

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

NORTH CAROLINA CHILD CARE COMMISSION

**Special Rules Meeting
Monday, September 28, 2015**

Nature Research Center
William G. Ross Conference Center, 4th Floor
121 W. Jones Street
Raleigh, NC 27603

Commission Members Present

Glenda Weinert, Chairperson
Kevin Campbell, Vice Chairperson
Elliott Blades
Zac Everhart
Melanie Gayle
Elizabeth Gilleland

Kay Lowrance
Charles F. McDowell III
Janice Price
Linda Vandevender
William Walton, III
Kristin Weaver

Bethany Burgon, Interim Attorney
Jim Wellons, Attorney

Commission Members with and Excused Absence

Jonathan Brownlee, Sr., MD
April Duvall
Laurie Morin

Division of Child Development & Early Education Staff Present

Janice Fain, Administration/Policy
Heather Laffler, Administration/Policy
Dedra Alston, Administration/Policy
Alexi Gruber, Attorney General
Cindy Wheeler, NC Pre-K
Mary Pat Hicks, NC Pre-K

Rachel Kaplan, NC Pre-K
Lorie Pugh, Regulatory Services
Laura Hewitt, Regulatory Service
Andrea Lewis, Regulatory Services
Terry McCauley, Regulatory Services
Melissa Stevenson, Regulatory Services

Welcome—Chairperson Glenda Weinert called the meeting to order at 10:00 a.m. and reviewed housekeeping items. Chairperson Weinert read the Conflicts of Interest statement and asked whether there were any conflicts noted for today. None were reported.

Chairperson Weinert called for roll call, which Ms. Dedra Alston performed. Chairperson Weinert noted the members with excused absences: Dr. Jonathan Brownlee, Ms. April Duvall and Ms. Laurie Morin.

Approval of August 17, 2015 Teleconference Meeting Minutes

Chairperson Glenda Weinert asked for a motion for approval of the August 17, 2015 Teleconference Meeting Minutes.

Commission Action: **Ms. Melanie Gayle moved to approve the August 17, 2015 teleconference meeting minutes as presented. Rev. Charles McDowell seconded. The motion carried unanimously.**

Introduction of Interim Commission Attorney

Ms. Alexi Gruber introduced Ms. Bethany Burgon of the Attorney General's Office to the Commission and stated that she will be serving as their interim attorney until the position is filled. Ms. Burgon stated that she has been working with the DHHS for 10 years, specializing in Health Care Law.

Ms. Gruber discussed recommendations for the Readoption of Rules process.

- Vote to publish along the way instead of waiting until March 19, 2019
- Consider 5 major groupings as a way to think about readopting Rules (in packet)
 - Child Care Center
 - Family Child Care Homes
 - Special Programs
 - Rated License
 - Rulemaking, Administrative Actions/Legal

Ms. Gruber informed the Commission that how the rules are eventually organized will be determined **at the end of the process**. The order of rules and renumbering is not required to be approved through the Rules Review Commission (RRC). This makes it easier for the Commission to decide how to organize the rules after all rules have been adopted.

Ms. Gruber discussed a proposed Rules Review Schedule—

All rules must be finalized by March 19, 2019, and the Commission will need to vote to publish the last group of rules by August 6, 2018.

Including this September 2015 meeting and all scheduled quarterly meetings, the Commission will need to meet approximately 30 times in order to complete the review of rules by August 2018. An estimated eight rules will need to be reviewed per meeting.

Prior to each meeting Ms. Burgon and Ms. Gruber will make recommendations for rules to be discussed at the upcoming meeting, based on the content of chronologically upcoming rules.

Mr. Wellons noted that the Commission has so far reviewed 8 rules in its 6 rules review meetings, so it will be necessary to develop a plan to move much more rapidly if the Commission hopes to

achieve its stated goal. He suggested that it might be more workable to consider a section of rules and determine how many rules to discuss based on pages rather than a number of rules per meeting.

Attorneys and staff will review the various options and return to the Commission with an ongoing plan for reviewing all rules by the stated deadline.

Presentation to Mr. Jim Wellons by Chairperson Glenda Weinert and Vice Chairperson Kevin Campbell

The Child Care Commission presented a commemorative plaque and Certificate of Appreciation thanking Mr. Wellons for his service as the attorney for the Commission in honor of his retirement October 30, 2015.

Legislative Update-Janice Fain

Ms. Janice Fain presented an update regarding legislative action impacting the Division.

Bills relevant to DCDEE

- SB 114—Ratified—Custodial Parent Cooperate with Child Support – this bill requires DHHS, DCDEE and DSS to develop a plan for requiring a parent who receives child care subsidy to cooperate with county child support programs.
- HB 765—Not Yet Finalized—Regulatory Reform (contested cases) – this bill would change the process for burden of proof in contested cases.
- SB578—Ratified—Transition A/N Investigations – this bill transitions investigations of maltreatment in child care facilities to DCDEE as of January 2016.

Budget Updates

- A final State Budget approved Sept 18, 2015.
- Generally, level funding for DCDEE administration and programs was maintained.

NC Pre-K

- \$5 million was added to the NC Pre-K program to make last year’s one-time expansion funds permanent.

ECIDS

- Approximately \$700,000 is added to DCDEE’s budget in SFY 16-17 to maintain the Early Childhood Integrated Data System (ECIDS).

Smart Start

- The match requirement for Smart Start increased from 15% to 17% for SFY 15-16.

Subsidized Child Care

- The budget reverses the legislative change made last year to the definition of “income unit.” Non-parent relative caretakers, such as grandparents, may now be included in the income unit.
- A pro-rated parent fee (75%) for part-time care is reinstated.
- There were some changes to the allocation formula – allocations will be based on a county’s expenditures from the previous year. Counties are eligible for additional funds if their rate of spending is at least 95%, or if they were impacted by market rate increases.
- There will be increases in infant/toddler market rates in 3-5 star facilities in Tier 1 and Tier 2 counties, based on Department of Commerce categories.

Mr. William Walton inquired about where to find the 2015 child care market rates. Ms. Fain directed him to the Division's website for the Market Rate Study Report where Appendix E contains the market rate charts. Vice Chairperson Campbell asked to confirm that Tier 1 and Tier 2 are the categories which will receive increases, which was affirmed.

Additional Updates

Mrs. Fain also reported from the approved State budget that the Joint Legislative Oversight Committee on DHHS will appoint a subcommittee to study child care subsidy, NC Pre-K and Smart Start. In addition, child care programs certified by the Department of Defense (DOD) will now be exempt from State monitoring and will be authorized to participate in the Child Care Subsidy program.

Mr. Walton asked what the timeframe is for the allocation of the \$5 million NC Pre-K enhancement funds which was provided through the budget but not included in the original allocation. Ms. Fain responded that using the information from the survey that has been distributed to the 91 Contractors, decisions will be made and information provided to contractors by next week and the contract amendments and local allocations will follow. Vice Chairperson Campbell asked whether provisions are also being made for increases in teacher salaries. Ms. Fain said that this was one of the variables that was taken into account by the survey. Last year, contractors were asked to include in their expansion/service request the amount of funds that needed to compensate for teacher salary raises as well as for direct services.

Mr. Walton asked whether retroactive exception increases will be granted for those granted exceptions to compensate for teacher salary increases. Ms. Fain and Ms. Cindy Wheeler stated that this would be looked at on a case by case basis.

Update on Developmental Day Rules (10A NCAC 09 .2902 and .2903)-Jim Wellons

Mr. Wellons reported that following the Commission's adoption of 10A NCAC 09 .2902 and .2903 more than 10 objections to those rules were filed with the Rules Review Commission (RRC) requesting legislative review of the rules. Per the Administrative Procedure Act, when ten or more objections are received by the RRC, the rules may not become effective until there is opportunity for legislative review. When the General Assembly reconvenes in April 2016, if a bill is **not** introduced to disapprove the rules, they will go into effect after 31 legislative days.

Readoption Timeframe for the Periodic Review of Existing Rules -Jim Wellons

Mr. Wellons referenced the green sheet in the packet, which is a letter from the RRC stating that the rules under the authority of the Child Care Commission must be fully reviewed and adopted by March 31, 2019. Any rules that have not been revised or readopted by this point will expire. In order to meet the goal of reviewing all of the child care rules, monthly additional rule review meetings have been scheduled for the Commission. It is estimated that 30 meetings will be sufficient to achieve this task. In addition, Mr. Wellons suggested eliminating unnecessary legislative reports, Division Director reports, Chairperson's reports, etc., from the meetings to allow for more time for Rules review.

Rules Discussion--Alexi Gruber

Ms. Alexi Gruber discussed the rules in Section .2000 – Rulemaking and Contested Case Procedures – with Commission members. Ms. Gruber and Mr. Wellons recommended that the Commission should vote to adopt the recommended technical changes made by DCDEE staff to Rules .2001-.2005 and vote to publish the repeal of Rules .2006, and .2007, which are now unnecessary.

Commission Action:

Ms. Elizabeth Gilleland moved to accept staff's recommendation for technical changes to be submitted to the RRC for Rules .2001-.2005 and to repeal Rules .2006 and .2007. Ms. Kristin Weaver seconded. The motion carried unanimously.

Ms. Gruber next referenced Child Care Center Rules related to Building Code Requirements - .1301-.1304 and General Requirements - .0201, .0301, .0401, .0302, .1401, .1402, .0304, .0204, .0205 and .2318. Related to Rule .2318 Child Care Center Record Retention—there is DCDEE staff concern that there are more than 18 forms that providers are required to maintain, and different timeframes for maintenance of each of the forms. Ms. Gruber recommended that the Commission defer discussing this rule until the end of the discussion of the Center Rules to see if any changes need to be made, and then all changes can be made and adopted at one time.

There was discussion regarding approving changes to the rest of the 14 rules in October; with recommendation to vote to publish after finishing the review of all Child Care Center Rules.

- Final Vote to approve changes
 - Building Code Requirements (Rules .1301, .1302, .1303, and .1304)
 - General Requirements (Rules .0201, .0301, .0403, .0302, .1401, .1302, .0304, .0204, .0205, and .2318)

Commission Action:

Ms. Linda Vandevender moved to defer the vote to approve changes to the next meeting so that the Commission has time to review the rules as presented today. Mr. Zac Everhart seconded. The vote carried unanimously.

Ms. Kay Lowrance asked in reference to Rule .0204(c)(1) if the rule is sufficiently worded so that any new spaces must also be in compliance with overall standards. Commission members are asked to review this and other associated rules, and the October agenda will include review and any new proposed language that members feel is necessary.

Ms. Gruber recommended that, if the Commission is deferring the vote on the Building Code and General Requirements rules until the next meeting, then the Commission should next discuss Child Care Center Rules .0508, .0509, .0510, .0511, .0712, .0713, .0714, .0501, and .1801.

Potential Meeting Dates:

Chairperson Weinert asked Commission members to review the list of potential meeting dates in their packet plan to discuss these dates at the October meeting.

Meeting break

Chairperson Weinert asked for clarification concerning implementation of the Emergency Preparedness and Response (EPR) Rules and Ms. Lorie Pugh spoke to the Commission on this matter.

The NC Health and Safety Resource Center is in the process of conducting online train-the-trainer education. At end of August, the online template was made available to facilities to enter emergency plan information. Existing centers have two years to complete the training, by July 1, 2017 to have a designated person trained. Once a staff person has completed training, the center has four months to complete the online emergency preparedness and response plan template and have an EPR plan ready to be implemented.

DCDEE Child Care Consultants will not monitor for new quarterly drills until training has been completed. New facilities licensed after July 1, 2016 will have one year to complete training. Ms. Vandevender brought up a concern brought to her attention that a provider cannot meet recommendations for the amount of water suggested to be maintained on site per child because the provider does not have room for storage of that much water (approximately 200 gallons). Ms. Pugh clarified that there are some best practice recommendations that are not required in rules. The rules require the EPR plan to include a description of how children's nutritional and health needs will be met.

Vice Chairperson Campbell expressed his feeling that the training goes far beyond what the Commission understood it to be. Ms. Pugh responded that the EPR training preceded the development of the online template. Vice Chairperson Campbell questioned why the training included so much additional information than the online template requires, concerned that this creates confusion. Ms. Pugh responded that the EPR training was already set up according to best practice, and the training delineates what is in rule and what is best practice. The training is designed to prepare facilities to deal with emergency situations and rule dictates that providers must develop a plan using that information. Chairperson Weinert and Mr. Elliott Blades concurred with Vice Chairperson Campbell that there is confusion in the field and Chairperson Weinert asked if there might be another way to deal with the situation, such as multiple trainings. Ms. Pugh stated that she will discuss the concern with Mary Cleary about what is being presented and how the message might better be conveyed regarding best practices versus what is required for compliance.

Center Rules Discussion

- Schedules and Activities (.0508, .0509, .0510, and .0511)
- Staffing Requirements (.0712, .0713, and .0714)
- Appropriate Staff/Child Interactions (.0501 and .1801)

10A NCAC 09 .0508(a) and (b) Activity Schedules and Plans for Centers

Vice Chairperson Campbell asked that the Commission consider Subparagraph (b)(4) and the minimum of one hour of outdoor time required for classrooms where children are in care for more than four hours. He stated that he thinks that this is problematic for NC Pre-K classrooms because there are so many transitions throughout the day, and requiring children to be outside for an hour or more is too much.

Ms. Weaver disagreed with shortening the minimum length of outdoor time and stated that she feels that more outdoor time should be encouraged rather than less. Ms. Vandevender concurred about the importance of outdoor time, but also recognized that in winter months, when children need extra layers of clothing, it is difficult to fit the required hour in a less than full day schedule. Ms. Gilleland expressed concern that reducing the required minimum outdoor time would be a regressive change with research demonstrating that outdoor learning is important for academic and social and emotional well-being. Ms. Cindy Wheeler also concurred that outdoor time should not be considered non-learning time; it should be considered additional learning opportunity and that outdoor time is not only ‘free play’ time.

Commission Action: **Vice Chairperson Kevin Campbell moved that Rule .0509(b)(4) should be changed to 30 minute minimum requirement for outdoor time for children in care 4 hours and less, a 45 minute minimum requirement for children in care four to 6.5 hours, and a minimum requirement of 60 minutes for children in care more than 6.5 hours a day. Mr. Zac Everhart seconded the motion. The motion carried with a 7-5 vote (For—Linda Vandevender, Zac Everhart, Charles McDowell, Elliott Blades, Glenda Weinert, Kevin Campbell, and William Walton) (Against—Janice Price, Kay Lowrance, Elizabeth Gilleland, Melanie Gayle, and Kristin Weaver)**

Mr. Jim Wellons suggested simplifying language wherever possible, such as in the current line 8 with the word “shall”. Because “shall” is used, there is no need for the additional verbs in Subparagraphs (b)(1), (2), (3), & (4). He also suggested dividing sections into subparts for ease of future amendments. Mr. Wellons also suggested that the Commission grant authorization to Division staff to make changes regarding numbering, underlining, ordering, etc., in order for the Commission to be able to devote energy to substantive issues rather than formatting.

Ms. Gilleland asked about a definition of “if weather conditions permit” Ms. Gruber replied that the definition could be found in the “Definitions” Rule .0102(18).

10A NCAC 09 .0508(c) Activity Schedules and Plans for Centers

Mr. Wellons questioned whether lines 18 & 19 are unique to children under two years of age, as the rule wording indicates, because all children eat, sleep and toilet. Ms. Pugh responded that ‘individualized’ in this rule refers to the fact that in the classroom daily schedule, there are not scheduled times for these things because there should be an individualized plan for each child. Mr. Wellons suggested that the language should be changed to something like “each child shall have

an individualized schedule for eating, napping, and toileting”. It was then pointed out that the scheduling of each child is only applicable to ‘infants’ and there needs to be a separation of the rules for infants (0-13 months), because there is a requirement for individual schedules for infants and not for toddlers.

Additional discussion raised issues of differentiating between infants (0-13 months) and toddlers throughout the rules, which led Mr. Wellons to conclude that there needed to be definitions of age groupings throughout rules where there are currently only definitions in the context of staff to child ratios.

10A NCAC 09 .0508(d) Activity Schedules and Plans

Vice Chairperson Campbell asked whether Paragraph (d) applies to all children. Mr. Wellons suggested that Rule .0508 needs to be written to apply to all children, with a subpart specifically for infants. Ms. Gruber stated that a new definition for ‘preschool’ also needs to be developed along with the age group definitions of school-age, toddler, and infant. Ms. Gruber offered that DCDEE staff will make recommendations about definitions and these will be available to be discussed at the next meeting.

Lunch break at 12:45 p.m., reconvened at 1:30 p.m.

Chairperson Weinert reminded Commission members that their task is to focus on the substance of the rules and asked for the Commission members’ agreement that they allow DCDEE staff to format and provide technical changes to the rules and offer language at the next meeting for review.

1:30 p.m. Rules Discussion (continued)

10A NCAC 09 .0509 Activities: General Requirements for Centers

Ms. Gayle asked if there is a definition of “vigorous” in Item (4). Mr. Wellons said that it is not necessary to define this word in the context of child care, as it is used here in its typical meaning. Mr. Blades questioned the redundancy of Items (1) and (4); it was again determined that this rule needs restructuring. DCDEE staff will offer language that they will submit to the Commission at the next meeting.

10A NCAC 09 .0510 Activity Areas: Preschool Children Two Years and Older

Chairperson Weinert questioned lines 33-34—why there is not the same requirement to have activity areas in centers located in a residence that there is for child care centers? Vice Chairperson Campbell agreed with Chairperson Weinert that if they are considered a Child Care Center, they should have designated activity areas.

Ms. Vandevender asked whether the Subsidy reimbursement rate for a 5-star center located in residence is same as a typical child care center’s rate. It was confirmed this is correct.

Ms. Lowrance proposed changing the language in Sub-Items (4)(a),(b) and (c) to “Each center shall provide the following 5 activity areas: art and other creative play, children's books, blocks and block building, manipulatives, and family living and dramatic play.” However, because the

statute requires for four activities to be made available daily, the rule cannot be changed to require 5 activity areas.

Ms. Gruber stated that staff will rework the language of Rule .0510 to address removing the “centers with a licensed capacity of 3 to 12 children located in a residence” provision, as well as redundancy in the rule.

Vice Chairperson Campbell expressed concern about Sub-Item (7)(c), limiting children to no more than 2 ½ hours per week of screen time. His concern is that this should not include screen time related to educational tools. Ms. Gruber said staff will come up with language to reflect different categories of free-choice screen time and teacher-directed educational tools.

10A NCAC 09 .0511 Activities for Children Under Two Years of Age

Mr. Wellons stated that the first sentence of this Rule can be deleted because it is redundant with the name of the rule, and suggested looking for similar duplication in other rules.

Ms. Gruber directed attention to page 5 line 6-7 (Paragraph .0511(d)) - staff recommends adding language requiring special supervision with tummy time, including language about developmentally appropriate lengths of time for tummy time.

Vice Chairperson Campbell asked about Subparagraph .0511(c)(4) - what does it mean “setting of limits that child can understand” when talking about infants and toddlers? It was noted this Rule should be adjusted to include more developmentally appropriate language.

Vice Chairperson Campbell also asked about Subparagraph .0511(c)(5). He and Mr. Everhart do not think this Rule is necessary. There was a general consensus of the Commission to delete this Rule.

Mr. Blades asked about Paragraph .0511(b)—is this redundant with the previous rule? Commission members agreed that it should be deleted.

Ms. Gruber directed attention to page 5 line 8 suggesting that this Rule language should be moved up to rules related to activities. Mr. Wellons said that a reason to leave it where it is currently would be that this is a prohibition at end of a list of requirements.

10A NCAC 09 .0712 Staff/Child Ratios for Centers with a Licensed Capacity of Less Than 30 Children

Ms. Gruber mentioned that much of this rule section is in statute, which prompted Mr. Wellons to question why this rule language is included. If the rule language duplicates the statute, then it should not be in rule.

Ms. Lowrance asked Mr. Wellons to confirm that if a requirement is in statute, the Commission cannot change the requirement? For example, child/staff ratios cannot be made more or less stringent? Mr. Wellons clarified that this is the case.

Ms. Gruber noted that the Commission does have authority, however, to make rules for categories not included in statute. For example, the statute does not require categories for staff/child ratio with ages 3-5 and 5 and older however the Commission has authority to include create these categories and has included the categories in the rules.

Vice Chairperson Campbell asked why there is a separate rules section for centers with less than 30 children. Division staff suggests that these rules should be combined with other center rules with the exception of group size.

10A NCAC 09 .0714 Other Staffing Requirements

Mr. Wellons pointed out that the use of “may” in this rule is appropriate because alternative options are offered. He also discussed that the use of “aide” as a job title and noted that this needs to be consistent or needs to be stricken. Ms. Gruber stated that “aide” is defined in .0701, however, Ms. Vandevender proposed using the term “teacher assistant,” as that is the current term that is used in the industry.

Mr. Wellons stated that Paragraph (b) line 21 needs to specify who the 18 year old is, so that it does not read as if any 18 year old could fill that position. He also pointed out that Paragraph (d) defines “teacher” without providing a specific role or responsibilities. He does not understand why the definition should exist here if it is not a precursor to further discussion of responsibilities. Ms. Gruber concurred that this and all definitions should be in the definition section and not scattered throughout the rules.

Ms. Gruber stated that staff will review the section that discusses credentials to determine what appropriate language should be and return that revised language to the Commission for review.

Vice Chairperson Campbell asked why the rules include Paragraphs (f), (h), and (i) in the section about other staff requirements? Mr. Wellons said Paragraphs (f) and (h) do fit within guidelines about staffing, but Paragraph (i) should be somewhere else because it references children sleeping and should be moved to the safe sleep rule section.

Vice Chairperson Campbell also asked for clarification as to what line 30 page 8 is referencing in Rule .0102? Ms. Gruber replied that this line is referencing the definition of “group” and suggested taking out the indirect reference, and replacing it with “for each group.”

10A NCAC 09 .0501 Staff/Child Interactions

Mr. Wellons proposed language in line 4 to replace the word “relate” with “interact.” Mr. Blades asked how you regulate this rule about interaction between staff and children, since it is fairly subjective regarding what is acceptable. Mr. Wellons replied that this is what is known as an aspirational rule, but it apparently was specific and measureable enough for the RCC to approve at the time. Vice Chairperson Campbell asked if staff interaction is evaluated on a facility’s compliance history. Chairperson Weinert requested that staff look into that answer and get back to Commission.

10A NCAC 09 .1801 Discipline Policy

Mr. Wellons stated that there needs to be a stated time limit of how long facilities are required to retain documentation, as documents are referenced in line 24 and line 28?

Ms. Gruber discussed staff recommendations to change the requirement from a 30 day notice to a 14 day notice in policy as referenced in line 25. She also suggested that line 33 should have an “including but not limited to” clause. In Part (b)(4)(A) line 5, Ms. Gruber asked if the Commission desires to broaden this to make it clear that facility staff also cannot withhold special foods, treats and rewards as a part of discipline/punishment. Chairperson Weinert stated that she wants the Commission to think about this and to be able to discuss the topic at the next meeting.

Ms. Gruber suggested that clarification is needed in Part (b)(4)(B) line 6 to define more broadly whether it is allowed to require children to clean up after themselves, either as a consequence of intentional behavior or as a part of teaching shared responsibility and cooperation. Vice Chairperson Campbell also asked for clarification in Part (b)(4)(A), line 5, regarding whether this rule meant that a child can be disciplined for behaviors by assigning chores that do not require contact with hazardous materials?

Chairperson Weinert requested that DCDEE staff, please distribute revised rules to Commission members as early as possible, to give the Commission as much time as possible to review the suggested changes before the meetings.

Chairperson Weinert adjourned the meeting at 4:00 p.m.

****This meeting date has been revised.**

**Next meeting - November 16-17, 2015 (Special Rules Meeting and Second Quarter Meeting)
Employee Center, 1101 Cafeteria Drive, Raleigh, NC 27603**

Future Meeting Dates:

February 8, 2016-Third Quarter Meeting

May 16, 2016-Fourth Quarter Meeting