

Burgos, Alexander N

Subject: FW: [External] Re: Request for Changes Child Care Commission November Rules
Attachments: 10A NCAC 09 .1707 12 13 23.docx

From: Davis, Amber <AIDavis@ncdoj.gov>
Sent: Wednesday, December 13, 2023 10:15 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Request for Changes Child Care Commission November Rules

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Mr. Ascher,

Thank you so much for your time and assistance. I'm not sure if this is helpful or not, but we do not have any issue with the technical change you've suggested for .1707, so I've updated the language in subsection (5) and attached.

I plan to attend tomorrow in the event the Commission decides to take these up this week, but please feel free to reach out with any additional questions.

Thank you again,
Amber

10A NCAC 09 .1707 is amended with changes as published in 37:24 NCR 2216-2217 as follows:

10A NCAC 09 .1707 BUILDING REQUIREMENTS

The applicant shall ensure that the family child care home complies with the following requirements:

- (1) all children are kept on the ground level of exit discharge; ~~with an exit at grade~~;
- (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~; 130A-131.7(7) and asbestos hazards;
- (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5) heating appliances shall be installed and maintained according to the NC Building Code; any North Carolina Building Code provisions governing the building;
- (6) all indoor areas used by children are heated when the indoor temperature is below 65 degrees and ventilated when the indoor temperature is above 85 degrees;
- (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (8) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children.

History Note: Authority G.S. 110-85; ~~110-86(3)~~; 110-91; 143B-168.3; S.L. 2021-180; 45 CFR 98.41; Eff. October 1, 2017; Amended Eff. November 1, 2023; February 1, 2021.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Wednesday, December 13, 2023 9:53 AM
To: Davis, Amber <AlDavis@ncdoj.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Request for Changes Child Care Commission November Rules

Amber,

The previous version of this opinion had a typo listing the wrong agency in the header. I have updated the opinion to correct the typo. I apologize for any confusion.

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: [External] Re: Request for Changes Child Care Commission November Rules
Attachments: G.S. 110-91.pdf; S.L. 2021-180.pdf; Staff Opinion 10A NCAC 09 .0601, .1707, .1725 .doc

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, December 12, 2023 5:29 PM
To: Davis, Amber I <aidavis@ncdoj.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Request for Changes Child Care Commission November Rules

Amber,

Attached is a staff opinion I am issuing regarding three of the Child Care Commissions rules. Ultimately, I am recommending approval (with a slight technical correction to .1725) but the statutory authority issues were such that I wanted to lay them before the RRC. For the rules not covered by the staff opinion, I anticipate recommending approval as well.

Note that because the Commission granted an extension in November, the RRC has until January's meeting to act on these rules. It is possible that the Commission will want to delay a final determination until then in order to fully consider the issues, but that is something they would decide at Thursday's meeting.

Let me know if you have any questions.

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: [External] Re: Request for Changes Child Care Commission November Rules
Attachments: Child Care Commission RFC.docx; 10A NCAC 09 .0102 12 5 23.docx; 10A NCAC 09 .0601 12 5 23.docx; 10A NCAC 09 .1707 12 5 23.docx; 10A NCAC 09 .1725 12 5 23.docx; 10A NCAC 09 .2204 12 5 23.docx; 10A NCAC 09 .2209 12 5 23.docx; 10A NCAC 09 .2611 12 5 23.docx; 10A NCAC 09 .2612 12 5 23.docx; 10A NCAC 09 .2613 12 5 23.docx; 10A NCAC 09 .2614 12 5 23.docx; 10A NCAC 09 .2615 12 5 23.docx; 10A NCAC 09 .2616 12 5 23.docx

From: Davis, Amber <AIDavis@ncdoj.gov>
Sent: Friday, December 8, 2023 9:25 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>
Subject: [External] Re: Request for Changes Child Care Commission November Rules

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Mr. Ascher,

Attached please find notes and technical changes for the Child Care Rules previously submitted to RRC. Please let me know if you have any additional questions or concerns.

Thank you for your assistance,
Amber



Amber I. Davis
Assistant Attorney General
Division of Child Development and Early Education
Phone: 919.814.6376
aidavis@ncdoj.gov
ncdoj.gov Please note messages to or from this address may be public records.

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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Wednesday, November 8, 2023 12:03 PM
To: Peck, Julie C <julie.peck@dhhs.nc.gov>
Subject: Request for Changes Child Care Commission November Rules

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Child Care Commission for the November 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 16, 2023, at 9:00 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 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 invites out to them as well.

Attached is the Request 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 November 9, 2023. I recognize that it may not be possible to turn around a response in that limited timeframe. If the Child Care Commission would like to request an extension on the consideration of these rules, I would have no problem recommending the RRC grant that extensions and we can discuss a different timeline.

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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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. 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:
<https://www.oah.nc.gov/rule-format-examples>

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .0102

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

Certainly, the Commission has more specific authority in G.S. 110-88, S.L. 2022-71 Sec. 1.1(a)-(e), and S.L. 2021-180 Sec. 9G.8.(a)-(d) to make the proposed revisions to .0102, but we also include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met and where these children are cared for by qualified persons of good moral character. We have added addition authority to the history note.

On lines 4 and 5, the phrase "except when the context of the rule requires a different meaning" appears to be vague. How would someone know if the context requires a different meaning?

We believe the Division and the public would know that a different meaning should be applied based on the context and language of the rule. That said, we are not aware of any place in the rules where a different meaning is used and have removed this language from .0102.

*On line 24, remove the first comma, "~~G.S. 110-86(2)~~, **G.S. 110-86(2)** that".*

Thank you for this recommendation. The language has been updated.

G.S. 150B-21.6 allows the incorporations of "a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association." Are the materials incorporated in items (14), (16), (18), (26), and (42) "standards adopted by a generally recognized organization or association"?

Yes, the materials incorporated in (14), (16), (18), (26), and (42) are standards adopted by generally recognized organizations or associations. Specifically, the North Carolina Foundations Task Force and Environment Rating Scales Institute are organizations generally recognized in child care. For background, the use of

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

environment rating scales is a widely accepted method of evaluating and improving the quality of home and center-based programs globally.

On p. 3, line 6, family child care homes care are defined as caring for less than nine children. It appears that S.L. 2023-134 Sec. 9D.10(a) changed the number of children in a family child care home to less than 10. Why doesn't this need to match?

Thank you for this comment. We agree that the definition of family child care home in 10A NCAC 09 .0102 will need to be updated to match the law. Notably, the process to amend 10A NCAC 09 .0102 as submitted predates the enactment of S.L. 2023-134 on October 3, 2023, going back to October 2022, with the Child Care Commission voting to publish the amended rule and fiscal note on May 15, 2023 and voting to adopt the amended rule on September 18, 2023. Additionally, there is an inconsistency between S.L. 2023-134 Sec. 9D.10(a), which references “less than 10 children”, and Sec. 9D.10(b), which contemplates “a maximum of 10 children” that complicates the task of defining a family child care home. For your awareness, the Division intends to request additional changes to law for the purpose of clarifying the updated capacity for a family child care home. Once addressed, the Commission intends to pursue rulemaking to update the definition and other rules that will likely be required, including an option to be licensed for less than nine children or more than nine children, as that threshold triggers additional requirements under the Building Code.

On p. 4, line 31, what does it mean for coursework to be “substantially equivalent”?

There are several ways that Lead Teacher equivalency options are determined, including legislative requests or updates to MOA/MOUs. DCDEE also reviews the need for additional equivalency options based on current trends in coursework/degrees offered or in the face of a public health crisis as we did with COVID-19, or when there is a request for additional nationally accredited credential certificates to be counted as equivalency.

On p. 5, line 17, you use the phrase “substantially equivalent”, but on line 18 you describe “equivalent coursework.” Should line 18 be “Substantially ~~Equivalent~~ equivalent coursework”? Or is there a difference I am missing?

Thank you for this recommendation. The language has been updated.

On p. 5, line 19, “include, but not be limited to” suggests that there are additional requirements beyond lines 20 through 29. What are those requirements?

For clarification, lines 20-29 describe alternative pathways to earning the North Carolina Early Childhood Credential as contemplated in S.L. 2022-71, Part I, rather than listing additional requirements. The language, “include, but not limited to” in line 19 is intended to inform providers that the list is not exhaustive and that the Division may determine other equivalences are appropriate, as contemplated in S.L. 2022-71, Sec. 1.1(c).

On p. 6, line 35, you have “determine that is an environmental or weather related threat”. Wouldn't all weather related threat's be environmental? Or is there a meaning I am missing here?

Federal law contemplates emergency preparedness and response planning for emergencies resulting from a natural disaster or man-caused event. The wording of our definition is intended to encompass both types of threats. To address your concern, however, we have updated the language.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .0601

DEADLINE FOR RECEIPT: November 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:

G.S. 110-91 appears to give the Commission for Public Health the authority to adopt rules on sanitation and safety in child care facilities, which I believe they have done. Where does the Child Care Commission get authority to adopt rules on the same subject?

For clarification, GS 110-91 gives the Commission for Public Health the authority to adopt rules on sanitation in child care *centers*, which is a type of child care facility. 45 CFR 98.41 requires the Division ensure health and safety standards are met in all types of child care facilities, including child care centers and family child care homes.

Specific to the amendments submitted, S.L. 2021-180 Sec. 9G.8.(a)(2) set up a program for lead paint and asbestos inspections and abatement in public school units and child care *facilities*. Sec. 9G.8.(a)(2)(c) also requires the Commission for Public Health and the Child Care Commission to adopt rules as necessary to implement the program.

Pursuant to this requirement and G.S. 150B-21.6, the Commission for Public Health and the Child Care Commission have worked in collaboration to pursue rulemaking to ensure that the lead and asbestos requirements apply to both child care centers (through Public Health Rules) and family child care homes (through Child Care Rules). For reference, the Commission for Public Health was informed of the proposed amendment to this rule in August 2022 and chose to cite to Child Care Rule .0601 in 10A NCAC 41C .1003(g), anticipating the changes related to asbestos hazards.

What is paragraph (a) actually requiring? Just compliance with the rules in this section? If so, it is not necessary.

Paragraph (a) requires a safe indoor and outdoor environment. We have updated to remove the unnecessary language.

On line 6, what is the standard for determining if something is “safe”?

Seth Ascher

Commission Counsel

Date submitted to agency: November 8, 2023

It is maintained in a condition that children in care are not exposed to a preventable or avoidable danger or risk.

On line 6, “shall be provided” is passive and potentially introduces an ambiguity as to who is responsible for providing the safe environment. Rewrite to make the subject who must provide the environment.

The language has been updated.

On line 8, what is the standard for “good repair”?

We use the ordinary meaning: in a condition sufficient for the equipment or furnishing to operate at full level of performance; that equipment or furnishings can be used by children as intended without an increased risk of injury.

On line 10 and 11, “if available” is unclear. Available to whom and in what way? For example, if a child care center threw away the instructions, are they unavailable?

The language has been updated.

On line 12, what is the standard for “sturdy”?

We use the ordinary meaning: strong and solidly built.

On line 13, is “protrusion” defined somewhere?

It is not. It is given the ordinary meaning.

On line 15, “shall be removed” is passive and potentially introduces ambiguity as to who is responsible for removing the equipment. Rewrite to make the subject who must remove the equipment.

The language has been updated.

*On line 17, I believe you are missing a word “adapted **for** use”.*

Thank you for this recommendation. The language has been updated.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .1707

DEADLINE FOR RECEIPT: November 9, 2023

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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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Child Care Commission has more specific authority in G.S. 110-88, S.L. 2021-180 Sec. 9G.8.(a)-(d), and 45 CFR 98.41 to make the proposed revisions to .1707, but we also include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met. We have added addition authority to the history note.

G.S. 110-91 appears to give the Building Code Council the authority to adopt rules related to building requirements, which I believe they have done. G.S. 110-91(4) seems to contemplate the Child Care Commission requesting changes to the Building Code rather than adopting their own rules on the subject. Where does the Child Care Commission get authority to adopt rules on the same subject?

While entitled "Building Requirements", .1707 sets forth rules outside the scope of the Building Code. For those that are related to Building Code, 110-91(4) sets forth that each child care facility must be in a building that meets the requirements of the North Carolina Building Code, "subject to adoption by the Commission specifically for child care facilities, including facilities operated in a private residence."

On line 5, the phrase "ground level of exit discharge" is an odd way to state this requirement. Consider rephrasing.

The Department of Insurance provided this language to describe what the Child Care Commission intended.

On line 12, there are several codes which are informally referred to as the NC Building Code. Which do you mean specifically?

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

The North Carolina State Building Codes promulgated by the North Carolina Building Code Council.

On line 13 and 14, does temperature in this rule refer to indoor or outdoor temperature? Clarify.

The temperature is referring to indoors. We have updated the language to clarify.

On line 18, what kind of “changes” to the designated space must be submitted? Do you just mean changes to the floor plan of what space is designated?

Yes. At the time of licensure, a family child care home provider must designate what space(s) in their home they will use for caregiving. If they want to change the designated caregiving space, they must submit that information to the Division.

Why is G.S. 110-86(3) in the history note for authority?

Thank you for this recommendation. The language has been updated.

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: November 8, 2023

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .1725

DEADLINE FOR RECEIPT: November 9, 2023

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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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

The Commission has more specific authority in G.S. 110-88, S.L. 2021-180, and 45 CFR 98.41 to make the proposed revisions to Child Care Rule .1725, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met. We have revised the history note.

G.S. 110-91 appears to give the Commission on Public Health the authority to adopt rules related to sanitation, which I believe they have done. Where does the Child Care Commission get authority to adopt rules on the same subject?

For clarification, G.S. 110-91(1) authorizes the Commission on Public Health to adopt rules for sanitation standards for child care *centers*, which is one type of child care facility. Pursuant to that authority and prior to the enactment of 2021-180, child care centers were required to be free of lead poisoning hazards and were subject to water testing pursuant to 15A NCAC 18A .2816 in the Sanitation Rules. The testing and remediation of lead in water required by 2021-180 Sec. 9G.8.(a)(1), however, applies to child care *facilities*. In addition, 45 CFR 98.41 requires the Division ensure health and safety standards are met in all types of child care facilities, including family child care homes.

The Rules passed by the Commission for Public Health in April 2023 in response to S.L. 2021-180 and related to lead poisoning hazards in drinking water only requires testing and remediation at North Carolina Public Schools. Public Health rules do not set forth any requirements for family child care homes. See 10A NCAC 41C .1005. Instead, the Division Public Health specifically requested that the Child Care Commission pursue rulemaking for the implementation of this program in family child care homes.

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

On line 19, is “sanitary” defined somewhere?
Paragraphs (5)(A)-(F) set forth what makes the toilet, diaper changing and hand washing facilities “sanitary”.

*On line 19, add a comma “~~changing~~ **changing,** and”.*
Thank you for this recommendation. The language has been updated.

*On line 25, add a comma “~~nonabsorbent~~ **nonabsorbent,** and”*
Thank you for this recommendation. The language has been updated.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2204

DEADLINE FOR RECEIPT: November 9, 2023

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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:

On line 8, what are violations? Or violations of what?
Violations of the Child Care Rules. We have updated the language to clarify.

*On line 8, do should be does, "that ~~de~~ **does** not meet".*
Thank you for this recommendation. The language has been updated.

On line 9, who determines and how it is determined more than three months is needed to monitor for corrective action?
The timetable for monitoring is dictated by the administrative action's corrective action plan. A corrective action plan is developed by the Division's Regulatory Unit staff and is approved/amended by an internal review panel.

On line 15, what is "correction" referring to?
Whatever action is required by the Secretary of State to reinstate the entity.

On line 17, what is "compliance history"?
A score calculated pursuant to G.S. 110-90(4) and 10A NCAC 09 .0304(e).

On line 21, "pattern of noncompliance" is potentially vague. Who determines this and what are the standards?
"Pattern of noncompliance" is defined in 10A NCAC 09 .2201(c)(1).

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2206

DEADLINE FOR RECEIPT: November 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:

On line 17, what is a "disapproved sanitation classification"?

It is a rating/grade issued to child care centers as a result of a sanitation inspection conducted pursuant to 15A NCAC 18A .2834. A center may be classified as "superior, " "approved," "provisional," or "disapproved" based on the sanitation inspection and resulting score. See 15A NCAC 18A .2834.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2209

DEADLINE FOR RECEIPT: November 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:

On line 13, what is the standard for “a pattern” of noncompliance?
“Pattern of noncompliance” is defined in 10A NCAC 09 .2201(c)(1).

On line 14, if someone is “unable to comply” how would that support “willful noncompliance”?
(3) refers to a violation that has been willful or continual. In the event a provider has repeated violations of the Child Care Rules, and technical assistance has been provided, the Division may issue a Revocation when the provider has made no attempt to comply or, alternatively, has tried to comply, but is still out of compliance.

*There is a grammar problem in item 4. On lines 17 and 18, I think you mean “**that** is hazardous to **the** health or”.*
Thank you for this recommendation. The language has been updated.

On line 22, what is the standard for “hazardous”?
We use the ordinary meaning; when violations are dangerous or create a risk of harm to children in care.

On line 23, what is a “disapproved sanitation classification”?
It is a rating/grade issued to child care centers as a result of a sanitation inspection conducted pursuant to 15A NCAC 18A .2834. A center may be classified as “superior,” “approved,” “provisional,” or “disapproved” based on the sanitation inspection and resulting score. See 15A NCAC 18A .2834.

As written, the sentence on lines 30 and 31 about staying the revocation would only apply to the suspension for the reason in item 10. Is that the intent?
Yes. An administrative action revoking a child care license for any other reason is stayed if appealed.

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: November 8, 2023

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2611

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to Child Care Rule .2611, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

Why is a scope rule necessary?

To clarify that the rules in this section only apply to this type of child care facility. In other words, the rules in this section do not apply to child care centers or family child care homes.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2612

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to .2611, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

The text of the rule cannot rely on the title to be meaningful because the title can be changed under different standards than rulemaking. Without the title, this rule doesn't say anything. See the OAH style guide for recommendations about how to format a definition rule.

The language has been updated.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2613

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to .2613, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

On line 4, what are the circumstances where more than one inspection would be required?

In the event separate visits are needed to inspect each unit, whether due to time or availability of the individual owners, or when it takes more than one visit to verify a unit's compliance with applicable Child Care Rules.

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: November 8, 2023

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2614

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to .2614, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

On line 5, provide a precise cross-reference to the rule about staff/child ratios.
Thank you for this recommendation. The language has been updated.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2615

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to .2615, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

Is this rule for each individual unit? Or for the entire multi-unit building?

Each unit. We have updated the language to clarify.

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: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2616

DEADLINE FOR RECEIPT: November 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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

The Commission has more specific authority in G.S. 110-88 to make the proposed revisions to .2616, but we include 110-85 in the history note to cite the agency's broader authority of ensuring that facilities provide a physically safe and healthy environment where the developmental needs of children are met.

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

10A NCAC 09 .0102 is amended with changes as published in 37:24 NCR 2212-2216 as follows:

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Activity area" means a space that is accessible to children and where related equipment and materials are kept in accordance with G.S. 110-91(12).
- (2) "Agency" as used in this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (3) "Appellant" means the person or persons who request a contested case hearing.
- (4) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40 C.F.R. 763.88(b)(1)-(6).
- ~~(4)~~ (5) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.
- ~~(5)~~ (6) "Biocontaminant" means blood, bodily fluids, or excretions that may spread infectious disease.
- ~~(6)~~ (7) "Child Care Center" means an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. This does not include arrangements described in Item (18) of this Rule regarding Family Child Care Homes.
- ~~(7)~~ (8) "Child Care Facility" means child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2); G.S. 110-86(2) that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- ~~(8)~~ (9) "Child care provider" as defined by G.S. 110-90.2(a)(2) includes the following employees who have contact with the children in a child care program:
 - (a) facility directors;
 - (b) child care administrative staff;
 - (c) teachers;
 - (d) teachers' aides;
 - (e) substitute providers;
 - (f) uncompensated providers;
 - (g) cooks;
 - (h) maintenance personnel; and
 - (i) drivers.

~~(9)~~(10) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.

~~(10)~~(11) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.

~~(11)~~(12) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

~~(12)~~(13) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.

~~(13)~~(14) "Domains" means the developmental areas of learning described in the North Carolina Foundations for Early Learning and Development © 2013, available on the Division's website at https://ncchildcare.nc.gov/providers/pv_foundations.asp. This instrument is incorporated by reference and does not include subsequent editions. The domains address children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development.

~~(14)~~(15) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.

~~(15)~~(16) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. https://www.tcpres.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours. For the purposes of this Rule, "regular business hours" for the Division means 8 a.m. to 5 p.m. during weekdays, excluding state holidays.

~~(16)~~(17) "Experience working with school-age children" means working with school-age children as a child care administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.

~~(17)~~(18) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html.

https://www.tcpress.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~; \$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.

~~(18)~~(19) "Family Child Care Home" means a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care. Family child care home operators must reside at the location of the family child care home.

~~(19)~~(20) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.

~~(20)~~(21) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.

~~(21)~~(22) "Health care professional" means:

- (a) a physician licensed in North Carolina;
- (b) a nurse practitioner approved to practice in North Carolina; or
- (c) a licensed physician assistant.

~~(22)~~(23) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.

~~(23)~~(24) "If weather conditions permit" means:

- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://idph.iowa.gov/Portals/1/Files/HCCI/weatherwatch.pdf>; and is incorporated by reference and includes subsequent editions and amendments;
- (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://xapps.ncdenr.org/aq/ForecastCenterEnvista> or call 1-888-RU4NCAIR (1-888-784-6224); <https://www.deq.nc.gov/mitigation-services/publicfolder/library/news/brochures/air-quality-color-guide/download>; and
- (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.

~~(24)~~(25) "Infant" means any child from birth through 12 months of age.

~~(25)~~(26) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html.
http://www.tcpres.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.

~~(26)~~(27) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and administered by the North Carolina Child Care Health and Safety Resource Center for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at http://ncchildcare.ncdhhs.gov/providers/pv_itssidsproject.asp.

~~(27)~~(28) "Lead Teacher" means an individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility. A lead teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.

~~(28)~~(29) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.

~~(29)~~(30) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.

~~(30)~~(31) "North Carolina Early Childhood Administration Credential" means the state early childhood administration credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Administration Credential Coursework. A copy of the North Carolina Early Childhood Administration Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credent.asp>.

~~(31)~~(32) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North

Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:

- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
- (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.

Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at <http://ncicdp.org/certification-licensure/eec-overview/>.

~~(32)~~(33) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any ~~NC~~ North Carolina Community College. Other ~~post-secondary curriculum coursework~~ equivalences shall be approved by the Division ~~as equivalent~~ if the Division determines that the content of the other ~~post-secondary curriculum coursework~~ or other pathways are offered is substantially equivalent to the ~~NC North Carolina Early Childhood Credential Coursework~~ coursework. [Equivalent] Substantially equivalent coursework shall include, but not be limited to:

- (a) a currently active Child Development Associate Credential from the Council for Professional Recognition, a Certified Child Care Professional Credential from the National Early Childhood Program Accreditation, or a Montessori Credential from any of the Montessori Accreditation Council for Teacher Education, American Montessori Society, National Center for Montessori Education, or Association Montessori Internationale; or
- (b) a passing score on a test developed by the early childhood faculty of the North Carolina Community College System designed to demonstrate an individual's mastery of the concepts taught in early childhood coursework taken at any North Carolina community college.

A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credent.asp>.

~~(33)~~(34) "Operator" means the owner, director, or other person having responsibility for operation of a child care facility subject to licensing.

1 ~~(34)~~(35) "Owner" means any person with a five percent or greater equity interest in a child care facility;
2 however, stockholders of corporations who own child care facilities shall not be subject to mandatory
3 criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.

4 ~~(35)~~(36) "Parent" means a child's parent, legal guardian, or full-time custodian.

5 ~~(36)~~(37) "Passageway" means a hall or corridor.

6 ~~(37)~~(38) "Person" means any individual, trust, estate, partnership, corporation, joint stock company,
7 consortium, or any other group, entity, organization, or association.

8 ~~(38)~~(39) "Premises" means the entire child care building and grounds including natural areas, outbuildings,
9 dwellings, vehicles, parking lots, driveways and other structures located on the property.

10 ~~(39)~~(40) "Preschooler" or "preschool-age child" means any child who is at least three years of age and does
11 not fit the definition of school-age child in this Rule.

12 ~~(40)~~(41) "Reside" refers to any person that lives at a child care facility location. Factors for determining
13 residence include:

14 (a) use of the child care facility address as a permanent address for personal identification or
15 mail delivery;

16 (b) use of the child care facility to store personal belongings such as furniture, clothing, and
17 toiletry items; and

18 (c) names listed on official documents such as criminal records or property tax records.

19 ~~(41)~~(42) "School-Age Care Environment Rating Scale, Updated Edition" (Harms, Jacobs, and White, 2014,
20 published by Teachers College Press) is the instrument used to evaluate the quality of care received
21 by a group of children in a child care center, when the majority of the children in the group are older
22 than five years, to achieve three or more points for the program standards of a rated license. This
23 instrument is incorporated by reference and does not include subsequent editions. A copy of the
24 scale is available for purchase on the Teacher College Press website at
25 ~~https://www.teacherscollegepress.com/assessment_materials.html~~
26 https://www.tcpspress.com/search?search_term=assessment+materials. The cost of this scale is
27 ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument
28 is on file at the Division at the address given in Item (2) of this Rule and is available for public
29 inspection during regular business hours.

30 ~~(42)~~(43) "School-age child" means any child who is attending or who has attended a public or private grade
31 school or kindergarten and meets age requirements as specified in G.S. 115C-364.

32 ~~(43)~~(44) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

33 ~~(44)~~(45) "Shelter-in-Place drill" means staying in place to take shelter rather than evacuating. It involves
34 selecting a small interior room, with no or few windows, and used when emergency personnel or
35 law enforcement determine there is a an environmental or weather related threat.

36 ~~(45)~~(46) "Staff" or "staff member" as used in this Chapter includes child care providers, substitute providers,
37 and uncompensated providers. Volunteers, as defined in this Rule, are not staff members.

~~(46)~~(47) "Substitute provider" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility. Any substitute provider must be at least 18 years of age and literate.

~~(47)~~(48) "Teacher" means an individual who assists the Lead Teacher in planning and implementing the daily program of activities for a group of children in a child care facility. A teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.

~~(48)~~(49) "Teacher's aide" or "Aide" means a person who assists the lead teacher or the teacher in planning and implementing the daily program. A teacher's aide shall be at least 16 years old and less than 18 years old, shall be literate, and may count in staff/child ratio as long as there is also a credentialed staff person who is at least 21 years of age present in the room and available to respond to the needs of the teacher's aide and children in care.

~~(49)~~(50) "Toddler" means any child ages 13 months to 35 months of age.

~~(50)~~(51) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.

~~(51)~~(52) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility. Any uncompensated provider must be at least 18 years of age and literate.

~~(52)~~(53) "Volunteer" means a person who works in a child care facility and is not counted in staff/child ratio, does not have unsupervised contact with children, and is not monetarily compensated by the facility. A person who is at least 13 years of age, but less than 16 years of age, may work on a volunteer basis, as long as he or she is supervised by and works with a staff person who is at least 21 years of age and meets staff qualification requirements.

History Note: Authority G.S. 110-85; 110-88; 110-90.2; 143B-168.3; 45 CFR 98.41; S.L. 2022-71; S.L. 2021-180
Eff. January 1, 1986;
Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989;
Temporary Amendment Eff. January 1, 1996;
Amended Eff. March 1, 2015; May 1, 2013; September 1, 2012; July 3, 2012; July 1, 2012;
November 1, 2007; May 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1,
1998; April 1, 1997;
Readopted Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2022; February 1, 2021; September 1, 2019.

10A NCAC 09 .0601 is amended with changes as published as published in 37:24 NCR 2216 as follows:

SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 09 .0601 SAFE ENVIRONMENT

(a) All child care centers shall provide a safe indoor and outdoor environment for the children in care, care in accordance with rules in this Section.

(b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings purchased after September 1, 2017, the manufacturer's instructions shall be kept on file or electronically accessible, if available, that include instructions from the manufacturer, those manufacturer's instructions shall be kept on file at the center, unless they are available electronically for review.

(c) Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.

(d) Staff of the center shall immediately remove all equipment and furnishings not meeting that do not meet the requirements of Paragraphs (b) and (c) of this Rule shall be removed from the premises immediately or made make the equipment or furnishings inaccessible to the children.

(e) Each child care center shall provide equipment and furnishings that are child-size or that can be adapted for use by children. Chairs and tables shall be of appropriate height for the children who will be using them.

(f) Each child care center shall be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~. 130A-131.7(7) and asbestos hazards.

*History Note: Authority G.S. 110-91(3),(6); 143B-168.3;
Eff. January 1, 1986;
Amended Eff. January 1, 1996; January 1, 1991;
Readopted Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2021.*

10A NCAC 09 .1707 is amended with changes as published in 37:24 NCR 2216-2217 as follows:

10A NCAC 09 .1707 BUILDING REQUIREMENTS

The applicant shall ensure that the family child care home complies with the following requirements:

- (1) all children are kept on the ground level of exit discharge; with an exit at grade;
- (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7);~~
130A-131.7(7) and asbestos hazards;
- (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5) heating appliances shall be installed and maintained according to the NC Building Code;
- (6) all indoor areas used by children are heated when the **indoor** temperature is below 65 degrees and ventilated when the **indoor** temperature is above 85 degrees;
- (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (8) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children.

*History Note: Authority G.S. 110-85; ~~110-86(3);~~ 110-91; 143B-168.3; **S.L. 2021-180; 45 CFR 98.41;**
Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2021.*

10A NCAC 09 .1725 is amended with changes as published in 37:24 NCR 2217 as follows:

10A NCAC 09 .1725 SANITATION REQUIREMENTS FOR FAMILY CHILD CARE HOMES

(a) To assure the health of children through proper sanitation, the family child care home operator shall:

(1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by ~~the North Carolina Division of Laboratory Services~~ the North Carolina State Laboratory of Public Health every two years. Results of the analysis shall be on file in the home;

(2) collect and submit samples of water from each water outlet used for drinking or food preparation for lead analysis to the local health department or a laboratory certified to analyze for lead in drinking water by the North Carolina State Laboratory of Public Health. Results of the analysis shall be on file in the home. For operators that submit an application for licensure after the effective date of this Rule, water samples shall be collected by the operator and tested during the application process. For all other family child care homes, water samples shall be collected by the operator and tested within 12 months of the effective date of this Rule;

~~(3) (2)~~ wash his or her hands prior to caring for children each day;

~~(4) (3)~~ ensure that each child's hands are washed upon arrival at the home each day;

~~(5) (4)~~ have sanitary toilet, diaper ~~changing~~ changing, and hand washing facilities as follows:

(A) diaper changing areas shall be separate from food preparation areas;

(B) toileting areas shall have toilet tissue available at all times;

(C) all toilet fixtures shall be cleanable and in good repair;

(D) handwashing areas shall have soap and paper towels or other drying devices available at all times;

(E) diapering surfaces shall be smooth, intact, ~~nonabsorbent~~ nonabsorbent, and cleanable; and

(F) potty chairs and diapering surfaces shall be cleaned after each use.

~~(6) (5)~~ use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:

(A) gather all supplies before placing a child on the diapering surface;

(B) wash his or her hands before, as well as after, diapering each child;

(C) ensure the child's hands are washed after diapering the child; and

(D) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;

~~(7) (6)~~ use sanitary procedures when preparing and serving food. The operator shall:

(A) wash his or her hands before and after handling food and feeding the children; and

(B) ensure the child's hands are washed before and after the child is fed;

~~(8) (7)~~ wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids;

1 ~~(9)~~ (8) handwashing procedures shall include:

2 (A) using liquid soap and water;

3 (B) rubbing hands vigorously with soap and water for 15 seconds;

4 (C) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under
5 fingernails and between fingers;

6 (D) rinsing well for 10 seconds;

7 (E) drying hands with a paper towel or other hand drying device; and

8 (F) turning off faucet with a paper towel or other method without recontaminating hands;

9 ~~(10)~~ (9) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain
10 a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor
11 the temperature;

12 ~~(11)~~ (10) have a house that is free of rodents;

13 ~~(12)~~ (11) screen all windows and doors used for ventilation; and

14 ~~(13)~~ (12) store garbage in waterproof containers with tight fitting covers.

15 (b) If reusable, cloth diapers are used, place soiled cloth diaper, after disposing of feces in toilet without rinsing, in a
16 tightly closed plastic bag or other equivalent container approved by the Division, stored out of reach of children and
17 sent daily to the child's home to be laundered or to a laundry service.

18 (c) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness
19 of each child when toilet training. The operator shall provide assistance to each child to ensure proper hygiene, as
20 needed.

21 (d) The operator shall ensure that clean clothes are available in the event that a child's clothes become wet or soiled.
22 The change of clothing may be provided by the operator or by the child's parents.

23
24 *History Note:* Authority G.S. 110-85; 110-88; 110-91; ~~143B-168.3;~~ S.L. 2021-180; 45 CFR 98.41;

25 Eff. October 1, 2017;

26 Amended Eff. November 1, 2023; September 1, 2019.

1 10A NCAC 09 .2204 is amended with changes as published in 37:24 NCR 2218 as follows:

2
3 10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL
4 NOTICE OF COMPLIANCE

5 A provisional child care facility license or provisional notice of compliance may be issued to an operator for any
6 period of time not to exceed 12 months in accordance with the factors listed in 10A NCAC 09 .2201(b) for, among
7 other things, the following reasons:

- 8 (1) a substantiation of one or more violations of the child care requirements set forth in this Chapter as
9 a result of a complaint that de does not meet the criteria for a maltreatment finding pursuant to G.S.
10 110-105.3(b)(3) but for which more than three months is needed to monitor for corrective action
11 implementation;
12 (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements;
13 (3) to allow a time period for remediation of an identified lead poisoning hazard as defined in G.S.
14 ~~130A-131.7(7)~~, 130A-131.7(7) or remediation of an asbestos hazard, regardless of whether a
15 provisional sanitation classification has been issued;
16 (4) to allow a time period for correction of an administratively dissolved corporation status from the
17 North Carolina Secretary of State;
18 (5) when the compliance history of the facility drops below the minimum requirement set forth in G.S.
19 110-90;
20 (6) change of location of a child care facility without proper notification to the Division as specified in
21 Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
22 (7) pattern of noncompliance.

23
24 *History Note:* Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3;
25 Eff. February 1, 2019;
26 Amended Eff. November 1, 2023; February 1, 2021.

10A NCAC 09 .2209 is amended with changes as published in 37:24 NCR 2218-2219 as follows:

**10A NCAC 09 .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN ORDER TO
CEASE OPERATION**

Revocation of a child care facility license or an order to cease operation may be issued to an operator in accordance with the factors listed in 10A NCAC 09 .2201(b) for the following reasons:

- (1) child maltreatment has occurred in a child care facility and harm occurred as set forth in Rule .2201(c)(2) of this Section;
- (2) more than two determinations of child maltreatment have occurred at a child care facility within three years;
- (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 has been willful or continual as evidenced by:
 - (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated violations or is unable to comply; or
 - (b) the operator has failed to comply with the terms of a corrective action plan issued with a special provisional or probationary license or notice of compliance;
- (4) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 is hazardous to **the** health or safety of children;
- (5) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);
- (6) the operator falsifies information in violation of G.S. 110-91(14);
- (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90 and the conditions at the facility are hazardous to the health and safety of the children or staff;
- (8) receipt of a disapproved sanitation classification that is not corrected with a superior or approved sanitation classification within 12 months of issuance of a Suspension as set forth in Rule .2206 of this Section; ~~or~~
- (9) the operator of the child care facility is a corporate entity that has been placed under revenue suspension from the North Carolina Secretary of State that has not been corrected within one year of issuance of a Suspension as set forth in Rule .2206 of this ~~Section.~~ Section; or
- (10) the Division has suspended the child care license or notice of compliance and the violation has not been corrected after 12 months. The revocation of a child care facility license or a notice of compliance pursuant to this Section shall not be stayed during the pendency of an appeal.

*History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989;
Readopted Eff. February 1, 2019 (Transferred from 10A NCAC 09 .2206);
Amended Eff. November 1, 2023; February 1, 2021.*

10A NCAC 09 .2611 is adopted as published in 37:24 NCR 2211 as follows:

SECTION .2600 – MULTI-UNIT CHILD CARE CENTERS

10A NCAC 09 .2611 Scope

The rules in this Section apply to child care centers with multiple units, licensed individually, in one building. All rules within this Chapter shall apply except as provided in this Section.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Eff. November 1, 2023.

1 10A NCAC 09 .2612 is adopted with changes as published in 37:24 NCR 2211 as follows:

2
3 10A NCAC 09 .2612 Definition of Multi-Unit Child Care Centers

4 A “multi-unit child care center” is ~~One~~ **one** building with multiple licensed units, each with a separate owner and
5 entrance and each having its own physical and mailing address.

6
7 History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
8 Eff. November 1, 2023.
9

1 **10A NCAC 09 .2613 is adopted as published in 37:24 NCR 2211 as follows:**

2
3 **10A NCAC 09 .2613 Licensure**

4 The Division shall make one or more inspections to inspect each unit within the building and issue individual
5 licenses if all applicable requirements of G.S. 110, Article 7, this Chapter, and this Section are met.

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7 History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91; 110-105;
8 Eff. November 1, 2023.
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10A NCAC 09 .2615 is adopted with changes as published in 37:24 NCR 2211 as follows:

10A NCAC 09 .2615 Staff/Child Ratios

Each unit in a multi-unit child care center shall meet the following staff/child ratios and group sizes for children:

The staff/child ratios and group sizes for children are as follows:

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

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

(2) when only one caregiver is required to meet the staff/child ratio and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties which are not direct child care responsibilities;

(a) The unit 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

(b) There shall be a second adult on the premises who is available to provide emergency relief. This second adult may be a person in another licensed unit within the multi-unit center or support staff within the building.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Eff. November 1, 2023.

10A NCAC 09 .2616 is adopted as published in 37:24 NCR 2212 as follows:

10A NCAC 09 .2616 Provider Qualifications

(a) The person who has the responsibility for administration of the program and planning and implementing daily activities for the group of children in their care shall meet the requirements for an administrator and lead teacher as outlined in G.S. § 110-91(8).

(b) When meeting enhanced standards, the person who has responsibility for administration of the program and planning and implementing daily activities shall meet the lead teacher requirements outlined in 10A NCAC 09 .2819.

(c) When meeting enhanced standards, additional staff within the licensed unit shall meet lead teacher or teacher requirements in Section .2800 of this Chapter as determined by their caregiving role.

(d) The person responsible for the administration of the program and program planning does not have to meet administrative hours as required in 10A NCAC 09 .0714(a).

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;

Eff. November 1, 2023.

Burgos, Alexander N

Subject: FW: [External] FW: Request for Changes Child Care Commission November Rules

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, November 9, 2023 4:47 PM
To: Davis, Amber I <aidavis@ncdoj.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] FW: Request for Changes Child Care Commission November Rules

Amber,

Thank you for getting back to me. Your email should be sufficient to request the extension. As I mentioned in my previous email, I will support such an extension. If something changes between now and the meeting I will let you know, or if you have any question I am happy to set up a time to discuss this further.

Seth Ascher

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

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From: Davis, Amber <AIDavis@ncdoj.gov>
Sent: Thursday, November 9, 2023 4:37 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Peck, Julie C <julie.peck@dhhs.nc.gov>
Subject: [External] FW: Request for Changes Child Care Commission November Rules
Importance: High

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Mr. Ascher,

Thank you for your email. We have worked diligently to respond to the Request for Changes by today's deadline, but, given the limited time and staff's schedules, we are not confident that we have adequately addressed all of your comments/questions and would like to request an extension on the consideration of these rules.

Thank you and please let me know if we need to do anything further on our end to request additional time from RRC,

Amber



Amber I. Davis
Assistant Attorney General
Division of Child Development and Early Education
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aidavis@ncdoj.gov
ncdoj.gov Please note messages to or from this address may be public records.

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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Wednesday, November 8, 2023 12:03 PM
To: Peck, Julie C <julie.peck@dhhs.nc.gov>
Subject: Request for Changes Child Care Commission November Rules

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Child Care Commission for the November 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 16, 2023, at 9:00 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 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 invites out to them as well.

Attached is the Request 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 November 9, 2023. I recognize that it may not be possible to turn around a response in that limited timeframe. If the Child Care Commission would like to request an extension on the consideration of these rules, I would have no problem recommending the RRC grant that extensions and we can discuss a different timeline.

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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