts Ms. Broaddus operated at her facility. Ms. Broaddus responded that she only operates for first shift.

Mr. Campbell inquired about the difference between requirements for a center in a residence and a FCCH. Ms. Tammy Barnes responded that a FCCH may care for five preschool + 3 school age children. A center in a residence can care for up to 12 children if preschoolers are present; or up to 15 children if all children are school-age.

Chairperson Weinert stated that when the Commission meets in October; they will ask Mr. Wellons for clarification on how to proceed.

Ms. Vandevender asked if the sticking point was the infant enrollment, and Ms. Broaddus confirmed meeting the infant staff/child ratio of 1:5 is what is impacting her program.

Continue Discussion of ERP comments:

Mary Cleary, Training Specialist with the NC Child Care Health and Safety Resource Center, spoke about the train the trainer process for the ERP rules. It is designed to be an online course to train more individuals for less funds.

Discussion followed about what the appropriate timeframe should be to meet this training requirement. Some of the issues reviewed were who would do future training in the facility; whether once the staff has someone trained, will that individual be the onsite trainer, etc.? Training is originally done to meet the demands of the template. Once the template is completed and an ERP is in place, the center will have completed the training.

Regarding the part of the rule that addressed new facilities, there was discussion about whether six months was sufficient time to get the training done, given the responsibilities that must occur during the first six months of operation. Whether there would be a sufficient number of trainers was discussed as well as how existing vs. new centers were treated differently. It was noted that many existing centers already have a plan in place.

Commission Action: **Mr. Walton moved to change the requirement for an administrator or designated staff person of a new facility to receive training within one year and within the first year of enrollment. Motion was seconded by Mr. Everhart and carried unanimously.**

Curriculum Subcommittee Report and Discussion Update from Jim Wellons -

Mr. Wellons shared with the Commission that Mr. Blades is awaiting a formal opinion on his participation regarding the curriculum discussion from the NC Ethics Commission. The Ethics Commission will not meet to hear that petition until August 20. Mr. Wellons felt that it was not prudent for the Commission, including Mr. Blades, to discuss curriculum until that formal opinion is provided.

With regard to questions about this petition, Mr. Wellons stated that almost every board/commission has restrictions on decisions and discussions that impact their business, therefore the ‘potential for a conflict of interest’. This specific issue may have a potential economic impact on Mr. Blades’ business. Violations of the ethics law can lead to civil or criminal charges, and so it is better to be sure on an issue than to guess. An informal opinion from an ethics attorney is not final, but the Ethics Board’s formal opinion is final.

Because of the pending Ethics Board decision and limitations that could impact the discussion of curriculum, Mr. Wellons suggested that the Commission table its discussion of the curriculum issue until the September 26 meeting, and Commission members agreed.

Upcoming Schedule

The next Child Care Commission meeting will be September 26 at the Division of Public Health, Six Forks Road, from 9:00 am until 3:00 pm. Chairperson Weinert encouraged members to be prepared to work on the rules review process. The following information was reviewed about upcoming meetings.

- September – There will time allowed for public comment since the Commission will be considering recommendations from its Curriculum subcommittee
- October – This meeting will focus only on rulemaking, so no public comment will be scheduled
- November – This will be the Commission’s Second Quarter meeting, so public comment will be scheduled on the first day of the meeting
- December/
- January – These meetings will focus only on rulemaking, so no public comment will be scheduled

Commission Action: Mr. Walton moved to adjourn; seconded by Ms. Vandevender; the meeting was adjourned by Chairperson Weinert.

The meeting adjourned at 4:00 p.m.