

Burgos, Alexander N

Subject: FW: RFC for Child Care Commission at RRC June 2023

Alexander Burgos

Paralegal

Office of Administrative Hearings

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From: Alston, Dedra <dedra.alston@dhhs.nc.gov>

Sent: Friday, June 2, 2023 4:11 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: RFC for Child Care Commission at RRC June 2023

Thank you! Have a good weekend!

Dedra

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Friday, June 2, 2023 3:11 PM

To: Alston, Dedra <dedra.alston@dhhs.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: RFC for Child Care Commission at RRC June 2023

Thanks Dedra,

I've reviewed your updates and at this point anticipate recommending approval at June's meeting. I'll update you if anything changes.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: RFC for Child Care Commission at RRC June 2023
Attachments: June 2023 Child Care Commission RFC (003)_AK AID.docx; 10A NCAC 09 .0713.docx; 10A NCAC 09 .2809.docx

From: Alston, Dedra <dedra.alston@dhhs.nc.gov>
Sent: Friday, June 2, 2023 7:53 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Child Care Commission at RRC June 2023

Hi Seth,
I've attached the technical change requests with responses to your questions and the two rules with changes.

Amber Davis AlDavis@ncdoj.gov and Alison Keisler alison.keisler@dhhs.nc.gov would like to receive invites to the meeting.

Let me know if you need anything else.

Thank you,
Dedra

1 **10A NCAC 09 .0713 is amended with changes as published in 37:14 NCR 978-980 as follows:**

2

3 **10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS**

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

5

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

6

7 (1) when combining age groups, the staff/child ratio for the youngest child in the group shall be
8 maintained for the entire group;

9 (2) children of all ages may be cared for together in groups for the first and last operating hour of the
10 day, provided the staff/child ratio for the youngest child in the group is maintained;

11 (3) a child two years of age and older may be placed with children under one year of age when a
12 physician certifies that the developmental age of the child makes this placement appropriate;

13 (4) when determined to be developmentally appropriate by the operator and parent, a child age two or
14 older may be placed one age level above his or her chronological age without affecting the staff/child
15 ratio for that group. This provision shall be limited to one child per group;

16 (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age
17 shall be kept separate from children two years of age and over;

18 (6) **except as provided in Subparagraph (2) of this Paragraph,** children between the ages of 12 months
19 and 24 months shall not be grouped with older children unless all children in the group are less than
20 three years of age;

21 (7) when only one caregiver is required to meet the staff/child ratio and no children under two years of
22 age are in care, that caregiver may concurrently perform food preparation or other duties that are
23 not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC
24 09 .1801 is maintained;

25 (8) except as provided in Subparagraph (7) of this Paragraph, staff members and child care
26 administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not
27 concurrently perform food preparation or other duties that are not direct child care responsibilities;
28 and

29 (9) when only one caregiver is required to meet the staff/child ratio, the operator shall select one of the
30 following options for emergency relief:

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

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

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

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

9

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

10

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

13 (d) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described
14 in Paragraph (b) of this Rule and children under two years of age are in care, that person shall not concurrently perform
15 food preparation or other duties that are not direct child care responsibilities.

16 (e) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described
17 in Paragraph (b) of this Rule the operator shall select one of the following options for emergency relief:

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

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

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

25

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 36 months 3 years of age	1/4	8
12 months to 36 months	1/5	10

24 months to 47 60 months	1/6	10
<u>4 years of age to 6 years of age</u>	<u>1/9</u>	<u>18</u>
<u>6 years of age through 12 years of age</u>	<u>1/19</u>	<u>25</u>

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- (1) Before meeting the ratios outlined in this Paragraph or before changing from multi-age group ratios to single-age group ratios, the Division must be notified in writing;
- (2) Paragraphs (a) through (e) of this Rule do not apply to centers that choose to meet the ratios outlined in this ~~Paragraph~~; and 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 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 outside of the center. Transition plans must be initiated at least six months prior to a child’s third 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 in that classroom in an area that parents are able to view at all times.

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

1 **10A NCAC 09 .2809 is amended with changes as published in 37:14 NCR 980 as follows:**

2

3 **10A NCAC 09 .2809 ENHANCED SPACE REQUIREMENTS**

4 (a) There shall be at least 30 square feet inside space per child per the total licensed capacity and ~~75~~ 100 square
5 feet outside space for ~~one-third of the total number of the capacity for which the center is licensed.~~ each child
6 using the outdoor learning environment at any one time. ~~In the alternative there shall be at least 35 square feet~~
7 ~~inside space per child per the total licensed capacity and 75 square feet outside space per child for the total licensed~~
8 ~~capacity.~~

9 (b) There shall be an area that can be arranged for administrative and private conference activities.

10

11 *History Note:* Authority G.S. 110-88(7); 110-90(4); ~~143B-68.3;~~ 143B-168.3;

12 *Eff. April 1, 1999;*

13 *Prior to amendment of May 1, 2006 this language was located in Rule .1604;*

14 *Amended Eff. May 1, 2006;*

15 *Readopted Eff. March 1, 2019;*

16 *Amended Eff. July 1, 2023; February 1, 2021*

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

AGENCY: Child Care Commission

RULE CITATION: 10 A NCAC 09 .0713

DEADLINE FOR RECEIPT: June 9, 2023

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:

There is some potential ambiguity in the interaction between (a)(1) through (a)(6). The following three questions relate to that ambiguity.

As written, age groups can be combined unless this rule limits such combination. Is this correct? Yes, generally that is correct, but the corresponding Subparagraphs do not always limit, rather, they clarify what types of age groupings are allowable outside of the standard staff/child ratio and group size.

Subparagraph (4) appears to be an exception to subparagraph (1) and not a limitation on combining age groups two and older. Stated another way, there is nothing prohibiting placing children aged two and older with older age groups if that staff/child ratio for the youngest child is maintained. Is that correct? Yes, with consideration to developmental appropriateness of moving the child. If considered an option of what age groupings are allowable it is an exception to subparagraph (1). Subparagraph (4) does not require the staff/child ratio for the youngest age child to be maintained. The subparagraph limits this option to one child per group.

It is unclear whether subparagraph (2) or (6) controls if they conflict. If the agency intends (2) to control consider "except as provided in Subparagraph (2) of this Paragraph, children. . ." (2) controls if it is the first or last operating hour of the day so I agree with adding this language to the beginning of subparagraph (6)

Paragraph (b) seems to indicate that residential pre-school aged childcare is only licensed for 3 to 12 students and that residential school age childcare is only licensed for 3 to 15 students. Are those limitations elsewhere in rule or statute? Correct. This paragraph is referencing the staff/child ratios for centers located in a residence. The statute that supports this paragraph in rule is G.S. 110-91(7)(2). In addition to the references within .0713, centers located in a residence with a licensed capacity of 3 to 12 and 3 to 15 is also noted in .0604(h); .0703(e); .1402(d). There are other references in rule specific to centers located in a residence with a licensed capacity of 3 to 12. Those references are: .0510(3); .2802(e); and .2819(e).

Seth Ascher

Commission Counsel

Date submitted to agency: May 30, 2023

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

Seth Ascher
Commission Counsel
Date submitted to agency: May 30, 2023

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

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .2513

DEADLINE FOR RECEIPT: June 9, 2023

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:

It appears to me that the second sentence of G.S. 110-86(2)i. is an example of the broader category established in the first sentence, and that this rule clarifies only the second sentence. Is this correct? Correct

Stated another way, "Cooperative arrangements among parents to provide care for their own children as a convenience rather for employment" are statutorily not childcare regardless of whether they address "instructional needs." Is this correct? Correct

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

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

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .2809

DEADLINE FOR RECEIPT: June 9, 2023

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:

In your submission you state that "this amendment corrects a conflict with another rule." What is that rule?

This rule corrects the conflict with rule .1402 by reinstating more stringent outdoor enhanced space requirements into Rule .2809.

*In the history note on line 11, 143B-68.3 does not exist. This may be a typo and you mean 143B-168.3. Please correct. **Corrected***

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

Burgos, Alexander N

From: Alston, Dedra
Sent: Tuesday, May 30, 2023 12:58 PM
To: Ascher, Seth M; Peck, Julie C
Cc: Burgos, Alexander N
Subject: RE: RFC for Child Care Commission at RRC June 2023

Thank you.

Dedra

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, May 30, 2023 12:41 PM
To: Alston, Dedra <dedra.alston@dhhs.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RFC for Child Care Commission at RRC June 2023

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Child Care Commission for the June 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 15, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on June 9, 2023.

Please note that I am currently planning to be out of the office the week of June 5. In the meantime, please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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