

1 **10A NCAC 09 .2001 has been amended with changes in accordance to G.S. 150B-21.5(4) as follows:**

2
3 **SECTION .2000 - RULEMAKING AND CONTESTED CASE PROCEDURES**

4
5 **10A NCAC 09 .2001 PETITIONS FOR RULEMAKING**

6 (a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the Child Care Commission
7 (hereinafter referred to as the Commission) shall make the request in a written petition to:

8
9 ~~Administrative Procedures~~ Rulemaking Coordinator
10 Division of Child Development and Early Education
11 2201 Mail Service Center
12 Raleigh, North Carolina ~~27699-2201~~ 27699-2200

13
14 (b) ~~The petition shall contain either a draft of the proposed rule or a summary of its contents, Petitions for adoption~~
15 or amendment of a rule shall include a draft of the proposed rule, the reasons for the proposal, and the name and
16 address of the petitioner. The petition shall may also include any of the following items known to the petitioner:

- 17 (1) the statutory authority for the Commission to promulgate the rule;
18 (2) the effect on existing rules;
19 (3) any data supporting the proposal;
20 (4) the effect of the proposed rule on existing practices in the area involved, including cost
21 factors; and
22 (5) the names and addresses of those most likely to be affected by the proposed rule.

23 (c) The Division Director or designee shall present the petition, ~~plus any additional information or recommendations~~
24 ~~deemed relevant,~~ to the Commission to determine whether the public interest will be served by granting the petition.

25 (d) The Commission shall render a decision as to whether to deny or approve the petition at its next scheduled
26 meeting, which may be no later than 120 days after submission of the petition. If the decision is to deny the petition,
27 the Division Director or designee shall notify the petitioner in writing, stating the reasons for the denial. If the
28 decision is to approve the petition, the Commission shall initiate a rulemaking proceeding by issuing a rulemaking
29 notice, as provided in these rules.

30
31 *History Note: Authority G.S. 110-85; 143B-168.3; ~~150B-16;~~ 150B-20;*
32 *Eff. November 1, 1989;*
33 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*
34 *May 23, ~~2015;~~ 2015;*
35 *Amended Eff. December 1, 2015.*

1 **10A NCAC 09 .2002 has been amended with changes in accordance to G.S. 150B-21.5(4) as follows:**

2

3 **10A NCAC 09 .2002 RULEMAKING PROCEDURES**

4 (a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in 10A
5 NCAC ~~04~~ 01A .0101 through .0107 are hereby adopted incorporated by reference including subsequent amendments
6 and editions pursuant to G.S. ~~150B-14(e)~~ 150B-21.6 to apply to the actions of the Commission, with the following
7 modifications:

8 (1) Correspondence related to the Commission's rulemaking actions shall be submitted to:

9 Administrative Procedures Rulemaking Coordinator

10 Division of Child Development and Early Education

11 2201 Mail Service Center

12 Raleigh, North Carolina ~~27699-2204~~ 27699-2200

13 (2) The "Secretary's designee" shall mean the Director of the Division of Child Development and

14 Early Education (hereinafter referred to as the Division).

15 (3) "The Division" shall be substituted for the "Office of General Counsel" in 10A NCAC

16 ~~04, 01A.~~

17 (4) "Hearing officer" shall mean the Chairman of the Child Care Commission or designee.

18 (b) Copies of 10A NCAC ~~04~~ 01A may be inspected in the Division at the address given in Subparagraph (a) (1) of

19 this Rule. A copy of the rules may be found on ~~Copies may be obtained from~~ the Office of Administrative Hearings,

20 Hearings website at <http://reports.oah.state.nc.us/ncac.asp>. ~~424 North Blount Street, [1711 New Hope Church~~

21 Road,] Raleigh, North Carolina, 27601. [27609.]

22

23 *History Note: Authority G.S. 110-85; 143B-168.3; ~~150B-11; 150B-14; 150B-20;~~*

24 *Eff. November 1, 1989;*

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

26 *May 23, ~~2015; 2015;~~*

27 *Amended Eff. December 1, 2015.*

1 **10A NCAC 09 .2003 has been amended with changes in accordance to G.S. 150B-21.5(4) as follows:**

2
3 **10A NCAC 09 .2003 DECLARATORY RULINGS**

4 (a) ~~The Commission shall have the power to make declaratory rulings.~~ All requests for declaratory rulings shall be
5 by written petition as described in Paragraph (b) of this Rule and shall be submitted to:

6
7 Administrative Procedures Rulemaking Coordinator
8 Division of Child Development and Early Education
9 2201 Mail Service Center
10 Raleigh, North Carolina ~~27699-2201~~ 27699-2200

11
12 (b) Every request for a declaratory ruling ~~must~~ shall include the following information:

- 13 (1) the name and address of the petitioner;
14 (2) the statute or rule to which the petition relates;
15 (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or
16 statute or its potential application to him or her; and
17 (4) the consequences for petitioner of a failure to issue a declaratory ruling.

18 (c) Where a declaratory ruling is deemed to be in the public interest, the Commission shall issue the ruling within ~~60~~
19 30 days of the receipt of the petition.

20 (d) A declaratory ruling procedure ~~may~~ shall consist of written submissions, oral hearings, ~~or~~ and such other
21 procedure procedures ~~as may be deemed appropriate, in the discretion of the Commission,~~ as the Commission
22 deems necessary to understand the issues involved in the particular case.

23 (e) If the Commission grants the declaratory ruling request, the ~~The~~ Commission ~~may~~ shall issue notice by posting
24 on the Division's website at <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp> ~~to persons who might be~~
25 ~~affected by the ruling~~ that written comments may be submitted or oral presentations received at a scheduled hearing.

26 (f) A record of all declaratory ruling proceedings shall be maintained by the Division and shall be available for
27 public inspection during regular business hours. This record shall contain:

- 28 (1) the original ~~request,~~ request;
29 (2) the reasons for refusing to issue a ~~ruling,~~ ruling;
30 (3) all written memoranda and information ~~submitted,~~ submitted;
31 (4) any written minutes or audio tape or other record of the oral ~~hearing,~~ hearing; and
32 (5) a statement of the ruling.

33
34 *History Note:* Authority G.S. 110-85; 143B-168.3; ~~150B-11; 150B-17; 150B-4;~~

35 *Eff. November 1, 1989;*

36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

37 *May 23, ~~2015.~~ 2015;*

1 **10A NCAC 09 .2004 has been amended with changes in accordance to G.S. 150B-21.5(4) as follows:**

2

3 **10A NCAC 09 .2004 CONTESTED CASES: DEFINITIONS**

4 The following terms shall have the following meaning for this Section: ~~unless the context of the rule requires a~~
5 ~~different interpretation:~~

6 (1) "Department" means the Department of Health and Human Services;

7 (2) ~~"Director" means the Director of the Division of Child Development; [Development and~~
8 ~~Early Education;]~~

9 ~~(3)~~(2) "Hearing" means a contested case hearing as provided in G.S. 150B-2(2) and 150B-23;

10 ~~(4)~~(3) "OAH" means the Office of Administrative Hearings.

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12 *History Note: Authority G.S. 110-85; 110-94; ~~143B-10; 150B-11; 150B-23;~~*

13 *Eff. November 1, 1989;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

15 *May 23, ~~2015;~~ 2015;*

16 *Amended Eff. December 1, 2015.*

1 **10A NCAC 09 .2005 has been amended with changes in accordance to G.S. 150B-21.5(4) as follows:**

2

3 **10A NCAC 09 .2005 CONTESTED CASES: REQUEST FOR DETERMINATION**

4 (a) In accordance with G.S. ~~150B-2(2)~~, 150B-22, any person may request a determination of his or her legal rights,
5 privileges, or duties as they relate to laws or rules administered by the Department. ~~All requests must be in writing~~
6 ~~and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the~~
7 ~~Department.~~

8 (b) Any person seeking ~~such~~ a determination pursuant to this Rule shall ~~must~~ exhaust all informal procedures
9 available before requesting a hearing under G.S. 150B-23.

10 (c) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in
11 accordance with G.S. 150B-23 and 26 NCAC 03 ~~.0003~~. .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the
12 petition shall be served on a registered agent for service of process for the Department. A list of registered agents
13 may be obtained from the Office of General Counsel, ~~2005~~ 2001 Mail Service Center, Raleigh, NC ~~27699-2005~~.
14 27699-2001.

15

16 *History Note: Authority G.S. ~~143B-10; 150B-11~~; 150B-22; 150B-23;*

17 *Eff. November 1, 1989;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

19 *May 23, ~~2015~~. 2015;*

20 *Amended Eff. December 1, 2015.*