

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

NORTH CAROLINA CHILD CARE COMMISSION

Special Meeting to Adopt Temporary Rules

Monday, October 5, 2020

Teleconference

Commission Members Present

Zac Everhart, Chairperson

Rhonda Rivers, Vice Chairperson

Sheresa Blanchard

Melissa Burroughs

Susan Butler-Staub

Brooke Child

Victor Coffenberry

J. Lanier DeGrella

Sharon Foster

Elizabeth Gilleland

Mitchell Gold

Kimberly J. McClure

Perry S. Melton

Beth Messersmith

Amelie Schoel

Iheoma Iruka Thompson

Janie R. Truesdale

Commission Members with an Excused Absence

Division of Child Development & Early Education Staff Present

Ariel Ford, Director

Kristi Snuggs, Deputy Director

Heather Laffler, Administration/Policy

Arlette Lambert, Administration/Policy

Dedra Alston, Administration/Policy

Rachel Kaplan, Administration/Policy

Tammy Barnes, Regulatory Services

Andrea Lewis, Regulatory Services

Lorie Pugh, Regulatory Services

Alison, Keisler, Regulatory Services

Regina Brooks, IT

Attorney General's Office Staff

John Green, Commission Attorney

Amber Davis, DCDEE Attorney

Sarah Tackett, DCDEE Attorney

Welcome

Chairperson Zac Everhart called the meeting to order at **9:07 a.m.** and reviewed housekeeping items.

Roll Call

Chairperson Everhart read the conflicts of interest statement and asked whether there were any conflicts noted for today.

Chairperson Everhart reviewed the agenda and discussed the materials and the processes by which the meeting will run via teleconference.

Chairperson Everhart welcomed the new Commission member in a citizen role, Ms. Brooke Child, and thanked Rev. Charles McDowell for his service on the Commission. He stated that Rev. McDowell received a "thank you" letter and certificate for his years of service.

Chairperson Everhart reviewed the evaluation letter received from the Ethics Commission that there is not a conflict of interest but a potential for conflict that does not interfere with participation on the Child Care Commission.

Ms. Child introduced herself and stated she has been in the world of child care since 2011 and that it is an honor to serve on the Commission. Ms. Dedra Alston conducted the swearing in of the new commission member, Ms. Child and conducted roll call.

Chairperson's Report

Chairperson Everhart thanked Rev. McDowell again for his service.

The following commission members have been reappointed until June 30, 2022:

Zac Everhart
Lanier DeGrella
Mitchell Gold
Beth Messersmith
Rhonda Rivers
Amelie Schoel
Iheoma Iruka Thompson

Approval of September 14, 2020 First Quarter WebEx Meeting Minutes

Commission Action: Chairperson Zac Everhart asked for approval of the September 14, 2020, First Quarter Meeting Minutes. Dr. Sharon Foster motioned for approval. Ms. Kimberly McClure seconded. The motion passed unanimously.

Director's Report-Ariel Ford

Director Ariel Ford announced that a member of the Division passed away unexpectedly, Ms. Diane Hilton, and Director Ford asked for a moment of silence.

Session Law 2020-97

DCDEE Impact Overview

- \$35,000,000 to DCDEE to provide **operational grants** to licensed child care providers
- \$6,000,000 **PPE**
- \$8,000,000 **school-age subsidy** for licensed school-age care and unlicensed CBO remote learning sites
- Development and execution of an inventory of **community-based organizations** hosting remote learning sites

Operational Grants

- \$35,000,000 to DCDEE to provide operational grants to licensed child care providers open or have reopened for in-person programming
- Per legislation, DCDEE is using the same formula which has previously been used
- This funding will be awarded over the next three months:
 - August, the provider will receive 75% of the amount received in previous months
 - September, the provider will receive 50% of the amount received in previous months
 - October, the provider will receive 25% of the amount received in previous months

Personal Protective Equipment & Cleaning Supplies

- \$6,000,000 PPE

- Order will be placed in the next few weeks
- Child care providers open prior to July 1st will receive a second shipment
- Child care providers who opened after July 1st will be included in this order.
- NC Pre-K programs open for in-person learning will receive the supplies.

Emergency School-Age Family Support Program

- \$8,000,000 school age subsidy for licensed school age care and unlicensed CBO remote learning sites
- Service months of October and November 2020
- Licensed child care facilities and unlicensed community-based organizations (CBO) that are registered are eligible
- Eligible families must be able to attest that their school-age child is
 - attending a child care facility or CBO for the purposes of remote learning **and**
 - the family's monthly household income must be at or below 200% of the Federal Poverty Level.
- Payment rates for this short-term program will be a flat rate
 - \$870 for licensed child care centers
 - \$645 for licensed family child care homes, and
 - \$516 for unlicensed CBOs

The [COVID-19 Community-Based Organization Remote Learning Facility Registration Form](#) is LIVE!!!

- CBOs allowed to provide remote learning facilities for school age children (enrolled in kindergarten and older) during the state of emergency.
 - Remote learning facility = a building or space used to house school-age children during the school year for the purpose of facilitating online or remote learning
- CBOs hosting remote learning sites required to complete a registration process. Completed registration forms will be posted on the DCDEE website.
- **Once a CBO submits a registration form, the applicant will receive a confirmation email indicating that the CBO is registered on the Remote Learning Site Inventory. CBOs must register with DCDEE in order to be in compliance with the requirements outlined in Session Law 2020-97.**

Subsidy Payments and Parent Fees

Beginning with September 2020 service month:

- DCDEE will pay subsidized child care providers using the payment process within NC FAST that was used prior to the onset of the COVID-19 Pandemic.
 - Payment for subsidized child care will be calculated based on attendance entered in the NC FAST Provider Portal.
- Parent fees for children 0-5 (not in kindergarten) will return to pre-COVID-19 structure.
- School age care for full-time remote learning will continue to be paid at 100%
 - Parents of school age children will pay the parent fee at the 83% rate
 - For September DCDEE will pay the differential in the parent fee between the 83% rate and the 100% rate for those attending for full time remote learning. This will be a separate payment.
- Detailed instructions on how to record attendance in the NC FAST Provider Portal has been provided through the Provider Portal Email Listserv.

Program Closures due to COVID-19

- Although DCDEE is returning to the usual payment cycle, it is understood that many facilities will have periods of time in which they are closed or have classrooms that are closed due to the COVID-

19 Pandemic or there will be subsidized children who are not able to attend a full month due to the need to quarantine.

- DCDEE will continue to pay subsidized child care providers for days that they are either closed or a child cannot attend due to the COVID-19 Pandemic.

Licensing Data Request Update

Director Ford stated that there will be a presentation of this data at the Second Quarter Commission Meeting in December 2020.

Commission Questions and Discussion:

Ms. Amelie Schoel asked what the PPE packages encompass. Deputy Director Kristi Snuggs responded that the shipments include masks, bleach, thermometers, batteries, paper towels, and hand sanitizer. Gloves and disinfectant wipes will be sent out.

Vice Chairperson Rhonda Rivers thanked the Division for its support with supplies. She expressed concerns about the stability of the workforce during the time of the pandemic. The bonus money for the teachers has ended and she is concerned that the workforce will deplete. She stated that we cannot afford to lose these teachers. She asked the Commission if they would consider hosting regional meetings to address these workforce issues, hearing their needs, and providing information about current resources. Director Ford responded that the Division is considering another round of workforce payments, depending on funding availability. She stated that she would support regional meetings.

Dr. Iheoma Iruka Thompson reaffirmed the need to hear from the workforce and examine the data as to who is benefitting across the state pre- and during COVID-19 and determining if there are inequities according to certain characteristics, such as region and race/ethnicity. Chairperson Everhart supports these efforts and stated that in addition to retaining the current workforce, there may be opportunities to recruit new workforce personnel.

Ms. Schoel stated the public schools are experiencing the same issues with maintaining the workforce.

Dr. Foster expressed concern for the winter season and asked if there is a uniform plan for dealing with potential overlapping symptoms of flu and colds with COVID. Director Ford stated that this guidance is currently provided, and updates will continue to be provided for the winter. Dr. Foster offered her assistance in this regard.

Deputy Director Snuggs reminded providers that they received communication as to how to record subsidy children so that providers can continue to be paid if children are absent due to COVID-19. She also stated that the election is very important in determining what further assistance may be provided.

Chairperson Everhart stated that he and Vice Chairperson Rhonda Rivers will collaborate with the Division about strategies going forward.

Ms. Truesdale asked if the providers who are private pay are eligible to receive funds for program closures; Director Ford stated that they are not.

Deputy Director Snuggs addressed a question from Ms. Child about parent fees. As of September 1, 2020, it is currently up to local providers to collect parent fees. There are no longer State funds available to pay for parent fees.

Discussion Regarding the Response for a Declaratory Ruling Submitted by Ms. Sylvia Corry

During the First Quarter Meeting on September 14, 2020, the Commission passed the following motion:

Commission Action:

Dr. Elizabeth Gilleland moved to call the question as to whether to grant or deny the petition for a request for a Declaratory Ruling. She motioned to deny the petition for a request for a Declaratory Ruling based on 1) The Rule cited in the violation was appropriate; 2) DCDEE properly applied the Rule to Ms. Corry's facts; and 3) The Commission does not have jurisdiction to grant an administrative hearing. Mr. Vic Coffenberry Seconded. Chairperson Everhart requested a roll call vote Ms. Alston conducted a roll call vote. The motion carried with 17 yeas and one abstention.

Chairperson Everhart stated that today's action is to draft the response letter, but, while they all feel compassion for Ms. Corry, the purpose of this meeting is not to re-debate the merits of the case but to draft the official letter.

Mr. John Green stated during the last meeting that an official response regarding the decision would need to be drafted. He drafted a response to which the Commission will discuss.

The Commission reviewed the draft of the official response.

***IN RE PETITION OF SYLVIA CORRY,
OWNER/DIRECTOR OF KIDS R
HOME CHILD DEVELOPMENT***

THIS MATTER came before the North Carolina Child Care Commission (the "Commission") during its 14 September 2020 meeting on Petition filed with the Commission on 12 August 2020 by Sylvia Corry, Owner/Director of Kids R Home Child Development ("Petitioner"). On 19 August 2020, the Commission voted to grant the Petitioner's request for this declaratory matter to be heard during its 14 September 2020 meeting. The Petitioner was promptly notified thereof and informed of her opportunity to be heard and present documents to the Commission, which she did during the hearing on 14 September 2020.

Pursuant to N.C. Gen. Stat. § 150B-4 and 10A NCAC 01A .0108, Petitioner petitions the Commission for a Declaratory Ruling regarding 10 NCAC 09 .1719(a)(7) and the application of the Rule by the Division of Child Development and Early Education (the "Division"). The Rule provides as follows:

10A NCAC 09 .1719 REQUIREMENTS FOR A SAFE INDOOR/OUTDOOR ENVIRONMENT

(a) The operator of a family child care home (operator) shall provide a physically safe and healthy indoor and outdoor environment that meets the developmental needs of children in care, including but not limited to the following:

(7) keep all corrosive agents, pesticides, bleaches, detergents, cleansers, polishes, any product that is under pressure in an aerosol dispenser, and any substance which may be hazardous to a child if ingested, inhaled, or handled shall be kept in its original container or in another labeled container, used according to the manufacturer's instructions, and stored in a locked area when not in use. Locked areas shall include those that are unlocked with a combination, electronic, or magnetic device, key, or equivalent locking device. These unlocking devices shall be kept out of the reach of a child and shall not be stored in the lock. Toxic substances shall be stored below or separate from medications and food. Any product not listed in this Paragraph that is labeled "keep out of reach of children" without any other warnings shall be kept inaccessible to children when not in use, but is not required to be kept in locked storage. The product shall be considered inaccessible to

children when stored on a shelf or in an unlocked cabinet that is mounted a minimum vertical distance of five feet above the finished floor; 10A NCAC 09 .1719(a)(7).

After reviewing the matter and fully considering the presentations, including comments and documents, the Commission declares that the Petitioner appears to be seeking an administrative hearing after her petition for such had been previously dismissed by the Office of Administrative Hearings and a similar result was issued by the Superior Court. Therefore, her Petition appears to be barred by the doctrines of res judicata and/or collateral estoppel.

In the event that such is not so barred, the Commission, in its discretion, and for good cause declares that the Rule is valid, applicable to the Petitioner, and properly applied to the Petitioner by the Division, and therefore denies the Petition.

This the 14th day of September, 2020.

The North Carolina Child Care Commission

Dr. Thompson asked about the reconciliation between the motion and the letter. The three items in the motion do not seem to be clearly stated in the letter. She wants the language that the Division “lacks jurisdiction” to be included. Dr. Lanier DeGrella suggested the language to include “lacks jurisdiction to grant administrative hearings”. Dr. Elizabeth Gilleland stated that this language will help individuals understand the statement for future reference.

Commission Action: **Ms. Amelie Schoel moved to approve the response with revisions. Dr. Lanier DeGrella Seconded. The motion carried unanimously.**

Commission Discussion

Chairperson Everhart reminded the Commission about the process of adopting the emergency and temporary rules. The temporary rules will remain in effect for 270 days after publication in the NC Register unless permanent rules to replace the temporary rules have been adopted and submitted to the Rules Review Commission before that date.

Chairperson Everhart stated that he feels that the Commission has done what they can do with the temporary rules; Vice Chairperson Rivers agreed. Ms. Beth Messersmith stated that she is uncomfortable with the lack of data concerning the effects of these temporary rules and whether there are parts of the State that are still underserved.

Vice Chairperson Rivers asked if there has been a decline in calls to the hotline. Director Ford stated the calls have declined slightly but they are still receiving calls. The new [COVID-19 Community-Based Organization Remote Learning Facility Registration Form](#) will reveal more data.

Ms. Messersmith stated that the Bureau of Labor Statistics revealed that a lot of women are being forced to leave the labor force, and this has a huge economic impact. Ms. Messersmith and Ms. Schoel expressed that there needs to be more attention to supporting people during this time.

Adopt Temporary Rules – 10A NCAC 09 .3101 - .3104

Commission Action: **Dr. Sharon Foster motioned for the Commission to adopt temporary rules .3101-.3104. Dr. Elizabeth Gilleland seconded. The motion passed unanimously.**

Chairperson Everhart thanked the Division for drafting and revising these temporary rules.

Ms. Alston reminded the Commission that in order to ensure the temporary rules remain in effect past the 270 days, they would need to work on the permanent rules. They would need to submit the permanent rules to Office of Administrative Hearings by late April or early May to have time to go through the permanent rulemaking process.

Dr. Foster stated that the discussion of the permanent Rules should be placed on the February agenda.

Chairperson Everhart adjourned the meeting at 10:30 a.m.

**The next meeting of the North Carolina Child Care Commission is December 7, 2020
from 9:00 a.m. - 2:00 p.m. (Second Quarter Meeting)**