

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

NORTH CAROLINA CHILD CARE COMMISSION

Special Rules Meeting
Tuesday, March 8, 2016
Dix Grill
1101 Cafeteria Drive
Employee Center
Raleigh, NC 27603

Commission Members Present

Glenda Weinert, Chairperson
Kevin Campbell, Vice Chairperson
Elliott Blades
Zac Everhart

Lisa Humphreys
Kay Lowrance
Linda Vandevender
Elizabeth Gilleland

Commission Members with an Excused Absence

Dr. Jonathan Brownlee, Sr.
Melanie Gayle
Charles F. McDowell III
Kristen Weaver

April Duvall
William Walton, III
Laurie Morin

Division of Child Development & Early Education Staff Present

Pam Shue, Director
Janice Fain, Administration/Policy
Dedra Alston, Administration/Policy
Heather Laffler, Administration/Policy
Tammy Barnes, Regulatory Services
Melodie Ford, Regulatory Services
Laura Hewitt, Regulatory Services

Mary Pat Hicks, NC Pre-K
Rachel Kaplan, NC Pre-K
Lorie Pugh, Regulatory Services
Andrea Lewis, Regulatory Services
Terry McCauley, Regulatory Services
Melissa Stevenson, 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 9:00 a.m. and reviewed housekeeping items. She expressed appreciation to Commission members for their attendance and welcomed everyone and discussed the meeting agenda. She read the conflict of interest statement and asked whether there were any conflicts noted for today. None were reported.

Chairperson Weinert asked for Commission roll call, which Ms. Dedra Alston performed. Chairperson Weinert noted the Commission members with excused absences: Dr. Jonathan Brownlee, Ms. April Duvall, Ms. Melanie Gayle, Rev. Charles McDowell, Mr. William Walton and Ms. Kristin Weaver.

Chairperson Weinert reminded the Commission that ethics training for all members must be completed by April 15. Members can be fined by Ethics Commission if they do not complete the training.

Ms. Lisa Humphreys asked for DCDEE staff to introduce themselves, which they did.

Curriculum Approval Process Discussion:

As a continuation from the previous day's discussion, Chairperson Weinert proposed that the publisher, Mr. Jerold Bryant (Frog Street) who has attended the previous three meetings and commented during the public comment period, be allowed to have his company's curriculum reviewed and approved through the existing (Commission member) committee process. However, Ms. Tammy Barnes and others expressed concern about this because there are a number (approximately 30) other publishers on a waiting list who have also submitted requests for their curriculums to be approved, who have been told that the Division is not processing curricula for review at this time.

Chairperson Weinert expressed concern that this publisher and curriculum appear to meet existing requirements and that its representative has participated in the previous several meetings. Ms. Linda Vandevender also expressed concern that there needs to be an interim process that would allow for additional curricula to be approved. Vice Chairperson Kevin Campbell stated his feeling that it is not fair to keep publishers waiting until the process is changed and the Commission needs to come up with a process, such as provisional approval, until a formal new process is implemented.

Ms. Humphreys asked for background history about why there is a lack of process for curriculum approval and Chairperson Weinert shared the history of the approval process and its change with the Commission. Chairperson Weinert volunteered to be a part of an ad-hoc committee to review curricula to determine whether it meets the approval standards of being evidenced based and containing a literacy component, if that were something the rest of the Commission supported.

Mr. Zac Everhart commended Chairperson Weinert for volunteering, but raised the issue that it is not just a current wait list of curricula that need to be reviewed, but any and all curricula that are submitted over the course of this year until new rules are in place, and potentially also new versions of currently approved curricula that would need to be processed. Ms. Elizabeth Gilleland stated that she did not think the Commission is responsible for meeting the timeline of publishers and that time should be spent on establishing the new process and not approving curricula by the old process, so that publishers are not delayed. Thoughtfully establishing a new process will benefit all providers.

Vice Chairperson Campbell expressed his concern that businesses are being punished for the Commission and the Division's failure to complete this process. He suggested that a provisional approval process based on reciprocity—e.g., if a curriculum is approved by two states, then it's provisionally approved in NC until the new process is in place—be established.

Mr. Everhart asked Director Shue her opinion on this option, and she expressed that the challenge with reviewing curricula is not in developing the criteria to be measured; it is in the amount of time and expertise needed to review all of the curriculum materials and determining who is responsible for that.

Ms. Barnes expressed concern about reciprocity because other states may have different requirements for child care than NC does. Ms. Burgon stated that if any type of reciprocity were implemented, curriculum publishers would have to submit statutes of the states in which they were approved to make sure that those requirements are in line with NC's criteria.

Ms. Hewitt expressed concern that child care programs who purchase provisionally approved curricula that are not ultimately fully approved (if that became the case) would be required to then purchase a new curriculum, and then additionally, those providers could be forced to purchase additional new curriculum materials every few years if the approval process were to continue changing.

Mr. Elliott Blades suggested that volunteers from the Commission break into three groups focusing on key issues associated with this discussion and return to the full Commission with recommendations; he volunteered to participate in one of the groups.

Ms. Gilleland is opposed to adding any curricula to the list at this point when her understanding is that the ultimate goal is to replace a rigid list with moving to a more natural approval process. However, she is open to the compromise to identify states with similar child care criteria, to provisionally approve curricula with the understanding that those will not necessarily be aligned with the new criteria and ultimately permanently approved. Chairperson Weinert asked if anyone knew what states might align with NC.

Ms. Gruber expressed two concerns with the idea of reciprocity: 1) the Statute requires the Commission to approve curricula—“shall review and approve”—and utilizing a reciprocity program entirely could potentially lead to problems if “provisionally approved” curricula do not ultimately get “approved”. She also reiterated the potential economic impact on child care programs that was mentioned by Ms. Hewitt previously.

Director Shue stated that the concept of reciprocity review and approval is a new arena for approving early childhood curricula and asked Ms. Cindy Wheeler to explain the Department of Public Instruction’s (DPI) process for the K-12 curricula. Ms. Wheeler explained that DPI has a standing appointed curriculum review commission that is financially supported by the Department and the curricula are aligned to specific standards; the standards are clearly laid out.

Chairperson Weinert reiterated Ms. Gruber’s point that the existing list of ‘approved’ curricula are all in essence provisional because they have not yet been proven to align with Foundations and they will also be required to be reviewed under the new process. Chairperson Weinert also maintained that centers are not likely to purchase new curricula just because new ones are on the list. She asked whether the Commission is willing to add curricula provisionally to the list if the curriculum has been approved by at least two other states, and if those states’ standards meet NC standards.

Ms. Vandevender stated that what is most important to her is learning how to use curricula and building capacity within the child care workforce. Ms. Kay Lowrance affirmed Ms. Vandevender’s sentiment and stated her belief that this is not an issue that the Commission compromise on. In her opinion, in many cases the quality of curricula are in the eye of the beholder, and what is important is getting qualified individuals in the classrooms to *use* curricula correctly.

Ms. Burgon proposed one possible solution to this problem could be delegating the approval process and having the Commission review recommendations that are submitted from that delegated body. Given the wide-ranging discussion of the Commission, Chairperson Weinert decided that it would not be prudent to move forward at this time with any alternative, temporary process and the Commission should focus its energy on expediting getting a new process in place.

Review Previous Section of Rules

10A NCAC 09 .0510 ACTIVITY AREAS

Based on the discussion from the March 7 meeting concerning screen time, Division staff proposed alternative language for Subparagraph .0510(d)(2) for the Commission to review and vote to accept.

.0510(d) When preschool children three years and older are in care the following apply:

(2) When screen time is provided on any electronic media device with a visual display, it shall be:

(a) offered to stimulate a developmental domain in accordance with the North Carolina Foundations for Early Learning and Development as referenced in this Section;

- (b) limited to a maximum of 30 minutes per day and no more than a total of two and a half hours per week per child; and
- (c) documented on a cumulative log or activity plan, and shall be available for review by a representative of the Division.

Chairperson Weinert read aloud a comment from Mr. William Walton asking the Commission to consider including language allowing screen time for teacher-directed activities because if a curriculum requires the use of a computer, the new language would limit the teacher's ability to fulfill the requirements of that plan of study. Ms. Gilleland clarified with Ms. Wheeler that there are no curricula that Ms. Wheeler is aware of that would be in conflict with a 30 minute a day screen time limit. She also reaffirmed that research literature supports that teacher-directed activities using media are **not** better than human interaction, without the additional use of media, at this stage of development. Vice Chairperson Campbell asked whether the log or activity plan referenced in the rule is for the classroom or for the child. Ms. Gruber stated that it was written to give the option of either, depending on the activity.

Commission Action:

Ms. Gilleland motioned to approve the changes as submitted by the Division on March 8, 2016. These rules address limits to screen time as written in Subparagraph .0510(d)(2). Ms. Lowrance seconded, and the motion passed unanimously.

Meeting break at 10:50 a.m., meeting reconvened at 11:00 a.m.

Review New Section of Rules

- **Transportation Standards (.1403)**
- **Staff Qualifications (.0701, .0702, .0703, and .0704)**
- **Health Standards for Children (.0801,.0802,.0803,.0804, and .0806)**
- **Nutrition Standards (.0901,.0902, and .0903)**

SECTION .1000—TRANSPORTATION STANDARDS

10A NCAC 09 .1403 AQUATIC ACTIVITIES

Ms. Gruber presented staff recommendations for aquatic activity rules.

Chairperson Weinert asked for clarification of possible discrepancy between Subparagraph

.1403(c) "Aquatic activities involving the following are prohibited:

- (5) natural bodies of water, and other unfiltered, non-disinfected containments of water."

and Subparagraph

.1403(n) "Children shall wear an age or size appropriate ~~life jacket~~ personal flotation device whenever they participate in boating, rafting or canoeing activities."

Chairperson Weinert asked how can boating, rafting or canoeing activities be performed if aquatic activities involving natural bodies of water are prohibited. The reconciliation of these two statements is that the intention is that children cannot be "**IN**" those bodies of water but they can be "**ON**" them.

Chairperson Weinert questioned the use of "an adult" with Subparagraph .1403(l)(4) "that swimming is allowed only when **an adult** is present;" because child care rules require that *at least* two adults be present

at all times during aquatic activities. She also asked whether changing the language from “pool” to “water” is necessary in Subparagraph .1403(g) “...If an uneven number of staff are needed to meet the required staff-child ratios, the majority shall be in the ~~pool.~~ water.” Ms. Gruber stated that there are other types of water besides a pool that children can be in.

Vice Chairperson Campbell requested that a more detailed description of “personal flotation device” be included in Subparagraph .1403(n) “Children shall wear an age or size appropriate ~~life jacket~~ personal flotation device whenever they participate in boating, rafting or canoeing activities.” After further discussion it was decided to include the words “Coast Guard approved” and to list the required type of device.

Commission Action: **Ms. Vandevender motioned to approve 10A NCAC 09 .1403 as amended. Mr. Blades seconded the motion, which carried unanimously.**

A brief discussion followed regarding reconciling the sanitation rule *prohibiting* recreational activities in water and water-based educational observation activities, e.g., observing tide pools, tadpoles, etc.

SECTION .0700—STAFF QUALIFICATIONS

10A NCAC 09 .0701 HEALTH STANDARDS FOR CHILD CARE PROVIDERS, SUBSTITUTE PROVIDERS, VOLUNTEERS, AND UNCOMPENSATED PROVIDERS

Ms. Gruber presented staff recommendations for revising this rule.

Chairperson Weinert asked the Commission to comment on whether members feel that 60 days is too long of a period of time regarding Subparagraph .0701(a) -

“All ~~personnel, employed by a child care center,~~ child care providers and uncompensated providers who are not substitute providers or volunteers, as defined in 10A NCAC 09 .0102, including the director, shall have on file within 60 days of the date of employment, a statement signed by a health care professional that indicates that the person is emotionally and physically fit to care for children. When submitted the medical statement shall not be older than 12 months.”

Because of possible difficulties for providers scheduling appointments with health care professionals, the Commission decided to leave the language as written allowing 60 days.

Vice Chairperson Campbell requested a table outlining all of the different records and forms that are required for child care staff, volunteers and others.

Ms. Vandevender asked to clarify in which situations staff are required to submit results of a completed TB test, per the established rule? In Subparagraph .0701(d) “~~A test showing each employee,~~ Prior to caring for children, all staff including the director, and individuals who volunteer more than once per week, to be shall be tested to ensure they are free of active tuberculosis. tuberculosis is required prior to employment.” The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to the date of employment.”

Lunch break at 11:45 a.m., meeting reconvened at 1:00 p.m.

Chairperson Weinert stated that the language in Subparagraph .0701(d) “Prior to caring for children, all staff including the director, and individuals who volunteer more than once per week, shall be tested to

ensure they are free of active tuberculosis.” should include provision for screening for TB because there might be instances where there are shortages of tests.

Mr. Everhart asked that the language in Subparagraph .0701(b) “Prior to the first day of work...” and Subparagraph .0701(h) “Prior to the first day of work...” be changed to “On or prior to the first day of work...”

Chairperson Weinert requested that the staff medical form referenced in Subparagraph .0701(g) separate the sections for diagnoses and medication.

10A NCAC 09 .0702 STANDARDS FOR SUBSTITUTES, VOLUNTEERS

Ms. Gruber presented staff recommendations. There were no further questions regarding these recommendations.

10A NCAC 09 .0703 GENERAL STATUTORY REQUIREMENTS

Ms. Gruber presented staff recommendations.

Mr. Blades asked about the definition of “child care providers” in Subparagraph .0703(a) “Child care providers, substitute providers and uncompensated providers counted toward meeting the staff/child ratio requirements set forth in Rules .0712 and .0713 of this Section shall meet the requirements of G.S. 110-91(8).” It was his understanding that the definition of “child care providers” in this situation already included substitutes and volunteers. Ms. Gruber stated that the rule was written this way because the Division was operating from the old definition of child care provider from the CRC statute that does not include other providers in its definition.

Vice Chairperson Campbell asked for clarification that Subparagraph .0703(c) is understood to be “or” and not “and”? “Within six months of an individual assuming lead teacher or child care administrator duties, each center shall maintain the following information in the individual’s staff record: (1) a copy of the credential certificate; (2) a copy of notification from the Division that the individual meets the equivalency or that the individual does not meet the equivalency and must enroll in coursework; (3) a dated copy of the request submitted by the individual to the Division for the assessment of equivalency status; or (4) documentation of enrollment in credential coursework.” Ms. Gruber explained that with Rule language, the “or” between Subparagraphs (3) and (4) implies “or” between all items in the list.

Vice Chairperson Campbell asked if what is meant by “equivalency” could be further clarified for Rule .0703(c)(2): “a copy of notification from the Division that the individual meets the equivalency or that the individual does not meet the equivalency and must enroll in coursework;”

Ms. Gruber stated that equivalency is a determination made by DCDEE according to individual situations, and there are too many specific scenarios and contingencies to list them in Rule language. Instead, a link will be provided to an equivalency chart which is posted on the DCDEE website.

10A NCAC 09 .0704 PRESERVICE REQUIREMENTS FOR ADMINISTRATORS

Ms. Gruber presented staff recommendations for this rule.

Vice Chairperson Campbell referenced .0704(b) “An administrator who does not meet the requirements of Paragraph (a) of this Rule may share the requirements of Paragraph (a) of this Rule with another individual, provided that prior to exercising child caring responsibilities, the individual who is responsible for planning and implementing the daily program at the center, to comply with Sections .0500 and .0600 of this Chapter, shall be a full-time staff member on-site who meets Subparagraphs (a)(1) and (2) of this Rule, and the other individual shall meet Subparagraph (a)(3) of the Rule and be either on-site or off-site.”

His question to the Division was whether one can achieve the equivalent of a Level III qualification combining the qualifications of two individuals. Ms. Pugh replied that this combination equivalent is not available. Vice Chairperson Campbell voiced concern that one should look at the synergy between the two people. Ms. Gilleland suggested that perhaps this could be a rule adjustment when the Commission addresses the section of rules which address quality measures.

Ms. Gilleland suggested separating out teacher and administrators within Rule .0704 with reference to how determinations are made. Ms. Gruber said Division will work on proposed language and present those suggestions to the Commission.

SECTION .0800—HEALTH STANDARDS FOR CHILDREN

10A NCAC 09 .0801 APPLICATION FOR ENROLLMENT

Ms. Gruber presented staff recommendations for this rule.

Mr. Blades commented that proposed Subparagraph .0801(b)(3) “Use the information provided on the application to ensure that each individual child’s needs are met during the time the child is in care” seems very broad and vague. Ms. Gruber stated that this references information outlined previously in Subparagraphs .0801(a)(1) through (7): (1) “Emergency medical information...;” (2) “The child’s full name and the name the child is to be called;” (3) “The child’s date of birth;” (4) “Any allergies, symptoms of allergies...;” (5) “Health care needs or concerns;” (6) “Particular fears, or unique behavior characteristics that the child has; and” (7) “The names of individuals to who the center may release the child as authorized by the person who signs the application.”

Mr. Everhart suggested language to clarify that it is the information from the application, not the physical application itself discussed in proposed Subparagraph .0801(b)(2) “Have the application readily available and easily accessible to caregiving staff during the time the children are in care; and.” that should be easily accessible to caregiving staff. He asked that the language be changed to clarify that the information to which it is referring is listed in Rule .0801(a)(1) through (7): (1) “Emergency medical information...;” (2) “The child’s full name and the name the child is to be called;” (3) “The child’s date of birth;” (4) “Any allergies, symptoms of allergies...;” (5) “Health care needs or concerns;” (6) “Particular fears, or unique behavior characteristics that the child has; and” (7) “The names of individuals to who the center may release the child as authorized by the person who signs the application.”

Ms. Gilleland suggested a change in the terminology used in Subparagraph .0801(a)(4) from “.....type of response required for allergies;” to “action plan” or “care plan.”

10A NCAC 09 .0802 EMERGENCY MEDICAL CARE

Ms. Gruber presented staff recommendations for this rule.

Chairperson Weinert inquired about proposed Subparagraph .0802(a)(2) “Designation of a means of transportation always available for use in the event of a medical emergency.” She stated that it was her understanding that the provider was *always* supposed to call 911 and never to transport a child for medical care. It was determined that the statement should be removed altogether. In addition, it was determined that Part .0802(a)(3)(C) should be changed from “Immediate transportation of the child to a designated medical resource for appropriate treatment;” to “Call 911.”

Chairperson Weinert asked whether Subparagraph (a)(4) should require “the name of the person or the alternate” and Ms. Gruber responded in the affirmative.

Ms. Lowrance suggested changing .0802(b) from “At least one person identified in Paragraph (a) of this Rule shall:” to “At least one person identified as the person or alternate responsible for carrying out the plan of action, ensuring that appropriate medical care is given shall:”

Ms. Gilleland advised removing the language of allowing a family to choose a “preferred hospital” in Subparagraph .0802(c) because if a provider calls 911, ambulance protocol is to take the child to the closest available hospital.

Ms. Lowrance suggested removing language in Subparagraph .0802(c) from “any chronic illness the individual has” to “any chronic illness.”

10A NCAC 09 .0803 ADMINISTERING MEDICATION

Chairperson Weinert addressed the public comment from Ms. Sarah Vidrine of NC Child and Ms. Kelly Close of NC Early Childhood Oral Health Collaborative from the March 7th (previous day) meeting regarding administration of medication. Ms. Vidrine and Ms. Close sent a letter dated March 1, 2016 to the Commission concerning fluoride toothpaste use in children less than 2 years of age and stated that dental decay is the most common chronic childhood disease and has serious impact on children’s health. Ms. Vidrine and Close requested that a rule amendment or clarification is needed to allow that children under age two have access comparable to children over age two to fluoridated toothpaste. Because toothpaste labels advise “ask a dentist for children under two years of age,” child care providers have been directed to treat toothpaste as a prescription medication in that age category.

Rule .0803(13) requires that child care providers document each administration of over-the-counter or prescription medication. However, Subparagraph .0803(7) provides a list of over-the-counter products that may be used without a prescription. Inclusion of fluoridated toothpaste in this list would greatly reduce the burden on providers and increase access to tooth-brushing for young children.

In response, Chairperson Weinert proposed a revised change in language to Subparagraph .0803(7):

“a parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders—such as sunscreen, diapering creams, baby lotion, and baby powder—to a child, when needed” to include fluoridated toothpaste to the list.

Ms. Gruber presented staff recommendations for Rule .0803 including fluoridated toothpaste in the allowed list.

Ms. Vandevender asked where in the rule the Commission could add that those who administer medications must go through training; Ms. Gruber stated that the Division will propose and present this language to the Commission at its next meeting. Vice Chairperson Campbell asked whether such training would be paid for (or provided free of charge) by the State, and Ms. Barnes replied that at this point it would not.

Ms. Gilleland inquired as to whether there should be a conceptual separation in the rules for administering medication and administering emergency medical assistance.

10A NCAC 09 .0804 INFECTIOUS AND CONTAGIOUS DISEASES

Ms. Gruber presented staff recommendations for this rule.

Mr. Everhart asked for a definition of “mildly ill” as it is referenced in Subparagraph .0804(b) “Centers that choose to provide care for mildly ill children shall.” Ms. Pugh responded that a child qualifies as mildly ill if they do not have any of the 11 symptoms listed in Subparagraph .0804(a)(1) through (11).

10A NCAC 09 .0806 TOILETING, CLOTHING AND LINENS

Ms. Gruber presented staff recommendations for this rule. There were no questions regarding the recommendations.

SECTION .0900 NUTRITION STANDARDS**10A NCAC 09 .0901 GENERAL NUTRITION REQUIREMENTS**

Ms. Gruber presented staff recommendations for this rule.

Mr. Blades expressed confusion over proposed Subparagraphs .0901(d)(1) through (4) regarding the definition of ‘opting out’ of the availability of supplemental food or beverage being provided from the child care provider. Ms. Gruber expressed that the Division agrees that this usage may be confusing to providers and others, but that requirement and phrasing is included in General Statute and the Division is attempting to present what is required as simply as possible.

Vice Chairperson Campbell requested that proposed Subparagraph .0901(d) include “When a child’s parent opts out of the supplemental food provided by the center, a signed statement acknowledging the parental decision shall be kept in the child’s file at the center and that a copy be provided to the parent.”

Ms. Humphreys and Ms. Gilleland expressed concern with proposed Subparagraph .0901(i); “Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as ~~cookies, chips, cupcakes, cakes, donuts, etc.~~, shall be available only for special occasions such as holidays, birthdays, and other celebrations.” The two members suggested removing the items altogether and prohibiting their being shared in child care. Chairperson Weinert and others disagreed, feeling that this would be unnecessarily limiting choice for parents and providers.

10A NCAC 09 .0902 GENERAL NUTRITION REQUIREMENTS FOR INFANTS

Ms. Gruber presented staff recommendations for this rule. There were no questions regarding the recommendations.

10A NCAC 09 .0903 REQUIREMENTS FOR CHILDREN AGED 24 MONTHS AND OLDER

Ms. Gruber presented staff recommendations for this rule, and Vice Chairperson Campbell expressed appreciation for the chart that was added to this rule to help clarify requirements.

Chairperson Weinert issued a reminder to Commission members that they are required to complete annual ethics training by the established deadline.

Future Special Rules Meeting dates

Chairperson Weinert stated that the next Quarterly and Special Rules Meetings will be held on May 16 and 17, 2016.

Chairperson Weinert adjourned the meeting at 3:00 p.m.

Next Meeting Dates:

May 16, 2016, 9:00 a.m.-4:00 p.m., Fourth Quarter Meeting
 May 17, 2016, 9:00 a.m.-4:00 p.m., Special Rules Meeting

Location: Dix Grill, 1101 Cafeteria Drive, Employee Center, Raleigh, NC 27603

Future Meeting Dates: July 25, 2016 - First Quarter Meeting; July 26, 2016 - Special Rules Meeting