

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: The NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2102

RECOMMENDATION DATE: August 21, 2026

RECOMMENDED ACTION:

No action

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

X Failure to comply with the APA

Extend the period of review

COMMENT:

The captioned rule was reviewed by the Rules Review Commission ("RRC") at the May 2026 meeting. The RRC objected to the rule based on lack of statutory authority, ambiguity, and necessity. The Child Care Commission then submitted a revised rule to Staff on August 13, 2026, to address the RRC's objections. The RRC is now tasked with reviewing the revised rule to determine whether the changes satisfy the Commission's objections and whether the changes are substantial.¹

In Staff Counsel's opinion, the changes fail to address the RRC's objections because the revised rule still goes beyond the Child Care Commission's statutory authority and contains unclear provisions. The changes also include revisions that rise to the level of "substantial changes" and would require republication in the Register.²

¹ See G.S. 150B-21.12(c).

² See G.S. 150B-21.2(g).

Statutory Authority

G.S. 110-91(10) explicitly states:

The use of corporal punishment as a form of discipline is prohibited in child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in religious sponsored child care facilities as defined in G.S. 110-106, only if (i) the religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment.

In relevant part, paragraph (b) of the revised rule states:

. . . Corporal punishment shall be administered by the administrator, other designated staff, or the child's parent. An additional staff member shall be present when corporal punishment is administered.

The Child Care Commission deleted some of the problematic language, but the revised rule still limits the manner in which corporal punishment is administered by these religious sponsored child care facilities. Staff does not believe that this type of restriction by rule is permissible under the cited statutory authority.

Clarity

As noted above, in paragraph (b), the revised rule adds "the child's parent" as a person that may administer the corporal punishment. However, it is unclear how that language interplays with other sections of the rule. For example, the next sentence of the rule states that an "additional staff member shall be present when corporal punishment is administered (emphasis added)." It is not clear to Staff whether this witness requirement would apply if the punishment was indeed administered by the child's parent. It is also unclear whether the facility would be required to give the parent the option of administering the corporal punishment based on the updated rule language.

Substantial Changes (G.S. 150B-21.2(g))

Staff believes the revised rule contains two provisions that substantially differ from the published proposed rule. Both provisions are likely to produce an effect that could not reasonably have been expected based on the proposed text of the rule.

- In paragraph (b), line 21, the revised rule adds "the child's parent" as a person that may administer the corporal punishment. The published version of the proposed rule stated that corporal punishment "shall be administered by the administrator or other designated staff member."*

- *Paragraph (c) of the revised rule requires a “corporal punishment log,” specifies the required information for the log, mandates log maintenance for a period of three years, and permits review of the log by Division staff. The published version of the proposed rule only stated, “The facility's administrator shall complete an incident report whenever corporal punishment is administered at the facility.”*

Conclusion

Staff recommends objecting to the rule changes for the reasons discussed above. If the RRC instead approves the changes, Staff believes that the revised rule would need to be republished and reviewed in accordance with the procedure set forth in G.S. 150B-21.2.

1 10A NCAC 09 .2102 is amended **with changes** as published in 40:06 NCR 505-506 as follows:

2
3 **10A NCAC 09 .2102 USE OF CORPORAL PUNISHMENT**

4 (a) Corporal punishment may be used in religious-sponsored child care facilities in accordance with G.S. **110-91(10)**,
5 **if: 110-91 (10).**

6 **(1) the religious sponsored child care facility files a notice with the Division stating that corporal**
7 **punishment is part of the religious training of its program; and**

8 **(2) the religious sponsored child care facility states in its written policy of discipline that corporal**
9 **punishment is part of the religious training of its program.**

10 (b) The **facility's** discipline policy shall state when corporal punishment is used, what type of punishment is used,
11 **and** who will be administering the **punishment.punishment, and that parents will be notified before the corporal**
12 **punishment is administered and notified in writing by the end of the day that their child received corporal punishment.**
13 **[The discipline policy shall state that parents will be informed before and by the end of the day after their child has**
14 **received corporal punishment and who will be administering the punishment.] The facility shall comply with [their]**
15 **its written discipline policy. [If administered by facility staff, corporal punishment shall be limited to one swat by the**
16 **hand on the buttocks of a child over the child's normal mode of dress that does not result in any mark that lasts more**
17 **than two hours or bruising. A witness shall be present when corporal punishment is administered and shall be**
18 **administered by the administrator or other designated staff member. A facility shall not administer corporal**
19 **punishment more than once a day per child. The facility's administrator shall complete an incident report whenever**
20 **corporal punishment is administered at the facility.] Corporal punishment shall be administered by the administrator,**
21 **other designated staff, or the child's parent. An additional staff member shall be present when corporal punishment is**
22 **administered.**

23 **(c) The facility's administrator shall maintain a corporal punishment log anytime corporal punishment is administered**
24 **at the facility. This log shall be maintained for a period of three years and shall be made available for review by**
25 **Division staff. This log shall include the following:**

26 **(1) the child's name;**

27 **(2) the date and time corporal punishment was administered;**

28 **(3) the type of corporal punishment administered; and**

29 **(4) the name of the person administering the corporal punishment.**

30 **(e)(d)** The discipline policy shall be shared with all parents that have children enrolled at the facility and the facility
31 shall provide parents a copy of the policy for their records.

32 **(d)(e)** If the facility's discipline policy changes, the new policy shall be shared with parents 14 days prior to the change
33 becoming effective. A copy of the revised discipline policy shall be submitted to the Division within 30 days of the
34 effective date of the revised policy.

35 **(e)(f)** A discipline policy that meets the requirements of this Rule shall not preclude the investigation of a complaint
36 **by the Department of Health and Human Services, Division of Child Development and Early Education,** alleging
37 inappropriate discipline of a child or child maltreatment as specified in G.S 110-105.3.

1
2
3
4
5
6

History Note: Authority G.S. 110-91(10); 110-106; 110-88; 110-85;
Eff. October 1, 2017.
Amended Eff. ~~[May 1, 2026]~~ September 1, 2026.