



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: NC CHILD CARE COMMISSION</b>	
<b>2. Rule citation &amp; name: 10A NCAC 09 .3101 SCOPE</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date: August 13, 2020</b>	
<b>5. Provide dates for the following actions as applicable:</b> a. Proposed Temporary Rule submitted to OAH: August 5, 2020 b. Proposed Temporary Rule published on the OAH website: August 11, 2020 c. Public Hearing date: August 19, 2020 d. Comment Period: August 12 -September 2, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): August 5, 2020 f. Adoption by agency on: October 5, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:  <b>Explain:</b> These rules were previously adopted as emergency rules effective August 13, 2020. The NC Child Care Commission has now adopted these rules as temporary rules to comply with the Governor's declaration of a state of emergency due to the Coronavirus Disease (COVID-19) to enact protective measures to help prevent the spread of the disease. This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing temporary rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

These temporary rules would not be considered, but for, the COVID-19 pandemic and the serious and unforeseen health and safety threats that it has created in our state. The North Carolina Child Care Commission has adopted these temporary rules to help address the desperate need families have for safe and healthy child care options for their school-age children as the result of county schools opting to close their classrooms in recent weeks and it is in the public interest to have these rules be effective at the start of the public school year, so the school-age children have a place to receive care and attend remote/online learning on the first day of class.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒

No

**9. Rule-making Coordinator: Dedra Alston**

Phone: 919-814-6307

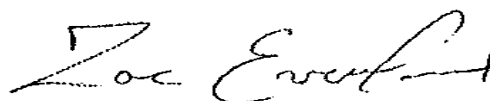
E-Mail: Dedra.Alston@dhhs.nc.gov

Agency contact, if any:

Phone:

E-Mail:

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: J. Zac Everhart

Title: Chairman, Child Care Commission

E-Mail: zeverhart.@excelkids.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐

Date returned to agency:

1 10A NCAC 09 .3101 is adopted under temporary procedures as follows:  
2

3 SECTION .3100 – CARE FOR SCHOOL-AGE CHILDREN DURING STATE OF EMERGENCY  
4

5 10A NCAC 09 .3101 SCOPE

6 The rules in this Section apply to care for school-age children, as defined by 10A NCAC 09 .0102(41), during the  
7 declared State of Emergency to coordinate the State's response and protective actions to address the Coronavirus  
8 Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and  
9 visitors located in North Carolina ("Declaration of a State of Emergency"). All rules in Section .2500 of this Chapter  
10 apply except as provided in this Section.  
11

12 *History Note:* Authority G.S. 110-85, 110-86; 110-88; 110-91;  
13 Emergency Adoption Eff. August 13, 2020;  
14 Temporary Adoption Eff. October 23, 2020.



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: NC CHILD CARE COMMISSION</b>	
<b>2. Rule citation &amp; name: 10A NCAC 09 .3102 DEFINITIONS</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date: August 13, 2020</b>	
<b>5. Provide dates for the following actions as applicable:</b> a. Proposed Temporary Rule submitted to OAH: August 5, 2020 b. Proposed Temporary Rule published on the OAH website: August 11, 2020 c. Public Hearing date: August 19, 2020 d. Comment Period: August 12 -September 2, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): August 5, 2020 f. Adoption by agency on: October 5, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:  <b>Explain:</b> These rules were previously adopted as emergency rules effective August 13, 2020. The NC Child Care Commission has now adopted these rules as temporary rules to comply with the Governor's declaration of a state of emergency due to the Coronavirus Disease (COVID-19) to enact protective measures to help prevent the spread of the disease. This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing temporary rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

These temporary rules would not be considered, but for, the COVID-19 pandemic and the serious and unforeseen health and safety threats that it has created in our state. The North Carolina Child Care Commission has adopted these temporary rules to help address the desperate need families have for safe and healthy child care options for their school-age children as the result of county schools opting to close their classrooms in recent weeks and it is in the public interest to have these rules be effective at the start of the public school year, so the school-age children have a place to receive care and attend remote/online learning on the first day of class.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒

No

**9. Rule-making Coordinator: Dedra Alston**

Phone: 919-814-6307

E-Mail: Dedra.Alston@dhhs.nc.gov

Agency contact, if any:

Phone:

E-Mail:

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: J. Zac Everhart

Title: Chairman, Child Care Commission

E-Mail: zeverhart.@excelkids.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐

Date returned to agency:

TEMPORARY RULE  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .3102

**DEADLINE FOR RECEIPT: October 9, 2020**

**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 call our office to inquire concerning the staff recommendation.

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

*Throughout this rule, why are defined terms such as "Remote Learning Facility" and "Contractual Agreement" capitalized? Please only capitalize titles and proper nouns.*

*In (2), line 12, please change "which" to "that."*

*In (2), line 13, where is your authority to reference guidelines in rule? Do you have a rulemaking exemption? If so, please provide a citation. If not, please do not refer to State-level guidelines in rule. Doing so circumvents the rulemaking process by establishing requirements outside of rulemaking.*

*At lines 16 and 23, please do not capitalize "public."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: October 7, 2020

1 **10A NCAC 09 .3102 is adopted with changes under temporary procedures as follows:**

2  
3 **10A NCAC 09 .3102 DEFINITIONS**

4 The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a  
5 different meaning.

6 (1) "Public schools" means:

7 (a) any building that is approved for school occupancy and which houses school-age children  
8 as part of the public school system during the school year; or

9 (b) a Remote Learning Facility.

10 (2) "Remote Learning Facility" means any building that is used by a public school system, pursuant to  
11 a Contractual Arrangement, to house school-age children enrolled in that public school system  
12 during the school year for the purpose of facilitating online or remote learning programs, and which  
13 follows the "Strong Schools NC: Public Health Toolkit (K-12) Interim Guidance" established by the  
14 North Carolina Department of Health and Human Services.

15 (3) "Contractual Arrangement" means a written agreement wherein the ~~[local school administrative~~  
16 ~~unit]~~ Public school unit, as defined in G.S. 115C-5(7A), agrees as follows:

17 (a) to be responsible for the enrollment and attendance of school-age children at a Remote  
18 Learning Facility; and

19 (b) that it shall be liable for any incidents or occurrences at the Remote Learning Facility in  
20 the same way it would be liable if the school-age child(ren) were in a building that is  
21 approved for school occupancy and which houses any part of the public school system.  
22 Notwithstanding the foregoing, this provision shall not prohibit the ~~[local school~~  
23 ~~administrative]~~ Public school unit from obtaining liability insurance or from contracting  
24 with the Remote Learning Facility regarding indemnification or other terms regarding the  
25 apportionment of liability between themselves for incidents or occurrences.

26  
27 *History Note: Authority G.S. 110-85, 110-86; 110-88; 110-91;*

28 *Emergency Adoption Eff. August 13, 2020;*

29 *Temporary Adoption Eff. October 23, 2020.*  
30



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: NC CHILD CARE COMMISSION</b>
<b>2. Rule citation &amp; name: 10A NCAC 09 .3103 PUBLIC SCHOOLS</b>
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date: August 13, 2020</b>
<b>5. Provide dates for the following actions as applicable:</b> a. Proposed Temporary Rule submitted to OAH: August 5, 2020 b. Proposed Temporary Rule published on the OAH website: August 11, 2020 c. Public Hearing date: August 19, 2020 d. Comment Period: August 12 -September 2, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): August 5, 2020 f. Adoption by agency on: October 5, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:  <b>Explain:</b> These rules were previously adopted as emergency rules effective August 13, 2020. The NC Child Care Commission has now adopted these rules as temporary rules to comply with the Governor's declaration of a state of emergency due to the Coronavirus Disease (COVID-19) to enact protective measures to help prevent the spread of the disease. This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing temporary rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.



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**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes  
Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

**9. Rule-making Coordinator: Dedra Alston**

**Phone:** 919-814-6307

**E-Mail:** Dedra.Alston@dhhs.nc.gov

**Agency contact, if any:**

**Phone:**

**E-Mail:**

**10. Signature of Agency Head\*:**



**\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:** J. Zac Everhart

**Title:** Chairman, Child Care Commission

**E-Mail:** zeverhart.@excelkids.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULE  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .3103

**DEADLINE FOR RECEIPT: October 9, 2020**

**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 call our office to inquire concerning the staff recommendation.

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

*At lines 4 and 7, please do not capitalize "public."*

*Just to be sure, based on your definitions, remote learning facilities are exempt from licensure, correct?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: October 7, 2020

1 **10A NCAC 09 .3103 is adopted with changes under temporary procedures as follows:**

2  
3 **10A NCAC 09 .3103 PUBLIC SCHOOLS**

4 Pursuant to G.S. 110-86(2)(e), Public schools are not child care and are, therefore, exempt from licensure.  
5 Notwithstanding any other provision of this Section, all NC Pre-K programs, as defined in Section .3000 of this  
6 Chapter, and Developmental Day Services, as defined in Section .2900 of this Chapter, and any program or  
7 arrangement housed in a Public school that is not operated by the ~~[local school administrative]~~ Public school unit and  
8 provides care to three or more infants, toddlers, or preschoolers on a regular basis of at least once per week for more  
9 than four hours from persons other than their guardians or full time custodians or from persons not related to them by  
10 birth, marriage, or adoption are child care as defined in G.S. 110-86(2) and requires a child care license.

11  
12 *History Note: Authority G.S. 110-85, 110-86; 110-88; 110-91;*

13 *Emergency Adoption Eff. August 13, 2020;*

14 *Temporary Adoption Eff. October 23, 2020.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: NC CHILD CARE COMMISSION</b>	
<b>2. Rule citation &amp; name: 10A NCAC 09 .3104 ADDING SPACE AT LICENSED CENTERS FOR CARE OF SCHOOL-AGE CHILDREN</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date: August 13, 2020</b>	
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<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:  <b>Explain:</b> These rules were previously adopted as emergency rules effective August 13, 2020. The NC Child Care Commission has now adopted these rules as temporary rules to comply with the Governor's declaration of a state of emergency due to the Coronavirus Disease (COVID-19) to enact protective measures to help prevent the spread of the disease. This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing temporary rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.	

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**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒

No

**9. Rule-making Coordinator: Dedra Alston**

Phone: 919-814-6307

E-Mail: Dedra.Alston@dhhs.nc.gov

Agency contact, if any:

Phone:

E-Mail:

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: J. Zac Everhart

Title: Chairman, Child Care Commission

E-Mail: zeverhart.@excelkids.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐

Date returned to agency:

TEMPORARY RULE  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .3104

**DEADLINE FOR RECEIPT: October 9, 2020**

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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 call our office to inquire concerning the staff recommendation.

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

*Please consider defining "additional space" in .3102 instead of providing the term in parentheses. Here, you could begin with "If an operator of a licensed child care center wishes to use additional space..."*

*At line 14, please replace "and/or" with either "and" or "or."*

*At line 15, by "policies" are you referring to the rule? If so, consider "...may issue a provisional license as set forth in 10A NCAC 09 .2204."*

*At line 16, consider deleting the first "additional" since it is repetitive. It would read "Any space that the operator desires to use as additional space..."*

*At line 18, where is your statutory authority to waive G.S. 110-91(6)? Are you relying upon this language in G.S. 110-91?*

The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

*At line 18, is "safe outdoor space" defined?*

*At line 18, should "at" be changed to "in" before "the additional space?"*

*At line 19, please change "which" to "that."*

*At line 21, is "adequate indoor space" defined? Are you referring to the requirements of G.S. 110-91(6)? If so, please make that clear.*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: October 7, 2020

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: October 7, 2020

10A NCAC 09 .3104 is adopted under temporary procedures as follows:

**10A NCAC 09 .3104      ADDING SPACE AT LICENSED CENTERS FOR CARE OF SCHOOL-AGE CHILDREN**

If an operator of a licensed child care center wishes to use space, regardless of location, not previously approved for child care ("additional space") to care for school-age children during the Declaration of a State of Emergency, the operator shall notify the Division of the desired change pursuant to 10A NCAC 09 .0204, but shall have six months to obtain any required inspections of the additional space by the local health, building, and fire inspections in accordance with G.S. 110-91(1), (4), and (5). If all other standards set forth in G.S. 110-91 and this Chapter are met, the operator may provide care to school-age children in the additional space and the Division shall document the same in a manner that will notify parents and the public of the change. Once the operator provides documentation that the additional space conforms to all applicable sanitation, building, and fire standards, and if all applicable requirements of G.S. 110, Article 7 and this Chapter are met, the Division shall issue a new license pursuant to 10A NCAC 09 .0204. If a health, building, and/or fire inspection reveals that the additional space does not conform to the required standards, the Division may issue a provisional license under the polices of the Commission, as set forth in 10A NCAC 09 .2204. Any additional space that the operator desires to use as additional space for care of school-age children, which is not located within the currently licensed facility, shall not be required to meet the outdoor space and fencing requirements of G.S. 110-91(6). If there is no safe outdoor space at the additional space to be used for care of school-age children, which is not located within the currently licensed facility, operators shall not be required to meet the requirements of 10A NCAC 09 .0508(c). Notwithstanding any other provision in this Section, operators shall provide adequate indoor space for daily gross motor activities when safe outdoor space is not available.

*History Note:      Authority G.S. 110-85, 110-86; 110-88; 110-91;*  
*Emergency Adoption Eff. August 13, 2020;*  
*Temporary Adoption Eff. October 23, 2020.*