

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

NORTH CAROLINA CHILD CARE COMMISSION

**Special Rules Meeting
Tuesday, May 17, 2016**

Dix Grill
1101 Cafeteria Drive
Employee Center
Raleigh, NC 27603

Commission Members Present

Glenda Weinert, Chairperson	Lisa Humphreys
Kevin Campbell, Vice Chairperson	Kay Lowrance
Zac Everhart	Charles F. McDowell, III
Melanie Gayle	William Walton, III
Elizabeth Gilleland	

Commission Members with an Excused Absence

Elliott Blades	Laurie Morin
Jonathan Brownlee, Sr., MD	Linda Vandevender
April Duvall	Kristin Weaver

Division of Child Development & Early Education Staff Present

Pam Shue, Director	Tammy Barnes, Regulatory Services
Dedra Alston, Administration/Policy	Terry McCauley, Regulatory Services
Heather Laffler, Administration/Policy	Melissa Stevenson, Regulatory Services
Andrea Lewis, Regulatory Services	Mary Pat Hicks, NC Pre-K
Melodie Ford, Regulatory Services	Rachel Kaplan, NC Pre-K
Laura Hewitt, Regulatory Services	

Attorney General's Office Staff

Bethany Burgon, Commission Attorney
Alexi Gruber, DCDEE Attorney

Welcome—Chairperson Glenda Weinert called the meeting to order at 9:15 a.m. and reviewed housekeeping items. She expressed appreciation to the Commission for members' attendance, welcomed everyone and discussed the meeting agenda. She read the conflicts of interest statement and asked whether there were any conflicts noted for today?

Chairperson Weinert asked for roll call, which Ms. Dedra Alston performed. Chairperson Weinert listed the Commission members who were absent from this meeting who requested and received excused absences. They are Mr. Elliott Blades, Dr. Jonathan Brownlee, Ms. April Duvall, Ms. Laurie Morin, Ms. Linda Vandevender, and Ms. Kristin Weaver.

Rulemaking Timeline Update—Dedra Alston and Alexi Gruber

Ms. Gruber stated that the updates discussion will involve Ms. Alston discussing the center rules review timeline, and Ms. Gruber providing an overall timeline for the review of all the rules. Ms. Alston stated that all of the center rules will have been reviewed at the close of today's meeting (per the expected agenda). This is a total of 56 rules, with the end goal being to publish all of the Center rules at the same time.

Center Rules

Following is the expected timeline detail:

- July—Commission will review changes requested/suggested from this meeting.
- The Division is currently in the process of determining which rules necessitate fiscal notes, and will prepare and return those for Commission review.
- August—All center rules will be emailed to Commission members for review.
- September—Commission will vote to publish all of the center rules
- Rules will be sent to DHHS and OSBM for review (allow 45-60 days).
- January 2017—Public hearing will be held for input on center rules, and will be extended to 3 hours.
- January-March—60 day public comment period, following publishing rules.
- April—Commission adopts rules
- May—Rules reviewed by Rules Review Commission, proposed effective date will be June-July 2017

Mr. Billy Walton asked what happens if public comments necessitate changes to the rules? Ms. Alston stated that if those changes are not substantial changes, then the rules can be changed accordingly and would not necessitate a repeat of the process. However, if the changes *are* substantial, then the rules involved must be republished and go through the 60 day review process again.

Ms. Lisa Humphreys asked about what the process should be for her review of the rules that were discussed prior to her appointment to the Commission, and what the process would be if she has issues with rules that have already been adopted by the group? Chairperson Weinert stated that it is difficult to recapture discussions of the past, and suggested not trying to attempt this. One thing that would be helpful for Ms. Humphreys would be to revisit past minutes to review previous discussions surrounding the rules and based upon that, for Ms. Humphreys to express any concerns she might have.

Vice Chairperson Campbell requested that a full version draft of all Center rules be provided for review to each Commission member. The Division is planning to provide this full draft on or before August 1, as Ms. Alston stated, so Commission members can review all the reviewed center rules at one sitting, before the vote to publish all of those rules in September. Commission members were strongly reminded that **ALL Rules must be adopted by March 2019**, and that any rules not reviewed and approved by that date will cease to exist.

The next set of rules scheduled for review by the Commission are the Family Child Care Home Rules. Chairperson Weinert requested that the Division work in advance to align these rules as

much as possible to the Center rules, before the next meeting in July when the Commission will discuss these Rules.

Overall Process

Ms. Gruber outlined the general timeline for the remainder of the rulemaking process. There are 151 Rules total. 95 Rules remain to be reviewed after the center rules are completed. The Commission has been meeting about 6 times a year, which would mean that there are approximately 15 more meetings before all rules need to be adopted. This would mean that the Commission would need to average completing 6-7 rules per meeting. By July 2018, all rules will need to be adopted, which may necessitate the acceleration of meetings (either additional meetings or more expedient review in the meetings) during the last year, depending on how the process is moving.

Current Review Order of Rule Sections

1. Centers
2. Family Child Care Homes
3. Special Programs
4. Rated License
5. Rulemaking, Administrative and Legal Actions

Chairperson Weinert stated her belief that the most challenging sections to review and address will be the Special Program and Rated License sections. She requested that for the next meeting that the Division develop a strategy for approaching these two sections.

Vice Chairperson Campbell requested that the Rated License section of the rules be addressed prior to Special Programs. There was general consensus among the members supporting this. Ms. Barnes requested that the Commission make sure to review the child care law (§ G.S. 110) related to the Rated Licenses, however, because a number of the related rules are in law and cannot be changed. Ms. Gilleland asked whether there was a way that the Division could flag the rules which are dictated by law? Ms. Gruber stated that there is a reference in the History Note at the end of each rule and she referred the members to § G.S. 110-88, Powers and Duties of Commission, which reviews the authority of the Commission and noted that History Note as an example. Ms. Gruber will also provide an overview of how the statute and rules intersect at the beginning of the discussion.

Ms. Alston provided a summary document with a summary of all of the rules for all five sections to be reviewed.

Commission Purpose Discussion

Ms. Humphreys raised the general issue of the purpose of the Commission, given the statement presented by Ms. Vandevender at the May 16th meeting, during the public comment period. (i.e. *“The North Carolina Childcare Commission should re-Mission the Commission to have a PURPOSE that first: Addresses the business interests of Private Sector Providers i.e., both “for profit” and “nonprofit” entities throughout the state...”*). Ms. Humphreys expressed concern with the tone and spirit of this statement because she does not feel that this represents her perspective.

Chairperson Weinert stated that Ms. Vandevender's request was articulating Ms. Vandevender's individual feelings that business needs have been overlooked in the past; however, the ultimate goal of the Child Care Commission as a whole remains to provide what is best for children in care.

Ms. Bethany Burgon stated that the rule review and Commission meeting process is intended to be a process of compromise where all perspectives are represented. Often, the outcome is that everyone is not completely happy; however, it is also intended that everyone is not completely unhappy with the outcome. Mr. Walton expressed his feeling that the varying perspectives of all the different types of members of the Commission is why it is so important to have the participation of the full Commission at each meeting. Vice Chairperson Campbell also expressed his feeling that Ms. Vandevender's statement is not representative of all the other Commission members. For the official purpose of the Commission, Ms. Gruber reminded the Commission to refer to the statute that grants authority to the Commission.

Ms. Gayle inquired as to the status of the two current vacancies on the Commission? Ms. Alston reported that one of the vacancies is in discussion, with a potential member having been appointed, and the Governor's appointment of a parent member is still vacant, as far as the Division is aware. Ms. Humphreys asked if there is a policy of replacing members that do not attend, and was informed that all members serve at the pleasure of their appointing bodies and can be replaced as a result of a number of different factors.

Chairperson Weinert asked for members to go into closed session at 10:00 a.m. and the meeting reconvened at 10:30 a.m.

10A NCAC 09 .0803 Administering Medication (continued from 5/16/16 meeting)

Wording suggested by staff:

Item (14) "Center administrators and staff members that are responsible for administering medications to children shall complete 'NC Medication Administration in Child Care' Training. Documentation of this training shall be maintained in each staff member's personnel file."

Chairperson Weinert asked in the May 16th meeting that the Commission table voting on suggested amendments to Rule .0803 until members receive documentation of the content of the training and data on the number of medical administration violations that are occurring in child care facilities across the state. Ms. Laura Hewitt provided data for the number of violations in Centers (1327) and the number of violations in Child Care Homes (209).

Dr. Sharon Brown, UNC NC Child Care Health & Safety Resource Center, reiterated the statement that she had made during the previous day's Public Comment period that there are variations in the seriousness of violations, and she also asked the Commission to consider the liability held by facilities for committing these violations. Vice Chairperson Campbell expressed his belief that while trainings often address needs in theory, they do not always end up addressing real needs. He expressed his concern that the medication administration training should address specific violations. Dr. Brown responded that the training does, in fact, address the specific violations and

the specific rules from which the violations stem and that specific regions' violation patterns are documented to be addressed in preparation for individual training sessions.

Mr. Walton asked whether there are trainings, or portions of the entire training, that are specific to actually dosing and administering medication to a child. Dr. Brown stated that not everyone must complete the entire training and that separate trainings can be arranged for subsections of the training for staff that only require specific areas of knowledge.

Mr. Everhart expressed that in his experience, the problems are not because of lack of training, but because staff were not doing what they were supposed to do. As a result of this, he made the decision for his centers to have a policy of **not** administering medication at all. Director Shue indicated that even if certain providers choose not to administer medications, as long there are providers that are and have the availability of administering medication, the Division needs to ensure that those who are or may be providing medication are doing it properly, and people need to be trained in order to do that.

Vice Chairperson Campbell acknowledged the need for training, but not necessarily this training; he feels that his experience has taught him that training to provide a blanket fix is not effective, that the Commission should undertake a more thorough review in order to select and require the best training. Ms. Lowrance asked specific questions regarding the content of the training and Dr. Brown referred the Commission members to the handout she had provided titled "Medication Administration in Child Care: A Trainer's Manual".

Ms. Gruber proposed rule language that would only require training to be documented for the two staff members listed on the emergency medical form, not specifying the specific training. Ms. Humphreys stated her feeling that only requiring two staff members to be trained is a problem if the facility allows anyone on staff to administer medication, because then other staff could be administering medication without training.

Vice Chairperson Campbell asked if there is a rule that requires a Center to specify who can administer medication? Mr. Walton proposed that the rule should be that someone on the staff should have the complete training, but not all staff; and additional staff should receive training through that one staff member's training. Ms. Humphreys reiterated the idea of training being offered at varying levels depending on the level of training needed for assigned duties. Dr. Brown responded again, that sections of the full training can be separated and administered without the entire training plan.

Vice Chairperson Campbell stated his belief that since federal CCDF reauthorization is requiring all states to meet these CCDF requirements, perhaps NC should seek to collaborate with other states to develop online trainings. Ms. Andrea Lewis mentioned that other states have created online trainings, but that their State requirements may be different than North Carolina's. Ms. Tammy Barnes stated that DCDEE must accommodate a number of training requirements for child care providers that necessitate contracting with other state agencies (such as the UNC School of Public Health); this is the process by which trainings have always been created and distributed.

Ms. Gilleland asked if a portion of the training could be designated as essential and this information would be provided to all child care employees during staff orientation? Mr. Walton suggested that it should be stated that the training that is eventually implemented needs to be approved by the Commission. Vice Chairperson Campbell stated that it should be stated that training will cover the elements specified in rule. Ms. Barnes reiterated that the Division has a training development process in place where it contracts with expert agencies to develop required trainings. Ms. Gilleland concurred, stating that it should be health professionals that develop the training, as they are the experts.

Ms. Gruber stated that while stipulating that the Commission must approve the training is not allowed, she suggested alternative language that the Commission could include requiring that the training shall cover Rule .0803, as well as Sanitation's storage rule, as well as the rules related to the administration of medication in Rule .0802. This would satisfy Vice Chairperson Campbell's concerns with addressing the specific violations in rule, as well as meeting the federal requirements. Vice Chairperson Campbell, Mr. Walton, and Ms. Gilleland all expressed appreciation of this suggestion. Ms. Gruber stated that the Division intends to develop the language requested over lunch and present the revised language to the Commission in the afternoon. In addition, language will be added to the Orientation Training Rule .0707, which is on the agenda to be discussed after lunch.

Rule .0102—Definitions

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. She reminded the Commission that the strategy that had been decided upon is to minimize the number of definitions included in this section, the reason being that if a definition needs to be revised in the future, and it is in this section, all rules in this definition section will be subject to revision. If a definition is unique to a specific rule, it will be defined within that rule.

Ms. Lowrance asked about whether the new version of the Environment Rating Scales (ERS) should be referenced; Ms. Gruber stated that the new version is not being utilized and the language will include a statement that the version used does not include subsequent editions. Vice Chairperson Campbell asked about the potential problem with specifying prices because the prices could change? Ms. Gruber found the reference in the Administrative Procedure Act that the referenced cost is the cost on the date the rule is adopted of a copy of the material. Ms. Gilleland asked if it is possible that editions could be discontinued? Ms. Gruber stated that this has never been an issue thus far. If this happens, the Commission would have to address that problem by adopting a subsequent edition in the rule. Ms. Lowrance noted that the edition of the School Age Care Environment Rating Scale (SACERS) on page 5 lines 30-31 needs to be updated.

Mr. Walton asked about the term "uncompensated provider" as listed in Item (39), line 17, page 6? Ms. Gruber explained this is to prevent providers from circumventing the CRC process for non-paid employees. Mr. Walton asked the ages referenced by "school-age child" referenced on page 6 lines 7-8? Mr. Everhart asked about the definition of "restraint" that he referenced during a previous meeting. Division staff responded that because that definition is unique to a specific rule, it will be addressed there, and not in the Definitions section. Mr. Everhart also stated that the

Commission needs to be careful to adhere to appropriate labor laws and make sure they are not in conflict with those requirements for staff.

Ms. Lowrance reminded the Commission to be mindful about the public comment at the May 16th meeting about requesting a definition of recreational activity. Ms. Gruber stated that there is already a definition in Statute, because it is stated that recreational activities are exempt from child care if operated more than four consecutive months. Therefore, the Commission would be bound by the definition in statute.

Lunch break at 12:00 p.m., meeting reconvened at 1:00 p.m.

Chairperson Weinert introduced Dr. Jonathan Koch, Director, NC Health and Safety Resource Center, and invited him to speak to the Commission. He is retiring and wanted to express that it had been his pleasure working with the Commission over the years and he wanted to introduce his successor, Dr. Sharon Brown, who had been providing information regarding medication administration training to the Commission over the past two days' meetings. Dr. Brown expressed her appreciation in observing the rulemaking process, and her desire to work with the Commission.

Vice Chairperson Campbell asked Dr. Koch how easy it would be to align the current training with rules more specifically? Dr. Koch answered that the training could be adapted. Chairperson Weinert thanked Dr. Brown for participating in the meeting discussions and providing time and information over the two days; her input was appreciated.

Training for Administration of Medication language (Cont.)

Ms. Gruber provided revised language for medication administration training stating that the training shall be provided to no less than the two individuals on the facility's emergency medical form. The training will cover Rule .0803 as well as the storage requirements for medication in the Sanitation rules and rules related to the administration of medication in Rule .0802. The training required for additional staff will move into the facility's orientation requirements. Training requirements for administering medication through an Epi Pen is covered in a separate rule.

Commission Action: Vice Chairperson Campbell motioned to approve the amended language for .0803(14) regarding the required training as presented. Mr. Walton seconded. The motion carried unanimously.

Commission Action: Ms. Gayle motioned to approve rules .0801-.0804, .0806 as amended. Vice Chairperson Campbell seconded. The motion carried unanimously.

Rule .2318 Record Retention

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. Ms. Lowrance stated that incident log was listed twice with different Rule references; this was corrected by Division staff. Vice Chairperson Campbell asked why all building, fire, sanitation and pool inspections have to be maintained as long as license remains valid? Division staff will look further into the matter of fire and sanitation.

10A NCAC 09 .0705-.0711 Staff Qualifications

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review and there was no further discussion from the Commission. Changes to this Section are significant due to meeting CCDF reauthorization requirements.

10A NCAC 09 .0705 Special Training Requirements

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. Mr. Walton asked whether there could be a provision that new staff have a time period to meet SIDS training as long as there is someone with the training in the classroom at all times? Language suggested was “At a minimum, one staff member who is present in the infant classroom must have SIDS training.” Division staff will look into this matter and also examine how this same issue might apply to other rules surrounding trainings.

10A NCAC 09 .0706 Ongoing Training Requirements

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. Vice Chairperson Campbell asked how semester hours translate to clock hours, which is approximately 16 clock hours equals 1 semester hour.

10A NCAC 09 .0707 Orientation Training Requirements

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. Vice Chairperson Campbell asked if there was a distinction in training hours for full-time versus part-time staff? The Division responded that CCDF requirements do not make such a distinction.

This is the Section in which the requirement for medication administration will be added to orientation requirements. Vice Chairperson Campbell asked whether orientation hours are counted towards the first year’s training? The answer is no. *Paragraph (a) page 4 line 22-23)* “Training required pursuant to this Rule shall not be counted toward annual ongoing training requirements.”

10A NCAC 09 .0708 Training Approval

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review. Ms. Humphreys asked whether use of the term “certificate” is antiquated because not all trainings now issue certificates? Ms. Sarah Lewis, DCDEE staff, stated that there needs to be some official documentation of completion of training. Ms. Gilleland asked about training received through conferences? Ms. Lewis responded that if that training is intended to count toward requirements, the recipient needs some sort of proof that they attended the conference.

10A NCAC 09 .0709 Documentation of Training

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review and there were no additional questions.

10A NCAC 09 .0710 Preservice Requirements for Lead Teachers, Teachers and Aides

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review and there were no additional questions.

10A NCAC 09 .0711 Preservice Requirements for Other Staff

Ms. Gruber discussed the proposed changes to the rules already suggested through staff review and there were no additional questions.

Chairperson Weinert adjourned the meeting at 2:30 p.m.

Next meetings:

July 25, 2016, First Quarter Meeting
July 26, 2016, Special Rules Meetings

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1101 Cafeteria Drive
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Future Meeting Dates:

July 25, 2016-	First Quarter Meeting
July 26, 2016-	Special Rules Meeting
September 26, 2016-	Special Rules Meeting
September 27, 2016-	Special Rules Meeting
October 24, 2016-	Special Rules Meeting
December 12, 2016-	Second Quarter Meeting
December 13, 2016-	Special Rules Meeting