

Department of Early Learning (DEL)
 Negotiated Rule Making Team Meeting Notes
 June 20, 2009, Seattle, Washington

Overall Goal:

The purpose of this Negotiated Rule Making Team (NRMT) is to develop a set of recommendations about rules and issues that affect the health, safety, learning and quality of environment for children that is supported by parents, early care providers, health/safety experts and interested stakeholders. The NRMT's recommended rules will then move on to the legal and legislative proceedings (and formal public comment period) by DEL before they can be formally adopted.

The following agenda guided our discussion:

Today's Meeting Objectives:

- Hear updates from small groups on the NRMT Communication/ Outreach efforts & Parent Involvement; Rule Writing team and Rule Review group; and the future NRMT process;
- Hear recommendations from the ad hoc small group about definitions related to Licensed space and Accessibility to children;
- Finish hearing recommendations about **Recordkeeping, Reporting & Posting** (Team C);
- Hear possible revised recommendations (from West Side Story) about **Staff Qualifications**;
- Continue with recommendations about **Capacity / Ratio** (West Side Story)
- If time permits begin discussing recommendations (from the A Team) about **Indoor Environment**
- Discuss and determine what elements should be incorporated into our work moving forward; and
- Determine next steps.

Pre-Work Given at May 16, 2009 Meeting:

West Side Story (Karen Hart is Lead) will:

- Review **Staff Qualifications** (West Side Story), to be sure issues from WAC 170-296-1420 regarding licensee responsibilities are addressed; also staff roles and amount of time provider is present
- Continue developing recommendations about **Capacity and Ratio**.

The A-Team (Debbie Knighten is Lead) will:

- Come prepared to begin recommendations on **Indoor Environment** (Debbie Knighten is Lead)

Team C (Martha Standley is Lead) will:

- Come prepared to complete **Recordkeeping, Recording & Posting** (Team C); specifically working on Policies & Procedures and revisiting the NRMT recommendations on reporting the licensee's attendance or absence.

- Continue working on *Emergency Preparedness*.

<i>Time</i>	<i>Topic</i>
9:00	Welcome, Agenda, Introductions, Check In
9:20	Updates <ul style="list-style-type: none"> • Communication / Outreach / Parent Involvement • Rule Writing & Rule Review
9:40	Definitions related to Licensed Space (Ad hoc small group)
10:50	<i>Indoor Environment (A Team)</i>
12:00	Lunch
12:30	<i>Supervision/ Capacity / Ratio (West Side Story)</i>
2:00	Break
2:10	<i>Staff Qualifications (West Side Story)</i>
2:40	<i>Recordkeeping, Reporting & Posting (Team C)</i>
3:15	Next Meeting Agenda, Assignments, Schedule Adjustments
3:30	Adjourn

Voting Members Present:

Kathleen Yasi, SEIU/Provider
 Mary Ruch-Brown, DEL
 Debbie Knighten, SEIU/Provider
 Laura Dallison - DEL
 Dora Herrera, SEIU/Provider
 Judy Bunkelman, DEL
 Sandra Van Doren, EWFCCA
 Vicky Lujan-Bell, DEL
 Nancy Gerber, SEIU/Provider (by phone)
 Jean Orton-Elders, DEL

Angela Taylor, SEIU/Provider
 Mary Kay Quinlan, DEL
 Cassandra Clemans, Care for Providers
 Karen Hart, SEIU
 Sue Winn, WSFCCA
 Sylvia Mierau, SEIU/Provider
 Martha Standley, DEL
 Laura Giddings, WSCCR&R
 Cynthia Hendsch, DEL

Guests, Public and Other Non-Voting

Carol Wilson, WSFCCA
 Sandra Sanchez, Proveedoras Unidas
 Joan Aarts, WSFCCA (Alternate)

Donna Horne, WSCCR&R
 Kathleen Hardee, Care for Providers (Altern.)
 Laura Tanzy, Provider

Bob McLellan, DEL NW Service Area Mgr.
Debbie Rough-Mack, Facilitator

Larry Horne, DEL Assistant Director
Andy Fernando, DEL NRMT Coordinator

Acronyms:

SEIU = Service Employees International Union 925
WSFCCA = Washington State Family Child Care Association
EWFCCA = Eastern Washington Family Child Care Association
WSCCR&R = Washington State Child Care Resource & Referral Network

Welcome, Check in

The agenda items were slightly rearranged to accommodate several NRM team members who needed to leave early to attend a memorial service.

Larry Horne, Assistant Director of the DEL Quality Division, announced that his Assistant Director position at DEL was eliminated due to a reorganization and budget cuts, and that today's meeting was his last with us. A different NRMT executive sponsor from DEL may be announced soon. In the meantime Bob McLellan continues to attend to represent DEL management. There are other changes to DEL administration, including restructuring of DEL central office staff on NRMT. As it becomes clearer, DEL staff will share with us how the changes impact the NRMT.

Updates

Communications, Outreach & Parent Involvement

- ◆ Sue Winn presented an update on NRMT progress at a local SEIU meeting on the west side of the state June 8.
- ◆ Sandra Van Doren presented an update at a meeting in Spokane on May 31. At the May meeting, about half of the providers attending were Russian-speaking.
- ◆ Dora Herrera presented an NRMT update and draft rules at a meeting in Kent on June 18, to mostly Spanish-speaking providers.
- ◆ Kathy Yasi wrote an article about the NRTM process for the SEIU newsletter, which was published several months ago but is still making the rounds.
- ◆ Sue Winn gave an update on NRMT to the Early Learning Advisory Council (ELAC, Sue is a member) on June 15.
- ◆ The DEL Parent Advisory Group received the first three parts of the draft rules on May 14. This was their second look at NRMT recommendations and they had good feedback, with suggestions about clarity and language and questions about the changed location of certain topic areas (found under different headings that in the old WAC).
- ◆ On June 16, Sandra Van Doren gave an update at a "Seeds of Success" child care quality meeting in Spokane.

All reported that people were interested, mostly positive, and had questions and suggestions which would be sent on to Judy J.

Rule Writing & Rule Review Committees

The Rule Writers, Judy J. and Sandra, are nearly current with the matrices that the large group has provided. The Review Committee is in its third round of changes to the draft rule language for *Program*.

Some issues have come up during the review process which meant that the writers needed to make decisions that “overruled” our group process. For example, where the writers learned that state law regarding children riding in the front seat of a vehicle was in conflict with the group’s recommendation, and the draft rule was written consistent with the law. Also, some members of the group were concerned that the draft WAC wording was different than the NRMT’s adopted recommendation.

Sue Winn noted that the NRMT WAC recommendation on responding to possible child poisonings may need to be changed. At a recent training, fire and emergency responders suggested reporting poisoning emergencies to 911 and not the Washington Poison Center (WPC), and that providers should not keep Syrup of Ipecac or activated charcoal in the home as the preferred method to induce vomiting. There was also concern that some calls to the WPC toll-free number may be diverted to other states that don’t recommend Syrup of Ipecac. All of this contradicts what we voted on as recommendation.

[Follow-up: Andy contacted Washington Poison Center and found that although they are facing steep budget cuts, WPC is staffing the toll-free poison emergency line and are still recommending Syrup of Ipecac (but they acknowledge that this remedy is still not stocked in many pharmacies). A provider located in Washington calling the toll-free number should be connected to WPC, but if the call is placed from a cell phone the cellular service’s routing system may send the call to another state’s poison center (they all use the same 1-800 number). But this is not because of any changes at the Washington Poison Center.]

This extended discussion led us to review the overall process that we agreed to about when and how the large group will see changes to the rules. Debbie Rough-Mack referred to the group’s Expected Process Flow document, attached to these notes. Mary Ruch-Brown of the Rule Review Group said that while wording or sentence structure may be changed in the writing, this group always compares the draft rule wording for consistency with the intent of the NRMT recommendation. As the draft rules are developed, Andy will make sure that all members receive the draft WAC side-by-side with the NRMT recommendation.

If there are significant changes that arise, the writers or review group will bring those issues back to the large group. One example of a significant issue is the subtopic of qualifications for household members who also serve as child care staff or volunteers, and background checks for every household member age 16 and older. The rule writers noticed that these requirements for household members were not included in the first round of *Staff Qualifications* or *Licensing Process* recommendations.

Licensed Space, Unlicensed Space & Access

The subgroup addressing this topic consists of Larry Horne (Lead), Karen Hart, Laura Giddings, Sue Winn, Andy Fernando and Sandy Clemans. They reported that they are close to consensus on defining the following terms:

- ◆ Licensed Space
- ◆ Unlicensed Space
- ◆ Premises
- ◆ Accessible to Children
- ◆ Inaccessible to Children

The subgroup will put their recommendations in matrix format for the large group discussion on July 25, where we will concentrate on the practical application of those definitions as they relate to our proposed rules.

NRMT Rule Topic Discussions and Recommendations

As noted in our Expected Process Flow, NRMT votes are recommendations on the intent of the future family home child care regulations, rather than specific WAC wording. The WAC will be drafted later generally consistent with the intent recommendations, but the specific wording may be different.

Indoor Environment, A-Team: Presenters: Laura Dallison, Debbie Knighten, Judy Bunkelman

Subtopic: Size/ Space

There was wide acceptance of this recommendation, with only a question about how it would impact current providers. The group voted to recommend that a child care home must have:

“Thirty-five (35) square feet per child measured to include furniture and space intended for regular access by the children in care. Furniture, such as a couch, may be counted in the square footage but furniture that could not be directly occupied by children, such as a bookcase, may not be counted. Not counted in the square footage:

- *Hallway space that is an access to an exit*
- *Bathrooms, and*
- *Closets*

Vote 21 in favor, 0 undecided, 0 opposed

The subgroup clarified that closets may be counted in the square footage if the space is adapted for child care use, such as by removing doors and making it a play or sleep area.

Subtopic: Storage of Medications

This generated considerable discussion and concerns about the need for immediate accessibility of some products and the practicality of other products having to be locked up as required (in the current rules this includes toothpaste, shampoo, etc.). This led to creation of an additional category of storage for “Rescue Medications” such as emergency allergy medications if needed under an individual child’s health plan. We ultimately decided to vote on some of the sub-issues and let the writers come up with a matrix or alternate explanation that clearly explains our intentions.

- ◆ *Sub-issue: Rescue Medicines should be immediately accessible (to staff, not to children) and have its own category.*

Vote 21 in favor, 0 undecided, 0 opposed

- ◆ *Sub-issue: First Aid kit should be inaccessible but not locked*

Vote 21 in favor, 0 undecided, 0 opposed

- ◆ *Sub-issue: Vitamins should be inaccessible but not locked*

Vote 15 in favor, 5 undecided, 0 opposed

Concerns: Potential toxicity of vitamins; “Inaccessible to kids” needs to be really inaccessible; Some wanted to see the draft definition of “inaccessible” before voting in favor.

- ◆ *Sub-issue: Locked cabinet medications (see matrix for examples)*

This would include prescription medications, syrup of ipecac, certain over-the-counter (OTC) medications

Vote 18 in favor, 2 undecided, 1 opposed

Concerns: Lack of clarity; Tylenol & other over-the-counter medications can be toxic; What is the definition of inaccessible; Even Lanacain OTC ointment can be dangerous.

Subtopic: Storage of Children’s Belongings

Noting that a provider may be caring for more than one child from a particular family, there was general agreement on that there must be:

“Separate storage for each family.”

Vote 20 in favor, 0 undecided, 1 opposed

Concerns: Space (why can’t separate families share a space?); Department of Health may trump our rules when there is a health alert.

Subtopic: Storage of Nap Equipment

After some discussion about how various providers use and store mats and bedding, the group agreed on the following:

“Nap equipment, such as mats and pads, must stored so that sleeping surfaces do not touch each other unless the bedding is cleaned between use.”

Vote 21 in favor, 0 undecided, 0 opposed**Subtopic: Toxic Plants (Indoors)**

While the group was concerned about children having contact with poisonous or toxic plants, there was equal concern about the provider's or licenser's ability to know what plants may be dangerous and how to identify them. The sub-group recommendation matrix included lists from two different sources, including the Washington Poison Center). Even when the common plant names are listed there often isn't a picture or explanation of how the plant may be dangerous (the leaves, berries, or resin; by touch or eating; or how much contact is dangerous). For example, rhododendron is a toxic plant on some lists, but a child would need to eat a very large quantity to be in danger. The group agreed to the following language, but still with concerns about how to implement a rule:

"Keep unknown, potentially poisonous or toxic plants out of reach of children."

Vote 16 in favor, 4 undecided, 1 opposed

Concerns: This should be a Guidebook issue; This is about supervision – plants like rhubarb could be harvested with proper supervision; The age of kids should be considered and the amount of contact that determines any real danger.

The group plans to continue discussion of *Indoor Environment* on July 25.

Capacity and Ratio; West Side Story Presenters Karen Hart & Mary Ruch-Brown

We spent a considerable amount of time on May 16 examining the first Capacity/Ratio table intended to describe the recommendations for new specialty licenses by age of the children and experience of the licensee. At the June meeting we looked at the second major redraft of the table, which is intended to become part of the WAC. In general, the large group favored the concept of specialty and mixed age licenses, as evidenced by this vote of the concept of the ratio recommendation for a specific *Infant-Toddler Specialty Care license*.

Vote 14 in favor, 5 undecided, 1 opposed

However, it was apparent that many in the group were still unsure whether the draft table would be understood by providers, licensors or parents. Licensors and providers on the team said the current rule is very difficult to decipher. Namely, could a person look at the draft table or read the recommended rule and understand how many infants and walking toddlers a family home provider could be licensed to care for, how many staff would be required, and what the licensee's experience level would be for the number of infants and walking toddlers.

The cited concerns were about:

- ◆ Confusion and complexity related to understanding the Capacity/Ratio table
- ◆ Practical aspects of transitioning from one license to another as kids age (e.g. from a specialty infant care license to a preschool or mixed-age license)

West Side Story is actively looking for recommendations to help make the ratio recommendations more understandable, and will return in July with a revised table and matrix. Please email recommendations to khart@seiu925.org.

Staff Qualifications, West Side Story Presenter Karen Hart

Subtopic: Licensee Responsibility

Again, there was considerable discussion about this topic. Ultimately, the group decided that there should be WAC language to address the following concerns:

- ◆ Licenses issued to one provider for multiple sites will not be allowed.
- ◆ Planned extended absences of the licensee.
- ◆ Ongoing absences of the licensee (this could be during periods each day, week or month). The group was clear that transporting child care kids is not considered an absence.
- ◆ Unplanned absences (medical, family emergency, etc.).
- ◆ What is meant by an “approved plan” – approved by whom at DEL?
- ◆ The licensee’s required presence in the child care (as the predominant provider).
- ◆ Should there be a percentage of time required (the current rule just says “majority” but isn’t clear of what period)?
- ◆ No other full time jobs for the licensee should be allowed during the hours of operation.
- ◆ What communication requirements about any of these things (to DEL, the children’s parents and staff) do we want?

Clearly this is a complicated topic, as each of the three small groups has wrestled with it. It will be revisited next meeting by the large group for the last time.

Next Meeting

Next meeting will be July 25, 2009 in at the Puget Sound Educational Service District (ESD) 121 conference center in Renton. Agenda items will include:

- ◆ Complete ***Recordkeeping, Recording & Posting subtopic of “Policies/Procedures”*** (Team C)
- ◆ Complete ***Ratio/ Capacity*** recommendations (West Side Story)
- ◆ Licensed vs. Unlicensed Space, Accessibility – recommendations from small group (Karen Hart and Andy Fernando)
- ◆ Complete ***Staff Qualifications*** (West Side Story) concerns regarding licensee presence and absence from the child care.
- ◆ If time permits, continue discussion of ***Indoor Environment*** (A Team)

Upcoming Meetings, all at ESD 121 in Renton:

- ◆ August 8
- ◆ September 19
- ◆ October 24
- ◆ November 7
- ◆ December 5

Please mark your calendars!

Pre-Work for the Small Groups:

West Side Story (Karen Hart is Lead) will:

- Revisit **Staff Qualifications** (West Side Story), to address specific issues identified at the June 20 meeting.
- Continue developing recommendations about **Capacity & Ratio**.

The A-Team (Debbie Knighten is Lead) will:

- Continue work on **Indoor Environment** (Debbie Knighten is Lead)

The Team C (Martha Standley is Lead) will:

- Come prepared to complete **Recordkeeping, Recording & Posting** (Team C); specifically working on Policies & Procedures and revisiting the NRMT recommendations on reporting hours of work
- Continue working on **Emergency Preparedness**.

Negotiated Rule Making

EXPECTED PROCESS FLOW:

How the Negotiated Rule Making Team's (NRMT) Recommendations become Family Home Child Care WAC's

[Note: Timeframes have been updated]

These steps are not necessarily all inclusive. This flow is intended to capture the role of the NRMT up to the point where DEL takes the Family Home Child Care WACs through formal proposal and final adoption...

- (1) **Jan. 2007 to Dec. 2009, the NRMT** researches, discusses & develops recommendations, focusing on the intent rather than specific WAC language. The NRMT's work is based on detailed research and alternatives considered by the three NRMT sub-teams: A-Team (Eastern Wash.); Westside Story (Northwest Wash.); and Team C (Southwest Wash.).
- (2) **Oct. 2008 thru Winter 2009-2010, the WRITING COMMITTEE** (Judy Jaramillo for DEL, and Sandra Van Doren for SEIU/Providers). The Writing Committee takes NRMT recommendations, considers statutory requirements and drafts the rule content.
- (3) **Nov. 2008 thru Spring 2010 a REVIEW COMMITTEE** (comprised of NRMT members: Providers Nancy Gerber and Angela Taylor; DEL staff Mary Ruch-Brown and Judy Bunkelman; WSFCCA representative Sue Winn; and Resource & Referral representative Laura Giddings; and the rule writers. Andy Fernando of DEL provides technical assistance). The Review Committee makes edits, ensures clarity, making special note of considerations for non-English speakers.
- (4) **Spring 2009 thru Spring 2010, STAKEHOLDER REVIEW**, as needed and determined by the NRMT. Gather feedback from parents, providers, DEL licensors and others on selected rule topics, chapters or issues. DEL may set up stakeholder meetings; create a continuing e-mail focus group; and/or work with SEIU-Providers to distribute information to parents and providers for feedback. DEL will create a special e-mail box for comments.
- (5) **Continuously, WRITING COMMITTEE** incorporates edits of Review Committee and stakeholders.
- (6) **Spring to Summer 2010, STAKEHOLDER REVIEW** of the entire draft WAC chapter. The Writing Committee may make minor or technical revisions from the comments. Significant changes are reviewed by the NRMT.

- (7) **Summer 2010, NRMT** reviews and approves proposed WAC (or makes additional edits and sends back to Writing Committee).
- (8) **Summer to Fall 2010, PREPARING THE PROPOSAL** by DEL. This includes the official proposed rule notice form (CR-102), official WAC text formatted by the Code Reviser's Office; and Small Business Impact Statement (SBEIS) if applicable.
- (9) **Fall 2010, PROPOSED WAC** process begins with filing the CR-102 and WAC text with the Code Reviser, which includes a formal public comment period and public hearing(s).
- (10) **Late 2010, NRMT** reviews formal public comments and makes recommendations about comments that may result in changes to the proposed rules. (DEL has final say about any WAC filed with the code reviser, though it would be unlikely and undesirable to overrule an NRMT recommendation). DEL prepares an official response to the comments, called a "concise explanatory statement." If "substantive" changes are made to the WAC text, a supplemental CR-102 proposed rule notice and additional public hearings may be required.
- (11) **Late 2010 to early 2011, FINAL WAC is filed with Code Reviser** and is normally effective 31 days after filing, but the effective date can be a longer period. Later effective date(s) may be appropriate to be sure that related guides, training, systems, etc., are ready when the rules take effect. Individual WAC sections may have different effective dates.
- (12) **AN EVALUATION PROCESS** and timeframe should be set to review implementation of the adopted rules and determine if the rules have been effective (clear, understandable, and enforceable), and to recommend revisions if needed.