

April 23, 2008

To: Interested Parties

From: Andres Fernando, Rules Coordinator  
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Department of Early Learning

SUBJECT: New WAC Chapter 170-06 – DEL Background Check Rules, and  
Related Revisions to DEL Child Care Licensing WAC Chapters –  
Concise Explanatory Statement

RCW 34.05.325(6) requires the Department to prepare a “concise explanatory statement” before any rule is filed for permanent adoption. The concise explanatory statement:

- Identifies the Department’s reasons for adopting the rule
- Describes any differences between the proposed rule and the final rule, other than editing, and the reasons for the differences; and
- Summarizes all comments by category received on the proposal rules during the official comment period, the Department’s response to the comments, and whether any comments resulted in a change to the final rules, or giving the Department’s reasons if the rule was not changed.

The Department sends the concise explanatory statement to everyone who commented on the proposed rules, or to anyone who requests it.

**Reasons for Adopting the Rule.** The Department of Early Learning (DEL) is adopting as permanent WAC chapter 170-06 DEL Background Check Rules, and related amended and repealed sections of the DEL child care licensing WAC chapters 170-151, 170-295, and 170-296. Chapters 43.215 RCW and 43.43 RCW require DEL to do background checks for child care licensees, employees, and volunteers, as well as others who may care for or have unsupervised access to children in child care that is licensed or certified by DEL.

Substantially similar background check rules have been filed as emergency rules since July 3, 2006, and was most recently extended on February 1, 2008. The emergency regulations allowed DEL to provide background checks for child care licensed or certified by DEL while permanent rule making proceeded. On July 1, 2006, child care licensing functions were separated from the Department of Social and Health Services (DSHS) and were transferred to the new Department of Early Learning. This transfer made DSHS rules in Title 388 WAC, including DSHS Background Check WAC chapter 388-06, obsolete for the purpose of regulating child care. New DEL rules are needed to describe the requirements and process for conducting background checks for child care licensed or certified by DEL.

**Rule Development Process.** On October 24, 2006, DEL filed a CR 101 pre-proposal public notice that began the rule development process. DEL staff conducted forums in Mount Vernon, Yakima, Vancouver, Bellevue, Wenatchee, Omak, Spokane and Tumwater during November and December of 2006. In July and August of 2007, DEL state office staff met with the state child care associations and SEIU leaders to discuss specific recommendation for possible changes to the background check regulations. From September through February, 2008, DEL state office personnel reviewed draft changes with DEL child care licensing personnel and legal advisors to determine which proposed changes would be feasible to implement. On February 11, 2008, a preliminary draft of chapter 170-06 WAC was circulated by e-mail and online for informal public review; more than 50 pages of comments were received.

On March 5, 2008, DEL filed the formal proposed rules (CR-102 notice). Formal public hearings were held in the evening on April 8, 2008 in Lacey, and on Saturday, April 12, 2008 in Yakima. No one from the public attended the April 8 hearing. About 20 persons attended the Yakima hearing, and formal testimony was given by Lisa Beaulaurier of the Service Employees Union International (SEIU), and from Katherine Yasi, a licensed family home child care provider and SEIU member. Other attendees asked questions about the proposed rules during an informal question and answer session held before the formal hearing. The department received several written comments. The comments from the hearing those received in writing are summarized by issue or WAC number in the table below. The table also includes the department responses to each issue raised in the public comments.

**Differences between the Proposed Rule and the Final Rule, other than editing.** The following changes were made to the rules proposed as WSR 08-06-101 as a result of comments or for clarity:

I. CHANGES TO SECTIONS OF ADOPTED NEW CHAPTER 170-06 WAC – DEL BACKGROUND CHECK RULES COMPARED TO THE PROPOSAL:

**A. WAC 170-06-0020 - Definitions**

The proposed definition of “negative action” in subsection (9) is changed as follows:

- In subsection (9)(b), the phrase “not subject to further review” is deleted for clarity.
- In subsection (9)(c) the phrase “An adverse agency action, including” is added before “termination, revocation...” This change is to indicate “adverse agency action” means termination, revocation, or denial of a license, or surrender of a license if done in lieu of a pending adverse action.

**B. WAC 170-06-0040 - Background check requirements**

The proposed rule is changed as follows:

- In subsection (2)(b) the department deleted “arrests and the subsequent dispositions of such arrests” and inserted in its place the phrase “pending criminal charges”. This change makes the rule consistent with RCW 43.43.832 regarding the criminal information that DEL may investigate in a background check.
- In subsection (5), the phrase “care for or” is deleted after “An individual may not...” If left in the adopted rule, the deleted phrase would have prevented a person who had not completed a background clearance from working *under supervision or having supervised access* to children in child care licensed or certified by DEL. This was not the intent of the proposed rule.

**C. WAC 170-06-0050 – Department action following completion of a background check**

In subsection (1)(f), the proposed rule is changed to include “certification of rehabilitation.” This proposed subsection was also revised for clarity and to be consistent with the definition of “conviction record” in RCW 43.43.830. Regarding what will not be considered a conviction under this rule, the following wording was deleted:

“ it [has been] pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.”;

and was replaced by:

“the conviction [has been] the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.”

**D. WAC 170-06-0060 Additional information the department may consider**

Proposed subsection (2) is changed to delete “DEL-approved evaluator” and replace the wording with “an evaluator who is licensed or certified under RCW 18.130.040.” This change requires that an individual who provides a health evaluation under subsection (1) of this rule must be licensed or certified by the Department of Health or the appropriate health profession board or commission. The list of these professions is in RCW 18.130.040.

**E. WAC 170-06-0070 – Disqualification**

The caption of the proposed rule is changed to “**Disqualification and reconsideration**” to more clearly reflect the rule content. The following changes to the rule content were made:

- Three new subheadings were added to help clarify the rule. These subheadings are:
  - “Background information that will disqualify an applicant” inserted before subsections (1) through (3)
  - “Background information that may disqualify an applicant” inserted before subsections (4) through (7)
  - “Reconsideration of disqualification” inserted before subsection (8).
- Subsections (1) and (2) were revised for clarity to refer to the appropriate subsections “(1)” and “(2)”, respectively, of WAC 170-06-0120 when describing the crimes that disqualify a person from a DEL background clearance.
- In subsection (3), “as defined in WAC 170-06-0020(9)” was added to be consistent with a similar reference in the term “negative action” in subsection (4) of this section.
- In subsection (7)(c), “reasonably” was added for clarity before the phrase “should have known that the illegal act occurred or would occur.”

**F. WAC 170-06-0120 - Director’s list**

This section includes a table that describes the crimes that disqualify an applicant from receiving a DEL background clearance. In column (a) of the table, “Commercial sexual abuse of a minor” was added to the list of crimes that permanently disqualify an applicant, and “Patronizing a juvenile prostitute” was deleted. Both changes make the rule consistent with the recent amendment of RCW 9.68A.100 (see chapter 368, Laws of 2007) that changed the name of this crime.

## II. CHANGES TO AMENDED SECTIONS OF CHAPTER 170-151 WAC – SCHOOL AGE CHILD CARE COMPARED TO THE PROPOSAL

**WAC 170-151-470 – What personnel policies and records must I develop and maintain.**

In subsection (1)(c), the word “lived” is changed to “resided” to be consistent with other rules in the proposal and with the RCW.

## III. CHANGES TO AMENDED SECTIONS OF CHAPTER 170-296 WAC – FAMILY HOME CHILD CARE COMPARED TO THE PROPOSAL.

**A. WAC 170-296-0200 – Will my license be denied or revoked if I have been disqualified from providing licensed child care?**

The phrase “licensed child” is deleted before “care.” And after the word “care” the following phrase was added for clarity, “...for or having unsupervised access to children in child care.” This makes the phrasing of this rule consistent with other rules being adopted.

**B. WAC 170-296-0220 Must I keep the results of the background checks on family members, staff and volunteers?**

The WAC caption is changed to “**Must I keep a record of submitted background check forms and the results of the background checks on family members, staff and volunteers?**”

The WAC content is also changed. After “You must keep” was added the phrase “documentation of background check forms submitted...” The effect of this change is that licensees keep documentation on file that they submitted background check applications, as well as keep a copy of the DEL background clearance authorization for persons covered by this rule.

**C. WAC 170-296-0450 When will my license be denied, suspended or revoked?**

The content of the current subsection (1)(b) was inadvertently deleted in the proposed rule and is being reinserted in its entirety. The subsection will read that the department must deny, suspend or revoke a license if you (the licensee) “(b) have been found to have committed or allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;”

**IV. THERE ARE NO CHANGES TO AMENDED SECTIONS OF CHAPTER 170-295 WAC AS PROPOSED IN WSR 08-06-101.**

**Summary of Comments; Department Response, and affect on the Final Rule.** DEL received both written and public hearing comments on the proposed rules. The following table summarized the issues raised in public comments, by rule section and category, and the departments response. The response also indicates if the proposed rule was changed as a result of the comment, or if the proposed rule was not changed and why.

(Continued on following page)

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0010</p> <ul style="list-style-type: none"> <li>• The purpose of background checks is only to screen out people who have only harmed children or adults in their past.</li> <li>• The rule language ‘or other information that raises concerns about an individual’s character, suitability and competence’ is too broad.</li> </ul>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> RCW 43.215.215 (1) states that the purpose of conducting background checks is to establish a pattern of conduct, behavior, or inaction with regard to the health, safety or welfare of a child. This indicates that the intent of lawmakers is to not only screen out individuals who have harmed a child or adult, but to also look at background information that would indicate a potential risk of harm to children in care.</p>
<p>WAC 170-06-0020(9)(a)(d)(e)</p> <ul style="list-style-type: none"> <li>• Who determines what are ‘negative actions’ and what criteria are used?</li> <li>• There is no specificity to the kinds of licenses and findings that will be considered.</li> <li>• The definition is a catch-all for punitive action and this definition could include a licensing action not related to child care.</li> <li>• The rule does not state what fact/information will be used.</li> <li>• The termination, revocation, suspension or denial of a license should not be is automatic disqualifier.</li> <li>• DEL staff is not trained to judge what is reasonable or what actions show poor character.</li> <li>• Are there appeal rights for disciplinary board findings?</li> </ul>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> The Department of Early Learning (DEL) is required by RCW 43.43.832 to investigate negative action records prior to authorizing an individual to care for or have unsupervised access to children in care. The definition of negative actions was added to give applicants more information about what types of actions may be considered.</p> <p>Other information, non-disqualifying criminal convictions and negative actions may be considered as a basis for disqualification; under WAC 170-06-0020(9), the information or negative action must be “reasonably related to a persons’ ability to care for or have unsupervised access the children in child care.” DEL must demonstrate that the information or negative action is related.</p> <p>Negative actions that <u>always</u> disqualify a person have been limited to those actions that relate to abuse or neglect of a child and those that relate to abuse, neglect or financial exploitation of a vulnerable adult. Negative actions that <u>may</u> disqualify a person must be ‘reasonably related to the individual’s character, suitability and competence to care for of have unsupervised access to children in child care’.</p> <p>Termination, revocation, suspension or denial of a license is not an automatic disqualifier.</p> <p>DEL trains its staff in both the process of collecting background information and in making determination whether to qualify or disqualify an applicant to care for or</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
	<p>have unsupervised access to children in care.</p> <p>State rules governing health professions provide appeal rights to persons subject to a disciplinary action – see WAC chapters 246-10 and 246-11. Department of Licensing (DOL) WAC chapter 308-08 also provides appeal rights for professions under DOL authority. There are also a variety of national, Washington state and other states’ boards that could potentially issue disciplinary findings that may constitute a negative action, although DEL has not researched whether these disciplinary boards offer appeal rights.</p>
<p>WAC 170-06-0020(9)(b) Providers do not have ‘due process’ rights as a result of a valid licensing complaint finding.</p>	<p><b>The final rule was changed as a result of this comment.</b> The phrase ‘not subject to further review’ was removed for clarity.</p> <p>DEL policy includes a process for a provider to have a ‘valid’ complaint finding reviewed.</p> <p>Any agency negative action(s) can be considered as a basis for disqualification. A disqualified applicant or provider has the opportunity appeal the disqualification through the administrative hearing process.</p>
<p>WAC 170-06-0020(9)(c)</p> <ul style="list-style-type: none"> <li>• What is the definition of ‘adverse agency action’?</li> <li>• Licensees may voluntarily surrender their license, without being informed that by doing so they may not be able to successfully reapply for a license in the future.</li> </ul>	<p><b>The final rule was changed as a result of this comment.</b> This rule now describes “adverse agency action” as including ‘termination, revocation or denial of a license’ to add clarity.</p> <p>The surrender of a license does not always disqualify an applicant. To be considered as a basis for disqualification, the license surrender has to be in lieu of a pending adverse action, such as license termination, revocation or denial. A disqualification must reasonably relate to the applicant’s character, suitability and competence to care for or have unsupervised access to children in care.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0020(10) Providers cannot always be in visual and auditory range of all children at all times especially when parents come pick their children up from care.</p>	<p><b>The final rule was changed as a result of this comment.</b> DEL changed the definition of ‘Unsupervised Access’ from ‘visual <u>and</u> auditory range’ to ‘visual <u>or</u> auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care’. This change to accommodate the circumstances when providers are only able to see or hear an unauthorized person who may have reason to be on premises, such as a parent.</p>
<p>WAC 170-06-0040 (1)(b) DEL should conduct child abuse and neglect record checks for assistants 14 and older.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> Child abuse and neglect record checks are conducted for all assistants, including those 14 to 16 years of age. DEL staff checks Child Protective Services (CPS) history records for juveniles, who are required to be authorized by DEL (such as assistants.) Also, background checks are conducted for all residents in a licensed facility’s premises ages 16 and older per RCW 43.43.832(6)(a).</p>
<p>WAC 170-06-0040(2) Suggest changing rule ‘to best of their knowledge’ for disclosures; material information not known to applicant should not be disqualification factor.</p>	<p><b>The final rule was changed as a result of this comment.</b> DEL replaced ‘arrests and the subsequent dispositions of such arrests’ with ‘pending criminal charges’. This change makes the rule consistent with RCW 43.43.832 regarding the criminal information that DEL may investigate in a background check</p> <p>There should be no reason an applicant would be unaware of criminal charges pending against them.</p> <p>For DEL to fulfill its responsibility to authorize persons to care for or have unsupervised access to children, it is important that background information is obtained. Applicants need to be fully informed of what information is needed and they must fully disclose any information that may have bearing on their authorization.</p>
<p>WAC 170-06-0040(3) Del should allow some flexibility on the timelines for submitting background checks.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> Licensees would be aware of hiring new staff, a person moving onto the premises or a person living on the premises turning sixteen years old in advance of the event. Licensees can request background check forms from the licensing office or access them online.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0050</p> <ul style="list-style-type: none"> <li>• Character, suitability and competence assessment has no definition, no standards or guidelines and is open to interpretation. It is not known what facts/information will be used to make the assessment.</li> <li>• These rules should limit character, suitability and competence assessment to convictions records, pending charges and findings of abuse or neglect or a child or vulnerable adult.</li> <li>• DEL staff is not trained to conduct a character, suitability and competence assessment.</li> </ul>	<p><b>The final rule was not changed as a result of this comment.</b></p> <p>DEL will start discussions with stakeholders on drafting a definition in rule of “character, suitability and competence.”</p> <p><u>Rationale:</u> RCW 43.215.205 and 42.215.215, direct DEL to collect information on the character, suitability and competence of applicants for licensure and for other persons associated with an agency. RCW 43.215.215 (1) allows DEL to consider the history of past involvement of child protective services or law enforcement agencies with the applicant to establish a pattern of conduct, behavior or inactions with regard to the health, safety or welfare of a child to determine whether an individual is of appropriate character, suitability and competence to provide child care and early learning services to children.</p> <p>In RCW 43.43.832 (6) DEL is directed to adopt rules and investigate convictions records, pending charges and <u>other information</u> including civil adjudication proceeding records. DEL licensing staff conduct this assessment based on information disclosed on the background check form, Washington State Patrol records, adjudicative proceeding records from other agencies, such as DSHS, Department of Health and Department of Corrections, FBI records (when required) and any other information that comes to the attention of DEL during the license application or background check process.</p> <p>The rules provide specificity about the negative actions and other information that the department may consider. Except for crimes and negative actions that always disqualify an applicant, DEL must show that the background information is ‘reasonably related’ to the applicants ability to care for or have unsupervised access to children in child care.</p> <p>DEL staff persons are trained in both the process of collecting background information and in making a determination whether to qualify or disqualify an applicant to care for or have unsupervised access to children in care.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0050(1)(a) A background check applicant could be disqualified as a result of false or inaccurate allegations.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> The rule treats pending criminal charges the same as convictions. In RCW 43.215.200(3), DEL is required to investigate pending charges.</p> <p>This rule is not related to an allegation of child abuse or neglect, CPS investigation or finding.</p>
<p>WAC 170-06-0050(1)(d) DEL should not consider juvenile records when disqualifying an applicant.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> The Washington State Patrol (WSP) check includes convictions, pending charges and dispositions for juveniles. DEL must consider the conviction record provided by WSP when determining whether to approve or disqualify an applicant.</p>
<p>WAC 170-06-0050(1)(f) DEL should add Certificate of Rehabilitation to this WAC.</p>	<p><b>The final rule was changed as a result of this comment.</b> The rule has been rewritten to closely follow RCW 43.43.830 (4), which defines what is or is not a ‘conviction record’. Certificate of rehabilitation has been added to what is <u>not</u> a “conviction.”</p>
<p>WAC 170-06-0050(3) The rule is vague and too broad. There are no standards or guidelines for disqualifying an applicant.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> This WAC describes the existing process that DEL uses after receiving background information and references WAC 170-06-0070, which describes under what conditions DEL disqualifies an applicant.</p>
<p>WAC 170-06-0050(5) DEL should consider a rule requiring a written explanation of a disqualification.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> DEL sends written notice to the person being disqualified per WAC 170-06-0080. The written notice includes the reason for the disqualification. DEL also notifies the licensee when an applicant who works at or resides at their facility has been disqualified. This notice is usually by phone so that the licensee is aware that the applicant will not be approved to care for or have unsupervised access to children in care.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0060</p> <ul style="list-style-type: none"> <li>• DEL should not be able to choose the evaluator.</li> <li>• There needs to be proof of risk to children.</li> <li>• The applicant should not have to pay for an evaluation.</li> <li>• The evaluation request should be written.</li> <li>• The process does not promote a neutral and unbiased evaluation.</li> <li>• The rule should require DEL to go beyond ‘a reason to believe that additional information is needed’.</li> </ul>	<p><b>The final rule was changed as a result of this comment.</b>                      In WAC 170-06-0060(2), ‘DEL-approved’ has been replaced with ‘an evaluator who is licensed or certified under RCW 18.130.040’. This provides a basis for the person being evaluated to choose the evaluator. The rule requires the evaluator to be licensed or certified by the Department of Health or the appropriate health profession board or commission.</p> <p>A request for additional evaluative information must be in writing and approved by the DEL licensing supervisor. The evaluator is chosen and paid for by person being evaluated. It is not clear whether DEL has the appropriate authority or funding to pay for evaluations. The department will study this issue but, in the meantime, the rule will be adopted with only the changes noted above.</p> <p>In the proposed rules, DEL will have to have ‘reason to believe that additional information is needed’ before requesting an applicant to provide more information or evaluative reports. DEL staff needs to talk to the evaluator to clarify the need for and scope of the evaluation.</p> <p>The request for additional evaluative information is often used to determine whether an applicant, who would be disqualified, can be qualified by providing information that relates to their character, suitability and competence to care for or have unsupervised access to children in care.</p> <p>The request can be prompted by information that DEL receives, or seeks out, that brings into question the background check applicant’s character, suitability or competence to care for or have unsupervised access to children in child care. It may be something disclosed by the applicant, noted from a reference, received as part of the background check process or observed behavior.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0070 (3)(a) DEL removed ‘unless the department determines that the person does not pose a risk to a child’s safety and well-being’ to the rule about evaluating negative actions. It should be put back in.</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> Although this rule was not changed from the proposal, WAC 170-06-0070(8) allows a disqualified applicant to ask for a reconsideration of the disqualification. The applicant would have to demonstrate by clear and convincing evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in child care.</p>
<p>WAC 170-06-0070 Comments received indicated some confusion over this section, which states what background information always disqualifies an applicant and what information may disqualify an applicant.</p>	<p><b>The final rule was changed as a result of this comment.</b> The caption of the proposed rule is changed to “<b>Disqualification and reconsideration</b>” to more clearly reflect the rule content.</p> <p>Three new subheadings were added for clarity. These subheadings are:</p> <ul style="list-style-type: none"> <li>- “Background information that will disqualify an applicant” inserted before subsections (1) through (3)</li> <li>- “Background information that may disqualify an applicant” inserted before subsections (4) through (7)</li> <li>- “Reconsideration of disqualification” inserted before subsection (8).</li> </ul>
<p>WAC 170-06-0070(4) The rule is too open. Who defines ‘reasonably relate’ and what facts/information are used to assess an applicant’s character, suitability and competence?</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> To protect children in care, DEL must assess all background information on an applicant and have the authority to disqualify an applicant based on negative action(s) that relate to the applicant’s character, suitability and competence to care for or have unsupervised access to children in care. As a part of the assessment DEL staff would determine if negative actions(s) relate. If an applicant is disqualified under this rule, they would have the opportunity to appeal the disqualification and, at hearing, DEL would need to show that the action(s) relate.</p>
<p>WAC 170-06-0070(5) When under a CPS investigation, providers should be able to remain open with safety plan and</p>	<p><b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> This rule states that an applicant to care for or have unsupervised access the children in care may be</p>

<p><b>Summary of Comments</b></p>	<p><b>Department Response</b>  <b>Was the Proposed Rule Changed as a Result?</b>  <b>If Not, Explain Why.</b></p>
<p>parent notification.</p>	<p>disqualified if they are the subject of a pending CPS investigation. The rules that relate to closure of a licensed child care facility are located in the licensing WACS 170-151, 170-295 and 170-296.</p>
<p>WAC 170-06-0070(6)                      This rule should be removed.                      DEL should not have discretion if a stay is granted.</p>	<p><b>The final rule was not changed as a result of this comment.</b>  <u>Rationale:</u> This rule relates to the administrative hearing process for a CPS finding. After a person is ‘found’ to have committed child abuse or neglect, they may appeal the finding to DSHS. While that process is underway, DEL will not authorize the person to care for or have unsupervised access to children in care. If the person’s CPS finding is changed to ‘unfounded’, then DEL will consider approving them to care for or have unsupervised access to children in care.</p>
<p>WAC 170-06-0070(7)(c)                      It is impossible to meet rules that a person should have known that illegal act would occur.</p>	<p><b>The final rule was changed as a result of this comment.</b>                      The rule now states that an applicant ‘reasonably should have known that the illegal act occurred or would occur’.</p>
<p>WAC 170-06-0070(7)(d)                      The rule is too broad, vague and open to interpretation. Who determines that someone does not have the health or mental health to meet needs of children in care and with what criteria?</p>	<p><b>The final rule was not changed as a result of this comment.</b>  <u>Rationale:</u> DEL is responsible for authorizing individuals to care for or have unsupervised access to children. If there is a physical or mental health issue that would interfere with a person’s ability to care for children, DEL may disqualify the applicant if the department determines that the person could not meet the needs of children in care.</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>WAC 170-06-0070(8)</p> <ul style="list-style-type: none"> <li>• How does DEL determine that an applicant has undergone enough corrective action and rehabilitation to be approved and by what criteria?</li> <li>• Why did DEL remove the clause ‘unless department determines that the person does not pose a risk to a child’s safety and well being’?</li> </ul>	<p><b>The final rule was not changed as a result of this comment.</b>  <u>Rationale:</u> DEL staff base background check approvals on whether the applicant can demonstrate by clear and convincing evidence they have the character, suitability and competence to be authorized to care for or have unsupervised access to children in child care. In RCW 43.215.215 (1) DEL is directed to determine if an applicant has the character, suitability and competence to care for or have unsupervised access to children in child care. The language in the proposed rules reflects the RCW.</p> <p>In the emergency rules (in effect since July 2006 and in effect until the permanent background rules are adopted), the clause ‘unless the department determines that the person does not pose a risk to a child’s safety and well being’ was used in the section that required DEL to disqualify an applicant; this included a finding for child abuse or neglect and the denial or revocation of a license to care for children or vulnerable adults. In the proposed rules, negative actions that always disqualify a person have been limited to those actions that relate to abuse or neglect of a child and those that relate to abuse, neglect or financial exploitation of a vulnerable adult.</p> <p>WAC 170-06-0070(8) allows a disqualified applicant to request a reconsideration of a disqualification; the applicant would have to provide evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in care.</p>
<p>WAC 170-06-0080</p> <ul style="list-style-type: none"> <li>▪ DEL needs timelines for notification of disqualification.</li> <li>▪ How is the notification made?</li> </ul>	<p><b>The final rule was not changed as a result of this comment.</b>  <u>Rationale:</u> DEL does not have control over the entire process of conducting a background check. DSHS Background Check Central Unit checks for information from other agencies and sends the form to the Washington State Patrol. If fingerprints are required the form must be sent to the Federal Bureau of Investigation; rejected fingerprints can delay the process.</p> <p>DEL notifies a disqualified applicant, by letter, as soon as</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
	the determination is made. DEL notifies the employer (licensee) by phone when an applicant is disqualified.
WAC 170-06-0090(1) Who has the right to appeal a disqualification?	<b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> Any person who is disqualified has appeal rights.
WAC 170-06-0090(2) An employer or prospective employer should be able to testify or provide evidence which could attest to the applicant’s character, suitability and competence to care for children.	<b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> An employer may testify or provide evidence to support a background check applicant’s appeal of the disqualification. An employer may not appeal on behalf of an employee or potential employee.
WAC 170-06-0090(3) DEL should add timelines for a hearing.	<b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> RCW 34.05 contains the laws that relate to administrative hearings and WAC 170-03 outlines the DEL process and timelines for hearings. The Administrative Law Judge (ALJ) appointed to hear the appeal sets the schedule; the person contesting the disqualification (or DEL) has the right to request additional time or to file motions that may delay a hearing decision.
WAC 170-06-0110 DEL should not take away an applicant’s right to contest a finding or decision.	<b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> Applicant’s who are disqualified by DEL can appeal that disqualification but may not appeal the underlying reason for the disqualification, such as a criminal conviction. The ALJ that hears the disqualification appeal does not have the legal authority to overturn a criminal conviction or another agency’s finding or decision.
WAC 170-06-0120 Are all crimes on the Director’s List permanent disqualifiers?	<b>The final rule was not changed as a result of this comment.</b> <u>Rationale:</u> The Director’s List contains: <ul style="list-style-type: none"> <li>▪ A list of crimes that are permanent disqualifiers and</li> <li>▪ A list of crimes that disqualify an applicant for five years form the date of conviction.</li> </ul>