

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: May 27, 2026

RECOMMENDED ACTION:

No action

X Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Per G.S. 150B-21.9(a)(1), the Rules Review Commission is tasked with determining whether a rule "is within the authority delegated to the agency by the General Assembly."

The proposed amendments to rule 10A NCAC 09 .2102, in relevant part, define the term "corporal punishment" and specify discipline policy requirements for religious-sponsored child care facilities as defined in G.S. 110-91(10). Specifically, the amended rule states: "If administered, corporal punishment shall be limited to one swat by the hand on the buttocks of a child over the child's normal mode of dress that does not result in any mark on the skin that lasts more than two hours or bruising." The amended rule also includes requirements for a witness, daily limitations on the use of corporal punishment, and incident reporting provisions.

The Child Care Commission is primarily relying on its general rulemaking authority for these rule amendments. In its May 22, 2026, letter to the RRC, the Commission states the following:

“As set forth in Chapter 10 of Article 7 of the North Carolina General Statutes, our General Assembly has established the State’s overarching purpose in regulating child care, that is, to protect the health, safety, and developmental well-being of children in care, and has specifically authorized the North Carolina Child Care Commission (“Commission”) to adopt rules necessary to carry out and enforce the child care statutes. See N.C.G.S. §§ 110-85; 110-88. Together, these statutes vest the Commission with broad authority to adopt rules that ensure clarity, safety, and consistent regulation across all child care settings.

Pursuant to N.C.G.S. § 110-106, a “religious-sponsored child care facility” may operate pursuant to a notice of intent, instead of a child care license issued by the Division of Child Development and Early Education (“Division”), but must comply with some of the minimum licensing standards established by N.C.G.S. § 110-91. While otherwise prohibited as a form of discipline in licensed child care, corporal punishment may be used in a religious sponsored facility if the facility notifies the Division and states in its written policy that corporal punishment is a part of its religious training. See N.C.G.S. § 110-91(10).

While recognizing and respecting the authority of religious-sponsored facilities to use corporal punishment as a form of discipline, the Commission is proposing amendments to 10A NCAC 09 .2102 that directly implement N.C.G.S. §§ 110-85 and 110-88 by defining what constitutes permissible corporal punishment, clarifying who may administer it, and identifying the required elements of written discipline policies for these programs. These revisions are necessary and reasonable to ensure compliance with those statutory requirements and to establish clear procedural safeguards. Adding these clarifications reduces ambiguity, promotes consistent enforcement, and strengthens child safety—especially where physical discipline is permitted under statute. The amendments also support consistent application of related statutory requirements, including investigations into inappropriate discipline or child maltreatment.”¹

On the other hand, one could argue that the limitations set forth in the amended rule go beyond the statutory requirements for religious sponsored child care facilities. G.S. 110-91(10) states:

“Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs. Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change. 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

¹ See <https://www.oah.nc.gov/media/18273/download?attachment>.

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.”

When read holistically, the statute could be interpreted as providing these religious sponsored child care facilities with discretion to set their own policies on discipline, including corporal punishment, so long as the policy meets all of the requirements of the paragraph and the facility notifies the Department and clearly states in the written policy that corporal punishment is part of the religious training program. The statute does not explicitly instruct the Commission to define or describe the methods and practices used when said facilities carry out corporal punishment.

G.S. 110-88.1 also prohibits the State from determining the religious training or curriculum offered in religious-sponsored child care facilities. However, it is not immediately clear if the rule revisions in question would rise to the level of “determining” the “religious training” of a given facility.

Staff ultimately finds the Commission’s arguments to be more persuasive and recommends approval of the final revised version of the rule. However, this is a close call and the RRC may want to consider these arguments during its meeting.

APPENDIX A:
§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

In the event that a proposed temporary or permanent rule fails to comply with any of the standards set forth in this section, the Commission shall object to the temporary or permanent rule.

(a1) Repealed by Session Laws 2023-134, s. 21.2(g), effective October 3, 2023.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9; 2023-134, s. 21.2(g).)

**APPENDIX B:
Relevant Authority Statutes**

§ 110-85. Legislative intent and purpose.

Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to the early care and education of children:

- (1) The State should protect children in child care facilities by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.
- (2) Repealed by Session Laws 1997-506, s. 2, effective September 16, 1997.
- (3) Achieving this level of protection and early education requires the following elements: mandatory licensing of child care facilities; promotion of higher quality child care through the development of enhanced standards which operators may comply with on a voluntary basis; and a program of education to help operators improve their programs and to deepen public understanding of child care needs and issues. (1971, c. 803, s. 1; 1987, c. 788, s. 1; 1997-506, ss. 1, 2.)

§ 110-88. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

- (1) To develop policies and procedures for the issuance of a license to any child care facility that meets all applicable standards established under this Article.
 - (1a) To adopt applicable rules and standards based upon the capacity of a child care facility.
- (2) To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center.
 - (2a) To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued.
- (3) Repealed by Session Laws 1997-506, s. 4.
- (4) Repealed by Session Laws 1975, c. 879, s. 15.
- (5) To adopt rules and develop policies for implementation of this Article, including procedures for application, approval, annual compliance visits for centers, and revocation of licenses.
- (6) To adopt rules for the issuance of a provisional license that shall be in effect for no more than 12 consecutive months to a child care facility that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article but that is making a reasonable effort to conform to the standards.

(6a) To adopt rules for administrative action against a child care facility when the Secretary's investigations pursuant to G.S. 110-105(a)(3) substantiate that child abuse or neglect did occur in the facility. The rules shall provide for types of sanctions which shall depend upon the severity of the incident and the probability of reoccurrence. The rules shall also provide for written warnings and special provisional licenses.

(7) To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article. These enhanced program standards must address, at a minimum, staff/child ratios, staff qualifications, parent involvement, operational and personnel policies, developmentally appropriate curricula, and facility square footage.

(8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(66).

(10) To adopt rules for the issuance of a temporary license which shall expire in six months and which may be issued to the operator of a new center or to the operator of a previously licensed center when a change in ownership or location occurs.

(11) To adopt rules for child care facilities which provide care for children who are mildly sick.

(12) To adopt rules regulating the amount of time a child care administrator shall be on-site at a child care center.

(13) To adopt rules for child care facilities that provide care for medically fragile children.

(14) To adopt rules establishing standards for certification of child care centers providing Developmental Day programs.

The Division and the Commission shall permit individual facilities to make curriculum decisions and may not require the standards, policies, or curriculum of any single accrediting child care organization. If Division inquiries to providers include database fields or questions regarding accreditation, the inquiry shall permit daycare providers to fill in any accrediting organization from which they have received accreditation. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232; 1991, c. 273, s. 2; 1993, c. 185, s. 1; 1997-506, ss. 4(a), 28.3; 1999-130, ss. 1, 5; 2004-124, s. 10.35; 2009-187, s. 2.)

§ 110-91. Mandatory standards for a license.

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. Notwithstanding any provision of law or rule to the contrary, any building and grounds which are currently approved for school occupancy and which house a public or private elementary or middle school shall be deemed to have met the space and equipment, sanitation, fire, and building code requirements for a licensed child care facility when the

building and grounds are serving the same, or a subset of the same, school-age children in an out-of-school child care program. None of the standards in this section apply to the school-age children of the operator of a child care facility but do apply to the preschool-age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. 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.

...

(10) Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

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 G.S. 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.

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§ 110-105.3. Child maltreatment.

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

(1) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in

G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.

(2) Child care facilities. – Any of the following: a. All facilities required to be licensed under this Article. b. All religious-sponsored facilities operating pursuant to G.S. 110-106. c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.

(3) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or issuing an administrative action based upon violations of child care licensure law or rules based upon its G.S. 110-105.3 investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

(i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding

inspections or the identity of the reporter, shall be held in strictest confidence as provided by subsection

(j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its website that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated. (j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:

(1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

(3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.

(l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by

federal law and regulations.

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f). (2015-123, s. 8; 2025-25, s. 29(5).)

APPENDIX C: Draft Rule

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

10A NCAC 09 .2102 USE OF CORPORAL PUNISHMENT

- (a) Corporal punishment may be used in religious-sponsored child care facilities in accordance with G.S. 110-91(10); ~~if:~~
- (1) ~~the religious sponsored child care facility files a notice with the Division stating that corporal punishment is part of the religious training of its program; and~~
 - (2) ~~the religious sponsored child care facility states in its written policy of discipline that corporal punishment is part of the religious training of its program.~~
- (b) The facility's discipline policy shall state when corporal punishment is used, what type of punishment is used, ~~and who will be administering the punishment.~~ ~~[The discipline policy shall state]~~ and that parents will be informed before and by the end of the day after their child has received corporal punishment [and who will be administering the punishment]. The facility shall comply with their written discipline policy. If administered ~~[by facility staff],~~ corporal punishment shall be limited to one swat by the hand on the buttocks of a child over the child's normal mode of dress that does not result in any mark on the skin that lasts more than two hours or bruising. ~~[A]~~ An additional staff member [witness] shall be present when corporal punishment is administered. ~~[and]~~ Corporal punishment shall be administered by the administrator or other designated staff member. A facility shall not administer corporal punishment more than once a day per child. The facility's administrator shall complete an incident report whenever corporal punishment is administered at the facility.
- (c) The discipline policy shall be shared with all parents that have children enrolled at the facility and the facility shall provide parents a copy of the policy for their records.
- (d) If the facility's discipline policy changes, the new policy shall be shared with parents 14 days prior to the change becoming effective. A copy of the revised discipline policy shall be submitted to the Division within 30 days of the effective date of the revised policy.
- (e) A discipline policy that meets the requirements of this Rule shall not preclude the investigation of a complaint by the Department of Health and Human Services, Division of Child Development and Early Education, alleging inappropriate discipline of a child or child maltreatment as specified in G.S 110-105.3.

History Note: *Authority G.S. 110-91(10); 110-106; 110-88; 110-85;*
Eff. October 1, 2017.
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