

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL or department).

(2) The department conducts background checks on subject individuals who are authorized to care for or have unsupervised access to children (~~((in child care agencies or in facilities that are licensed or certified by the department))~~) receiving early learning services.

(3) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

(4) The department's rules and state law require the evaluation of background information to determine the character, suitability, or competence of persons who will care for or have unsupervised access to children (~~((in child care))~~) receiving early learning services.

(5) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children (~~((in child care))~~) receiving early learning services, the provisions in this chapter shall govern.

(6) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832.

(7) Effective date: These rules are initially effective July 3, 2006, and apply prospectively. Effective July 1, 2012, these rules are amended to allow for increased and continued portability of background check clearances for subject individuals who are authorized to care for or have unsupervised access to children (~~((in child care agencies or in facilities that are licensed or certified by the department))~~) receiving early learning services.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

"Agency" has the same meaning as "agency" in RCW 43.215.010(2).

"Appellant" means only those with the right of appeal under this chapter.

"Authorized" or "authorization" means approval by DEL to care for or have unsupervised access to children (~~((in child care))~~) receiving early learning services or to work in or reside on the premises of a child care agency or certified facility.

"Certification" or "certified by DEL" means an agency that is legally exempt from licensing that has been certified by DEL as meeting minimum licensing requirements.

"Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

"DEL" or "department" means the department of early learning.

"Director's list" means a list of crimes, the commission of which disqualifies a subject individual from being authorized by DEL to care for or have unsupervised access to children ~~((in child care))~~ receiving early learning services, WAC 170-06-0120.

"Disqualified" means DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children ~~((in child care))~~ receiving early learning services.

"Early learning service(s)" for purposes of this chapter means the early childhood education and assistance program and licensed child care.

"Negative action" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children ~~((in child care))~~ receiving early learning services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"Nonconviction information" means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual.

"Nonexpiring license" or **"nonexpiring full license"** means a full license that is issued to a licensee following the initial licensing period, as provided in WAC 170-151-087, 170-295-0095, or 170-296A-1450, as appropriate.

"Subject individual":

~~((1))~~ (a) Means an individual who:

~~((a))~~ (i) Is seeking a background check authorization or upon whom the department may conduct a background check authorization;

~~((b))~~ (ii) Is sixteen years of age or older;

~~((e))~~ (iii) Is employed by, contracted with, or volunteering ~~((for a licensed child care agency or certified facility))~~ to provide early learning services; and

~~((d))~~ (iv) Will care for or have unsupervised access to children ~~((in child care))~~ receiving early learning services; and

~~((2))~~ (b) Includes, but is not limited to, the following:

~~((a))~~ (i) Personnel, including employees and staff;

~~((b))~~ (ii) Contractors, including contracted providers;

~~((e))~~ (iii) Temporary workers;

~~((d))~~ (iv) Assistants;

~~((e))~~ (v) Volunteers;

~~((f))~~ (vi) Interns;

~~((g))~~ (vii) Each person ~~((residing on, or moving into, the premises of a licensed family home child care who is sixteen years of age or older))~~ who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;

((h)) (viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children ((in-child-care)) receiving early learning services;

((i)) (ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;

((j)) (x) Applicants. As used in this definition, "applicant" means an individual who is seeking a DEL background check authorization as part of:

((i)) (A) An application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children ((in-child-care)) receiving early learning services; or

((ii)) (B) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DEL's authorization to care for or have unsupervised access to children ((in-child-care)) receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider; and

((k)) (xi) Licensees. As used in this definition, "licensee" means the individual, person, organization, or legal entity named on the child care license issued by DEL and responsible for operating the child care facility or agency.

"Unsupervised access" means:

(a) A subject individual will or may have the opportunity to be alone with a child ((in-child-care)) receiving early learning services at any time and for any length of time; and

(b) Access that is not within constant visual or auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child ((in-child-care)) receiving early learning services.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0040 Background clearance requirements. (1) Effective July 1, 2012, all new subject individuals applying for a first-time background check must complete the background check application process through DEL to include:

(a) Completion of the required fingerprint process; and

(b) Payment of all required fees as provided in WAC 170-06-0044.

(2) All other subject individuals who have been qualified by the department to have unsupervised access to children in care, prior to July 1, 2012, must submit a new background check application no later than July 1, 2013. The subject person must:

(a) Submit the new background check application through DEL;

(b) Submit payment of all required fees as provided in WAC 170-06-0044;

(c) Complete the required fingerprint process if the subject individual has lived in Washington state for fewer than three consecutive years prior to July 1, 2013;

(d) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed.

(3) Each subject individual completing the DEL background check process must disclose:

(a) Whether he or she has been convicted of any crime;
(b) Whether he or she has any pending criminal charges; and
(c) Whether there is any negative actions, to which he or she has been subject, as defined by WAC 170-06-0020.

(4) A subject individual must not have unsupervised access to children in care unless he or she has obtained DEL authorization under this chapter.

(5) A subject individual who has been disqualified by DEL must not be present on the premises (~~of a licensed or certified facility during the hours for which the licensee is licensed or certified to provide child care~~) when early learning services are provided to children.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0041 ((Licensee)) Requirements. (1) An agency, licensee, (~~or~~) certified facility or early learning services provider must require a subject individual to complete the DEL background check application process:

(a) Within seven days of the date of hire;
(b) By the date a subject individual age sixteen or older moves onto the premises; or
(c) By the date a subject individual who lives on the premises turns sixteen years old.

(2) The (~~licensee~~) early learning services provider must keep on-site a copy of each subject individual's background check clearance authorization.

(3) The (~~licensee~~) early learning services provider must update the provider portal in the DEL system to verify the subject individuals associated with their program.

(4) The (~~licensee~~) early learning services provider must verify annually that each subject individual who is required to have a background check has either obtained a department clearance or has applied for a department background check through the DEL system. The verification must be submitted with the licensee's annual license fee and declarations.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0042 Departmental investigation and redetermination.

(1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency.

(2) Subject to the requirements in RCW 43.215.215, the department may immediately suspend or modify the subject individual's background clearance.

(3) Subject to the requirements in RCW 43.215.300 and 43.215.305, and based on a determination that a subject individual lacks the ap-

appropriate character, suitability, or competence to provide child care or early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children (~~(in child care agencies or in facilities that are licensed or certified by the department)~~) receiving early learning services.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0043 Failure to report nonconviction and conviction information. (1) (~~(A licensee)~~) The early learning services provider must report to the department within twenty-four hours if he or she has knowledge of the following with respect to a subject individual working in that child care agency or who resigns or is terminated with or without cause:

(a) Any nonconviction and conviction information for a crime listed in WAC 170-06-0120;

(b) Any other nonconviction and conviction information for a crime that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care; or

(c) Any negative action as defined in WAC 170-06-0020.

(2) A subject individual who has been issued a background check clearance authorization pursuant to WAC 170-06-0040 must report non-conviction and conviction information to the department involving a disqualifying crime under WAC 170-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information.

(3) A subject individual who intentionally or knowingly fails to report to the department as provided in subsection (1) or (2) of this section may have his or her background check clearance suspended. This penalty will be in addition to any other penalty that may be imposed as a result of a violation of this chapter or chapter 170-151, 170-295, or 170-296A WAC.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0050 Department action following completion of background inquiry. As part of the background check process the department will conduct a character, suitability or competence assessment as follows:

(1) Compare the background information with the DEL director's list, WAC 170-06-0120, to determine whether the subject individual must be disqualified under WAC 170-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and may include convictions or dispositions for crimes committed as either an adult or a juvenile. It may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the defendant's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) The crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of the 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.

(2) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 170-06-0070(3).

(3) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 170-06-0070 (4), (5) or (7).

(4) ~~((The department may discuss the result of the criminal history and background check information with the licensee upon request, except for protected contents of the FBI record of arrest and prosecution (RAP) sheet subject to federal regulation.))~~ Except for the protected contents of the FBI record of arrest and prosecution (RAP) sheet and subject to federal regulation, the department may discuss the results of the criminal history and background check information with the authorized personnel of the early learning service provider.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0060 Additional information the department may consider. (1) If DEL has reason to believe that additional information is needed to determine the character, suitability or competence of the subject individual to care for or have unsupervised access to children ~~((in child care))~~ receiving early learning services, additional information will be requested. Upon request, the subject individual must provide to the department any additional reports or information requested. This additional information may include, but is not limited to:

(a) Sexual deviancy evaluations;

- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

(2) Any evaluation requested under this section must be conducted by an evaluator who is licensed or certified under RCW 18.130.040. The evaluation will be at the expense of the person being evaluated.

(3) The subject individual must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to evaluation, to establish the need for and scope of the evaluation, and after the evaluation to discuss the results.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0070 Disqualification. Background information that will disqualify a subject individual.

(1) A subject individual who has a background containing any of the permanent convictions on the director's list, WAC 170-06-0120(1), will be permanently disqualified from providing licensed child care, caring for children or having unsupervised access to children (~~in child care~~) receiving early learning services.

(2) A subject individual who has a background containing any of the nonpermanent convictions on the director's list, WAC 170-06-0120(2), will be disqualified from providing licensed child care, caring for children or having unsupervised access to children (~~in child care~~) receiving early learning services for five years after the conviction date.

(3) A subject individual will be disqualified when their background contains a negative action, as defined in WAC 170-06-0020 that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

Background information that may disqualify a subject individual.

(4) A subject individual may be disqualified for other negative action(s), as defined in WAC 170-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children (~~in child care~~) receiving early learning services.

(5) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(6) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(7) The department may also disqualify a subject individual if that person has other nonconviction background information that renders him or her unsuitable to care for or have unsupervised access to children (~~in child care~~) receiving early learning services. Among the factors the department may consider are:

(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child (~~in child care~~) receiving early learning services.

(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.

(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children (~~in child care~~) receiving early learning services.

(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0080 Notification of disqualification. (1) The department will notify the subject individual in writing if he or she is disqualified by the background check.

(2) If the department sends a notice of disqualification, the subject individual will not be authorized to care for or have unsupervised access to children (~~in child care~~) receiving early learning services, or to be present on the early learning service's premises (~~of a licensed or certified facility~~) during the hours for which (~~a licensee is licensed or certified to provide~~) child care is provided.

(3) Any decision by the department to disqualify a subject individual under this chapter is effective immediately upon receipt of notice from the department to the subject individual.

AMENDATORY SECTION (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

WAC 170-06-0115 Reconsideration of disqualification. (1) Subject to the requirements contained in chapter 170-06 WAC the department may reconsider an earlier decision to disqualify a subject individual.

(2) The disqualified subject individual must submit with his or her request for reconsideration a current and complete background check form and fingerprint card pursuant to WAC 170-06-0040.

(3) For a disqualification based on WAC 170-06-0070(4), 170-06-0070 (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualifica-

tion that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children (~~(in child care)~~) receiving early learning services. For purposes of (3) of this subsection a disqualification based on a "negative action," WAC 170-06-0070(4), 170-06-0070 (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or

(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.

(4) For a disqualification based on any of the circumstances described in WAC 170-06-0070(3), 170-06-0070 (7)(b) or (d) a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.

(5) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(1).

(6) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(2) for a period of five years from the date of the disqualifying conviction.

AMENDATORY SECTION (Amending WSR 14-13-002, filed 6/4/14, effective 7/5/14)

WAC 170-06-0120 Director's list. (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children (~~(in child care)~~) receiving early learning services.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children (~~(in child care)~~) receiving early learning services for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	