

## Burgos, Alexander N

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**Subject:** FW: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

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**From:** Peck, Julie C <julie.peck@dhhs.nc.gov>  
**Sent:** Monday, October 21, 2024 5:42 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Amber I <aidavis@ncdoj.gov>  
**Subject:** RE: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Mr. Liebman,

Thank you for the additional review and for confirming you will be recommending approval.

Please let us know if there is anything further needed prior to the RRC meeting next week.

Thanks,

Julie

**Julie Peck**  
Lead Policy Advisor  
Division of Child Development and Early Education, Office of the Director  
[NC Department of Health and Human Services](#)  
[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)  
Pronouns: she / her / hers

DCDEE Office  
333 Six Forks Road  
Raleigh, NC 27609

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2201 Mail Service Center  
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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, October 21, 2024 5:07 PM

**To:** Peck, Julie C <[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Davis, Amber I <[aidavis@ncdoj.gov](mailto:aidavis@ncdoj.gov)>

**Subject:** RE: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Julie,

I think as revised, the rule is OK. I would like to see a clearer definition of “early childhood partner”, but I think as written, the rule probably isn’t ambiguous anymore.

Since you’ve already sent the rule to oah.rules, I’ll just let our staff know the rule is final and I’ll be recommending approval.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713  
**Attachments:** 10.2024 - Child Care Commission Request for Changes 10 18 24.docx; 10A NCAC 09 .0713.docx

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**From:** Peck, Julie C <julie.peck@dhhs.nc.gov>  
**Sent:** Friday, October 18, 2024 12:38 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Amber I <aidavis@ncdoj.gov>  
**Subject:** RE: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Mr. Liebman,

The updated Request for Changes document and Rule are attached. Please let us know if you have additional questions or concerns.

Thank you,

Julie

**Julie Peck**  
Lead Policy Advisor  
Division of Child Development and Early Education, Office of the Director  
[NC Department of Health and Human Services](#)  
[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)  
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Child Care Commission

RULE CITATION: 10A NCAC 09 .0713

**DEADLINE FOR RECEIPT: Tuesday, October 15, 2024.**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*At both (a)(9) and (e)(1) and (2) the Rule allows the operator to choose whether to post the name of the adult who has agreed to provide emergency relief, or to simply have a second adult on the premises. However, in G.S. 110-91(7)(a)(2)II, the statute directs that “when only one caregiver is required to meet the staff-child ratio, the operator **shall** make available to parents the name, address, and phone number of an adult who is nearby and available for emergency relief.” It appears to me that to the extent the Rule permits the operator to simply bring a second adult on the premises for emergency relief without providing the parents with the name, address, and phone number of that person, the Rule is without statutory authority.*

We have updated the rule to remove the second option from these subsections.

*In (a)(7), line 22-23, what are “other duties that are not direct child care responsibilities”? Are these defined elsewhere?*

They are not defined. These duties are a part of a caregiver’s day, but are not “direct caregiving”. So, they may not involve the child or his/her needs, but are necessary supportive tasks. For example, cleaning/sanitizing, activity planning or set up, and communicating with families. We have updated the rule to include some examples.

*In (a)(8), line 28, the “and” seems to be misplaced, I think it should go after (a)(9).*

Thank you for this suggestion. We have corrected.

*In (a)(9), p.2, line 3, does “an adult” mean any adult? Must they meet the requirements in G.S. 110-91(8)?*

Yes, it means any adult. For emergency relief, they do not have to meet the requirements in GS 110-91(8).

Brian Liebman  
Commission Counsel

Date submitted to agency: October 1, 2024

*On line 13, it says “(b)(1).” This is improperly formatted, please correct per our formatting rules.*

Thank you. We have updated the formatting.

*In the table under (b)(1), there is no “Maximum Group Size” as there is in the other tables. Just wanted to confirm this is intentional.*

Thank you. Yes, this is intentional.

*In the table under (b)(1), please define “school-age children” in both the 0-12 Months and 12-24 Months row.*

Updated rule to include a reference to .0102(43).

*Would it not violate (a)(5) and (6) to allow “school-age children” (assuming they are over 2 years old) to be grouped in with children under the age of two?*

If a provider is operating pursuant to (b), they do not have to meet the standards in (a). We have updated the formatting to help clarify that subparagraphs (c), (d), and (e) apply to programs operating pursuant to (b).

*In (c), line 17, does “Paragraph (b)” refer to (b) or (b)(1) or both?*

It was intended to refer to both. We have updated the formatting and the reference to clarify.

*In (c)(1), p.3, line 6, does “an adult” mean any adult? Must they meet the requirements in G.S. 110-91(8)?*

We believe you’re looking at current (e)(1). But, yes, it means any adult. For emergency relief, they do not have to meet the requirements in GS 110-91(8).

*In (c)(1), line 7, define “reasonable time”.*

We have removed this language from the Rule.

*In (f), line 10, does this apply to any center, including those in residential settings?*

Centers in a residence are allowed to operate with multi-age groups, consistent with the limitations in (b). Subparagraph (f) is for centers not operating in a residence.

*In (f)(1), line 16, can you provide more specifics on the written notification? Who must make the notification? Is there a particular street address or email address where the notification must be sent?*

The center operator should make the notification. We have updated the rule to reflect that written notification should be made to the facility's child care consultant.

What is a child care consultant? I didn't see reference to this in your rules or statutes. I looked it up on your website, and I found a reference to "your area's lead child care consultant" and a link, ostensibly to a list of these consultants, but the link was dead.

Here's a link to the page where I found the dead link, for your reference.

<https://www.ncdhhs.gov/providers/licensure/facility-licensure/child-development-and-early-education>

Child Care Consultants are Division employees whose primary purpose is to ensure that child care facilities are in compliance with child care requirements. Lead consultants work with potential operators during the pre-licensure process and assist them with licensure and the first six months of operation.

Thank you for the information regarding the website. The broken link you reference is maintained by DHHS, but we will let them know the link is no longer active. If helpful, the lead consultant link on the DCDEE website is working and can be found here:

<https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/L/Lead%20Child%20Care%20Consultant%20Contact%20List-Rv%209.6.24.pdf?ver=HBMcA99tgymUfpPm0CQ2bA%3d%3d&timestamp=1727964002140>.

We have updated the language to require that notice be sent to the Division.

*In (f)(3), line 19, what classroom? Is this different from being in the center generally?*

This refers to the classroom where the child is currently enrolled. And yes, it's referring to a specific classroom within the center.

*In (f)(3), line 19, please define "infants".*

We've updated to include a reference to .0102(25).

Thanks for the cross-reference. You have a small typo on line 27, where it says "ine" instead of "in."

We've corrected, thank you.

*In (f)(3), line 20, can you provide further detail regarding the “transition plan”? A transition from what to what?*

The family, family engagement coordinator (could be titled different in each facility), and other advocates for the child work together to determine the next place for care. In an early Head Start program that is referenced as a transition plan. The next place of care may be Head Start, traditional center, NC PreK, etc. It is a term used and understood among child care providers.

I'm sure it's understood, but the term “transition plan” isn't defined in your rule, so it is open to interpretation as to what you're requiring. Thus, the requirement is ambiguous.

We disagree that “transition plan” is ambiguous. However, we've updated the language to clarify.

Additionally, for centers grouping the children in multi-age groups under the table in (d), (d)(2) says that paragraphs (a)-(c) don't apply except for (a)(7)-(9). Thus, the prohibition in (a)(5) doesn't apply here. So why do children between 36-47 months old need a transition plan to stay in the classroom? Going further, can a child over 47 months be in the classroom with an infant without a transition plan?

Multi-age groupings allow for children 0-36 months to be grouped together. According to the grouping chart, a child 37 months or older should not be in the classroom. Once this subsection was adopted, though, there was a concern raised about children in this setting that turn 3 during the school year when there is no older classroom to move them to. So, an exception was created to allow for the child to remain in the classroom for a temporary period, with a limitation of moving programs prior to reaching age 4. The “exception” only applies to children 35-47 months. Any child over 47 months would not be in a classroom with infants, so would not need not need a transition plan.

For some background, (f)(3) was adopted in response to a petition from the operator of an Early Head Start program, who only cares for children ages 0-3 years. These programs follow the school calendar and enroll children each August. The Early Head Start was concerned with being out of compliance with the allowed groupings due to a child turning three during the school year and there not being an opening immediately available in a Head Start program. The Commission decided that there should be an exception and children could remain enrolled at the Early Head Start for a brief period, until they could be transitioned to another program. Which is where the collaboration with the facility, the parent, and the early childhood partner comes in- in most scenarios, the partner is Head Start.

If (a)(1) doesn't apply, what would the appropriate staff to child ratio be for a group of either 0-36 month children or 12-36 month children that includes a 40 month old child?

If it is a group of 0-36 month children with a 40 month old, the ratio would be 1/4.

If a group of 12-36 month children with 40 month old, the ratio would be 1/5. We have added language to clarify this requirement.

I'm a little concerned about the statutory authority for this provision, as well. Below, I'm quoting from G.S. 110-91:

(7) Staff-Child Ratio and Capacity for Child Care Facilities. – In determining the staff-child ratio in child care facilities, all children younger than 13 years old shall be counted.

- a. The Commission shall adopt rules for child care centers regarding staff-child ratios, group sizes and **multi-age groupings other than for infants and toddlers**, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

I can't lay hands on the session law referenced here right away, so maybe there is something in there that provides support, but the highlighted portion of your statute seems to suggest that you cannot allow multi-age groups for infants (0-12 months) and toddlers (12-35 months). Can you address?

If helpful, here a link to the Session Law referenced:

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/1985-1986/SL1985-757.html>

Notably, when 110-91(7) addressed programs licensed for less than 30 children, which is the type of program that utilize this multi-age grouping, there was no age limitation on the grouping of children. We recognize, however, that (f) is not limited to programs licensed for less than 30. Would it address your concern to add that limitation for who can group multi-age children?

*In (f)(3), line 21, what is a "local partner"?*

Head Start, Public School, Family Engagement Coordinator, etc. It is a term that is used and understood among child care providers.

I'm sure it's understood, but it isn't defined in your rule, so according to the letter of your rule, the facility, the parents, the county liquor store, and the nearby Home Depot could get together to decide where the child should be cared for after leaving the facility, as long as the facility and the parents agree that the liquor store and the Home Depot are both "local" and "partners". The term is entirely subjective and is subject to objection under 150B-21.9(a)(2) for ambiguity. To avoid a staff opinion, please define the term, addressing both the "local" and "partner" concepts within the term.

Respectfully, we disagree that, in context, it could be interpreted as including a liquor store or Home Depot. Regardless, we have updated the language to clarify.

Brian Liebman  
Commission Counsel

Date submitted to agency: October 1, 2024

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: October 1, 2024

10A NCAC 09 .0713 is amended as published in 39:01 NCR 14-16 as follows:

**10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS**

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

- (1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) children of all ages may be cared for together in groups for the first and last operating hour of the day, provided the staff/child ratio for the youngest child in the group is maintained;
- (3) a child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate;
- (4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;
- (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;
- (6) except as provided in Subparagraph (2) of this Paragraph, children between the ages of 12 months and 24 months shall not be grouped with older children unless all children in the group are less than three years of age;
- (7) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties such as cleaning, activity planning and set up, or communication with families, that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;
- (8) except as provided in Subparagraph (7) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not

concurrently perform food preparation or other duties that are not direct child care responsibilities;

and

- (9) when only one caregiver is required to meet the staff/child ratio, the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; and the operator shall select one of the following options for emergency relief:

(A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or

(B) there shall be a second adult on the premises who is available to provide emergency relief.

- (10) the staff/child ratio applicable to a classroom as described in this Paragraph shall be posted in that classroom in an area that parents are able to view at all times.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool age child is enrolled, or with a licensed capacity of 3 13 to 15 children when only school age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5 preschool children plus three additional school-age children	<u>10</u>
12 to 24 Months	1/6 preschool children plus two additional school-age children	<u>12</u>
2 to 13 Years	1/10	<u>15</u>
3 to 13 Years	1/12 <u>15</u>	<u>15</u>
All school-age	1/15	

~~(b) (1) (c)~~ The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children are as follows:

Age of Children	Ratio Staff/Children
<u>0 to 12 Months</u>	<u>1/5 preschool children plus three additional school-age</u> <u>[children] children, as defined in 10A NCAC 09 .0102(43)</u>
<u>12 to 24 Months</u>	<u>1/6 preschool children plus two additional school-age</u> <u>[children] children, as defined in 10A NCAC 09 .0102(43)</u>
<u>2 to 13 Years</u>	<u>1/10</u>
<u>3 to 13 Years</u>	<u>1/12</u>

(e) (1) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) and (c) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.

(d) (2) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) and (c) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties such as cleaning, activity planning and set up, or communication with families that are not direct child care responsibilities; and

(e) (3) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) or (c) of this Rule, the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief. Rule the operator shall select one of the following options for emergency relief:

(1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief, and who can respond within a reasonable period of time; or

(2) there shall be a second adult on the premises who is available to provide emergency relief.

(f) (d) Upon the Division's receipt of a written request, a center may choose to group children in multi-age groups rather than single-aged groups. The staff/child ratios and group sizes for multi-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 36 months	1/4	8
12 months to 36 months	1/5	10
24 months to 47 months	1/6	10
4 years of age to 6 years of age	1/9	18
6 years of age through 12 years of age	1/19	25

(1) Before meeting the ratios outlined in this Paragraph or before changing from multi-age group ratios to single-age group ratios, the operator must notify the Division in writing by mailing a notice to the Division at 2201 Mail Service Center, Raleigh, North Carolina 27699-2200; Division must be notified in writing;

(2) Paragraphs (a) through (e) (c) of this Rule do not apply to centers that choose to meet the ratios outlined in this Paragraph, with the exception of Subparagraphs (a)(7), (8) and (9) of this Rule;

(3) Children 36 months through 47 months may remain in the classroom with infants infants, as defined in 10A NCAC 09 .0102(25), provided there is an agreed upon transition plan between the child care facility, the child's parents or legal guardian, and a local partners early childhood partner, such as Head Start, public school, or family engagement coordinator, for transitioning the child to if the

1 ~~plan includes~~ future care outside of the center. ~~Transition plans~~ This plan for future care must be  
2 initiated at least six months prior to a child's third birthday, maintained in each child's file, and be  
3 available for review by the ~~Division;~~ Division. When a child age 35 through 47 months remains in  
4 the classroom pursuant to this subparagraph, the staff/child ratio for the youngest child in the group  
5 shall be maintained for the entire group; and

- 6 (4) The staff/child ratio applicable for a multi-age group as described in this Paragraph shall be posted  
7 in that classroom in an area that parents are able to view at all times.  
8

9 *History Note: Authority G.S. 110-85; 110-91(7); 143B-168.3;*

10 *Eff. December 1, 1988;*

11 *Amended Eff. January 1, 2006; July 1, 1998; July 1, 1994; January 1, 1992; August 1, 1990;*  
12 *November 1, 1989;*

13 *Readopted Eff. October 1, 2017;*

14 *Amended Eff. November 1, 2024; July 1, 2023; February 1, 2021.*  
15  
16

## Burgos, Alexander N

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Hi Mr. Liebman,

Thank you for sending these additional follow ups for the change request document. Amber and I are reviewing and working to address in consultation with DCDEE's Regulatory Section and will let you know if we think we may not be able to complete by tomorrow.

Thanks,

Julie

**Julie Peck**  
Lead Policy Advisor  
Division of Child Development and Early Education, Office of the Director  
[NC Department of Health and Human Services](#)  
[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)  
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Hi Julie,

Thanks for sending me the changes. I am OK with almost everything, but continue to have concerns about what is now paragraph (d). I've attached the change request document with my follow ups in red.

Per our new rules, we're trying to have all requests for changes resolved by the 2<sup>nd</sup> Friday before the meeting, which would be this Friday, 10/18. If you don't think you can meet that deadline, let me know.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Child Care Commission

RULE CITATION: 10A NCAC 09 .0713

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We have updated the rule to remove the second option from these subsections.

*In (a)(7), line 22-23, what are “other duties that are not direct child care responsibilities”? Are these defined elsewhere?*

They are not defined. These duties are a part of a caregiver’s day, but are not “direct caregiving”. So, they may not involve the child or his/her needs, but are necessary supportive tasks. For example, cleaning/sanitizing, activity planning or set up, and communicating with families. We have updated the rule to include some examples.

*In (a)(8), line 28, the “and” seems to be misplaced, I think it should go after (a)(9).*

Thank you for this suggestion. We have corrected.

*In (a)(9), p.2, line 3, does “an adult” mean any adult? Must they meet the requirements in G.S. 110-91(8)?*

Yes, it means any adult. For emergency relief, they do not have to meet the requirements in GS 110-91(8).

Brian Liebman  
Commission Counsel

Date submitted to agency: October 1, 2024

*On line 13, it says “(b)(1).” This is improperly formatted, please correct per our formatting rules.*

Thank you. We have updated the formatting.

*In the table under (b)(1), there is no “Maximum Group Size” as there is in the other tables. Just wanted to confirm this is intentional.*

Thank you. Yes, this is intentional.

*In the table under (b)(1), please define “school-age children” in both the 0-12 Months and 12-24 Months row.*

Updated rule to include a reference to .0102(43).

*Would it not violate (a)(5) and (6) to allow “school-age children” (assuming they are over 2 years old) to be grouped in with children under the age of two?*

If a provider is operating pursuant to (b), they do not have to meet the standards in (a). We have updated the formatting to help clarify that subparagraphs (c), (d), and (e) apply to programs operating pursuant to (b).

*In (c), line 17, does “Paragraph (b)” refer to (b) or (b)(1) or both?*

It was intended to refer to both. We have updated the formatting and the reference to clarify.

*In (c)(1), p.3, line 6, does “an adult” mean any adult? Must they meet the requirements in G.S. 110-91(8)?*

We believe you’re looking at current (e)(1). But, yes, it means any adult. For emergency relief, they do not have to meet the requirements in GS 110-91(8).

*In (c)(1), line 7, define “reasonable time”.*

We have removed this language from the Rule.

*In (f), line 10, does this apply to any center, including those in residential settings?*

Centers in a residence are allowed to operate with multi-age groups, consistent with the limitations in (b). Subparagraph (f) is for centers not operating in a residence.

*In (f)(1), line 16, can you provide more specifics on the written notification? Who must make the notification? Is there a particular street address or email address where the notification must be sent?*

The center operator should make the notification. We have updated the rule to reflect that written notification should be made to the facility's child care consultant.

What is a child care consultant? I didn't see reference to this in your rules or statutes. I looked it up on your website, and I found a reference to "your area's lead child care consultant" and a link, ostensibly to a list of these consultants, but the link was dead.

Here's a link to the page where I found the dead link, for your reference.

<https://www.ncdhhs.gov/providers/licensure/facility-licensure/child-development-and-early-education>

*In (f)(3), line 19, what classroom? Is this different from being in the center generally?*

This refers to the classroom where the child is currently enrolled. And yes, it's referring to a specific classroom within the center.

*In (f)(3), line 19, please define "infants".*

We've updated to include a reference to .0102(25).

Thanks for the cross-reference. You have a small typo on line 27, where it says "ine" instead of "in."

*In (f)(3), line 20, can you provide further detail regarding the "transition plan"? A transition from what to what?*

The family, family engagement coordinator (could be titled different in each facility), and other advocates for the child work together to determine the next place for care. In an early Head Start program that is referenced as a transition plan. The next place of care may be Head Start, traditional center, NC PreK, etc. It is a term used and understood among child care providers.

I'm sure it's understood, but the term "transition plan" isn't defined in your rule, so it is open to interpretation as to what you're requiring. Thus, the requirement is ambiguous.

Additionally, for centers grouping the children in multi-age groups under the table in (d), (d)(2) says that paragraphs (a)-(c) don't apply except for (a)(7)-(9). Thus, the prohibition in (a)(5) doesn't apply here. So why do children between 36-47 months old need a transition plan to stay in the classroom? Going further, can a child over 47 months be in the classroom with an infant without a transition plan?

If (a)(1) doesn't apply, what would the appropriate staff to child ratio be for a group of either 0-36 month children or 12-36 month children that includes a 40 month old child?

I'm a little concerned about the statutory authority for this provision, as well. Below, I'm quoting from G.S. 110-91:

(7) Staff-Child Ratio and Capacity for Child Care Facilities. – In determining the staff-child ratio in child care facilities, all children younger than 13 years old shall be counted.

- a. The Commission shall adopt rules for child care centers regarding staff-child ratios, group sizes and multi-age groupings other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

I can't lay hands on the session law referenced here right away, so maybe there is something in there that provides support, but the highlighted portion of your statute seems to suggest that you cannot allow multi-age groups for infants (0-12 months) and toddlers (12-35 months). Can you address?

*In (f)(3), line 21, what is a "local partner"?*

Head Start, Public School, Family Engagement Coordinator, etc. It is a term that is used and understood among child care providers.

I'm sure it's understood, but it isn't defined in your rule, so according to the letter of your rule, the facility, the parents, the county liquor store, and the nearby Home Depot could get together to decide where the child should be cared for after leaving the facility, as long as the facility and the parents agree that the liquor store and the Home Depot are both "local" and "partners". The term is entirely subjective and is subject to objection under 150B-21.9(a)(2) for ambiguity. To avoid a staff opinion, please define the term, addressing both the "local" and "partner" concepts within the term.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

## Burgos, Alexander N

---

**Subject:** FW: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713  
**Attachments:** 10.2024 - Child Care Commission Request for Changes 10 15 24.docx; 10A NCAC 09 .0713..docx

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**From:** Peck, Julie C <julie.peck@dhhs.nc.gov>  
**Sent:** Tuesday, October 15, 2024 3:10 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Amber I <aidavis@ncdoj.gov>  
**Subject:** RE: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Mr. Liebman,

Attached please find notes and technical changes for the Child Care Rule 10A NCAC 09 .0713 previously submitted to RRC.

Please let us know if you have any additional questions or concerns.

Thank you for your assistance,

Julie

**Julie Peck**

Lead Policy Advisor

Division of Child Development and Early Education, Office of the Director

[NC Department of Health and Human Services](#)

[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)

Pronouns: she / her / hers

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Raleigh, NC 27699-2200

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## **Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

### **Note the following general instructions:**

1. You must submit the revised rule via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day;, and”
  - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:  
[www.ncoah.com/rules/examples.html](http://www.ncoah.com/rules/examples.html)

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Child Care Commission

RULE CITATION: 10A NCAC 09 .0713

**DEADLINE FOR RECEIPT: Tuesday, October 15, 2024.**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*At both (a)(9) and (e)(1) and (2) the Rule allows the operator to choose whether to post the name of the adult who has agreed to provide emergency relief, or to simply have a second adult on the premises. However, in G.S. 110-91(7)(a)(2)II, the statute directs that “when only one caregiver is required to meet the staff-child ratio, the operator **shall** make available to parents the name, address, and phone number of an adult who is nearby and available for emergency relief.” It appears to me that to the extent the Rule permits the operator to simply bring a second adult on the premises for emergency relief without providing the parents with the name, address, and phone number of that person, the Rule is without statutory authority.*

We have updated the rule to remove the second option from these subsections.

*In (a)(7), line 22-23, what are “other duties that are not direct child care responsibilities”? Are these defined elsewhere?*

They are not defined. These duties are a part of a caregiver’s day, but are not “direct caregiving”. So, they may not involve the child or his/her needs, but are necessary supportive tasks. For example, cleaning/sanitizing, activity planning or set up, and communicating with families. We have updated the rule to include some examples.

*In (a)(8), line 28, the “and” seems to be misplaced, I think it should go after (a)(9).*

Thank you for this suggestion. We have corrected.

*In (a)(9), p.2, line 3, does “an adult” mean any adult? Must they meet the requirements in G.S. 110-91(8)?*

Yes, it means any adult. For emergency relief, they do not have to meet the requirements in GS 110-91(8).

*On line 13, it says “(b)(1).” This is improperly formatted, please correct per our formatting rules.*

Thank you. We have updated the formatting.

*In the table under (b)(1), there is no “Maximum Group Size” as there is in the other tables. Just wanted to confirm this is intentional.*

Thank you. Yes, this is intentional.

*In the table under (b)(1), please define “school-age children” in both the 0-12 Months and 12-24 Months row.*

Updated rule to include a reference to .0102(43).

*Would it not violate (a)(5) and (6) to allow “school-age children” (assuming they are over 2 years old) to be grouped in with children under the age of two?*

If a provider is operating pursuant to (b), they do not have to meet the standards in (a). We have updated the formatting to help clarify that subparagraphs (c), (d), and (e) apply to programs operating pursuant to (b).

*In (c), line 17, does “Paragraph (b)” refer to (b) or (b)(1) or both?*

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We have removed this language from the Rule.

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Centers in a residence are allowed to operate with multi-age groups, consistent with the limitations in (b). Subparagraph (f) is for centers not operating in a residence.

*In (f)(1), line 16, can you provide more specifics on the written notification? Who must make the notification? Is there a particular street address or email address where the notification must be sent?*

The center operator should make the notification. We have updated the rule to reflect that written notification should be made to the facility's child care consultant.

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*In (f)(3), line 21, what is a "local partner"?*

Head Start, Public School, Family Engagement Coordinator, etc. It is a term that is used and understood among child care providers.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

10A NCAC 09 .0713 is amended as published in 39:01 NCR 14-16 as follows:

**10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS**

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

- (1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) children of all ages may be cared for together in groups for the first and last operating hour of the day, provided the staff/child ratio for the youngest child in the group is maintained;
- (3) a child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate;
- (4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;
- (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;
- (6) except as provided in Subparagraph (2) of this Paragraph, children between the ages of 12 months and 24 months shall not be grouped with older children unless all children in the group are less than three years of age;
- (7) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties such as cleaning, activity planning and set up, or communication with families, that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;
- (8) except as provided in Subparagraph (7) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not

concurrently perform food preparation or other duties that are not direct child care responsibilities;

and

- (9) when only one caregiver is required to meet the staff/child ratio, the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; and the operator shall select one of the following options for emergency relief:

(A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or

(B) there shall be a second adult on the premises who is available to provide emergency relief.

- (10) the staff/child ratio applicable to a classroom as described in this Paragraph shall be posted in that classroom in an area that parents are able to view at all times.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool age child is enrolled, or with a licensed capacity of 3 13 to 15 children when only school age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5 preschool children plus three additional school-age children	<u>10</u>
12 to 24 Months	1/6 preschool children plus two additional school-age children	<u>12</u>
2 to 13 Years	1/10	<u>15</u>
3 to 13 Years	1/12 <u>15</u>	<u>15</u>
All school-age	1/15	

~~(b) (1) (c)~~ The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children are as follows:

Age of Children	Ratio Staff/Children
<u>0 to 12 Months</u>	<u>1/5 preschool children plus three additional school-age</u> <u>[children] children, as defined in 10A NCAC 09 .0102(43)</u>
<u>12 to 24 Months</u>	<u>1/6 preschool children plus two additional school-age</u> <u>[children] children, as defined in 10A NCAC 09 .0102(43)</u>
<u>2 to 13 Years</u>	<u>1/10</u>
<u>3 to 13 Years</u>	<u>1/12</u>

(e) (1) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) and (c) of this Rule shall be posted in that classroom in an area that parents are able to view at all times:

(d) (2) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) and (c) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties such as cleaning, activity planning and set up, or communication with families that are not direct child care responsibilities; and

(e) (3) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) or (c) of this Rule, the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief. Rule the operator shall select one of the following options for emergency relief:

(1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief, and who can respond within a reasonable period of time; or

(2) there shall be a second adult on the premises who is available to provide emergency relief.

(f) (d) Upon the Division's receipt of a written request, a center may choose to group children in multi-age groups rather than single-aged groups. The staff/child ratios and group sizes for multi-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 36 months	1/4	8
12 months to 36 months	1/5	10
24 months to 47 months	1/6	10
4 years of age to 6 years of age	1/9	18
6 years of age through 12 years of age	1/19	25

(1) Before meeting the ratios outlined in this Paragraph or before changing from multi-age group ratios to single-age group ratios, the operator must notify the facility's child care consultant in writing by email or by mailing a notice to the consultant, c/o the Division, 2201 Mail Service Center, Raleigh, North Carolina 27699-2200; Division must be notified in writing;

(2) Paragraphs (a) through (e) (c) of this Rule do not apply to centers that choose to meet the ratios outlined in this Paragraph, with the exception of Subparagraphs (a)(7), (8) and (9) of this Rule;

(3) Children 36 months through 47 months may remain in the classroom with infants infants, as defined in 10A NCAC 09 .0102(25), provided there is an agreed upon transition plan between the child care facility, the child's parents or legal guardian, and local partners if the plan includes future care

1 outside of the center. Transition plans must be initiated at least six months prior to a child's third  
2 birthday, maintained in each child's file, and be available for review by the Division; and

- 3 (4) The staff/child ratio applicable for a multi-age group as described in this Paragraph shall be posted  
4 in that classroom in an area that parents are able to view at all times.

5  
6 *History Note: Authority G.S. 110-85; 110-91(7); 143B-168.3;*  
7 *Eff. December 1, 1988;*  
8 *Amended Eff. January 1, 2006; July 1, 1998; July 1, 1994; January 1, 1992; August 1, 1990;*  
9 *November 1, 1989;*  
10 *Readopted Eff. October 1, 2017;*  
11 *Amended Eff. November 1, 2024; July 1, 2023; February 1, 2021.*  
12  
13

## Burgos, Alexander N

---

**From:** Peck, Julie C  
**Sent:** Tuesday, October 1, 2024 2:19 PM  
**To:** Liebman, Brian R; Davis, Amber I  
**Cc:** Burgos, Alexander N  
**Subject:** RE: October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Good Afternoon,

Thank you for sharing this information with Request for Changes. I am adding in DCDEE's assigned attorney [@Davis, Amber I](#) also and we will let you know any questions or concerns.

Thanks,

Julie

**Julie Peck**

Lead Policy Advisor

Division of Child Development and Early Education, Office of the Director

[NC Department of Health and Human Services](#)

[julie.peck@dhhs.nc.gov](mailto:julie.peck@dhhs.nc.gov)

Pronouns: she / her / hers

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, October 1, 2024 1:00 PM  
**To:** Peck, Julie C <julie.peck@dhhs.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** October 2024 RRC - Request for Changes - 10A NCAC 09 .0713

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Child Care Commission for the October 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, October 30, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Tuesday, October 15, 2024.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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