

Email dated January 12, 2010

Dear Child Care Commission members,

I hope you were able to enjoy some restful days off during the holidays!

Across the state, we're all dealing with unusually cold temperatures recently. I wanted to use this opportunity to encourage you to ask questions about how Division staff would interpret the proposed rule for one hour of outdoor time, with the recent conditions. You can recall the language from Rule .0508 (a) (1) (D) (iii) states: ***"When children two years old or older are in care, the schedule shall reflect daily opportunities indoors and outdoors for A minimum total of one hour of outdoor time throughout the day, if weather conditions permit."*** For children under two, the rule requires a minimum total of 30 minutes of outdoor time, if weather conditions permit.

Providers have shared with you how there is inconsistency in implementation of the rules. Here are some scenarios that might help you understand some of the questions providers typically ask. Since you put so much time and energy into approving the rules, we hope this will help you know what questions to ask the DCD Licensing staff in order to be comfortable with any rulemaking action you ultimately take.

Potential Scenarios:

- a) Tomorrow the outside temp is forecasted for 24°, with wind chill making it feel like 11°. No precipitation forecasted. Would the one hour minimum still apply?
- b) Tomorrow the outside temp is forecasted for 22°, with wind chill making it feel like 9°. *Flurries forecasted*. Would the one hour minimum still apply? Could that decision be made today or would it depend on whether or not snow actually fell tomorrow? What if it was snowing in the morning, but cleared in the afternoon, would they be expected to work in their one hour minimum when they woke up from their naps?
- c) Last Friday the outside temp was 8°, with a wind chill below 0°. Sky was hazy, with *no precipitation*. If a licensing consultant visited a center where the Director had determined weather was not appropriate for children to go outside that day, would they have been cited for a violation?
- d) Last Friday the outside temp was 8°, with a wind chill below 0°. Sky was hazy, with no precipitation. A parent calls in a complaint because the children DID go outside four times for 15 minutes each. Would licensing support, in writing, the center's decision? What if the parent called in a complaint because her child did NOT go outside that day. Would licensing support the center's decision or cite them for a violation?
- e) For each of the decisions above, would the basis for the decision be in a policy that is in writing and shared with or made available to child care providers? Would the policy be ready prior to the effective date of the new rule? Would it be included in the handbook so that a center Director doesn't have to make a phone call or go to a website to find out the answer? Will it be an informal policy communicated to licensing consultants, who are then able to make their own determinations on a case-by-case basis?
- f) For c) and d) above, would the center have the burden of providing documentation of what the actual weather was for the day, in order to support any statements they made as part of the investigation or report?

We recognize that *implementation* of the rules is not part of your job as a Commission. However, seeing areas where providers need clarification might help you write “better” rules! We ask that you **take** into consideration:

What's the REAL purpose of the rule change?

- If the goal is to encourage outdoor time, then perhaps a range of time would be better. Or maybe a range expressed in hours per week, instead of per day, might make it less restrictive.
- If the goal is to be able to cite centers with violations when they aren't going outside, would more frequent licensing visits be a better solution? Would that address the issue without creating more compliance/documentation requirements for the classrooms who ARE going outside?

Who will be most impacted by the rule change?

- Centers who are conscientious about following rules will take on additional work to make sure they can prove they followed the rules.
- If an owner or director feels the need to have a *rule* in place in order to require certain behaviors of their staff, they may instead need personnel training. They need to learn how to write better job descriptions that spell out expected behaviors as a condition of continued employment.
- Centers who knowingly violate rules that already exist are likely to continue to violate new rules as they are written.
- Will the centers who are assessed by the Environment Rating Scales (ITERS-R, ECERS-R, SACERS, and FCCERS) have multiple definitions of “weather permitting” to remember?

Please take time to ask questions, and feel free to let us know if we can help you in any way!

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