

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

NORTH CAROLINA CHILD CARE COMMISSION

**Special Rules Meeting
Tuesday, June 27, 2017**

Dix Grill
1101 Cafeteria Drive
Employee Center
Raleigh, NC 27603

Commission Members Present

**Glenda Weinert, Chairperson
Zac Everhart, Vice Chairperson
Melanie Gayle
Elizabeth Gilleland
Lisa Humphreys**

**Brooke King
Kay Lowrance
Amelie Schoel
Linda Vandevender
William Walton, III**

Commission Members with an Excused Absence

**Elliott Blades
Laurie Morin
Donnette Thomas**

Division of Child Development and Early Education Staff Present

**Anna Carter, Director
Janice Fain, Administration/Policy
Dedra Alston, Administration/Policy
Heather Laffler, Administration/Policy
Branda Watford, Administration/Policy
Lorie Pugh, Regulatory Services
Cindy Wheeler, Early Education Branch**

**Andrea Lewis, Regulatory Services
Kimberly Mallady, Regulatory Services
Allison Keisler, Regulatory Services
Melissa Stevenson, Regulatory Services
Heather Marler, Workforce
Jenine Gatewood, NC Pre-K**

Attorney General's Office Staff

**Bethany Burgon, Commission Attorney
Alexi Gruber, DCDEE Attorney**

**Letitia Echols, DCDEE Attorney
Mercedes Restucha-Klem, DCDEE
Attorney**

Welcome—Chairperson Weinert called the meeting to order at **9:09 a.m.** and reviewed housekeeping items. Ms. Weinert called for roll call, Ms. Dedra Alston performed roll call. Chairperson Weinert listed the Commission members who were absent from this meeting who requested and received excused absences.

Chairperson Weinert read the conflicts of interest statement and asked whether there were any conflicts noted for today. There were no conflicts stated.

Chairperson Weinert explained that a subcommittee met to review 3 curricula and reviewed changes

- Curiosity Corner, Success for All
- Connect4Learning, Kaplan Early Learning Company
- StarFall Pre-K 4, StarFall Education Foundation

Chairperson Weinert said the recommendation to approve all of these curricula comes as a motion from the committee.

Approval of Re-reviewed curricula:

Commission Action: Chairperson Weinert asked for Commission approval of the committee's curriculum approval as recommended by the Curriculum Committee. The motion carried unanimously.

Review of Rules

Ms. Alexi Gruber began to review the proposed rule changes for family child care homes.

Rule changes:

- .1703 - revised on-going training requirements for family child care home (FCCH) providers to align with center staff requirements.
- .1707, beginning in line 35 - children are to be cared for in space designated as the caregiving area on a floor plan that the operator submits to DCDEE.
- .1709 - DCDEE staff recommends that the Division be allowed to inspect the entire premises of a FCCH prior to licensure. For visits after the initial licensure pre-inspection, DCDEE will only inspect the entire premises of the FCCH when there is probable cause for concern. Probable cause for extended inspection of the FCCH includes emergencies, investigating complaints, or reasonable evidence that children are being cared for or their presence is concealed in an undesignated space, or if DCDEE believes conditions in an undesignated space pose a risk to the health or safety of children in the designated care space. Ms. Schoel asked what would be conditions that may pose a risk? Ms. Gruber provided an example of a consultant hearing a dog barking during a visit when that operator does not have documentation of a pet in the home. This could be a possible risk to the children that the consultant could check. Commission members expressed support for this language change that addresses public comments.
- .3002, Facility Requirements – language added to the NC Pre-K rules that requires at least 45 minutes per day of outdoor time per day. This language was moved from center rules that were reviewed yesterday. Ms. Schoel asked for clarification about which programs this would apply to, based on the wording? Ms. Gruber suggested that the language could be clarified by changing the word 'programs' to 'classrooms' in line 35.

For a continuation of the rules review discussion Ms. Gruber referred the Commission back to the packet of rules provided to them in yesterday's meeting – starting on p. 97.

- .1708 - moves this rule to the beginning of Section .1700.
- .1710 - language changed for operator to not knowingly permit a person with a disqualifying conviction on the premises.
- .1718, p. 105 - DCDEE recommends deleting the requirement for posting written activity schedules, per public comment.
- .1719 p. 108 - Ms. Gruber pointed out that the requirement is for space to be non-smoking only during operating hours; also on p. 108 removed reference to “Caring for our Children” publication.
- .1720, p. 111 – aligns language with center requirements, based on public comment requesting clarification of mildly ill criteria.
- .1721, p. 119 – Chairperson Weinert referred to a comment she received that noted the requirement that a program's menu be included in the list of program records to be maintained on file within 30 days from its revision or replacement date; Ms. Gruber agreed that this requirement should be deleted.
- .1723, p. 122, line 16 - DCDEE recommends a fire extinguisher and first aid kit be present in the child care transportation vehicle, but are not required to be mounted (based on public comment).
- .1724, p. 123 – changed to mirror center language – prohibits swaddling, requires checks on infants to be conducted in-person.
- .1725, Sanitation, p. 126, line 3 – uses same language as for centers on how soiled reusable cloth diapers are to be handled.
- .1729, p. 129 - adds that facility transportation policy and identification of building and premises safety issues must be added to orientation topics.
- .1730, p.131 - adds language to allow “splashing in puddles” without a lifeguard. This change is consistent with what was changed for centers, in response to public comment.
- p. 130, line 13 - DCDEE recommends deleting the restriction for children under age 3 from participating in aquatic activities; this is in response to public comment.

Approval of FCCH Rules:

Commission Action:

Ms. Gayle made a motion to approve the Family Child Care Home rules as discussed and amended today. Ms. Lowrance seconded and the motion carried unanimously.

Chairperson Weinert expressed appreciation for everyone's efforts to work through the rules, ensuring that considering public comments were carefully considered and incorporated.

Review of Administrative Actions and Civil Penalties Rules

Ms. Gruber led a review of the proposed rule changes for administrative actions and civil penalties.

- .2101, p. 133 - corrected error in the chart; requires CPR, first aid and ITS SIDS training at religious sponsored facilities.

- Ms. Elizabeth Gilleland requested that after the Commission has completed its review of all rule changes that the group revisit the religious sponsored rules for specific discussion. Both she and Ms. Amelie Schoel expressed concerns with how some of these programs operate and the rules that govern them. Ms. Gilleland discussed making recommendations to influence Statute re: staff qualifications and corporal punishment. Ms. Anna Carter expressed openness from DCDEE about having this discussion as well. Ms. Gilleland expressed concerns, but also understanding that some of these rules cannot be changed only through the Commission, because of Statutory requirements. Ms. Burgon stated she would assist the Commission in drafting a letter to the General Assembly about this issue when the time is appropriate.
- .2214, p. 134 – The Commission asked for language to be added on line 10 that each violation be documented in terms of what penalties would be assessed; added safe environment on p. 37 to the list of non-compliance activities resulting in civil penalties up to \$100.
- Ms. Schoel asked about a comment made during the public comment period yesterday that 37 violations were cited, one for each child's records, at a facility. Ms. Gruber stated that without seeing the document in question, it would be difficult to reliably address the situation, but she explained that the Regulatory system cannot actually assign separate violations in this way. Ms. Gruber stated that the burden of proof for an Administrative Action is on the agency, so DCDEE must be very certain of the basis of violations in case they are contested. Ms. Gruber said there is also no financial incentive to DCDEE to assess civil penalties, because the resulting funds collected are not kept by the agency.

<p>The Commission took a break and reconvened at 10:15 a.m.</p>
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- .2510, p. 150, line 23 – tracks center and home rules to add transportation policies and identification of building and premise safety issues to topics required to be reviewed during orientation; p. 151, tracks changes with center and FCCCH rules re: CPR/first aid training being appropriate for the ages of children in care.
- .3002 rule already reviewed – adds language establishing minimum 45 minutes of outdoor time per day.
- .3007, p.157 – updates website address for NC Foundations for Early Learning and Development document.
- .3017, p. 163 - adds language related to process to be followed before suspending or expelling a child from the NC Pre-K program.
- Mr. Everhart asked if this change means that a provider is prohibited from sending a child home early for a day from a program because of behavioral issues? Ms. Cindy Wheeler stated that programs are expected to use other options to support the child other than removing the child from the program, particularly for children who may have social/emotion needs. There should be a plan available and a process followed to address these situations, although each case should be considered separately. Mr. Everhart asked about the ability to remove a child from a program or classroom when that child's behavior has been physically aggressive and may be putting staff or other children in danger? Ms. Wheeler stated that the NC Pre-K program serves NC's most vulnerable children, and some children may not have other placement options. Because of this she suggested providing an alternative placement – in the program – from the regular classroom during a

challenging time. Ms. Schoel asked what providers are expected to do in a moment of immediate concern? Ms. Wheeler explained the protocol that children with exceptional behaviors and other challenges, in private and public school Pre-K classrooms, should be addressed back through the school system's Exceptional Children's Program first. At that point, DCDEE staff should problem solve with the NC Pre-K contractor to determine the best course of action. Ms. Wheeler suggested that providers should maintain documentation of what has been done and what is planned to do in case of an emergent situation for a child who has presented issues. In response to this Mr. Everhart stated his concern that NC Pre-K providers also have responsibility for the safety and education of other children, and that those other parties and their well-being also must be considered. Chairperson Weinert stated that the language needs to be reconsidered. An audience member who is a Pre-K teacher talked about how similar situations are handled in the school setting using the CSFEL model and EC staff who can assist. She understands a physically aggressive child can be challenging, especially if there are other medically -or otherwise- fragile children in the classroom. Her experience agrees that this language and handling these situations is difficult.

- Angela Beacham spoke from the audience about her experience in developmental day programs with children with challenging behaviors, and she asked to speak to the intent of the language. She feels that it does not say a child *cannot* be sent home, but says that a provider is required to follow the steps in place to ensure procedure is followed to try to access resources for children prior to removing them from a classroom. She expressed concern that a child may not be diagnosed with special needs but that a referral for evaluation and assistance may be needed.
- Ms. Gilleland suggested the language should be tweaked to say that a provider must be working through an established process before taking any action to remove a child from a classroom.
- Ms. Linda Vandevender shared how she has utilized the assistance of EESLPD evaluator to help children learn how to self-regulate. She requested that these specialists be available and ready to provide assistance.
- Ms. Gruber suggested adding language that no child shall receive less than 6.5 hours of classroom time unless the child exhibits behavior that may harm other children, staff, or themselves, as a possible compromise for situations that arise. Mr. Everhart stated his feeling that this would address the concern. This language would allow the opportunity for steps to be followed that are described in the rule. Mr. Walton recommended not crafting rules so tightly that it becomes difficult to implement them. Ms. Gruber agreed it is a balance of developing rules to apply to all types of facilities, but it is helpful for Commission members to point out the impact of the language of the rules in actual care situations. Mr. Walton commended DCDEE staff for assisting in drafting appropriate language.
- Mr. Everhart requested that the language be clarified for the requirement or duration of the length of the NC Pre-K day. Ms. Gruber suggested changing the wording to "the full Pre-K school day" instead.
- Mr. Walton asked the Commission to review p. 148, the 30-minute time limitation for computer use for homework. Ms. Mallady explained there has been language added to allow the time to be extended.

Approval of Special Program Rules

Commission Action: Ms. Vandevender made a motion to adopt the Special Program rules as presented and amended today. Ms. Schoel seconded the motion and it was approved unanimously.

Commission Action: Ms. Gilleland made a motion to approve the fiscal note for center, FCCH, and Special Programs rules as long as the fiscal impact (pending OSBM approval) was reduced by the changes approved. Ms. Schoel seconded the motion and it was approved unanimously.

Review of Proposed Administrative Action (AA) Rules to be Published

Ms. Gruber asked Chairperson Weinert if it would be helpful for her to explain the administrative action process to the Commission prior to presenting this set of rules. Ms. Weinert agreed that it would and Ms. Gruber provided an overview of actions that impact a facility's license.

Process includes:

- Recommendation of an AA based on violations cited comes from consultant
- Recommendation is reviewed at Internal Review Panel (IRP) (DCDEE staff)
- Draft of administrative action to be taken is sent to provider, provider is provided with an opportunity to respond
- Provider's response is shared back with Internal Review Panel, along with field staff's (consultant and supervisor) input regarding the provider's response
- Final action agreed to by IRP and consultant/staff is issued to provider, with appeal rights to the Office of Administrative Hearings (OAH)
- Some providers may choose to have an attorney represent them, but this is not required – Ms. Gruber estimates 10-15% do employ an attorney
- If an appeal is requested, a hearing is scheduled with OAH

For actions not impacting a license (written warning or reprimand), those do not go through the IRP. Managers submit written warnings and reprimands to Ms. Tammy Barnes and an AA is taken. Written warnings and reprimands are also able to be appealed by the provider.

Ms. Gruber stated that the intent of the AA process is for the agency to be consistent in the process and to allow for mitigating factors to be considered in individual facility situations. Having received an overview of the administrative action process, the Commission is at the point of voting to publish rules related to AA.

- Rule .2201- adds language to list the administrative actions and civil penalties that may be taken by DCDEE. Beginning on line 27, lists the factors to be considered when determining the type of administrative penalty and states that providers have multiple opportunities for responding to proposed or final actions.

- Ms. Gruber explained that the penalty of allowing no new enrollment based upon an administrative action is only for special provisional licenses or violations pertaining to child maltreatment. DCDEE issues very few of these each year.
- p. 2, line 4 - provides description of criteria for when an AA or civil penalty may be issued. Requires a pattern or history of noncompliance or serious harm.
- p. 3 – operator must post documents received related to an AA issued so that parents and visitors can be aware.
- p. 4 – DCDEE will monitor a child care facility for compliance after an AA is issued; injunctive relief shall not be available for an AA that prohibits new enrollment or to stay termination of child care payments. If an operator fails to achieve compliance DCDEE may assess additional civil penalties or pursue other AAs.
- Chairperson Weinert asked what action the Commission needed to take at this meeting regarding the Administrative Action rules? Ms. Gruber responded that the Commission did not need to vote to publish rules today. A fiscal note will need to be prepared and reviewed before these rules are published. Chairperson Weinert would like for the Commission to have additional time to review the text and questions received from providers, noting that the questions were complex. Ms. Gruber agreed there was a lot of information in the proposed text, but noted that the current AA rules were vague and not helpful to providers; this is why detailed rule information is needed and has been added. She also noted that DCDEE is requesting input from the Commission on how to proceed with the rule text.
- Ms. Barnes noted to the Commission that DCDEE only issues around 400 AA per year and about 25-26 revocations /year for approximately 6500 licensed programs, so a small percentage of programs receive administrative actions or revocations.
- Commission members asked for additional information about AA based on a facility's history or pattern of non-compliance. Ms. Gruber explained this is considered over 18 months and that compliance must fall below 75%
- Chairperson Weinert asked Ms. Barnes whether data could be shared on the number of facilities with certain types of violations and administrative actions?
- Ms. Gruber explained the types of AA from least severe to most severe:
 - Written warnings, written reprimands
 - Provisional or probationary licenses
 - Suspension of license
 - Special provisional licenses – very serious, includes issues of child maltreatment
 - Revocations
 - Summary suspension – immediate revocation of license due to immediate safety issues
 - Civil penalties
- P. 16, .4001- establishes proposed penalties for child care trainers that falsify training records. Ms. Barnes noted that the intent of this rule is to clarify how DCDEE determines which AA is taken.
- Ms. Lowrance noted to staff that the text for AA was very well written to cover the complexity of the information and provide material that is more specific and needed.

Discussion of Future Commission meeting dates

Chairperson Weinert asked the Commission members to look at dates in September and December 2017 for future meetings.

The next scheduled meetings of the NC Child Care Commission are as follows:

September 25, 2017, 9:00 a.m.- 4:00 p.m. (First Quarter Meeting)

September 26, 2017, 9:00 a.m.- 4:00 p.m. (Special Rules Meeting)

December 11, 2017, 9:00 a.m.-4:00 p.m. (Second Quarter Meeting)

December 12, 2017, 9:00 a.m.-4:00 p.m. (Special Rules Meeting)

The meeting adjourned at 12:15 p.m.
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