

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

NORTH CAROLINA CHILD CARE COMMISSION

**Special Rules Meeting
Monday, November 16, 2015**

Dix Grill
1101 Cafeteria Drive
Employee Center
Raleigh, NC 27603

Commission Members Present

**Glenda Weinert, Chairperson
Kevin Campbell, Vice Chairperson
Jonathan Brownlee, Sr., MD
April Duvall
Zac Everhart**

**Kay Lowrance
Linda Vandevender
William Walton, III
Kristin Weaver
Elizabeth Gilleland**

Commission Members with an Excused Absence

**Elliott Blades
Melanie Gayle
Charles F. McDowell III
Laurie Morin**

Division of Child Development & Early Education Staff Present

**Dedra Alston, Administration/Policy
Tammy Barnes, Interim Director
Janice Fain, Administration/Policy
Heather Laffler, Administration/Policy
Melissa Stevenson, Regulatory Services
Terry McCauley, Regulatory Services**

**Laura Hewitt, Regulatory Service
Andrea Lewis, Regulatory Services
Lorie Pugh, Regulatory Services
Rachel Kaplan, NC Pre-K
Mary Pat Hicks, NC Pre-K**

Attorney General Staff

**Bethany Burgon, Interim 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 Commission members for their 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; no conflicts were noted.

Ms. Dedra Alston performed roll call and Chairperson Weinert listed the Commission members who were absent from this meeting who requested and received excused absences. Ms. Mary Pat

Hicks reviewed evacuation procedures in case of emergency due to the new meeting location and arrangements.

Rules Review & Updates—Dedra Alston

Ms. Alston noted that a Public Hearing will be held at the next day's meeting, November 17, 2015 1:00 p.m., for any comments related to the 'See & Hear' rule, 10A NCAC 09 .1718 for FCCHs. The end of the comment period for this rule is November 30, 2015.

Upon DCDEE's submission of the proposed rule amendments for Rules .2001-.2007, the Rules Review Commission (RRC) responded with Technical Change Requests and Staff Objections. This rule package was filed with RRC as 'technical changes', however, the staff attorney for RRC found additional changes that were needed to bring the rules current, and indicated potential non-technical objections to some of the rules as currently filed. RRC will meet on Thursday, November 19th and determine whether current *proposed objections* will be approved by the Commission as formal objections. If this is the case a formal letter from RRC will follow and the Commission will have a chance to satisfy the objections.

For the review of all Child Care Rules, Chairperson Weinert proposed a potentially more efficient way to move through the remaining rules. She suggests that the full Commission break into small groups of three and discuss sections of the rules, bringing back recommendations on each section reviewed to the full group.

Regarding this suggestion, Ms. Rachel Kaplan noted that official meeting minutes would not be able to capture all subgroup discussions. Chairperson Weinert said that should not be a problem as long as recommendations to the larger group were captured. Mr. Zac Everhart and Ms. Elizabeth Gilleland expressed concern about whether this would actually create greater efficiency, as all members would likely still want to discuss all of the rules when subgroup recommendations returned to the full Commission.

Ms. Gilleland suggested in place of meeting as subgroups that Commission members be diligent in doing work ahead of time and noting suggested changes to the rules in writing so that those can be shared more efficiently. Ms. Alexi Gruber stated that DCDEE staff have taken recommendations from the Commission and made proposed rule changes to be brought back for review and approval by the Commission, and will continue to bring recommendations on proposed rule changes for the Commission to review, which should assist in expediting the review process. Chairperson Weinert suggested that the Commission continue to move forward as a single group and continue to monitor progress within the allowed timeline.

Rules Discussion—Final Review of Rules/Vote on Changes (to move forward)

- Building Code Requirements (Rules .1301, .1302, .1303, and . 1304)
- General Requirements (Rules .0201, .0301., .0403, .0302, .1401, .1402, .0304, .0204, and .0205)

At the most recent meeting, it was decided that the Commission was to review and then vote to approve the language before the group at today's meeting.

Vice Chairperson Campbell referred to first sentence of .1301 which states that “The North Carolina State Building Code is hereby incorporated by reference, inclusive of subsequent amendments” and inquired whether child care facilities are *required* to use NC State Building Code? Ms. Lorie Pugh said yes, facilities are required to abide by NC Building Codes due to a requirement in statute.

Chairperson Weinert expressed her feeling that all language should be removed with the exception of reference to NC State Building Code and the requirement of its use. Ms. Gruber stated that Rule .1301 will be retitled “Building Code Requirements for Centers”. A center is subject to the existing building code at the time of construction until new construction or sale of the building, at which point the building is then subject to any new amendments. Ms. Gruber believes that the existing reference to abiding by NC Building Code would also include any grandfathered facilities.

It was additionally stated that it is in Law that the Commission *can* request that other Commissions enact changes in building code and sanitation statutes if there are special needs for preschool population—birth through school age, but that decision would ultimately be the responsibility of the Commission responsible for rules specific to the situation. Ms. Linda Vandevender inquired as to how the Child Care Commission would proceed with this process and stated that it would be beneficial to have Commission representation or communication with the Commissions responsible for building codes and sanitation requirements. Chairperson Weinert asked Ms. Vandevender to find out further details regarding participation in building code meetings and asked Division staff to research the Environmental Health Commission process; including how these committees conduct their meetings; discuss rules; and decide the order in which they will discuss rules.

Mr. William Walton and Vice Chairperson Kevin Campbell expressed concern about the wording of Rule .0205 line 18 in reference to parent access “...for the purposes of contacting the child or evaluating the center and the care provided by the center.” Both would prefer that the wording more explicitly limit parental access to areas accessible to children and areas directly impacted and encountered by their child and not allowing full access to all of a facility.

Mr. Walton asked about the points as discussed in Rule .0304(e)(1)-(10) “The Division shall calculate the visit compliance score by taking the total possible points for items monitored at a visit and calculating the percentage of compliance based upon the actual points awarded.” Ms. Gruber provided a recommendation from staff that the full information regarding point values be made available to the public. Current concern is that the ranges provided do not reflect that consultants have discretion and that there are specific violations that are assigned points within a designated range.

Dr. Jonathan Brownlee inquired as to whether the Commission has the authority to change the point values for violations, specifically regarding nutrition violations, and Ms. Gruber responded that this is within the authority of the Commission. Mr. Everhart, Dr. Brownlee, and Vice Chairperson Campbell raised their concern about the potentially “one size fits all” point assignment for violations, which does not take into account degrees of violations or the size and number of classrooms in a facility. Chairperson Weinert said that specifically addressing this concern would necessitate the Commission making recommendations as to how point assignments

should be revised and bringing recommendations back to the Commission for discussion. Ms. Gruber advised that the Commission may wish to wait to discuss this detailed and complicated topic until after the Commission more fully completes its rules review. She also suggested a presentation by staff on the topic and all its nuances and Ms. Gilleland agreed that this would be very helpful

Commission Action: **Ms. Elizabeth Gilleland moved to approve the wording of the following rules: Building Code Requirements (Rules .1301, .1302, .1303, and .1304) and General Requirements (Rules .0201, .0301, .0403, .0302, .1401, .1402, .0304, .0204, and .0205) with the understanding that the Commission will return to discuss the assignment of point values for rule violations in Rule .0304(e) before publishing these rules. Ms. Kay Lowrance seconded the motion. The motion carried unanimously.**

Rules Discussed at the September 28, 2015 Special Rules Meeting:

Three sets of Rules - .0508-.0511, .0712-.0714 and .0501 and .1801 were discussed at the September 28, 2015 Child Care Commission meeting and it was determined that the Commission members would review requested changes and then vote to approve the language in today's meeting. Ms. Gruber walked through the changes suggested by staff and a handout to define age definitions and groupings ("information on age groupings for Infants and Toddlers") currently in the Child Care Law and Rules including definitions for preschooler and preschool-age child, school-age child and age groupings.

Schedules and Activities (.0508, .0509, .0510, and .0511)

Mr. Everhart suggested change to Rule .0508(b)(5)(B) - "For programs providing care for less than 6.5 hours..." should be changed to "more than four hours and up to and including 6.5 hours"; .0508(b)(5)(C) "For programs providing 6.5 hours or more..." should be changed to "more than 6.5 hours."

Vice Chairperson Campbell suggested changing Rule .0508(c) line 3 "Each child shall have individualized caregiving routines such as eating, napping..." to "Children under two shall have individualized caregiving routines such as"

Ms. Gilleland requested that there be reference to Foundations in Rule .0508(d), (1) through (5) "For each group of children in care, the activity plan must include at least one daily activity intended to stimulate the following developmental domains."

Ms. Lowrance suggested that this section of rules be reordered for sequential age, and Mr. Walton suggested that this might be a good place for a chart, in Rule .0508(5), (A) through (C).

Vice Chairperson Campbell referenced Rule .0508(d), "For each group of children in care, the activity plan must include at least one daily activity intended to stimulate the following

developmental domains” and requested clarity for the definition of ‘activity plans.’ He also asked if Rule .0510(c), lines 14-15 were new - “Each center shall provide materials and opportunities for music and rhythm, science and nature, and...” These lines are not new, but were moved from a different location.

Ms. Gilleland asked about Rule .0510(d)(4) “Screen time shall not include teacher directed activities” and that phrase’s meaning. Ms. Gruber distributed research compiled by the Division regarding the issue of screen time and child development. Ms. Gilleland expressed concern with not limiting amount of screen time no matter what the activity as long as it is ‘teacher directed’. She expressed her concern that screen activities should be limited to 45 minutes a day, no matter for what purpose (or size) a screen being used. Mr. Walton stated that he did not agree with the limit proposed by Ms. Gilleland. Ms. Vandevender discussed the importance of learning technology for this day and age. Dr. Brownlee said his recommendation for screen time would be 0 for the under two years old developmental stage. Chairperson Weinert stated her belief that there needs to be balance especially in the special needs realm; she is fine with limiting but not eliminating screen time. Ms. April Duvall also agreed with Chairperson Weinert’s concern for balance. Mr. Walton stated his concern is *how* screens are used not *how much* they are used; feeling that the amount of teacher interaction is what is important. Dr. Brownlee also agreed that it is important to focus on *content* rather than time limitations and referred to an American Pediatrics Association article that he will share with Ms. Alston to distribute to all the Commission members.

Ms. Lowrance stated that the Commission has to look at the whole picture for the entire state when considering maximum and minimum requirements. There are facilities that will naturally do their best to implement best practices, and also facilities that will implement the least costly or difficult option, and the Commission’s responsibility is to take everything within this spectrum into consideration. Mr. Walton suggested that the Commission should be educated on current research-based best practices and recommendations before any official vote on the time allotted for screen time is recorded. Chairperson Weinert agreed that the group could vote to approve the language of the rules related to Schedules and Activities with the caveat that the Commission will come back to inserting specific language regarding screen time after educating themselves on the research. Chairperson Weinert stated that it would be helpful for members to return to the next discussion with specific suggestions.

UPDATE: Proposed legislation to mandate child care curriculum alignment with Foundations

Ms. Gilleland noted to the group that she received feedback from a member of the General Assembly staff that requested legislation was not included concerning mandating Foundations be the standards by which curricula are measured because the General Assembly’s feeling is that the Commission already has the authority to require this alignment in Rule, so that requirement does not need to be included in statute. The next steps for implementing such a requirement will be taking the language from the proposed legislation and submitting it to the regular rules process.

Meeting adjourned for lunch at 12:30 p.m., reconvened at 1:30 p.m.

Rules Discussed at the September 28, 2015 Special Rules Meeting (continued):

Ms. Lowrance indicated concern that Rule .0510(d)(1) is a definition of activity area “An activity area is an identifiable space which is accessible to the children and where related equipment and

materials are kept in an orderly fashion” and should therefore be contained in the ‘definitions’ section of the rules. DCDEE staff agreed, and that information will be moved.

Staffing Requirements (.0712, .0713, and .0714)

In Rule .0713(a) “The staff/child ratios and group sizes for single-age groups of children in centers with a licensed capacity of 30 or more children shall be as follows” Chairperson Weinert suggested adding a grouping for children 4-5 years old with a ratio of 1:20. The Commission and staff agreed, with discussion, to this addition.

Appropriate Staff/Child Interactions (.0501, .1801, .1802, .1803, and .1804)

Ms. Lowrance stated that she appreciates how this section of rules is divided into two rules. Rule .1803 Prohibited Discipline (currently .1801) and new Rule .1804 Discipline Policy (currently .1801(a)). Mr. Walton pointed out that language in new Rule .1804(b) line 13 needs correction “The signed, dated statement must be in the child’s record and must remain on file in the center as long as the child is enrolled.” The phrase ‘for one year’ will be removed.

Mr. Everhart expressed concern with Rule .1803(a)(1) line 15 (currently .1801(b)(1)) “No child shall be handled roughly in any way, including but not limited to shaking, pushing, shoving, pinching, slapping, biting, kicking, restraining, or spanking.” The complete prohibition from restraining a child, followed literally, does not allow staff to keep a child in certain circumstances from harming themselves or others, or from keeping from leaving the building. Mr. Everhart believes that language should be included to allow for these circumstances. In response Ms. Burgon noted a distinction between restraining for discipline and restraining for safety.

Ms. Duvall expressed concern with Rule .1803(a) - (currently .1801(b)) “No child shall be subjected to any form of corporal punishment by the owner, operator, director, or staff of any child care facility...” including Subparagraphs (1) through (10) and that there is no restriction included regarding verbal aggression or verbal or mental/emotional intimidation. The following language was added to Rule .1803(a)(9), “No child shall ever be yelled at, shamed, humiliated, frightened, threatened, or bullied.”

As the Commission completed their review of this group of rules, Chairperson Weinert asked if the Commission could return to the issue of screen time and resolve that question today. After further discussion surrounding the research that Dr. Brownlee had provided earlier in the meeting, all present members agreed to leave the language as currently written and voted to approve the language and not revisit the issue to revise the screen time limit as previously proposed earlier in the meeting. Chairperson Glenda Weinert asked for a motion for approval of wording changes to discussed sections of Rules.

Commission Action:

Ms. April Duvall motioned to approve the wording for the following Rules - Schedules and Activities (.0508, .0509, .0510, and .0511), Staffing Requirements (.0712, .0713, .0714), and Appropriate Staff/Child Interactions (.0501, .1801, .1802, .1803 and .1804).

Mr. Zac Everhart seconded the motion with the caveat that a definition of the word “restraining” will be brought back to the next Commission meeting. The motion carried unanimously.

Review New Section of Rules -

Safety Requirements for Child Care Centers (.0601, .0602, .0603, .0604)

Section .0600 Safety Requirements for Child Care Centers

10A NCAC 09 .0601 Safe Environment

Vice Chairperson Campbell addressed the peeling paint issue included in Rule .0601(c) “Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.” He is concerned that noncompliance for “faded” paint should not be included this prohibition, and inquired as to whether clarity is needed in the definition of “peeling” paint.

Ms. Vandevender discussed concerns surrounding what constitutes “good repair” in Rule .0601 (b), “All equipment and furnishings shall be in good repair and shall be maintained in useable condition.” She expressed the need for clarification, as these issues and the definition and requirement to replace equipment have financial implications for facilities. Chairperson Weinert made a statement that what is demonstrated by these remarks is that these are real issues that centers deal with; they are occurring no matter what the intention of the language of the rules is, and there are real consequences when rules are not clear or consistently interpreted.

Vice Chairperson Campbell expressed a concern with Rule .0601(d) “All broken equipment or furnishings shall be removed from the premises immediately or made inaccessible to the children.” Regarding the language surrounding that all broken equipment shall be removed from premises he suggested it be changed to “equipment that is broken and may present a safety hazard”; Dr. Brownlee suggested a requirement to remove “non-functional” equipment. Vice Chairperson Campbell further recommended to remove Paragraph (d) altogether. Ms. Burgon suggested reference to Rule .0601(c) for what should be removed; all equipment that may be included in items references in Rule .0601(c) “Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.” which includes equipment and furnishings that are potential hazards to children.

10A NCAC 09 .0604 Safety Requirements

Chairperson Weinert asked if Rule .0604(p) line 15 “During the required fire, lockdown, or shelter-in-place drills, an evacuation crib or other device shall be used in the manner described in the Emergency preparedness and Response Plan” is referring to new Emergency Preparedness and Response Plan requirements, and Division staff responded in the affirmative.

Transportation (.1001, .1002, .1003, .1004, .0512)

Section .1000-Transportation Standards

10A NCAC 09 .1001 Seat Restraints and Child Safety Seats

There were no comments or suggested changes for this Rule.

10A NCAC 09 .1002 Safe Vehicles

Ms. Vandevender asked whether Rule .1002(d) “Vehicles used to transport children in snowy, icy, and other hazardous weather conditions must be equipped with snow tires, chains, or other safety equipment as appropriate” was new concerning the statement that vehicles used to transport children in snowy, icy and other hazardous weather conditions *must* be equipped with snow tires, chains or other safety equipment as appropriate? The answer is no; this was in the original rule. Ms. Vandevender expressed concern about the provision that vehicles must be equipped, as most North Carolina conditions do not require this; the ensuing discussion led to agreement that this should be interpreted as when appropriate, in very poor conditions and for extended transportation.

10A NCAC 09 .1003 Safe Procedures

Vice Chairperson Campbell raised issue with Rule .1003(d) “For each child being transported, identifying information, including the child’s name, photograph, emergency contact information, a copy of the emergency medical care information form required by Rule .0802(b) of this Chapter, and a seating chart shall be in the vehicle.” He stated that he understands this is best practice, but is concerned about what kind of violation this is if a photograph is not present for every child?

10A NCAC 09 .1004 Staff/Child Ratios - There were no comments or suggested changes for this Rule.

10A NCAC 09 ~~.0512~~ .1005 - There were no comments or suggested changes for this Rule.

Expediting Rules Process

Mr. Walton raised the issue about the potential necessity of expediting rules that the Commission feels should be implemented more quickly than through this several-year-long full rules review process. Ms. Gruber stated that if a rule needs to be enacted more quickly than through the completion of the full review process, the Commission can still achieve that through normal rule amendment/adoption channels, outside of the full rule review process.

Chairperson Weinert asked for a motion for approval of wording of changes of the previously discussed section of Rules.

Commission Action:

Ms. Vandevender moved to approve the wording including changes for the following rules: Safety Requirements for Child Care Centers (.0601, .0602, .0603, .0604) and Transportation (.1001, .1002, .1003, .1004, .0512). Mr. Everhart seconded the motion and the motion carried unanimously.

Future Special Rules Meeting Dates

Chairperson Weinert asked for feedback from the Commission about the next Special Rules meeting. It was determined that the Commission would not meet during the months of December and January and will meet on February 15th and 16th.

Chairperson Weinert adjourned the meeting at 3:30 p.m.

Next meeting - Tuesday, November 17, 2015 - 9:00 a.m. - 4:00 p.m. (Second Quarter Meeting)

Dix Grill

1101 Cafeteria Drive

Employee Center

Raleigh, NC 27603

Future Meeting Dates:

February 15, 2016 - Third Quarter Meeting

February 16, 2016 - Special Rules Meeting

May 16, 2016 - Fourth Quarter Meeting