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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 10, 2013

The Honorable Scott Simon, Chairman
House Committee on Health and Welfare
P. O. Box 94062, Capitol Station
Baton Rouge, Louisiana 70804

Dear Representative Simon:

The Department of Children and Family Services (DCFS) hereby announces its plan to proceed with rulemaking by finalizing the Notice of Intent titled "Licensing Class A Regulations for Child Care Centers" that was promulgated and published on page 2804 of the October 2013 *Louisiana Register*. Copies of the notice and fiscal statement were provided to you on, or about, October 10, 2013.

In accordance with R.S. 46:1430 and R.S. 46:1409.B (10) the proposed rule will allow DCFS, in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations. It will also provide for a process of appeal, clarify specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the Department.

DCFS held a public hearing on November 26, 2013. Copies of the summary of testimony from this hearing, comments received, and department responses to comments are attached. Comments submitted were generally in response to fines and health requirements.

While comments received were considered, the department deems the proposed rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. Therefore, no changes have been made to the proposed rule.

At this time the department intends to submit the Final Rule to the Office of State Register for publication in the January 2014 issue of the *Louisiana Register*. This Rule is effective February 1, 2014. Please contact me at (225) 342-9538 if the department may be of any assistance to you concerning this matter.

Sincerely,



Brent Villemarette
Deputy Secretary

bv/vg



PUBLIC HEARING

HEARING OFFICER: Alyson R. McCord
LOCATION: Division of Planning and Policy Circulation
Department of Children and Family Services
Iberville Building
Room 1-127
Baton Rouge, Louisiana
DATE: Tuesday, November 26, 2013
TIME: 9:00 a.m.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
DIVISION OF PLANNING AND POLICY CIRCULATION

REGULATIONS FOR CHILD CARE CENTERS AND LICENSING CLASS "A"
REGULATIONS FOR CHILD CARE CENTERS & LICENSING CLASS "B"
REGULATIONS FOR CHILD CARE CENTERS

<u>NAME</u>	<u>ADDRESS</u>	<u>PARTY REPRESENTED IF OTHER THAN SELF</u>
Donna Leger	3649 Belle Vale Dr.	
Joyce Arnold	3649 Belle Vale Dr	
Lisa G. Brachard	LDOE	LDE
ANGIE BATAUX	Iberville Bldg.	Licensing
Joy McCall	Iberville Bldg	Licensing
Vashika Gilmore	627 N 4th St	DCFS Planning
WYATT GRAVES	2538 Wimper Foot	—
Emil Krelso	1201 N 3RD	LDE
Kimberly Bardell	627 N. 4th street	DCFS
James Evans, Jr	4521 Martin L. King Ave NOAA 70125	Head Start
Kahree Wahid	1201 North 3rd Street B.R. LA 70802	Head Start



Appeals
Division of Management
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Baton Rouge, LA 70802

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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Doris McWhite Weston, Manager
DCFS Appeals Unit**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers, that is scheduled for November 26, 2013 at 9:00 a.m. in Room 1-127

Please find attached a Summary of the Public Hearing that was conducted on November 26, 2013, at 9:00 a.m., at the Iberville Building, 627 North 4th Street, Baton Rouge, Louisiana, Room 1-127. Also attached is a copy of the attendance roster for your review.






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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Vashika Gilmore, Program Coordinator
DCFS Planning and Policy Circulation Section**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Attached is the original record of the public hearing that was held on November 26, 2013, in Baton Rouge, Louisiana. Please file the appended record with the appropriate official records of the department.



PUBLIC HEARING

APPEAL #262612

TUESDAY, NOVEMBER 26, 2013 AT 9:00 A.M.

BATON ROUGE, LOUISIANA

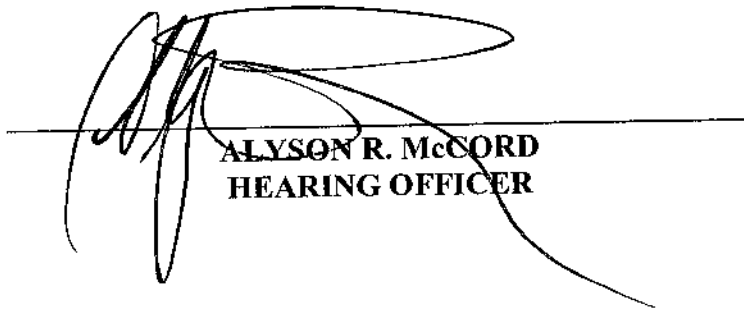
**DEPARTMENT OF
CHILDREN AND FAMILY SERVICES
DIVISION OF PROGRAMS/PLANNING**

NOTICE OF INTENT FOR:

**Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A,
Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335.
Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B"
Regulations for Child Care Centers**

CERTIFICATION

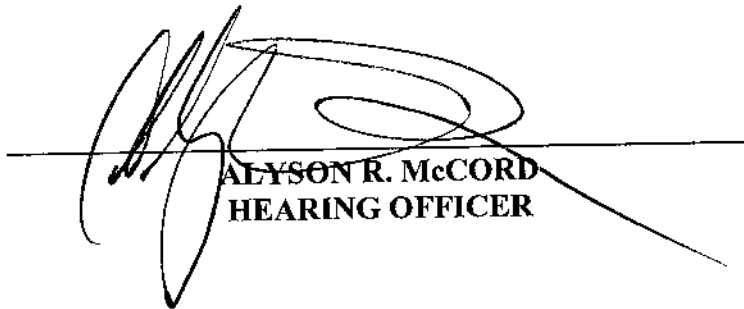
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER, **ALYSON R. McCORD**, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING. THE HEARING WAS ADJOURNED WITH 1 PUBLIC COMMENT, 2 WRITTEN COMMENT SUBMISSIONS, AND 8 MEMBER(S) OF THE PUBLIC WERE PRESENT TO OFFER REMARKS.



ALYSON R. McCORD
HEARING OFFICER

CERTIFICATION

THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER,
ALYSON R. McCORD, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE AND
ON THE TAPE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING
HELD ON TUESDAY, NOVEMBER 26, 2013, AT 9:00 A.M. IN BATON ROUGE,
LOUISIANA.



ALYSON R. McCORD
HEARING OFFICER



627 North 4th Street
Baton Rouge, LA 70802

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Bobby Jindal, Governor
Suzie Sonnier,
Secretary

INTEROFFICE MEMORANDUM

TO: Doris Weston
Manager, Appeals Unit

FROM: Alyson R. McCord
Attorney, DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing 262612 regards the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.

I conducted a Public Hearing in Room 1-127 of the Iberville Building on November 26, 2013, at 9:00 a.m. The hearing commenced at 9:13 a.m.

Presenting on behalf of the agency was Angie Badeaux, Program Director of the Licensing Section of the Department of Children and Family Services. Other agency representatives in attendance were Joy McCall, Vashika Gilmore and Kimberly Bardell. Members of the public in attendance were Donna Leger, Joyce Arnold, Lisa G. Brochard, Wyatt Graves, James Evans, Jr., Kahree Wahid and Alana Guidry.

Hearing Summary

Angie Badeaux testified that in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 21 Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.



Sections Amendment is pursuant to the authority granted to the department by R.S. 46:1430, the rule allows the Department of Children and Family Services, in lieu of license revocation, to enact intermediate sanctions through the use of civil files relative to child care facilities that violate the terms for specific violations, including violations of the requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child-ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2,000. In addition, the rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409.B (10), the rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Public Comments from Wyatt Graves of Fundamentals Learning Center

“My name is Wyatt Graves and I am the Immediate Past President of the Childcare Association of Louisiana and the Owner and Director of seven licensed childcare centers between St. Tammany, Livingston and East Baton Rouge Parishes. I am also a participant in one of the thirteen statewide pilots offered by the Louisiana Department of Education. I have been closely involved with the current initiative to streamline licensing and regulations relative to the senate bill of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this on record also having been part of the work group which wrote and is writing the original draft of this version of this rule. While we support the act of fines, especially as an alternative to the licensing process, we cannot support this rule in its entirety. I want to call attention to the department’s ability, already in law, to create a provisional license for those centers who may be in serious deficiencies with meeting those regulations. The rule being promulgated and heard today was



drafted in 2012, which was prior to the 2013 legislative session regarding the streamlining of licensing types and regulations to enhance the overall quality of care in early education offered to Louisiana's children. During the drafting of this rule in 2012, there was no separate formed to re-write the entire set of regulations which the rule is based upon. There is no insight that we have new licensing and the new quality rating system coming up in the future. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset seems to have changed of regulating childcare. It has evolved and even morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the Childcare Association of Louisiana, all 500 plus members, and oppose this rule in its current form. Specifically, the reasons are as follows. Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the definition of this violation. How can the state move forward with this rule to fine providers based on a regulation that everyone knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialists on the new definition to rightly assess this regulation which will lead to fines, only to change the definition, which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning? Again, those regulations that I am calling into question and is a problem is supervision, which is being cited as one of the critical violations. Under the definition, of supervision and also understanding how we calculate a repeat deficiency, this rule is saying 'even if one or more of the violations occurred prior to the adoption of the current set of standards'. So in reference to that section of this rule, I'd like to say that in the event that a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of this rule becoming final; not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of corrections process, which is also part of this rule, were in place. It would give providers a change to have corrective plans of action in place before



automatically attacking them with a multiple violation report, which could yield to fines. If we believe that a corrective plan of action is something that we want to implement, which we do believe that, and we support that part of the bill, then we've got to give providers an opportunity to implement a corrective plan of action before we look at retroactive compliance with this particular regulation.

Another point of contention is . . . I don't have the specific section number, but its F1 under a particular section. The Director shall report all critical incidents as specified below. But the following critical incidents immediate notification made to emergency personnel and/or law enforcement as appropriate. In addition, the child's parent shall be contacted. Once contact has been made to the child's parent, the Director shall verbally notify the licensing section management staff immediately. The verbal report shall be followed by a written report within 24 hours. So, in reference to that section, in an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule or regulation where children is the only . . . where childcare, I'm sorry . . . childcare is the only section required to comply with this rule? What is done in public schools when an injury occurs? Are Principals required to call LDE or the Police? If the answer is no and we genuinely care about parity in the system, then this rule and this section needs to be modified.

A little further down in Section B, which is one of the reasons that . . . uhm, the rule is specifying immediate report be made to the department. Illness or injury requiring hospitalization or professional medical attention of a child, while in the care of the provider, in reference to this section, we've mentioned that this section is very unclear. There are some centers who have registered nurses on staff. If the R.N. looks at the child or assesses the child, does that qualify? What if the parent voluntarily brings the child to the doctor for an evaluation, but no treatment is necessary, does this qualify? With no interpretive guide, this regulation is left ambiguous and literally leads to providers wanting to call the state for every incident that potentially has the harm or change of being referred out to a physician even if it is a child who falls and hits their mouth on a toy and the parent brings them to a dentist. Does that qualify? That's a question.



The physical presence, under General Requirements. We've brought this up in the past too and it doesn't seem that it's addressed in the rule. The physical presence of a sex offender in or on within a thousand feet of a child daycare facility is prohibited. Providers and childcare staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541, physical access to a child daycare facility is defined in R.S. 46:1403. And so, when this rule was talked about there is a legitimate question which is customers who are listed on the registered sex offenders list as we understand a person can be convicted of a sex offense that involves prostitution of legal adults and also be a sex offender or a mother for that matter and wish to enroll their child in one of our schools. This is already happening and we are unclear as to how we will be treated by knowingly allowing them to enter our facilities as a customer. This rule particularly, in this section, needs to be modified and explicit expectations need to be listed for that situation.

Under supervision, I think in the definition of it, children shall not be left alone in any room, excluding the restrooms as noted in section 73:17(B) outdoors or in vehicles, even momentarily, without a staff present. Relative to that section, again, um, a little bit unrealistic and certainly not in line with the other providers of childcare and early education such as preschools and those school settings from a public school campus. The regulations seem to be changing and we should not promulgate a rule knowing that its going to change soon, especially in light of the retroactive look back period which will result in monetary fines.

Section 2 of that same, um, paragraph, a staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff should be able to state how many children are in their care at all times. This is particularly a problem for programs who fall under this license code, but serve after schoolers, especially those that have zones for children to attend and freely choose throughout the day or afternoon. This part of the rule we do not recall being reviewed with the industry and especially this conclusion of the rule. This was . . . this regulation does not and will not work with providers who are caring for after schoolers. A quality and proven method for successfully administering an after school program is what we call zone management. Children are free; which are typically six, seven . . . all the way up to eleven and twelve and sometimes thirteen years of age, to select and move between rooms or activities



frequently, making their own independent decision if they want to watch a movie or play basketball or go to the arcade room or do an arts and crafts activity and they are frequently making those selections throughout the day. Therefore not assigned to a particular staff member, but rather a group of staff members who are managing such zones. This regulation should be changed or omitted for after schoolers particularly.

In closing, I feel as though I've pointed out where the industry called substantial changes that need to be made before the rule will work for the industry in the current climate of change. I respectfully ask for the department to reconsider the changes which I've mentioned on behalf of the industry and my business. Thank you."

Adjournment

The hearing was adjourned at 9:29 a.m.

Respectfully Submitted by Alyson R. McCord, Hearing Officer



EXHIBIT #1

WRITTEN COMMENTS FROM WYATT GRAVES (Submitted via email)

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**

My name is Wyatt Graves and I am the immediate past president of the child care association of la and the owner/director of 7 licensed childcare centers between st tammany, Livingston, and east baton rouge parishes. I am also a participant in one of the 13 state-wide pilots offered by LDE. I have been closely involved with the current initiative to streamline licensing and regulations relative to senate bill 222 of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this, on record, also having been part of the work group which wrote drafted the original versions of this rule.

While we support the act of fines, especially as an alternative to license revocation, we cannot support this rule in its entirety. I want to call attention to the department's current ability to create a license with a provisional status for those who need licenses to be monitored more heavily and to serve as an alternative to license revocation.

The rule being promulgated and heard today was drafted in 2012 which was prior to the 2013 legislation regarding the streamlining of licensing types and regulations to enhance the overall quality of care and early education offered to louisiana's children. During the drafting of this rule, there was no such committee formed to rewrite the entire set of regulations which this rule is based. There was no onsite that we'd have new types of licensing and a new quality rating system. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset of regulating childcare has changed, evolved, and morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the childcare association of la, all 500+ members and oppose this rule in its current form.

Specific reasons are as follows:

Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the very definition of the violation. How can this state move forward with a rule to fine providers based on a regulation that everyone in the state department knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialist on the new definition to rightly assess it which may lead to fines -- only to change the definition which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning?

a. §7302.G and/or §7311.A.5 and/or §7311.B -

criminal background check;

b. §7302.H and/or §7311.A.6 - state central registry

disclosure;

- c. §7303.F.1 and/or §7303.F.5 - critical incidents;
- e. §7315.A - D - ratio,
- d. §7317 -- supervision; and/or supervision is one of the critical violations
- f. §7331.N - motor vehicle.

In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of noncompliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response

Comment [TWG1]: In the event a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of the rule becoming final – not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of correction process (which this rule establishes) were in place. Give providers a chance to have corrective plans of action in place before automatically attacking them with a multiple violation report yielding fines.

to the CAP within 14 calendar days of receipt of the letter.

Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a 24 month period, provider will be assessed a civil fine of up to \$250 per day for violation of each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

- ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.
- iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.
- iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.
- v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.
- vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.
- vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.
- viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.
- ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.
- x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by

\$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

F.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;

Comment [TWG2]: In an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule/regulation when childcare is the ONLY section/type of provider required to comply with this rule? What is done in public school when an injury occurs? Are principals required to call IDE? Police? If the answer is no, and we genuinely care about parity in the system, then this rule needs to be modified. From what I understand, the governor and administration is seeking parity.

Comment [TWG3]: This section is very unclear. There are some centers with RN's on staff. If the RN looks at the child or assesses the child, does this qualify? What if the parent voluntarily brings the child to the dr for an evaluation but not treatment is necessary, does this qualify? With no interpretive guide, this regulation is left very ambiguous.

- g. any child given the wrong medication or an overdose of the correct medication;
 - h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
 - i. fire on the child care premises if children are present;
 - j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
 - k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.
2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to notifying parents and/or Licensing Section management staff.
3. Within 24 hours or the next business day, the

director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;

General Requirements

A. - M. ...
N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the Licensing Section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

E. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

§7317. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

1. Children shall not be left alone in any room, (excluding the restroom as noted in §7317.B) outdoors, or in vehicles, even momentarily, without a staff present.

2. A staff person shall be assigned to supervise

Comment [TWG4]: With this being put into regulations, it adds dcfs to the list of agencies with enforcement provisions. We've brought this up to the department several times regarding parents who are convicted sex offenders and choose to enroll their children in our facilities. This has to be allowed by law and now becomes a deficiency. This is unfair, not just, and should not be implemented without clarification. Reminder: convicted sex offenders can be parents who need childcare. Also, convicted sex offenders could have been convicted due to prostitution -- not involving a child.

Comment [TWG5]: Again, unrealistic and certainly not in line with other providers of childcare and early education such as preschools and la4 sites. This regulation is changing and we should not promulgate a rule knowing it will soon change. This will cause undue challenges on providers and take away from the positive outcomes for children.

specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;
2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;
3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and
4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

Comment [TW66]: This was never reviewed with the industry. This was never reviewed with any workgroup and not approved by the early childhood advisory council. This regulation does not and will not work with providers who are caring for afterschoolers. A quality and proven method of successfully administering an afterschool program is zone management. Children are free to select and move between rooms/activities frequently and therefore are not assigned to a particular staff member but rather a group of staff members who are managing such zones. This regulation shall be omitted.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

In closing, I feel as though I have pointed out what the industry calls substantial changes needed before this rule be made final. I respectfully ask the department to reconsider the changes which I have mentioned on behalf of the industry.



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Baton Rouge, LA 70821

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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Wyatt Graves
P.O. Box 1449
Walker, LA 70785

Re: Public Hearing Comments (Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B" Regulations for Child Care Centers – Notices of Intent)

Dear Mr. Graves:

This letter is in response to your comments made during a public hearing held by the Department of Children and Family Services (DCFS) on November 26, 2013, regarding the department's proposed Licensing rules published in the October 20, 2013 *Louisiana Register*. R.S. 46:1430 granted DCFS the authority to enact sanctions through the use of civil fines in lieu of license revocation with regard to specific violations if the condition or occurrence does not pose an imminent threat to the health, safety, or welfare of a child.

DCFS coordinated with various stakeholders, including the Child Care Association of Louisiana (CCAL) in the development of the proposed rules. The department deems this rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. We appreciate your comments regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux



EXHIBIT #2

**WRITTEN COMMENTS FROM CHARLES DEGRAW AND LOUIS
TRACHTMAN (Received by Child Support Enforcement)**

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**



State of Louisiana
Department of Health and Hospitals
Office of Public Health

November 15, 2013

Ms. Lisa Andry
Deputy Assistant Secretary
Department of Children and Family Services
P.O. Box 94065
Baton Rouge, Louisiana 70804-9065

CHILD SUPPORT
ENFORCEMENT
NOV 18 2013
DEPT. CHILDREN AND
FAMILY SERV

Dear Ms. Landry:

We in the Department of Health and Hospitals, Office of Public Health, Tuberculosis Control Section have reviewed your Departments Notice of Intent published in the October 2013 issue of the Louisiana Register. Specifically regarding Licensing Class "B" Regulations for Child Care Centers (LAC 67:III.7365). Under 7. Health Requirements b. The reference to tuberculosis and testing should be omitted, as should the reference to Chapter II of the State Sanitary Code.

We feel that the requirement to have no evidence of active tuberculosis is covered well in 7.a. in that staff "must be free from infectious and contagious diseases." In 2009, the requirements for tuberculin testing in the State Sanitary Code's Chapter II were changed. That current requirement is in "Chapter II - Chapter 5. §501. Employee Health for Employees, Volunteers and Patients at Certain Medical and Residential Facilities." There is no requirement in the State Sanitary for "routine" testing of staff in Child Care Centers.

If you have any questions about this recommendation, please let us know. We can be reached via e-mail or by telephone as follows:

Mr. Charles DeGraw Charles.DeGraw@la.gov (504) 568-5015 – Program Director

Dr. Louis Trachtman Louis.Trachtman@la.gov (504) 568-5015 – Program Medical Director

Thank you for your consideration of this matter.

Sincerely,

Charles DeGraw

Charles DeGraw

Louis Trachtman, MD
Louis Trachtman, MD, MPH



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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Charles DeGraw, Program Director
Louis Trachtman, MD, MPH, Program Medical Director
Department of Health and Hospitals, Office of Public Health
1450 Poydras Street
Suite 2029
New Orleans, LA 70112

Re: Public Hearing Comments (Licensing Class "B" Regulations for Child Care Centers – Notice of Intent)

Dear Mr. DeGraw and Dr. Trachtman:

This letter is in response to your comments submitted to the Department of Children and Family Services (DCFS) regarding the department's proposed Licensing rule published in the October 20, 2013 *Louisiana Register*. You expressed concerns related to the Louisiana Administrative Code (LAC 67:III.7365) references to tuberculosis and testing.

We appreciate your comments regarding the Class B licensing regulations related to the standard which requires tuberculosis testing for all child care staff. However the proposed rule does not address changes to the health requirements for staff and will be addressed when the entire rule is revised. We appreciate the time and effort that went into your response regarding this rule and thank you for your participation in this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Suzy Sonnier", with a long horizontal line extending to the right.

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux





Division of Programs
627 N. Fourth St.
Baton Rouge, LA 70802

(O) 225.342.3961
(F) 225.219.9399
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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 10, 2013

The Honorable Charles E. Kleckley
Speaker of the House
Louisiana House of Representatives
P. O. Box 94062, Capitol Station
Baton Rouge, Louisiana 70804

Dear Representative Kleckley:

The Department of Children and Family Services (DCFS) hereby announces its plan to proceed with rulemaking by finalizing the Notice of Intent titled "Licensing Class A Regulations for Child Care Centers" that was promulgated and published on page 2804 of the October 2013 *Louisiana Register*. Copies of the notice and fiscal statement were provided to you on, or about, October 10, 2013.

In accordance with R.S. 46:1430 and R.S. 46:1409.B (10) the proposed rule will allow DCFS, in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations. It will also provide for a process of appeal, clarify specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the Department.

DCFS held a public hearing on November 26, 2013. Copies of the summary of testimony from this hearing, comments received, and department responses to comments are attached. Comments submitted were generally in response to fines and health requirements.

While comments received were considered, the department deems the proposed rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. Therefore, no changes have been made to the proposed rule.

At this time the department intends to submit the Final Rule to the Office of State Register for publication in the January 2014 issue of the *Louisiana Register*. This Rule is effective February 1, 2014. Please contact me at (225) 342-9538 if the department may be of any assistance to you concerning this matter.

Sincerely,



Brent Villemarette
Deputy Secretary

bv/vg



PUBLIC HEARING

HEARING OFFICER: Alyson R. McCord
LOCATION: Division of Planning and Policy Circulation
Department of Children and Family Services
Iberville Building
Room 1-127
Baton Rouge, Louisiana
DATE: Tuesday, November 26, 2013
TIME: 9:00 a.m.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
DIVISION OF PLANNING AND POLICY CIRCULATION

REGULATIONS FOR CHILD CARE CENTERS AND LICENSING CLASS "A"
REGULATIONS FOR CHILD CARE CENTERS & LICENSING CLASS "B"
REGULATIONS FOR CHILD CARE CENTERS

<u>NAME</u>	<u>ADDRESS</u>	<u>PARTY REPRESENTED IF OTHER THAN SELF</u>
Donna Leger	3649 Belle Vale Dr.	
Joyce Arnold	3649 Belle Vale Dr	
Lisa G. Brachard	LDOE	LDE
ANGIE BATAUX	Iberville Bldg	Licensing
Joy McCall	Iberville Bldg	Licensing
Vashika Gilmore	627 N 4th St	DCFS Planning
WYATT GRAVES	2538 Wimper Foot	—
Emil Krelso	1201 N 3RD	LDE
Kimberly Bardell	627 N. 4th street	DCFS
James Evans, Jr	4521 Martin L. King Ave NOA 70125	Head Start
Kahree Wahid	1201 North 3rd Street B, R LA 70802	Head Start



Appeals
Division of Management
and Finance
627 North 4th Street
Baton Rouge, LA 70802

(O) 225.342.4120
(F) 225.342.7797
www.dcfsl.a.gov

Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Doris McWhite Weston, Manager
DCFS Appeals Unit**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Please find attached a Summary of the Public Hearing that was conducted on November 26, 2013, at 9:00 a.m., at the Iberville Building, 627 North 4th Street, Baton Rouge, Louisiana, Room 1-127. Also attached is a copy of the attendance roster for your review.






Appeals
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and Finance
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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Vashika Gilmore, Program Coordinator
DCFS Planning and Policy Circulation Section**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Attached is the original record of the public hearing that was held on November 26, 2013, in Baton Rouge, Louisiana. Please file the appended record with the appropriate official records of the department.



PUBLIC HEARING

APPEAL #262612

TUESDAY, NOVEMBER 26, 2013 AT 9:00 A.M.

BATON ROUGE, LOUISIANA

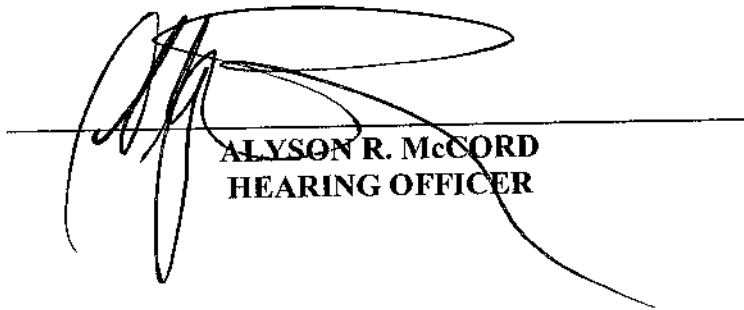
**DEPARTMENT OF
CHILDREN AND FAMILY SERVICES
DIVISION OF PROGRAMS/PLANNING**

NOTICE OF INTENT FOR:

**Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A,
Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335.
Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B"
Regulations for Child Care Centers**

CERTIFICATION

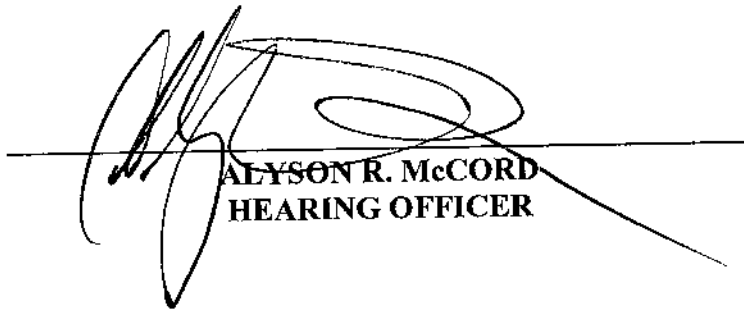
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER, **ALYSON R. McCORD**, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING. THE HEARING WAS ADJOURNED WITH 1 PUBLIC COMMENT, 2 WRITTEN COMMENT SUBMISSIONS, AND 8 MEMBER(S) OF THE PUBLIC WERE PRESENT TO OFFER REMARKS.



ALYSON R. McCORD
HEARING OFFICER

CERTIFICATION

THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER,
ALYSON R. McCORD, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE AND
ON THE TAPE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING
HELD ON TUESDAY, NOVEMBER 26, 2013, AT 9:00 A.M. IN BATON ROUGE,
LOUISIANA.



ALYSON R. McCORD
HEARING OFFICER



627 North 4th Street
Baton Rouge, LA 70802

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Bobby Jindal, Governor
Suzie Sonnier,
Secretary

INTEROFFICE MEMORANDUM

TO: Doris Weston
Manager, Appeals Unit

FROM: Alyson R. McCord
Attorney, DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing 262612 regards the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.

I conducted a Public Hearing in Room 1-127 of the Iberville Building on November 26, 2013, at 9:00 a.m. The hearing commenced at 9:13 a.m.

Presenting on behalf of the agency was Angie Badeaux, Program Director of the Licensing Section of the Department of Children and Family Services. Other agency representatives in attendance were Joy McCall, Vashika Gilmore and Kimberly Bardell. Members of the public in attendance were Donna Leger, Joyce Arnold, Lisa G. Brochard, Wyatt Graves, James Evans, Jr., Kahree Wahid and Alana Guidry.

Hearing Summary

Angie Badeaux testified that in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 21 Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.



Sections Amendment is pursuant to the authority granted to the department by R.S. 46:1430, the rule allows the Department of Children and Family Services, in lieu of license revocation, to enact intermediate sanctions through the use of civil files relative to child care facilities that violate the terms for specific violations, including violations of the requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child-ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2,000. In addition, the rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409.B (10), the rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Public Comments from Wyatt Graves of Fundamentals Learning Center

“My name is Wyatt Graves and I am the Immediate Past President of the Childcare Association of Louisiana and the Owner and Director of seven licensed childcare centers between St. Tammany, Livingston and East Baton Rouge Parishes. I am also a participant in one of the thirteen statewide pilots offered by the Louisiana Department of Education. I have been closely involved with the current initiative to streamline licensing and regulations relative to the senate bill of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this on record also having been part of the work group which wrote and is writing the original draft of this version of this rule. While we support the act of fines, especially as an alternative to the licensing process, we cannot support this rule in its entirety. I want to call attention to the department’s ability, already in law, to create a provisional license for those centers who may be in serious deficiencies with meeting those regulations. The rule being promulgated and heard today was



drafted in 2012, which was prior to the 2013 legislative session regarding the streamlining of licensing types and regulations to enhance the overall quality of care in early education offered to Louisiana's children. During the drafting of this rule in 2012, there was no separate formed to re-write the entire set of regulations which the rule is based upon. There is no insight that we have new licensing and the new quality rating system coming up in the future. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset seems to have changed of regulating childcare. It has evolved and even morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the Childcare Association of Louisiana, all 500 plus members, and oppose this rule in its current form. Specifically, the reasons are as follows. Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the definition of this violation. How can the state move forward with this rule to fine providers based on a regulation that everyone knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialists on the new definition to rightly assess this regulation which will lead to fines, only to change the definition, which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning? Again, those regulations that I am calling into question and is a problem is supervision, which is being cited as one of the critical violations. Under the definition, of supervision and also understanding how we calculate a repeat deficiency, this rule is saying 'even if one or more of the violations occurred prior to the adoption of the current set of standards'. So in reference to that section of this rule, I'd like to say that in the event that a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of this rule becoming final; not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of corrections process, which is also part of this rule, were in place. It would give providers a change to have corrective plans of action in place before



automatically attacking them with a multiple violation report, which could yield to fines. If we believe that a corrective plan of action is something that we want to implement, which we do believe that, and we support that part of the bill, then we've got to give providers an opportunity to implement a corrective plan of action before we look at retroactive compliance with this particular regulation.

Another point of contention is . . . I don't have the specific section number, but its F1 under a particular section. The Director shall report all critical incidents as specified below. But the following critical incidents immediate notification made to emergency personnel and/or law enforcement as appropriate. In addition, the child's parent shall be contacted. Once contact has been made to the child's parent, the Director shall verbally notify the licensing section management staff immediately. The verbal report shall be followed by a written report within 24 hours. So, in reference to that section, in an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule or regulation where children is the only . . . where childcare, I'm sorry . . . childcare is the only section required to comply with this rule? What is done in public schools when an injury occurs? Are Principals required to call LDE or the Police? If the answer is no and we genuinely care about parity in the system, then this rule and this section needs to be modified.

A little further down in Section B, which is one of the reasons that . . . uhm, the rule is specifying immediate report be made to the department. Illness or injury requiring hospitalization or professional medical attention of a child, while in the care of the provider, in reference to this section, we've mentioned that this section is very unclear. There are some centers who have registered nurses on staff. If the R.N. looks at the child or assesses the child, does that qualify? What if the parent voluntarily brings the child to the doctor for an evaluation, but no treatment is necessary, does this qualify? With no interpretive guide, this regulation is left ambiguous and literally leads to providers wanting to call the state for every incident that potentially has the harm or change of being referred out to a physician even if it is a child who falls and hits their mouth on a toy and the parent brings them to a dentist. Does that qualify? That's a question.



The physical presence, under General Requirements. We've brought this up in the past too and it doesn't seem that it's addressed in the rule. The physical presence of a sex offender in or on within a thousand feet of a child daycare facility is prohibited. Providers and childcare staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541, physical access to a child daycare facility is defined in R.S. 46:1403. And so, when this rule was talked about there is a legitimate question which is customers who are listed on the registered sex offenders list as we understand a person can be convicted of a sex offense that involves prostitution of legal adults and also be a sex offender or a mother for that matter and wish to enroll their child in one of our schools. This is already happening and we are unclear as to how we will be treated by knowingly allowing them to enter our facilities as a customer. This rule particularly, in this section, needs to be modified and explicit expectations need to be listed for that situation.

Under supervision, I think in the definition of it, children shall not be left alone in any room, excluding the restrooms as noted in section 73:17(B) outdoors or in vehicles, even momentarily, without a staff present. Relative to that section, again, um, a little bit unrealistic and certainly not in line with the other providers of childcare and early education such as preschools and those school settings from a public school campus. The regulations seem to be changing and we should not promulgate a rule knowing that its going to change soon, especially in light of the retroactive look back period which will result in monetary fines.

Section 2 of that same, um, paragraph, a staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff should be able to state how many children are in their care at all times. This is particularly a problem for programs who fall under this license code, but serve after schoolers, especially those that have zones for children to attend and freely choose throughout the day or afternoon. This part of the rule we do not recall being reviewed with the industry and especially this conclusion of the rule. This was . . . this regulation does not and will not work with providers who are caring for after schoolers. A quality and proven method for successfully administering an after school program is what we call zone management. Children are free; which are typically six, seven . . . all the way up to eleven and twelve and sometimes thirteen years of age, to select and move between rooms or activities



frequently, making their own independent decision if they want to watch a movie or play basketball or go to the arcade room or do an arts and crafts activity and they are frequently making those selections throughout the day. Therefore not assigned to a particular staff member, but rather a group of staff members who are managing such zones. This regulation should be changed or omitted for after schoolers particularly.

In closing, I feel as though I've pointed out where the industry called substantial changes that need to be made before the rule will work for the industry in the current climate of change. I respectfully ask for the department to reconsider the changes which I've mentioned on behalf of the industry and my business. Thank you."

Adjournment

The hearing was adjourned at 9:29 a.m.

Respectfully Submitted by Alyson R. McCord, Hearing Officer



EXHIBIT #1

WRITTEN COMMENTS FROM WYATT GRAVES (Submitted via email)

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**

My name is Wyatt Graves and I am the immediate past president of the child care association of la and the owner/director of 7 licensed childcare centers between st tammany, Livingston, and east baton rouge parishes. I am also a participant in one of the 13 state-wide pilots offered by LDE. I have been closely involved with the current initiative to streamline licensing and regulations relative to senate bill 222 of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this, on record, also having been part of the work group which wrote drafted the original versions of this rule.

While we support the act of fines, especially as an alternative to license revocation, we cannot support this rule in its entirety. I want to call attention to the department's current ability to create a license with a provisional status for those who need licenses to be monitored more heavily and to serve as an alternative to license revocation.

The rule being promulgated and heard today was drafted in 2012 which was prior to the 2013 legislation regarding the streamlining of licensing types and regulations to enhance the overall quality of care and early education offered to louisiana's children. During the drafting of this rule, there was no such committee formed to rewrite the entire set of regulations which this rule is based. There was no onsite that we'd have new types of licensing and a new quality rating system. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset of regulating childcare has changed, evolved, and morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the childcare association of la, all 500+ members and oppose this rule in its current form.

Specific reasons are as follows:

Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the very definition of the violation. How can this state move forward with a rule to fine providers based on a regulation that everyone in the state department knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialist on the new definition to rightly assess it which may lead to fines -- only to change the definition which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning?

a. §7302.G and/or §7311.A.5 and/or §7311.B -

criminal background check;

b. §7302.H and/or §7311.A.6 - state central registry

disclosure;

- c. §7303.F.1 and/or §7303.F.5 - critical incidents;
- e. §7315.A - D - ratio,
- d. §7317 -- supervision; and/or supervision is one of the critical violations
- f. §7331.N - motor vehicle.

In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of noncompliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response

Comment [TWG1]: In the event a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of the rule becoming final – not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of correction process (which this rule establishes) were in place. Give providers a chance to have corrective plans of action in place before automatically attacking them with a multiple violation report yielding fines.

to the CAP within 14 calendar days of receipt of the letter.

Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a 24 month period, provider will be assessed a civil fine of up to \$250 per day for violation of each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

- ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.
- iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.
- iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.
- v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.
- vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.
- vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.
- viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.
- ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.
- x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by

\$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

F.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;

Comment [TWG2]: In an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule/regulation when childcare is the ONLY section/type of provider required to comply with this rule? What is done in public school when an injury occurs? Are principals required to call IDE? Police? If the answer is no, and we genuinely care about parity in the system, then this rule needs to be modified. From what I understand, the governor and administration is seeking parity.

Comment [TWG3]: This section is very unclear. There are some centers with RN's on staff. If the RN looks at the child or assesses the child, does this qualify? What if the parent voluntarily brings the child to the dr for an evaluation but not treatment is necessary, does this qualify? With no interpretive guide, this regulation is left very ambiguous.

- g. any child given the wrong medication or an overdose of the correct medication;
 - h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
 - i. fire on the child care premises if children are present;
 - j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
 - k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.
2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to notifying parents and/or Licensing Section management staff.
3. Within 24 hours or the next business day, the

director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;

General Requirements

- A. - M. ...
- N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the Licensing Section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

- E. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

§7317. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

- 1. Children shall not be left alone in any room, (excluding the restroom as noted in §7317.B) outdoors, or in vehicles, even momentarily, without a staff present.

- 2. A staff person shall be assigned to supervise

Comment [TWG4]: With this being put into regulations, it adds dcfs to the list of agencies with enforcement provisions. We've brought this up to the department several times regarding parents who are convicted sex offenders and choose to enroll their children in our facilities. This has to be allowed by law and now becomes a deficiency. This is unfair, not just, and should not be implemented without clarification. Reminder: convicted sex offenders can be parents who need childcare. Also, convicted sex offenders could have been convicted due to prostitution -- not involving a child.

Comment [TWG5]: Again, unrealistic and certainly not in line with other providers of childcare and early education such as preschools and la4 sites. This regulation is changing and we should not promulgate a rule knowing it will soon change. This will cause undue challenges on providers and take away from the positive outcomes for children.

specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;
2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;
3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and
4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

Comment [TW66]: This was never reviewed with the industry. This was never reviewed with any workgroup and not approved by the early childhood advisory council. This regulation does not and will not work with providers who are caring for afterschoolers. A quality and proven method of successfully administering an afterschool program is zone management. Children are free to select and move between rooms/activities frequently and therefore are not assigned to a particular staff member but rather a group of staff members who are managing such zones. This regulation shall be omitted.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

In closing, I feel as though I have pointed out what the industry calls substantial changes needed before this rule be made final. I respectfully ask the department to reconsider the changes which I have mentioned on behalf of the industry.



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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Wyatt Graves
P.O. Box 1449
Walker, LA 70785

Re: Public Hearing Comments (Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B" Regulations for Child Care Centers – Notices of Intent)

Dear Mr. Graves:

This letter is in response to your comments made during a public hearing held by the Department of Children and Family Services (DCFS) on November 26, 2013, regarding the department's proposed Licensing rules published in the October 20, 2013 *Louisiana Register*. R.S. 46:1430 granted DCFS the authority to enact sanctions through the use of civil fines in lieu of license revocation with regard to specific violations if the condition or occurrence does not pose an imminent threat to the health, safety, or welfare of a child.

DCFS coordinated with various stakeholders, including the Child Care Association of Louisiana (CCAL) in the development of the proposed rules. The department deems this rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. We appreciate your comments regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux



EXHIBIT #2

**WRITTEN COMMENTS FROM CHARLES DEGRAW AND LOUIS
TRACHTMAN (Received by Child Support Enforcement)**

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**



State of Louisiana
Department of Health and Hospitals
Office of Public Health

November 15, 2013

Ms. Lisa Andry
Deputy Assistant Secretary
Department of Children and Family Services
P.O. Box 94065
Baton Rouge, Louisiana 70804-9065

CHILD SUPPORT
ENFORCEMENT
NOV 18 2013
DEPT. CHILDREN AND
FAMILY SERV

Dear Ms. Landry:

We in the Department of Health and Hospitals, Office of Public Health, Tuberculosis Control Section have reviewed your Departments Notice of Intent published in the October 2013 issue of the Louisiana Register. Specifically regarding Licensing Class "B" Regulations for Child Care Centers (LAC 67:III.7365). Under 7. Health Requirements b. The reference to tuberculosis and testing should be omitted, as should the reference to Chapter II of the State Sanitary Code.

We feel that the requirement to have no evidence of active tuberculosis is covered well in 7.a. in that staff "must be free from infectious and contagious diseases." In 2009, the requirements for tuberculin testing in the State Sanitary Code's Chapter II were changed. That current requirement is in "Chapter II - Chapter 5. §501. Employee Health for Employees, Volunteers and Patients at Certain Medical and Residential Facilities." There is no requirement in the State Sanitary for "routine" testing of staff in Child Care Centers.

If you have any questions about this recommendation, please let us know. We can be reached via e-mail or by telephone as follows:

Mr. Charles DeGraw Charles.DeGraw@la.gov (504) 568-5015 – Program Director

Dr. Louis Trachtman Louis.Trachtman@la.gov (504) 568-5015 – Program Medical Director

Thank you for your consideration of this matter.

Sincerely,

Charles DeGraw

Charles DeGraw

Louis Trachtman, MD
Louis Trachtman, MD, MPH



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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Charles DeGraw, Program Director
Louis Trachtman, MD, MPH, Program Medical Director
Department of Health and Hospitals, Office of Public Health
1450 Poydras Street
Suite 2029
New Orleans, LA 70112

Re: Public Hearing Comments (Licensing Class "B" Regulations for Child Care Centers – Notice of Intent)

Dear Mr. DeGraw and Dr. Trachtman:

This letter is in response to your comments submitted to the Department of Children and Family Services (DCFS) regarding the department's proposed Licensing rule published in the October 20, 2013 *Louisiana Register*. You expressed concerns related to the Louisiana Administrative Code (LAC 67:III.7365) references to tuberculosis and testing.

We appreciate your comments regarding the Class B licensing regulations related to the standard which requires tuberculosis testing for all child care staff. However the proposed rule does not address changes to the health requirements for staff and will be addressed when the entire rule is revised. We appreciate the time and effort that went into your response regarding this rule and thank you for your participation in this process.

Sincerely,



Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux





Division of Programs
627 N. Fourth St.
Baton Rouge, LA 70802

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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 10, 2013

The Honorable David Heitmeier, Chairman
Louisiana Senate Committee on Health and Welfare
P. O. Box 94183, Capitol Station
Baton Rouge, Louisiana 70804

Dear Senator Heitmeier:

The Department of Children and Family Services (DCFS) hereby announces its plan to proceed with rulemaking by finalizing the Notice of Intent titled "Licensing Class A Regulations for Child Care Centers" that was promulgated and published on page 2804 of the October 2013 *Louisiana Register*. Copies of the notice and fiscal statement were provided to you on, or about, October 10, 2013.

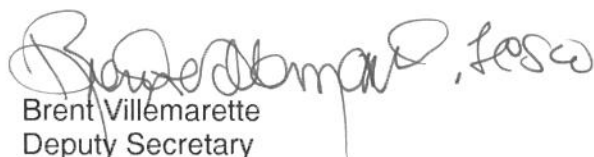
In accordance with R.S. 46:1430 and R.S. 46:1409.B (10) the proposed rule will allow DCFS, in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations. It will also provide for a process of appeal, clarify specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the Department.

DCFS held a public hearing on November 26, 2013. Copies of the summary of testimony from this hearing, comments received, and department responses to comments are attached. Comments submitted were generally in response to fines and health requirements.

While comments received were considered, the department deems the proposed rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. Therefore, no changes have been made to the proposed rule.

At this time the department intends to submit the Final Rule to the Office of State Register for publication in the January 2014 issue of the *Louisiana Register*. This Rule is effective February 1, 2014. Please contact me at (225) 342-9538 if the department may be of any assistance to you concerning this matter.

Sincerely,



Brent Villemarette
Deputy Secretary

bv/vg



PUBLIC HEARING

HEARING OFFICER: Alyson R. McCord
LOCATION: Division of Planning and Policy Circulation
Department of Children and Family Services
Iberville Building
Room 1-127
Baton Rouge, Louisiana
DATE: Tuesday, November 26, 2013
TIME: 9:00 a.m.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
DIVISION OF PLANNING AND POLICY CIRCULATION

REGULATIONS FOR CHILD CARE CENTERS AND LICENSING CLASS "A"
REGULATIONS FOR CHILD CARE CENTERS & LICENSING CLASS "B"
REGULATIONS FOR CHILD CARE CENTERS

<u>NAME</u>	<u>ADDRESS</u>	<u>PARTY REPRESENTED IF OTHER THAN SELF</u>
Donna Leger	3649 Belle Vale Dr.	
Joyce Arnold	3649 Belle Vale Dr	
Lisa G. Brachard	LDOE	LDE
ANGIE BATAUX	Iberville Bldg	Licensing
Joy McCall	Iberville Bldg	Licensing
Vashika Gilmore	627 N 4th St	DCFS Planning
WYATT GRAVES	2538 Wimper Foot	—
Emil Krelso	1201 N 3RD	LDE
Kimberly Bardell	627 N. 4th street	DCFS
James Evans, Jr	4521 Martin L. King Ave NOA 70125	Head Start
Kahree Wahid	1201 North 3rd Street B, R LA 70802	Head Start



Appeals
Division of Management
and Finance
627 North 4th Street
Baton Rouge, LA 70802

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www.dcfsl.a.gov

Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Doris McWhite Weston, Manager
DCFS Appeals Unit**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Please find attached a Summary of the Public Hearing that was conducted on November 26, 2013, at 9:00 a.m., at the Iberville Building, 627 North 4th Street, Baton Rouge, Louisiana, Room 1-127. Also attached is a copy of the attendance roster for your review.






Appeals
Division of Management
and Finance
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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Vashika Gilmore, Program Coordinator
DCFS Planning and Policy Circulation Section**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Attached is the original record of the public hearing that was held on November 26, 2013, in Baton Rouge, Louisiana. Please file the appended record with the appropriate official records of the department.



PUBLIC HEARING

APPEAL #262612

TUESDAY, NOVEMBER 26, 2013 AT 9:00 A.M.

BATON ROUGE, LOUISIANA

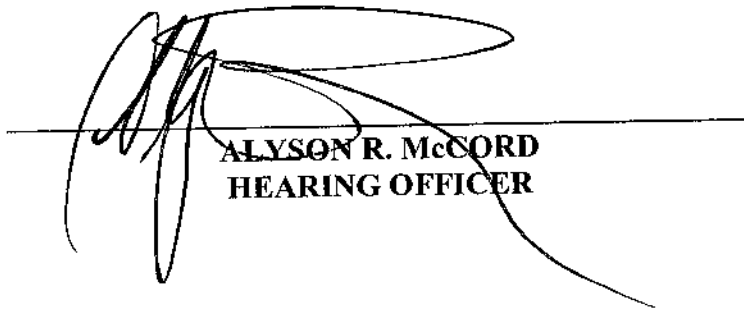
**DEPARTMENT OF
CHILDREN AND FAMILY SERVICES
DIVISION OF PROGRAMS/PLANNING**

NOTICE OF INTENT FOR:

**Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A,
Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335.
Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B"
Regulations for Child Care Centers**

CERTIFICATION

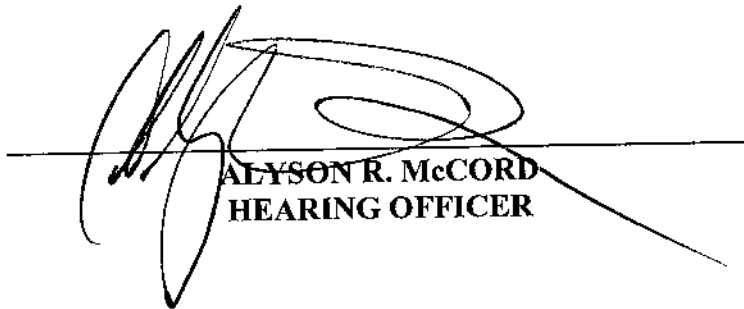
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER, **ALYSON R. McCORD**, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING. THE HEARING WAS ADJOURNED WITH 1 PUBLIC COMMENT, 2 WRITTEN COMMENT SUBMISSIONS, AND 8 MEMBER(S) OF THE PUBLIC WERE PRESENT TO OFFER REMARKS.



ALYSON R. McCORD
HEARING OFFICER

CERTIFICATION

THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER,
ALYSON R. McCORD, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE AND
ON THE TAPE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING
HELD ON TUESDAY, NOVEMBER 26, 2013, AT 9:00 A.M. IN BATON ROUGE,
LOUISIANA.



ALYSON R. McCORD
HEARING OFFICER



627 North 4th Street
Baton Rouge, LA 70802

(O) 225.342.4120 (F)
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Bobby Jindal, Governor
Suzie Sonnier,
Secretary

INTEROFFICE MEMORANDUM

TO: Doris Weston
Manager, Appeals Unit

FROM: Alyson R. McCord
Attorney, DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing 262612 regards the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.

I conducted a Public Hearing in Room 1-127 of the Iberville Building on November 26, 2013, at 9:00 a.m. The hearing commenced at 9:13 a.m.

Presenting on behalf of the agency was Angie Badeaux, Program Director of the Licensing Section of the Department of Children and Family Services. Other agency representatives in attendance were Joy McCall, Vashika Gilmore and Kimberly Bardell. Members of the public in attendance were Donna Leger, Joyce Arnold, Lisa G. Brochard, Wyatt Graves, James Evans, Jr., Kahree Wahid and Alana Guidry.

Hearing Summary

Angie Badeaux testified that in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 21 Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.



Sections Amendment is pursuant to the authority granted to the department by R.S. 46:1430, the rule allows the Department of Children and Family Services, in lieu of license revocation, to enact intermediate sanctions through the use of civil files relative to child care facilities that violate the terms for specific violations, including violations of the requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child-ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2,000. In addition, the rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409.B (10), the rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Public Comments from Wyatt Graves of Fundamentals Learning Center

“My name is Wyatt Graves and I am the Immediate Past President of the Childcare Association of Louisiana and the Owner and Director of seven licensed childcare centers between St. Tammany, Livingston and East Baton Rouge Parishes. I am also a participant in one of the thirteen statewide pilots offered by the Louisiana Department of Education. I have been closely involved with the current initiative to streamline licensing and regulations relative to the senate bill of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this on record also having been part of the work group which wrote and is writing the original draft of this version of this rule. While we support the act of fines, especially as an alternative to the licensing process, we cannot support this rule in its entirety. I want to call attention to the department’s ability, already in law, to create a provisional license for those centers who may be in serious deficiencies with meeting those regulations. The rule being promulgated and heard today was



drafted in 2012, which was prior to the 2013 legislative session regarding the streamlining of licensing types and regulations to enhance the overall quality of care in early education offered to Louisiana's children. During the drafting of this rule in 2012, there was no separate formed to re-write the entire set of regulations which the rule is based upon. There is no insight that we have new licensing and the new quality rating system coming up in the future. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset seems to have changed of regulating childcare. It has evolved and even morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the Childcare Association of Louisiana, all 500 plus members, and oppose this rule in its current form. Specifically, the reasons are as follows. Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the definition of this violation. How can the state move forward with this rule to fine providers based on a regulation that everyone knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialists on the new definition to rightly assess this regulation which will lead to fines, only to change the definition, which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning? Again, those regulations that I am calling into question and is a problem is supervision, which is being cited as one of the critical violations. Under the definition, of supervision and also understanding how we calculate a repeat deficiency, this rule is saying 'even if one or more of the violations occurred prior to the adoption of the current set of standards'. So in reference to that section of this rule, I'd like to say that in the event that a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of this rule becoming final; not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of corrections process, which is also part of this rule, were in place. It would give providers a change to have corrective plans of action in place before



automatically attacking them with a multiple violation report, which could yield to fines. If we believe that a corrective plan of action is something that we want to implement, which we do believe that, and we support that part of the bill, then we've got to give providers an opportunity to implement a corrective plan of action before we look at retroactive compliance with this particular regulation.

Another point of contention is . . . I don't have the specific section number, but its F1 under a particular section. The Director shall report all critical incidents as specified below. But the following critical incidents immediate notification made to emergency personnel and/or law enforcement as appropriate. In addition, the child's parent shall be contacted. Once contact has been made to the child's parent, the Director shall verbally notify the licensing section management staff immediately. The verbal report shall be followed by a written report within 24 hours. So, in reference to that section, in an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule or regulation where children is the only . . . where childcare, I'm sorry . . . childcare is the only section required to comply with this rule? What is done in public schools when an injury occurs? Are Principals required to call LDE or the Police? If the answer is no and we genuinely care about parity in the system, then this rule and this section needs to be modified.

A little further down in Section B, which is one of the reasons that . . . uhm, the rule is specifying immediate report be made to the department. Illness or injury requiring hospitalization or professional medical attention of a child, while in the care of the provider, in reference to this section, we've mentioned that this section is very unclear. There are some centers who have registered nurses on staff. If the R.N. looks at the child or assesses the child, does that qualify? What if the parent voluntarily brings the child to the doctor for an evaluation, but no treatment is necessary, does this qualify? With no interpretive guide, this regulation is left ambiguous and literally leads to providers wanting to call the state for every incident that potentially has the harm or change of being referred out to a physician even if it is a child who falls and hits their mouth on a toy and the parent brings them to a dentist. Does that qualify? That's a question.



The physical presence, under General Requirements. We've brought this up in the past too and it doesn't seem that it's addressed in the rule. The physical presence of a sex offender in or on within a thousand feet of a child daycare facility is prohibited. Providers and childcare staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541, physical access to a child daycare facility is defined in R.S. 46:1403. And so, when this rule was talked about there is a legitimate question which is customers who are listed on the registered sex offenders list as we understand a person can be convicted of a sex offense that involves prostitution of legal adults and also be a sex offender or a mother for that matter and wish to enroll their child in one of our schools. This is already happening and we are unclear as to how we will be treated by knowingly allowing them to enter our facilities as a customer. This rule particularly, in this section, needs to be modified and explicit expectations need to be listed for that situation.

Under supervision, I think in the definition of it, children shall not be left alone in any room, excluding the restrooms as noted in section 73:17(B) outdoors or in vehicles, even momentarily, without a staff present. Relative to that section, again, um, a little bit unrealistic and certainly not in line with the other providers of childcare and early education such as preschools and those school settings from a public school campus. The regulations seem to be changing and we should not promulgate a rule knowing that its going to change soon, especially in light of the retroactive look back period which will result in monetary fines.

Section 2 of that same, um, paragraph, a staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff should be able to state how many children are in their care at all times. This is particularly a problem for programs who fall under this license code, but serve after schoolers, especially those that have zones for children to attend and freely choose throughout the day or afternoon. This part of the rule we do not recall being reviewed with the industry and especially this conclusion of the rule. This was . . . this regulation does not and will not work with providers who are caring for after schoolers. A quality and proven method for successfully administering an after school program is what we call zone management. Children are free; which are typically six, seven . . . all the way up to eleven and twelve and sometimes thirteen years of age, to select and move between rooms or activities



frequently, making their own independent decision if they want to watch a movie or play basketball or go to the arcade room or do an arts and crafts activity and they are frequently making those selections throughout the day. Therefore not assigned to a particular staff member, but rather a group of staff members who are managing such zones. This regulation should be changed or omitted for after schoolers particularly.

In closing, I feel as though I've pointed out where the industry called substantial changes that need to be made before the rule will work for the industry in the current climate of change. I respectfully ask for the department to reconsider the changes which I've mentioned on behalf of the industry and my business. Thank you."

Adjournment

The hearing was adjourned at 9:29 a.m.

Respectfully Submitted by Alyson R. McCord, Hearing Officer



EXHIBIT #1

WRITTEN COMMENTS FROM WYATT GRAVES (Submitted via email)

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**

My name is Wyatt Graves and I am the immediate past president of the child care association of la and the owner/director of 7 licensed childcare centers between st tammany, Livingston, and east baton rouge parishes. I am also a participant in one of the 13 state-wide pilots offered by LDE. I have been closely involved with the current initiative to streamline licensing and regulations relative to senate bill 222 of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this, on record, also having been part of the work group which wrote drafted the original versions of this rule.

While we support the act of fines, especially as an alternative to license revocation, we cannot support this rule in its entirety. I want to call attention to the department's current ability to create a license with a provisional status for those who need licenses to be monitored more heavily and to serve as an alternative to license revocation.

The rule being promulgated and heard today was drafted in 2012 which was prior to the 2013 legislation regarding the streamlining of licensing types and regulations to enhance the overall quality of care and early education offered to louisiana's children. During the drafting of this rule, there was no such committee formed to rewrite the entire set of regulations which this rule is based. There was no onsite that we'd have new types of licensing and a new quality rating system. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset of regulating childcare has changed, evolved, and morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the childcare association of la, all 500+ members and oppose this rule in its current form.

Specific reasons are as follows:

Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the very definition of the violation. How can this state move forward with a rule to fine providers based on a regulation that everyone in the state department knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialist on the new definition to rightly assess it which may lead to fines -- only to change the definition which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning?

a. §7302.G and/or §7311.A.5 and/or §7311.B -

criminal background check;

b. §7302.H and/or §7311.A.6 - state central registry

disclosure;

- c. §7303.F.1 and/or §7303.F.5 - critical incidents;
- e. §7315.A - D - ratio,
- d. §7317 -- supervision; and/or supervision is one of the critical violations
- f. §7331.N - motor vehicle.

In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of noncompliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response

Comment [TWG1]: In the event a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of the rule becoming final – not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of correction process (which this rule establishes) were in place. Give providers a chance to have corrective plans of action in place before automatically attacking them with a multiple violation report yielding fines.

to the CAP within 14 calendar days of receipt of the letter.

Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a 24 month period, provider will be assessed a civil fine of up to \$250 per day for violation of each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

- ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.
- iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.
- iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.
- v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.
- vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.
- vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.
- viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.
- ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.
- x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by

\$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

F.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;

Comment [TWG2]: In an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule/regulation when childcare is the ONLY section/type of provider required to comply with this rule? What is done in public school when an injury occurs? Are principals required to call IDE? Police? If the answer is no, and we genuinely care about parity in the system, then this rule needs to be modified. From what I understand, the governor and administration is seeking parity.

Comment [TWG3]: This section is very unclear. There are some centers with RN's on staff. If the RN looks at the child or assesses the child, does this qualify? What if the parent voluntarily brings the child to the dr for an evaluation but not treatment is necessary, does this qualify? With no interpretive guide, this regulation is left very ambiguous.

- g. any child given the wrong medication or an overdose of the correct medication;
 - h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
 - i. fire on the child care premises if children are present;
 - j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
 - k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.
2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to notifying parents and/or Licensing Section management staff.
3. Within 24 hours or the next business day, the

director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;

General Requirements

- A. - M. ...
- N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the Licensing Section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

- E. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

§7317. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

- 1. Children shall not be left alone in any room, (excluding the restroom as noted in §7317.B) outdoors, or in vehicles, even momentarily, without a staff present.

- 2. A staff person shall be assigned to supervise

Comment [TWG4]: With this being put into regulations, it adds dcfs to the list of agencies with enforcement provisions. We've brought this up to the department several times regarding parents who are convicted sex offenders and choose to enroll their children in our facilities. This has to be allowed by law and now becomes a deficiency. This is unfair, not just, and should not be implemented without clarification. Reminder: convicted sex offenders can be parents who need childcare. Also, convicted sex offenders could have been convicted due to prostitution -- not involving a child.

Comment [TWG5]: Again, unrealistic and certainly not in line with other providers of childcare and early education such as preschools and la4 sites. This regulation is changing and we should not promulgate a rule knowing it will soon change. This will cause undue challenges on providers and take away from the positive outcomes for children.

specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;
2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;
3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and
4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

Comment [TW66]: This was never reviewed with the industry. This was never reviewed with any workgroup and not approved by the early childhood advisory council. This regulation does not and will not work with providers who are caring for afterschoolers. A quality and proven method of successfully administering an afterschool program is zone management. Children are free to select and move between rooms/activities frequently and therefore are not assigned to a particular staff member but rather a group of staff members who are managing such zones. This regulation shall be omitted.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

In closing, I feel as though I have pointed out what the industry calls substantial changes needed before this rule be made final. I respectfully ask the department to reconsider the changes which I have mentioned on behalf of the industry.



Executive Division
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Post Office Box 3776
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(O) 225.342.0286
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www.dcfsl.a.gov

Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Wyatt Graves
P.O. Box 1449
Walker, LA 70785

Re: Public Hearing Comments (Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B" Regulations for Child Care Centers – Notices of Intent)

Dear Mr. Graves:

This letter is in response to your comments made during a public hearing held by the Department of Children and Family Services (DCFS) on November 26, 2013, regarding the department's proposed Licensing rules published in the October 20, 2013 *Louisiana Register*. R.S. 46:1430 granted DCFS the authority to enact sanctions through the use of civil fines in lieu of license revocation with regard to specific violations if the condition or occurrence does not pose an imminent threat to the health, safety, or welfare of a child.

DCFS coordinated with various stakeholders, including the Child Care Association of Louisiana (CCAL) in the development of the proposed rules. The department deems this rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. We appreciate your comments regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux



EXHIBIT #2

**WRITTEN COMMENTS FROM CHARLES DEGRAW AND LOUIS
TRACHTMAN (Received by Child Support Enforcement)**

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**



State of Louisiana
Department of Health and Hospitals
Office of Public Health

November 15, 2013

Ms. Lisa Andry
Deputy Assistant Secretary
Department of Children and Family Services
P.O. Box 94065
Baton Rouge, Louisiana 70804-9065

CHILD SUPPORT
ENFORCEMENT
NOV 18 2013
DEPT. CHILDREN AND
FAMILY SERV

Dear Ms. Landry:

We in the Department of Health and Hospitals, Office of Public Health, Tuberculosis Control Section have reviewed your Departments Notice of Intent published in the October 2013 issue of the Louisiana Register. Specifically regarding Licensing Class "B" Regulations for Child Care Centers (LAC 67:III.7365). Under 7. Health Requirements b. The reference to tuberculosis and testing should be omitted, as should the reference to Chapter II of the State Sanitary Code.

We feel that the requirement to have no evidence of active tuberculosis is covered well in 7.a. in that staff "must be free from infectious and contagious diseases." In 2009, the requirements for tuberculin testing in the State Sanitary Code's Chapter II were changed. That current requirement is in "Chapter II - Chapter 5. §501. Employee Health for Employees, Volunteers and Patients at Certain Medical and Residential Facilities." There is no requirement in the State Sanitary for "routine" testing of staff in Child Care Centers.

If you have any questions about this recommendation, please let us know. We can be reached via e-mail or by telephone as follows:

Mr. Charles DeGraw Charles.DeGraw@la.gov (504) 568-5015 – Program Director

Dr. Louis Trachtman Louis.Trachtman@la.gov (504) 568-5015 – Program Medical Director

Thank you for your consideration of this matter.

Sincerely,

Charles DeGraw

Charles DeGraw

Louis Trachtman, MD
Louis Trachtman, MD, MPH



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627 North 4th Street
Post Office Box 3776
Baton Rouge, LA 70821

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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Charles DeGraw, Program Director
Louis Trachtman, MD, MPH, Program Medical Director
Department of Health and Hospitals, Office of Public Health
1450 Poydras Street
Suite 2029
New Orleans, LA 70112

Re: Public Hearing Comments (Licensing Class "B" Regulations for Child Care Centers – Notice of Intent)

Dear Mr. DeGraw and Dr. Trachtman:

This letter is in response to your comments submitted to the Department of Children and Family Services (DCFS) regarding the department's proposed Licensing rule published in the October 20, 2013 *Louisiana Register*. You expressed concerns related to the Louisiana Administrative Code (LAC 67:III.7365) references to tuberculosis and testing.

We appreciate your comments regarding the Class B licensing regulations related to the standard which requires tuberculosis testing for all child care staff. However the proposed rule does not address changes to the health requirements for staff and will be addressed when the entire rule is revised. We appreciate the time and effort that went into your response regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux





Division of Programs
627 N. Fourth St.
Baton Rouge, LA 70802

(O) 225.342.3961
(F) 225.219.9399
www.dcfsl.a.gov

Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 10, 2013

The Honorable John Alario
President of the Senate
Louisiana State Senate
P. O. Box 94183, Capitol Station
Baton Rouge, Louisiana 70804

Dear Senator Alario:

The Department of Children and Family Services (DCFS) hereby announces its plan to proceed with rulemaking by finalizing the Notice of Intent titled "Licensing Class A Regulations for Child Care Centers" that was promulgated and published on page 2804 of the October 2013 *Louisiana Register*. Copies of the notice and fiscal statement were provided to you on, or about, October 10, 2013.

In accordance with R.S. 46:1430 and R.S. 46:1409.B (10) the proposed rule will allow DCFS, in lieu of license revocation, to enact intermediate sanctions through the use of civil fines relative to child care facilities that violate the terms of licensure for specific violations. It will also provide for a process of appeal, clarify specific areas for which a fine may be assessed, and include procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the Department.

DCFS held a public hearing on November 26, 2013. Copies of the summary of testimony from this hearing, comments received, and department responses to comments are attached. Comments submitted were generally in response to fines and health requirements.

While comments received were considered, the department deems the proposed rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. Therefore, no changes have been made to the proposed rule.

At this time the department intends to submit the Final Rule to the Office of State Register for publication in the January 2014 issue of the *Louisiana Register*. This Rule is effective February 1, 2014. Please contact me at (225) 342-9538 if the department may be of any assistance to you concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Villemarette", is written over a faint, larger version of the signature.

Brent Villemarette
Deputy Secretary

bv/vg



PUBLIC HEARING

HEARING OFFICER: Alyson R. McCord
LOCATION: Division of Planning and Policy Circulation
Department of Children and Family Services
Iberville Building
Room 1-127
Baton Rouge, Louisiana
DATE: Tuesday, November 26, 2013
TIME: 9:00 a.m.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
DIVISION OF PLANNING AND POLICY CIRCULATION

REGULATIONS FOR CHILD CARE CENTERS AND LICENSING CLASS "A"
REGULATIONS FOR CHILD CARE CENTERS & LICENSING CLASS "B"
REGULATIONS FOR CHILD CARE CENTERS

<u>NAME</u>	<u>ADDRESS</u>	<u>PARTY REPRESENTED IF OTHER THAN SELF</u>
Donna Leger	3649 Belle Vale Dr.	
Joyce Arnold	3649 Belle Vale Dr	
Lisa G. Brachard	LDOE	LDE
ANGIE BATAUX	Iberville Bldg.	Licensing
Joy McCall	Iberville Bldg	Licensing
Vashika Gilmore	627 N 4th St	DCFS Planning
WYATT GRAVES	2538 Wimper Foot	—
Emil Krelso	1201 N 3RD	LDE
Kimberly Bardell	627 N. 4th street	DCFS
James Evans, Jr	4521 Martin L. King Ave NOA 70125	Head Start
Kahree Wahid	1201 North 3rd Street B.R. LA 70802	Head Start



Appeals
Division of Management
and Finance
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Baton Rouge, LA 70802

(O) 225.342.4120
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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Doris McWhite Weston, Manager
DCFS Appeals Unit**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers, that is scheduled for November 26, 2013 at 9:00 a.m. in Room 1-127

Please find attached a Summary of the Public Hearing that was conducted on November 26, 2013, at 9:00 a.m., at the Iberville Building, 627 North 4th Street, Baton Rouge, Louisiana, Room 1-127. Also attached is a copy of the attendance roster for your review.






Appeals
Division of Management
and Finance
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Baton Rouge, LA 70802

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Bobby Jindal, Governor
Suzy Sonnier, Secretary

MEMORANDUM

**TO: Vashika Gilmore, Program Coordinator
DCFS Planning and Policy Circulation Section**

FROM: Alyson R. McCord, Attorney 
DCFS Appeals Unit

DATE: November 26, 2013

**RE: Public Hearing #262612 regarding the Amendments to LAC 67:III, Subpart 21,
Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304,
7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A"
and Class "B" Regulations for Child Care Centers, that is scheduled for
November 26, 2013 at 9:00 a.m. in Room 1-127**

Attached is the original record of the public hearing that was held on November 26, 2013, in Baton Rouge, Louisiana. Please file the appended record with the appropriate official records of the department.



PUBLIC HEARING

APPEAL #262612

TUESDAY, NOVEMBER 26, 2013 AT 9:00 A.M.

BATON ROUGE, LOUISIANA

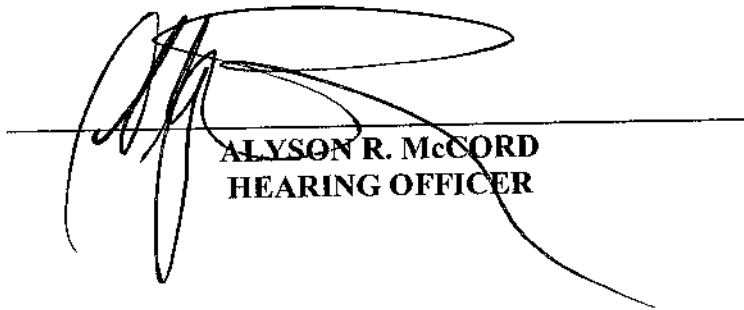
**DEPARTMENT OF
CHILDREN AND FAMILY SERVICES
DIVISION OF PROGRAMS/PLANNING**

NOTICE OF INTENT FOR:

**Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A,
Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335.
Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B"
Regulations for Child Care Centers**

CERTIFICATION

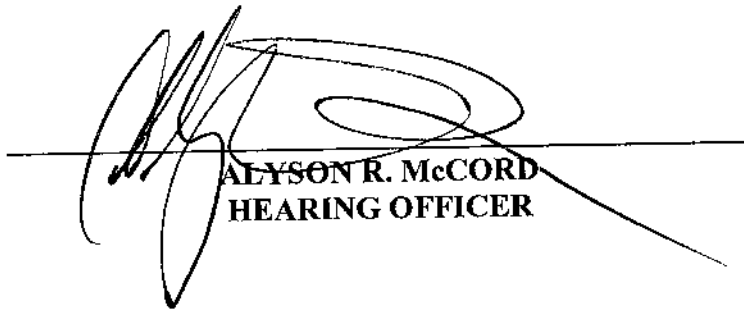
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER, **ALYSON R. McCORD**, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING. THE HEARING WAS ADJOURNED WITH 1 PUBLIC COMMENT, 2 WRITTEN COMMENT SUBMISSIONS, AND 8 MEMBER(S) OF THE PUBLIC WERE PRESENT TO OFFER REMARKS.



ALYSON R. McCORD
HEARING OFFICER

CERTIFICATION

THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES HEARING OFFICER,
ALYSON R. McCORD, DOES HEREBY CERTIFY THAT THE ITEMS IN THE FILE AND
ON THE TAPE CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC HEARING
HELD ON TUESDAY, NOVEMBER 26, 2013, AT 9:00 A.M. IN BATON ROUGE,
LOUISIANA.



ALYSON R. McCORD
HEARING OFFICER



627 North 4th Street
Baton Rouge, LA 70802

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225.219.1212
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Bobby Jindal, Governor
Suzie Sonnier,
Secretary

INTEROFFICE MEMORANDUM

TO: Doris Weston
Manager, Appeals Unit

FROM: Alyson R. McCord
Attorney, DCFS Appeals Unit

DATE: November 26, 2013

RE: Public Hearing 262612 regards the Amendments to LAC 67:III, Subpart 21, Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.

I conducted a Public Hearing in Room 1-127 of the Iberville Building on November 26, 2013, at 9:00 a.m. The hearing commenced at 9:13 a.m.

Presenting on behalf of the agency was Angie Badeaux, Program Director of the Licensing Section of the Department of Children and Family Services. Other agency representatives in attendance were Joy McCall, Vashika Gilmore and Kimberly Bardell. Members of the public in attendance were Donna Leger, Joyce Arnold, Lisa G. Brochard, Wyatt Graves, James Evans, Jr., Kahree Wahid and Alana Guidry.

Hearing Summary

Angie Badeaux testified that in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 21 Child Care Licensing, Chapter 73, Subchapter A, Sections 7302, 7303, 7304, 7305, 7311, 7315, 7317, 7331, 7333 and 7335; relative to Licensing Class "A" and Class "B" Regulations for Child Care Centers.



Sections Amendment is pursuant to the authority granted to the department by R.S. 46:1430, the rule allows the Department of Children and Family Services, in lieu of license revocation, to enact intermediate sanctions through the use of civil files relative to child care facilities that violate the terms for specific violations, including violations of the requirements related to supervision, criminal history checks, state central registry disclosure forms, staff-to-child-ratios, motor vehicle checks, or failing to report critical incidents, if such condition or occurrence does not pose an imminent threat to the health, safety, rights or welfare of a child. These civil fines would not be more than \$250 per day for each assessment, and the aggregate fines assessed for violations determined in any consecutive 12-month period shall not exceed \$2,000. In addition, the rule provides for a process of appeal and notes that all civil fines collected from providers will be placed in the Child Care Licensing Trust Fund for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies. The rule also offers clarification and revisions to the specific areas for which a fine may be assessed to include supervision, criminal history checks, state central registry disclosure forms, staff-to-child ratios, motor vehicle checks, and critical incidents. In accordance with R.S. 46:1409.B (10), the rule includes procedures to allow a day care center to remedy certain deficiencies immediately upon identification by the department.

Public Comments from Wyatt Graves of Fundamentals Learning Center

“My name is Wyatt Graves and I am the Immediate Past President of the Childcare Association of Louisiana and the Owner and Director of seven licensed childcare centers between St. Tammany, Livingston and East Baton Rouge Parishes. I am also a participant in one of the thirteen statewide pilots offered by the Louisiana Department of Education. I have been closely involved with the current initiative to streamline licensing and regulations relative to the senate bill of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this on record also having been part of the work group which wrote and is writing the original draft of this version of this rule. While we support the act of fines, especially as an alternative to the licensing process, we cannot support this rule in its entirety. I want to call attention to the department’s ability, already in law, to create a provisional license for those centers who may be in serious deficiencies with meeting those regulations. The rule being promulgated and heard today was



drafted in 2012, which was prior to the 2013 legislative session regarding the streamlining of licensing types and regulations to enhance the overall quality of care in early education offered to Louisiana's children. During the drafting of this rule in 2012, there was no separate formed to re-write the entire set of regulations which the rule is based upon. There is no insight that we have new licensing and the new quality rating system coming up in the future. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset seems to have changed of regulating childcare. It has evolved and even morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the Childcare Association of Louisiana, all 500 plus members, and oppose this rule in its current form. Specifically, the reasons are as follows. Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the definition of this violation. How can the state move forward with this rule to fine providers based on a regulation that everyone knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialists on the new definition to rightly assess this regulation which will lead to fines, only to change the definition, which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning? Again, those regulations that I am calling into question and is a problem is supervision, which is being cited as one of the critical violations. Under the definition, of supervision and also understanding how we calculate a repeat deficiency, this rule is saying 'even if one or more of the violations occurred prior to the adoption of the current set of standards'. So in reference to that section of this rule, I'd like to say that in the event that a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of this rule becoming final; not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of corrections process, which is also part of this rule, were in place. It would give providers a change to have corrective plans of action in place before



automatically attacking them with a multiple violation report, which could yield to fines. If we believe that a corrective plan of action is something that we want to implement, which we do believe that, and we support that part of the bill, then we've got to give providers an opportunity to implement a corrective plan of action before we look at retroactive compliance with this particular regulation.

Another point of contention is . . . I don't have the specific section number, but its F1 under a particular section. The Director shall report all critical incidents as specified below. But the following critical incidents immediate notification made to emergency personnel and/or law enforcement as appropriate. In addition, the child's parent shall be contacted. Once contact has been made to the child's parent, the Director shall verbally notify the licensing section management staff immediately. The verbal report shall be followed by a written report within 24 hours. So, in reference to that section, in an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule or regulation where children is the only . . . where childcare, I'm sorry . . . childcare is the only section required to comply with this rule? What is done in public schools when an injury occurs? Are Principals required to call LDE or the Police? If the answer is no and we genuinely care about parity in the system, then this rule and this section needs to be modified.

A little further down in Section B, which is one of the reasons that . . . uhm, the rule is specifying immediate report be made to the department. Illness or injury requiring hospitalization or professional medical attention of a child, while in the care of the provider, in reference to this section, we've mentioned that this section is very unclear. There are some centers who have registered nurses on staff. If the R.N. looks at the child or assesses the child, does that qualify? What if the parent voluntarily brings the child to the doctor for an evaluation, but no treatment is necessary, does this qualify? With no interpretive guide, this regulation is left ambiguous and literally leads to providers wanting to call the state for every incident that potentially has the harm or change of being referred out to a physician even if it is a child who falls and hits their mouth on a toy and the parent brings them to a dentist. Does that qualify? That's a question.



The physical presence, under General Requirements. We've brought this up in the past too and it doesn't seem that it's addressed in the rule. The physical presence of a sex offender in or on within a thousand feet of a child daycare facility is prohibited. Providers and childcare staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541, physical access to a child daycare facility is defined in R.S. 46:1403. And so, when this rule was talked about there is a legitimate question which is customers who are listed on the registered sex offenders list as we understand a person can be convicted of a sex offense that involves prostitution of legal adults and also be a sex offender or a mother for that matter and wish to enroll their child in one of our schools. This is already happening and we are unclear as to how we will be treated by knowingly allowing them to enter our facilities as a customer. This rule particularly, in this section, needs to be modified and explicit expectations need to be listed for that situation.

Under supervision, I think in the definition of it, children shall not be left alone in any room, excluding the restrooms as noted in section 73:17(B) outdoors or in vehicles, even momentarily, without a staff present. Relative to that section, again, um, a little bit unrealistic and certainly not in line with the other providers of childcare and early education such as preschools and those school settings from a public school campus. The regulations seem to be changing and we should not promulgate a rule knowing that its going to change soon, especially in light of the retroactive look back period which will result in monetary fines.

Section 2 of that same, um, paragraph, a staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff should be able to state how many children are in their care at all times. This is particularly a problem for programs who fall under this license code, but serve after schoolers, especially those that have zones for children to attend and freely choose throughout the day or afternoon. This part of the rule we do not recall being reviewed with the industry and especially this conclusion of the rule. This was . . . this regulation does not and will not work with providers who are caring for after schoolers. A quality and proven method for successfully administering an after school program is what we call zone management. Children are free; which are typically six, seven . . . all the way up to eleven and twelve and sometimes thirteen years of age, to select and move between rooms or activities



frequently, making their own independent decision if they want to watch a movie or play basketball or go to the arcade room or do an arts and crafts activity and they are frequently making those selections throughout the day. Therefore not assigned to a particular staff member, but rather a group of staff members who are managing such zones. This regulation should be changed or omitted for after schoolers particularly.

In closing, I feel as though I've pointed out where the industry called substantial changes that need to be made before the rule will work for the industry in the current climate of change. I respectfully ask for the department to reconsider the changes which I've mentioned on behalf of the industry and my business. Thank you."

Adjournment

The hearing was adjourned at 9:29 a.m.

Respectfully Submitted by Alyson R. McCord, Hearing Officer



EXHIBIT #1

WRITTEN COMMENTS FROM WYATT GRAVES (Submitted via email)

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**

My name is Wyatt Graves and I am the immediate past president of the child care association of la and the owner/director of 7 licensed childcare centers between st tammany, Livingston, and east baton rouge parishes. I am also a participant in one of the 13 state-wide pilots offered by LDE. I have been closely involved with the current initiative to streamline licensing and regulations relative to senate bill 222 of the 2013 session. It is from that involvement that I have formed the opinion and professional recommendation that this rule is fundamentally flawed. I say this, on record, also having been part of the work group which wrote drafted the original versions of this rule.

While we support the act of fines, especially as an alternative to license revocation, we cannot support this rule in its entirety. I want to call attention to the department's current ability to create a license with a provisional status for those who need licenses to be monitored more heavily and to serve as an alternative to license revocation.

The rule being promulgated and heard today was drafted in 2012 which was prior to the 2013 legislation regarding the streamlining of licensing types and regulations to enhance the overall quality of care and early education offered to louisiana's children. During the drafting of this rule, there was no such committee formed to rewrite the entire set of regulations which this rule is based. There was no onsite that we'd have new types of licensing and a new quality rating system. This rule was drafted based on old methods of regulations and old content for such regulations. As of now, the entire mindset of regulating childcare has changed, evolved, and morphed into something completely new. It is because of the significant changes in direction for regulating childcare and building support for childcare systems to improve quality that I stand with my colleagues and fellow members of the childcare association of la, all 500+ members and oppose this rule in its current form.

Specific reasons are as follows:

Specific problems with this rule are found in the actual violations which will result in a fine. The one in particular is supervision. This particular regulation, due to its unrealistic nature, has caused the industry undue problems. It's because of this historical track record that current efforts are being taken to revise the very definition of the violation. How can this state move forward with a rule to fine providers based on a regulation that everyone in the state department knows is going to change? Furthermore, how can we knowingly implement rules and spend time educating providers and licensing specialist on the new definition to rightly assess it which may lead to fines -- only to change the definition which will likely lead to a new meaning whereby previously written deficiencies and fines would not have been written under the new meaning?

a. §7302.G and/or §7311.A.5 and/or §7311.B -

criminal background check;

b. §7302.H and/or §7311.A.6 - state central registry

disclosure;

- c. §7303.F.1 and/or §7303.F.5 - critical incidents;
- e. §7315.A - D - ratio,
- d. §7317 -- supervision; and/or supervision is one of the critical violations
- f. §7331.N - motor vehicle.

In determining whether multiple violations of one of the above categories has occurred, both for purposes of this section and for purposes of establishing a history of noncompliance, all such violations cited during any 24 month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the regulation previously violated is substantially similar to the present rule.

4.a. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

b. The warning letter shall include a directed Corrective Action Plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing regulations. The Provider shall acknowledge receipt of the warning letter by submitting a written response

Comment [TWG1]: In the event a fine bill is put into practice, the industry and advocates for children and families agree that all records of compliance should begin with the inception of the rule becoming final – not retroactively implemented. The fines bill, from the introduction of the bill into session was designed to promote compliance with providers. Implementing retroactive fines could lead to automatic fining of providers who otherwise could have changed their practices if the plans of correction process (which this rule establishes) were in place. Give providers a chance to have corrective plans of action in place before automatically attacking them with a multiple violation report yielding fines.

to the CAP within 14 calendar days of receipt of the letter.

Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the regulations may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

5.a. For the second violation of one of the same aforementioned categories within a 24 month period, provider will be assessed a civil fine of up to \$250 per day for violation of each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

b. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

i. If the violation resulted in death or serious physical or emotional harm to a child, or placed a child at risk of death or serious physical or emotional harm, increase the fine by \$50.

- ii. If a critical violation for child/staff ratio is cited and provider was found to have three or more children above the required ratio, increase the fine by \$50.
- iii. If a critical violation for child/staff ratio is cited for failure to have a minimum of two staff present, increase the fine by \$50.
- iv. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.
- v. If a critical violation for supervision was cited due to a child being left alone outdoors, increase the fine by \$25.
- vi. If the age of the child cited in the child/staff ratio critical violation is four years of age or younger, increase the fine by \$25.
- vii. If the age of the child cited in the supervision critical violation is four years of age or younger, increase the fine by \$25.
- viii. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.
- ix. If a critical violation was cited for the provider's incomplete documentation of the motor vehicle check, decrease the fine by \$25.
- x. If the cited critical violation was for annual state central registry disclosure forms, decrease the fine by

\$25.

xi. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

6. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

F.1. The director shall report all critical incidents as specified below. For the following critical incidents, immediate notification shall be made to emergency personnel and/or law enforcement, as appropriate. In addition, the child's parent shall be contacted. Once contact or attempted contact has been made to child's parent, the director shall verbally notify Licensing Section Management staff immediately. The verbal report shall be followed by a written report within 24 hours:

- a. death of a child while in the care of the provider;
- b. illness or injury requiring hospitalization or professional medical attention of a child while in the care of the provider;
- c. any child leaving the facility and/or play yard unsupervised or with an unauthorized person;
- d. any child left unsupervised on the play yard;
- e. use of corporal punishment;
- f. suspected abuse and/or neglect by facility staff;

Comment [TWG2]: In an environment of streamlining regulations and expectations among providers in the early care and education industry, how can we move forward with this rule/regulation when childcare is the ONLY section/type of provider required to comply with this rule? What is done in public school when an injury occurs? Are principals required to call IDE? Police? If the answer is no, and we genuinely care about parity in the system, then this rule needs to be modified. From what I understand, the governor and administration is seeking parity.

Comment [TWG3]: This section is very unclear. There are some centers with RN's on staff. If the RN looks at the child or assesses the child, does this qualify? What if the parent voluntarily brings the child to the dr for an evaluation but not treatment is necessary, does this qualify? With no interpretive guide, this regulation is left very ambiguous.

- g. any child given the wrong medication or an overdose of the correct medication;
 - h. leaving any child in a vehicle unsupervised or unsupervised on a field trip;
 - i. fire on the child care premises if children are present;
 - j. any serious and unusual situation that affects the safety and/or well-being of a child or children in the care of the provider;
 - k. any emergency situation that requires sheltering in place;
 - l. implementation of facility lock-down procedures, and/or temporarily relocating children;
 - m. any loss of power over two hours while children are in care;
 - n. an accident involving transportation of children in which children were injured; and/or
 - o. a physical altercation between adults in the presence of children on the child care premises.
2. Director shall ensure that appropriate steps have been taken to ensure the health and safety of the children in sheltering in place and/or lock down situations prior to notifying parents and/or Licensing Section management staff.
3. Within 24 hours or the next business day, the

director shall verbally notify Licensing Section management staff of the following reportable incidents. The verbal report shall be followed by a written report within 24 hours:

- a. fire on the child care premises if children not present;

General Requirements

- A. - M. ...
- N. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense, as defined in R.S. 15:541, physical access to a child day care facility, as defined in R.S. 46:1403.

O. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the Licensing Section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

- E. The DCFS form noting required child/staff ratios shall be posted in each room included in the facility's licensed capacity.

§7317. Supervision

A. Children shall be supervised at all times in the facility, on the playground, on field trips, and on non vehicular excursions, including all water activities and water play activities.

- 1. Children shall not be left alone in any room, (excluding the restroom as noted in §7317.B) outdoors, or in vehicles, even momentarily, without a staff present.

- 2. A staff person shall be assigned to supervise

Comment [TWG4]: With this being put into regulations, it adds dcfs to the list of agencies with enforcement provisions. We've brought this up to the department several times regarding parents who are convicted sex offenders and choose to enroll their children in our facilities. This has to be allowed by law and now becomes a deficiency. This is unfair, not just, and should not be implemented without clarification. Reminder: convicted sex offenders can be parents who need childcare. Also, convicted sex offenders could have been convicted due to prostitution -- not involving a child.

Comment [TWG5]: Again, unrealistic and certainly not in line with other providers of childcare and early education such as preschools and la4 sites. This regulation is changing and we should not promulgate a rule knowing it will soon change. This will cause undue challenges on providers and take away from the positive outcomes for children.

specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

B. Children who are developmentally able may be permitted to go to the restroom on the child care premises independently, provided that:

1. staff member's proximity to children assures immediate intervention to safeguard a child from harm while in the restroom;
2. individuals who are not staff members may not enter the facility restroom area while in use by any child other than their own child;
3. a child five years of age and younger shall be supervised by staff members who are able to hear the child while in the restroom; and
4. a child six years of age and older may be permitted to go and return from the restroom without staff; however, staff must know the whereabouts of the child at all times.

C. When children are outside on the play yard, the staff member shall be able to summon another adult staff without leaving the group unsupervised.

D. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

Comment [TW66]: This was never reviewed with the industry. This was never reviewed with any workgroup and not approved by the early childhood advisory council. This regulation does not and will not work with providers who are caring for afterschoolers. A quality and proven method of successfully administering an afterschool program is zone management. Children are free to select and move between rooms/activities frequently and therefore are not assigned to a particular staff member but rather a group of staff members who are managing such zones. This regulation shall be omitted.

E. Children ages two years and above may be grouped together at rest time with one staff in each room supervising the resting children. If two rooms share a common doorway, one staff may supervise the resting children. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff continually circulating among the resting children.

F. Areas used by the children shall be lighted in such a way as to allow visual supervision at all times.

G. While on duty with a group of children, staff shall devote their entire time to supervising the children, meeting the needs of the children, and participating with them in their activities. Staff duties that include cooking, housekeeping, and/or administrative functions shall not interfere with the supervision of children.

In closing, I feel as though I have pointed out what the industry calls substantial changes needed before this rule be made final. I respectfully ask the department to reconsider the changes which I have mentioned on behalf of the industry.



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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Wyatt Graves
P.O. Box 1449
Walker, LA 70785

Re: Public Hearing Comments (Licensing Class "A" Regulations for Child Care Centers and Licensing Class "B" Regulations for Child Care Centers – Notices of Intent)

Dear Mr. Graves:

This letter is in response to your comments made during a public hearing held by the Department of Children and Family Services (DCFS) on November 26, 2013, regarding the department's proposed Licensing rules published in the October 20, 2013 *Louisiana Register*. R.S. 46:1430 granted DCFS the authority to enact sanctions through the use of civil fines in lieu of license revocation with regard to specific violations if the condition or occurrence does not pose an imminent threat to the health, safety, or welfare of a child.

DCFS coordinated with various stakeholders, including the Child Care Association of Louisiana (CCAL) in the development of the proposed rules. The department deems this rule necessary to protect the health, safety, and well-being of the children who receive care in out-of-home licensed child care facilities. We appreciate your comments regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux



EXHIBIT #2

**WRITTEN COMMENTS FROM CHARLES DEGRAW AND LOUIS
TRACHTMAN (Received by Child Support Enforcement)**

**WRITTEN RESPONSE FROM DCFS SECRETARY SUZY SONNIER
(Dated December 9, 2013)**



State of Louisiana
Department of Health and Hospitals
Office of Public Health

November 15, 2013

Ms. Lisa Andry
Deputy Assistant Secretary
Department of Children and Family Services
P.O. Box 94065
Baton Rouge, Louisiana 70804-9065

CHILD SUPPORT
ENFORCEMENT
NOV 18 2013
DEPT. CHILDREN AND
FAMILY SERV

Dear Ms. Landry:

We in the Department of Health and Hospitals, Office of Public Health, Tuberculosis Control Section have reviewed your Departments Notice of Intent published in the October 2013 issue of the Louisiana Register. Specifically regarding Licensing Class "B" Regulations for Child Care Centers (LAC 67:III.7365). Under 7. Health Requirements b. The reference to tuberculosis and testing should be omitted, as should the reference to Chapter II of the State Sanitary Code.

We feel that the requirement to have no evidence of active tuberculosis is covered well in 7.a. in that staff "must be free from infectious and contagious diseases." In 2009, the requirements for tuberculin testing in the State Sanitary Code's Chapter II were changed. That current requirement is in "Chapter II - Chapter 5. §501. Employee Health for Employees, Volunteers and Patients at Certain Medical and Residential Facilities." There is no requirement in the State Sanitary for "routine" testing of staff in Child Care Centers.

If you have any questions about this recommendation, please let us know. We can be reached via e-mail or by telephone as follows:

Mr. Charles DeGraw Charles.DeGraw@la.gov (504) 568-5015 – Program Director

Dr. Louis Trachtman Louis.Trachtman@la.gov (504) 568-5015 – Program Medical Director

Thank you for your consideration of this matter.

Sincerely,

Charles DeGraw

Charles DeGraw

Louis Trachtman, MD
Louis Trachtman, MD, MPH



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Bobby Jindal, Governor
Suzy Sonnier, Secretary

December 9, 2013

Charles DeGraw, Program Director
Louis Trachtman, MD, MPH, Program Medical Director
Department of Health and Hospitals, Office of Public Health
1450 Poydras Street
Suite 2029
New Orleans, LA 70112

Re: Public Hearing Comments (Licensing Class "B" Regulations for Child Care Centers – Notice of Intent)

Dear Mr. DeGraw and Dr. Trachtman:

This letter is in response to your comments submitted to the Department of Children and Family Services (DCFS) regarding the department's proposed Licensing rule published in the October 20, 2013 *Louisiana Register*. You expressed concerns related to the Louisiana Administrative Code (LAC 67:III.7365) references to tuberculosis and testing.

We appreciate your comments regarding the Class B licensing regulations related to the standard which requires tuberculosis testing for all child care staff. However the proposed rule does not address changes to the health requirements for staff and will be addressed when the entire rule is revised. We appreciate the time and effort that went into your response regarding this rule and thank you for your participation in this process.

Sincerely,

Suzy Sonnier
Secretary

C: Brent Villemarette
Lisa Andry
Sammy Guillory
Angie Badeaux

