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TO: Interested Stakeholders

FROM: Matt Judge, Department of Early Learning Rules Coordinator

SUBJECT: **Concise Explanatory Statement**
Final Adoption of Amended WAC sections 170-295-0010, 170-295-2090, 170-295-2100, and 170-295-5100 regarding the definition of “preschool age child” and infants in mixed age groups.

RCW [34.05.325](#)(6) requires that when a state agency adopts a permanent rule (known as Washington Administrative Code or WAC), the agency must prepare a “*Concise Explanatory Statement*” (CES). This statement is a public document that summarizes:

- Comments, summarized by category, received at public hearings or in written form on the proposed version of the rule;
- Whether the final rule was changed as a result of the comments; and
- Changes from the proposed to the final version of the rule.

The Department of Early Learning (DEL) sends the Concise Explanatory Statement to everyone who testified at public hearings, sent a written comment, or asks to receive the CES. The CES is also posted on the DEL website (see <http://www.del.wa.gov/laws/development/Default.aspx>, *DEL Rules Under Development*).

This document also serves as the summary of public hearing comments to the agency head required under RCW [34.05.325](#)(4).

I. Background

The term “preschool age child” is currently defined in WAC 170-295-0010 as “a child thirty months through five years of age not attending kindergarten or elementary school.” The proposed rules revise this definition such that a “preschool age child” is “a child age thirty months through six years of age who is not attending kindergarten or elementary school”. References to the definition are updated to reflect the change.

The proposed rules also revise WAC sections 170-295-2090 and 170-295-2100 to allow mixed age groups to include ambulatory infants, and reorganize these sections for clarity.

Public Comment. DEL filed proposed rules on April 10, 2014 as WSR 14-09-035. A public hearing was held on May 27, 2014 in Olympia. Four people testified at the hearing and 12 written comments were received before the May 27, 2014 comment deadline. Comments on the proposed rules are summarized in section II of this document.

II. Summary of Issues Raised in Public Comments, and DEL’s Responses, Noting if the Proposed Rule was Changed as a Result

A. Public Comments regarding WAC sections 170-295-0010, 170-295-2090, 170-295-2100, and 170-295-5100 regarding the definition of “preschool age child” and infants in mixed age groups.	B. 1. DEL Response; and 2. Was the proposed rule changed as a result of the comment? If yes, how?
<p>Disagree. I believe that if we are going to use the term "ambulatory" to define the ability of an infant to be grouped with older children, then we need a clear definition of the word "ambulatory" in the rules.</p>	<ol style="list-style-type: none"> 1. The term “ambulatory” is used in the current WAC without definition. DEL agrees that more specific terminology will aid the reader in understanding the requirements of the section. 2. The proposed rules were changed as a result of this comment. The term “ambulatory” was replaced with the phrase “walking independently” and a definition of that term was provided.
<p>Disagree. Please define ambulatory and describe the specific circumstances this would apply to.</p>	<ol style="list-style-type: none"> 1. The term “ambulatory” is used in the current WAC without definition. DEL agrees that more specific terminology will aid the reader in understanding the requirements of the section. However, the circumstances in which the term “ambulatory” was used already describe the circumstances under which it applies. 2. The proposed rules were changed as a result of this comment. The term “ambulatory” was replaced with the phrase “walking independently” and a definition of that term was provided.
<p>Disagree. The language is not specific. It will need clarification of what is considered "ambulatory" and detailed guidelines regarding the "certain circumstances."</p>	<ol style="list-style-type: none"> 1. The term “ambulatory” is used in the current WAC without definition. DEL agrees that more specific terminology will aid the reader in understanding the requirements of the section. The phrase “certain circumstances” is not used in the affected sections, either in current rule or in proposed rules, so no guidelines are needed. 2. The proposed rules were changed as a result of this comment. The term “ambulatory” was replaced with the phrase “walking independently” and a definition of that term was provided.
<p>The wording here needs to be very specific and define ambulatory infant as well as the ages of the children with whom they could be combined. This could be a positive thing as long as it is clearly defined.</p>	<ol style="list-style-type: none"> 1. The term “ambulatory” is used in the current WAC without definition. DEL agrees that more specific terminology will aid the reader in understanding the requirements of the section. Research also supports limiting the age groups with which infants should be placed in mixed age groups. 2. The proposed rules were changed as a result of this comment. The term “ambulatory” was replaced with the phrase “walking independently” and a definition of that term was provided. Language was inserted stating that mixed groups including infants walking

	independently must not include school-age children.
<p>Change the lower age to 36 months...not at 30 months. They are still toddlers at 30 months!!!</p>	<ol style="list-style-type: none"> 1. Current research does not explicitly contraindicate defining “preschool age child” as young as 30 months. Further, current Child Care Center minimum licensing standards allow programs to place a child in a different age group based on developmental level and individual needs after consulting with the child’s parent. 2. The proposed rules were not changed as a result of this comment.
<p>WAC 170-295 While considering the Preschool age group please consider wording for the Toddler age group. Allow children age 30 to 36 months to transition at a time of developmental readiness. In a center that serves both ages the transition from Toddler to Preschool has to be planned for the readiness of each child. Many children are not toileting independently until age 3 and would require the same level of guidance and attention as the Toddlers. Such a child should have allowance to be advanced to Preschool when developmentally ready and a center can coordinate this with planning for available space. That would serve the continuity for the family and the child. Abrupt age divisions do not serve the needs of all children.</p> <p>WAC 170-290/295/296 AGREE to change for Preschool age group 1-The upper age of this group needs to be THROUGH age 6 to allow for needs of all children and choice by their parents. This reflects the reality of many families and centers already serving this full age span. 2-Montessori Early Childhood education is a 3 year age span that prepares a child to enter Lower Elementary 1st - 3rd Grade. The complete early childhood cycle is through age 6. Teacher credentials require internship with the complete age group. 3-This change will solve a problem in licensing that has created problems within this age group. The clarification will allow licensing to get past the linguistic dance around Kindergarten. 4-Most Kindergarten classes are grouped as ages 5 1/5 - 6 1/2. Parents need flexibility and children need to progress when ready to either Kindergarten or 1st grade at any school. 5-All licensors across the state need to be trained to implement this change and become consistent in writing licenses that quote this age group.</p>	<ol style="list-style-type: none"> 1. Regarding the comment on children age 30 to 36 months, current Child Care Center minimum licensing standards allow programs to place a child in a different age group based on developmental level and individual needs after consulting with the child’s parent. Regarding the comment on “through age 6”, the proposed rules specifically define “preschool age child” as “through six years of age”. The comment regarding a child’s status as attending kindergarten or school as a determiner of the child’s age category speak to the broader issue of grouping children based on developmental criteria and is beyond the scope of this rulemaking. The comment suggesting removal of the phrase “and not attending kindergarten” would require a shift in policy direction across all licensing WACs separating age categorization from whether the child is attending kindergarten or school and is beyond the scope of this rulemaking. 2. The proposed rules were not changed as a result of these comments.

<p>I want to address the change from age 2 and a half through age 6 – I'm in favor of that change. Licensors have deliberately required that programs separate three and four year olds from five year olds under existing WAC that defines preschool age up through age five. So I request training of licensors to address the confusion. Licensed centers have also turned away families with five year olds creating a gap of time for the five years, and it could also do that for six year olds if there's still misinterpretation of the rule.</p> <p>I do disagree with the statement that preschoolers cannot be attending kindergarten or school. This would exclude from care children who are attending a two hour kindergarten class and contribute to licensors' misunderstanding.</p> <p>I do not agree to the inclusion of "not attending kindergarten" because there are children who can only attend 2-3 hours a day of Kindergarten and they still need the childcare in a quality early learning center for the remainder of their day. These children can be closed out of age appropriate care.</p>	
<p>These new rules will definitely effect my business and the families I serve. Families will be left with fewer choices in childcare. Fewer choices can result in fewer opportunities for children to flourish and thrive. Especially those children who are not socially or emotionally ready to participate in (public) institutionalized education. Not all 5 year olds are ready. Providing an environment that provides scaffolding children has proven to be successful in childcare programs. I urge you to reconsider the full effects of reorganizing the WAC. that will eliminate this This plan will hurt many programs and put them out of business again, eliminating fewer choices for families.</p>	<ol style="list-style-type: none"> 1. The proposed rules do not eliminate choices for families in. The proposed rules expand the definition of "preschool age child" to include children through age six not attending kindergarten or school. Parents can still determine whether to enroll a child age 5 or 6 in kindergarten or school, consistent with Revised Code of Washington (RCW) 28A.225.010 requiring parents to have their children between eight and eighteen years of age attend school. 2. The proposed rules were not changed as a result of this comment.
<p>The term "ambulatory" is a very difficult one. From a licensor's perspective this is unworkable. Licensors would have to test children. What is "walking"? What about children who can't walk due to disability? The entire grouping of children should be rethought. It should be done by cohort. Each group of children should be kept together until the youngest's third birthday – a key developmental milestone. Without this, the</p>	<ol style="list-style-type: none"> 1. The term "ambulatory" is used in the current WAC without definition. DEL agrees that more specific terminology will aid the reader in understanding the requirements of the section. <p>Under the proposed rules, infants unable to walk due to disability can still be moved into toddler groups when they reach toddler age. There is a different level of required care for a non-ambulatory child as compared to an</p>

<p>exception allowing ambulatory infants to be grouped in mixed age groups isn't all that helpful. Plus, the requirement of parent of approval may not be that helpful, as some parents may prioritize cost over developmental appropriateness, and the cost of care for children in older age groups is lower. I'm curious to know what exact "documentation" would be required for the mixed age group. Programs would also have to use the child-to-staff ratio for the youngest child in the group, and most programs would more likely exclude younger children in order to maximize earning potential to support program costs. I've been told by many DEL representatives that DEL doesn't grant waivers any more. My last request to mix ambulatory infants with older children was denied. Until DEL employees have more conversations about this, I don't see the waiver as a real option. We need new center based licensing WACs started from nothing, a totally new iteration.</p>	<p>ambulatory child. The proposed rules take this into account and provide the child the ability to develop at a rate consistent with the child's own individual development. The proposed rules continue to allow a non-ambulatory child to be placed in an age group consistent with the child's actual age and do not prevent or diminish the non-ambulatory child's opportunity to reach the same level of achievement as an ambulatory child.</p> <p>Moving to a cohort model instead of age ranges would constitute a broader change in approach across all licensing WACs and is beyond the scope of this rulemaking.</p> <p>The proposed rules do not require that documentation of developmental appropriateness take any specific form – each program would develop its own procedure.</p> <p>Rules regarding waivers exist in current WAC and are unaffected by this rulemaking.</p> <p>2. The proposed rules were changed as a result of this comment. The term "ambulatory" was replaced with the phrase "walking independently" and a definition of that term was provided.</p>
<p>I support making this change in a way so there is no room for licensors to misunderstand. When a licensor tells a director they need to corral a five year, that's just nonsense. We would like this issue to be clarified. We'd like the wording to be specific enough so there's no confusion on the part of a licensor. If Montessori schools can't have five year olds in their classroom it affects the ability to train child care workers.</p>	<p>1. The proposed rules explicitly define "preschool age child" to include children through six years of age and not attending kindergarten or school. Further clarification goes beyond the scope of the WAC and is a matter for training and policy guidance.</p> <p>2. The proposed rules were not changed as a result of this comment.</p>

III. Changes to the final rule compared to the proposed rule.

- Based on the comments received, the term "ambulatory" as used in WAC 170-295-2100 was replaced with the phrase "walking independently" in order to provide better guidance to the reader. A definition of "walking independently" was inserted in the section.
- Based on the comments received, language was inserted stating that mixed groups including infants walking independently as described in subsections (1) and (3) must not include school-age children.