

Department of Early Learning
Negotiated Rule Making Team Meeting Notes
October 24, 2009, Renton, Washington

The following agenda guided our discussion:

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 in licensed family home child care that is supported by parents, early care providers, health and 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) before they can be formally adopted.

Today's Meeting Objectives:

1. Hear updates on Rule Writing & Rule Review progress and Communication/ Outreach;
2. Finish recommendations about *Supervision* (West Side Story);
3. Begin discussing *Adverse Actions* (Ad Hoc Group);
4. Begin discussing *Emergency Preparedness* (Team C)
5. Discuss and determine what elements should be incorporated into our work moving forward; and
6. Determine next steps.

Pre-Work Given at September 19, 2009 Meeting:

The West Side Story (Karen Hart is Lead) will:

- o Finish work on *Supervision*
- o Continue developing recommendations about *Health*

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

- o Work on a *Celebration* component for the December meeting

Team C (Martha Standley is Lead) will:

- o Continue working on *Emergency Preparedness*
- o Continue working on *Nurturing & Guidance*

<i>Time</i>	<i>Topic</i>
9:00	Welcome, Agenda, Introductions, Check In
9:20	Updates <ul style="list-style-type: none">• Rule Writing & Rule Review• Outreach / Parent Involvement
10:00	<i>Supervision</i> (West Side Story)
10:30	<i>Adverse Actions</i> (Ad Hoc Group, Bob is Lead)

12:00	Lunch
12:30	<i>Adverse Actions - continued</i>
1:30	<i>Emergency Preparedness (Team C)</i>
3:15	Next Meeting Agenda, Assignments, Schedule Adjustments
3:30	Adjourn

Voting Members Present:*

Sue Winn, WSFCCA
 Jean Orton-Elders, DEL
 Sylvia Mierau, SEIU/Provider
 Angela Taylor, SEIU/Provider
 Judy Jaramillo, DEL
 Katherine Yasi, SEIU/Provider
 Nancy Gerber, EWFCCA
 Lisa Beaulaurier, SEIU (Alternate)
 Stu Jacobson, Parents for Safe Child Care
 Vicki Lujan-Bell, DEL

Cassandra Clemans, Care for Providers
 Debbie Knighten, SEIU/Provider
 Mary Kay Quinlan, DEL
 Martha Standley, DEL
 Dora Herrera, SEIU/Provider
 Lola Kling, SEIU/Provider
 Sherry Schleufer, SEIU
 Sandra Van Doren, EWFCCA
 Mary Ruch-Brown, DEL
 Laura Giddings, WSCCR&R

Guests, Public and Other Non-Voting

Kathleen Hardee, Care for Providers (Alternate)
 Joan Aarts, WSFCCA
 Marianne Kilgore, WSFCCA
 Pauline Elder, SWWFCCA
 Foeluna Mose
 Maturbarre
 Farhia Osman
 Batara Jama
 Fatima H. LowLow, Provider
 Isir Ali, Provider
 Nasro Hirsi
 Robert McLellan, DEL NW Service Area Mng.
 Debbie Rough-Mack, Independent Facilitator

Carol Gibbs, EKCFCCA
 Sandra Sanchez, Provedora Unidas
 Donna Horne, VOA/CCR&R
 Roxanne Ples, SWWFCCA
 Asha Ali Adun
 Zainab Dirie
 Nafisa Abdulle
 Mulki Ibramha
 Asha S.H. Osman, Provider
 Hindia Ali Yusuf
 Sadia Abke, Provider
 Catumo Ali
 Andy Fernando, DEL NRMT Coordinator

Acronyms:

WSFCCA – Washington State Family Child Care Association
 SEIU – Services Employees International Union, Local 925
 EWFCC – Eastern Washington Family Child Care Association
 WSCCR&R - Washington State Child Care Resource and Referral Network
 EKCFCCA – East King County Family Child Care Association
 SWWFCCA – Southwest Washington Family Child Care Association
 VOA/CCR&R - Volunteers of America/Child Care Resource & Referral

Check In

The next meeting will be November 14th, instead of November 7th as originally planned, due to schedule conflicts. The issues of (1) food as a reward and (2) research on minimum temperature in the home will be addressed briefly at the November 14th meeting.

Many visitors were present for this meeting, including a large number Somali child care providers and guests. They voiced concern about being unable to understand the rules (and circulating draft rules), because they are available only in English. The issue of translation continues to be a concern, as noted in last month's meeting notes. We again discussed some obstacles to readily available translation:

- Cost per document and per language for document translation
- How many languages should be translated, and how will the decision of translating which languages and which documents to translate?
- How many times would documents in draft mode be translated?
- The WACs are administrative law with meanings set in English. Liabilities may arise around rules translated or interpreted using terms with different meaning than the words in English.

Updates

Strategy Meeting Update

There was a strategy team meeting on October 22nd that included Andy Fernando, Debbie Rough-Mack, Lisa Beaulaurier and Judy Jaramillo (by phone). The purpose of the meeting was to agree on documents that describe NRMT accomplishments, status for NMRT completion, and beginnings of a plan for after the rule review process is finished, given that funding for NRMT meetings ends December 31, 2009. Documents will be drafted and the large group will review them at the November meeting.

At the strategy meeting, Lisa also represented the concerns of providers about the fact that the NRMT did not get to the issue of weighting WACs. This has come up previously, but it has been deemed impractical to discuss weighting when all topics have not been covered, since comparison of rule recommendations are needed for weighting. A majority of the group agreed that consideration of weighting the WAC is desirable, and Bob indicated that DEL Director Betty Hyde considers WAC weighting is a priority issue. However, it is also a complex issue because:

- ◆ WAC weighting would need to encompass licensed child care centers and school-age centers, and should have input from those providers
- ◆ To be done comprehensively and fairly it would require an investment of research, time and money
- ◆ The desire is for them to be research-based, yet research on this topic is scarce.

The group agreed that a recommendation for a WAC-weighting process be part of the post-NRMT plan.

Rule Writing & Rule Review Committees

Sandra and Judy are meeting twice a week. By November, the next three draft sections (Licensing Process, Outdoor Environment, Program) will be ready for posting on the DEL Web

site. The first three draft sections have been posted there since May 2009. The final seven subchapters will be posted after the NRMT completes its meetings in December.

Communications, Outreach & Parent Involvement

October NRMT information sessions mentioned:

- ◆ Debbie Knighten and Dora Herrera gave a presentation on September 26 in Pasco to Spanish-speaking child care provider association (Providora Unidas).
- ◆ Another workshop for Spanish-speaking providers was held on October 16 in Kennewick. An estimated 150 providers attended in all.
- ◆ Kennewick, October 30 -- Debbie Knighten,
- ◆ Eastern Washington, October 19 – Nancy Gerber
- ◆ SEIU leadership meeting, October 18 – Debbie Knighten
- ◆ Membership meetings, October 1, October 7 – Kathy Yasi
- ◆ Somali providers, September 30 – Sue Paskiewitz, Kathy Yasi, Cynthia Hendsch
- ◆ Local association meeting, October 12 – Sue Winn
- ◆ Longview association meeting, October 13 – Sandy Clemans
- ◆ Washington Association for the Education of Young Children (WAEYC) conference in Bellevue for center providers, October 17th -- Sandra Van Doren.
- ◆ South King County Family Child Care Association meeting, October 10 -- Sue Paskiewitz, Kathleen Hardee

Upcoming NRMT information sessions mentioned:

- ◆ North King County Family Child Care Association conference, November 7 – Judy Jaramillo
- ◆ KCTS Child Care Conference, November 7 – Sandra Van Doren
- ◆ East King County Family Child Care Association conference, November 10 – Cynthia Hendsch

Recurring issues:

- ◆ Translation of WACs continues to come up in the small groups as a concern. (See section above).
- ◆ Ease of accessing the DEL website also continues to be a concern. What can be done to make it less confusing, more accessible?

The following was the discussion about the various topics and subtopics in the rules that the NRMT considered. Votes were taken on “in-concept” recommendations; these were not recommendations about the specific WAC language. A writing team of one DEL and one SEIU/Provider used the group recommendations to write a first draft of NRMT-recommended rules, and a Rule Review Committee comprised of Providers, a Child Care Resource and Referral member and DEL staff reviewed the draft rules for clarity and consistency with the NRMT in-concept recommendations.

Adverse Actions, Ad Hoc Group presenting

The Ad Hoc Group was “nominated” for this task by the large group. Participants were Bob McLellan (Lead), Sandy Clemans, Mary Ruch–Brown, Judy Jaramillo, Lisa Beaulaurier, and

Kathleen Hardee. Several of these subtopics were “guided” by existing DEL child care licensing authorities and responsibilities in the Revised Code of Washington (RCW).

Subtopic: Disqualification of Licenses and Individuals Residing in the Family Child Care home

The group wanted more clear language regarding when a background check disqualification affects the license. The following language was approved in-concept:

A license may be denied or revoked when:

- *Licensee is disqualified under chapter 170-06 WAC (DEL Background check rules)*
- *A family member or any person residing in the home is disqualified under chapter 170-06 WAC(DEL Background check rules)*

Vote in-concept: 19 in favor, 0 undecided, 1 opposed

Subtopic: Consequence of failure to follow rules

Compliance Agreements are an interim step intended to allow a Provider to correct a rule violation within a certain time period without the DEL taking a formal licensing action. The group wanted more clarity than there is now in the rules about how the process works and what may happen if the Provider either doesn't sign a Compliance Agreement or doesn't correct the violation. Regarding fines, the maximum daily fine is set in RCW 43.215.305 for family home child care in RCW at \$75 per violation/per day, meaning that if a Provider had multiple violations multiple fines could be levied. The law also guarantees that a Provider may appeal a civil fine by requesting an administrative hearing (adjudicative proceeding). The group agreed to adopt the following:

“A written notice of a letter or a “facility licensing compliance agreement” may be issued when a licensee is in violation of the rules. This notice contains:

- *A description of the violation and rule that was broken*
- *A statement of what is required to comply with the rule*
- *The date the violation must be corrected*
- *The maximum financial penalty (civil fine) that must be paid if compliance does not occur by the required date*

“The facility licensing compliance agreement also contains:

- *A statement from the licensee regarding proposed plan to comply with the rule*
- *Signature of the licensor and licensee*

“The licensee must return a copy of the completed “facility license compliance agreement” to DEL when corrective action has been taken.

“The following apply to fines that may be imposed when licensing rules are violated.

- *A fine of seventy-five dollars a day for each violation of the licensing rules*
- *A penalty may be assessed and collected with interest for each day a licensee fails to follow the rules;*
- *A civil penalty may be imposed in addition to other adverse action taken against the license including probation, suspension and revocation*

“The fine may be withdrawn by the department if the licensee comes into compliance during the notification period.”

“When a civil penalty is assessed the licensee has the right to an adjudicative proceeding as governed by RCW 43.215.305 (Licenses-Denial, revocation, suspension, or modification-Notice) and chapter 170-03 WAC (DEL hearing rules).”

“The civil fine must be paid within twenty-eight days after the licensee receives the notice unless an adjudicative proceeding has been requested.”

Vote: 19 in favor 0 undecided, 0 opposed

Subtopic: Amount of time to make corrections

The recommended wording is nearly identical to current WAC 170-296-0380. The group voted to recommend:

“The length of time the licensee has to make the corrections depends on:

- The seriousness of the violation*
- The potential threat to the health, safety and well-being of the children in care and*
- The number of times the licensee has failed to follow the rules”*

Vote 19 in favor, 0 undecided, 0 opposed

Concern: Process clarity (at times the provider may have input)

Subtopic: Basis of fine

Again, the current WAC 170-296-0390 provided a basis for the ad hoc group recommendations as well as RCW 43.215.300 and 43.215.307. Bob noted that DEL levies very few fines. There was considerable discussion on what “repeatedly” should mean and whether the word “assessed” should be changed. The group voted on:

“Fines are assessed based on proof of any violation of a licensing rule and according to the following conditions:

- Licensee has allowed any conditions that create a serious safety or health risk*
- Corporal punishment or humiliating methods of control or discipline are used on the children in care*
- Failure to provided required supervision*
- Required light, ventilation, sanitation, food, water or heating are not provided*
- Licensee is providing care for more children than is permitted by the license*
- Licensee repeatedly (two more times in a month) fails to follow the rules*

Vote 19 in favor, 1 undecided, 0 opposed

Concern: Concept of civil penalty should be more structured

Subtopic: Informing the public of civil penalty

Bob explained that the statute (RCW 43.215.525) dictates much of what the licensee must post for the public, including when DEL levies a civil fine. With some changes to the current WAC 170-296-0400, the group recommended:

- “The department letter notifying the licensee of a final notice of a civil penalty must be posted:*
- immediately upon receipt and*

- *in the licensed space where it is clearly visible and*
- *for at least two weeks or until the violation causing the enforcement action is corrected (whichever is longer)”*

Vote 18 in favor, 1 undecided, 0 opposed (2 out of the room)

Concern: clarity about what exactly must be posted (e.g. the letter?)

Subtopic: Failure to pay fine

With topic, too, the statute (RCW 43.215.300(3)) controls what happens if a fine is not paid, including further DEL enforcement action. The group decided to keep language similar to the current WAC 170-296-0410:

“If the licensee fails to pay a fine within ten days after the fine assessment becomes final the department may suspend, revoke or not renew the license.”

Vote 18 in favor, 0 undecided, 0 opposed (2 out of the room)

Subtopic: Unlicensed care fine

Bob again noted that RCW 43.215.250 43.215.330, 43.215.340 set the civil fine amount, that providing unlicensed care is a misdemeanor, and that DEL may take action in court to stop the unlicensed child care. The group then voted:

“A civil penalty of seventy-five dollars a day for each day unlicensed child care is provided may be assessed.

“A person providing unlicensed child care may be guilty of a misdemeanor.

“An injunction may be taken by the department against a person providing unlicensed child care.”

Vote 16 in favor, 0 undecided, 0 opposed (4 members out of the room)

Subtopic: Unlicensed care actions

Current WAC 170-296-0430 describes how DEL must notify someone providing child care without a license. The group decided to revise the first sentence of this WAC, but otherwise recommend what is in the current rule:

“The department may send written notice to a person alleged (who the dept believes) to be providing unlicensed child care. The notice explains:

- *Why the department believes unlicensed child care is being provided*
- *How to respond to the department*
- *The law that prohibits unlicensed child care*
- *Child care must stop being provided*
- *A civil penalty may be assessed*
- *How to apply for a license*
- *How the civil penalty may be lifted if applying for a license*
- *Right to an adjudicated proceeding if a civil penalty is assessed and*
- *How to ask for an adjudicative proceeding.”*

Vote 17 in favor, 0 undecided, 0 opposed (3 out of the room)

Subtopic: Probationary License

Already addressed and voted on under the *Licensing Process* topic.

Subtopic: License denied, suspended or revoked

This topic was actually voted on twice. The major points of discussion surrounded whether there should be certain instances when a licensor **MUST** take action, as opposed to listing all of the topics as the licensor **MAY** take action, which leaves room for circumstantial discretion. After consulting the RCW, the second vote was to change “must” to “may” in what is now WAC 170-296-0450, and combine the list of violations in -0450 with the list in WAC 170-296-0460, and adding, when the licensee “*treats, permits, or assists in treating children in care with cruelty, or indifference*”.

“The license ~~must~~ may be denied, suspended or revoked for the following reasons:

- *When the licensee cannot provide the required care for the children in a way that promotes their health, safety and well-being*
- *When the licensee has been disqualified by a background check under chapter 170-06 WAC(DEL background check rules)*
- *When the licensee has been found to have committed child abuse, child neglect or child exploitation*
- *When the licensee allows others to commit child abuse, child neglect or child exploitation*
- *When the licensee treats, permits or assists in treating children in care with cruelty, or indifference*
- *Permits or staff to treat, permit or assist in treating children in care with cruelty, or indifference;*
- *The licensee fails to report to DSHS children’s administration intake or law enforcement any instances of alleged child abuse, child neglect or child exploitation*
- *When the licensee tries to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application*
- *When the licensee commits, permits or assists in an illegal act at the child care address*
- *When the licensee uses illegal drugs, or excessively uses alcohol or abuses prescription drugs*
- *When an individual residing at the same address had a license denied or revoked by an agency that provided care to children or vulnerable adults*
- *When the licensee knowingly allowed employees or volunteers to make false statements on their application*
- *When there is repeated lack of required number of qualified staff present to care for the children*
- *When the licensee repeatedly fails to provide the required level of supervision for the children in care*
- *When the licensee repeatedly cares for more children than the license allows*
- *When the licensee refuses to allow Department authorized staff requested information or access to the licensed space, child and program files or staff and children in care during times when licensed activities are conducted*
- *When the licensee is unable to manage the property, fiscal responsibilities or staff in the facility.*

The license may be suspended or revoked for the following reasons:

- *When the licensee goes beyond the conditions of the license by caring for children with ages different than the license allows*
- *When the licensee repeatedly fails to comply with the license requirements set forth in this chapter or any provisions of chapter 43.215 RCW (Department of early learning)”*

Second, final vote: 17 in favor, 2 undecided, 1 opposed

Concern: congruence of language between RCW and WAC; Discretionary nature of “may” can lead to uneven enforcement; potential for inconsistency; We need “line in the sand” clarity for both providers and licensors (using “must” or “will”).

Subtopic: Notification of action

The statute requires DEL to inform someone in writing when the department takes enforcement action. There was little discussion on this issue, other than minor editing of this recommendation:

“The department sends a certified letter and/or personally delivers a letter informing the licensee of any decision to deny, suspend or revoke the license.

“The letter contains information on what the licensee may do if the licensee disagrees with the decision to deny, suspend or revoke the license”

Vote 20 in favor, 0 undecided, 0 opposed

Subtopic: Disagreement with enforcement action

Although RCW 43.215.300 and 43.215.305 give the right to appeal a DEL enforcement action, there was concern that the rules should give more information about the provider’s rights, including the right to ask for a “stay” or “expedited stay” of a suspension or revocation, and whether the provider could stay open pending the outcome of the appeal. Eventually, the group voted to recommend:

“The licensee has a right to appeal any department decision to deny, suspend, revoke or modify the licensee.

“Procedures for appealing, staying, or obtaining an expedited stay of a department decision are outlined in chapter 43.215.305 RCW (Licenses-Denial, revocation, suspension, or modification-notice), chapter 34.05 RCW (Administrative procedure act) and chapter 170-03 WAC (DEL hearing rules).”

Vote 20 in favor, 0 undecided, 0 opposed

This concluded the topic *Enforcement (Adverse) Actions*.

Supervision(during the Licensee’s absence), revisited

This topic has been reviewed and discussed by each of the three small groups and by the large groups twice, without reaching general consensus. Supervision issues were voted on at the

August meeting (see August notes) and discussed again at the September meeting, but no re-vote was taken in September. Negative reactions from providers have led NRMT members to resurface the topic. There appear to be two major areas of disagreement:

◆ ***Majority of the time, accountability for the license***

Should we have a WAC that requires licensors to be caring for children the majority of the time? If so, what constitutes majority of time (51%) in the current rules? Over what time period (daily, monthly, annually)?

◆ ***Having to get absences regularly approved by DEL***

Do licensors and providers need to have interaction over typical absences?

After considerable discussion time and no perceived progress, the group decided that solutions/proposals could be submitted to Andy by November 9th for consideration at the November 14, 2009 meeting. The large group will entertain limited discussion and voting time (maximum one hour), in view of the time already devoted to this topic.

Since the Supervision discussion was so heated and expansive, the group decided to defer the planned presentation on Emergency Preparedness until next meeting.

Next Meeting

Next meeting will be November 14, 2009 in Renton. Agenda items will include:

- ◆ Review and vote on pre-submitted recommendations about ***Supervision***;
- ◆ Begin discussing ***Emergency Preparedness*** (Team C)
- ◆ Begin discussing ***Nurture and Guidance*** (Team C)

Upcoming Meetings

- ◆ November 14
- ◆ December 5 (final full NRMT meeting)

Pre-Work for the Small Groups:

The West Side Story (Karen Hart/ Judy Jaramillo is Lead) will:

- Continue developing recommendations about ***Health***

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

- Work on a ***Celebration*** component for the December meeting

Team C (Martha Standley is Lead) will:

- Continue working on ***Emergency Preparedness***
- Continue working on ***Nurturing & Guidance***