

# Chapter 110-06 WAC

## DEL BACKGROUND CHECKS

(Formerly chapter 170-06 WAC)

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

110-06-0060	Additional information the department may consider. [WSR 18-14-078, recodified as § 110-06-0060, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0060, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0060, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0060, filed 4/30/08, effective 5/31/08.] Repealed by WSR 19-01-111, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 43.216.-055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98.
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**WAC 110-06-0010 Purpose and scope.** (1) The purpose of this chapter is to establish rules for background checks conducted by the department of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who are authorized to:

(a) Care for or have unsupervised access to children receiving early learning services; or

(b) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive working connections child care (WCCC) subsidies.

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

(4) The department's rules and state law require the evaluation of background information to determine the character,

suitability, or competence of persons who will care for or have unsupervised access to children receiving early learning services or other agency authorized services.

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

(6) These rules implement chapters 43.216 and 43.43 RCW, including, but not limited to, DCYF responsibilities in RCW 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

(7) These rules are amended to allow for increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0010, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0010, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0010, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0010, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0010, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0020 Definitions.** The following definitions apply to this chapter:

**"Agency"** has the same meaning as "agency" in RCW 43.216.010.

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

**"Applicant"** means an individual who is seeking DCYF background check authorization as part of:

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

(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.

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

**"Certification"** or **"certified by DCYF"** means an agency that is legally exempt from licensing that has been

certified by DCYF as meeting minimum licensing requirements.

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

**"DCYF"** or **"department"** means the department of children, youth, and families.

**"Disqualified"** means DCYF has determined that a person's background information prevents that person from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services.

**"Early learning service(s)"** for purposes of this chapter means the early childhood education and assistance program, head start, licensed child care, and license-exempt child care services.

**"In-home/relative provider"** or **"family, friends, and neighbors provider"** or **"FFN provider"** means an individual who is exempt from child care licensing standards, meets the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

**"Licensee"** means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

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

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

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

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

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

(e) A final decision of a disciplinary board.

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

**"Nonexpiring license"** or **"nonexpiring full license"** means a license that is issued to a licensee following the initial licensing period, as provided in chapter 110-300 WAC, as appropriate.

**"Secretary's list"** means a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services, WAC 110-06-0120.

**"Subject individual":**

(a) Means an individual who:

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

(ii) Is sixteen years of age or older;

(iii) Is an in-home/relative provider or is employed, contracted with, or volunteers to provide early learning services; and

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

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

(i) Personnel, including employees and staff;

(ii) Contractors, including contracted providers;

(iii) Temporary workers;

(iv) Assistants;

(v) Volunteers;

(vi) Interns;

(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;

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

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

(x) Applicants;

(xi) Licensees; or

(xii) In-home/relative providers and their household members who are sixteen years of age or older.

**"Unsupervised access"** means:

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

(b) Access to a child receiving early learning services that is not within constant visual or auditory range of the individual authorized by DCYF.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0020, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0020, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0020, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0020, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0040 Background clearance requirements.** This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the background check application process through DCYF to include:

(a) Submitting a completed background check application;

(b) Completing the required fingerprint process; and

(c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals who have been previously qualified by the department to have unsupervised access to children in care and are renewing their applications must:

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

(b) Submit payment of all required fees as provided in WAC 110-06-0044; and

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

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

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative action, as defined by WAC 110-06-0020.

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

(5) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0040, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0040, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0040, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0041 Requirements for early learning service providers.** (1) This section applies to all providers other than in-home/relative providers.

(2) Early learning services providers must require a subject individual to complete the DCYF background check application:

(a) Prior to the date of hire;

(b) By the date a subject individual age sixteen or older moves onto the premises; or

(c) By the date a subject individual who lives on the premises turns sixteen years old.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0041, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0041, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0041, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0041, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0042 Departmental investigation and redetermination.** (1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency.

(2) Subject to the requirements in RCW 43.216.270, the department may immediately suspend or modify the subject individual's background clearance.

(3) Subject to the requirements in RCW 43.216.300 and 43.216.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide early learning services to children, the

(12/18/18)

department may disqualify the subject individual from having any unsupervised access to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0042, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0042, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0042, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0042, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0043 Failure to report nonconviction and conviction information.** (1) The early learning services provider must report to the department within twenty-four hours if he or she has knowledge of the following with respect to a subject individual associated with their services, who has a background check clearance authorization with the department:

(a) Any nonconviction and conviction information for a crime listed in WAC 110-06-0120;

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

(c) Any negative action as defined in WAC 110-06-0020.

(2) A subject individual who has been issued a background check clearance authorization pursuant to WAC 110-06-0040 must report nonconviction and conviction information to the department involving a disqualifying crime under WAC 110-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information.

(3) A subject individual who intentionally or knowingly fails to report to the department as provided in subsection (1) or (2) of this section may have his or her background check clearance suspended. This penalty will be in addition to any other penalty that may be imposed as a result of a violation of this chapter or of the applicable provisions of any chapter of Title 110 WAC that implement the authority and requirements of chapter 43.216 RCW.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0043, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0043, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0043, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0043, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0044 Background check fees.** This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee of:

(i) Twelve dollars for an electronic submission; or

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(ii) Twenty-four dollars for a paper submission.

(2) DCYF administrative fee payments may be:

(a) By debit or credit card;

(b) In the form of a personal check, cashier's check, or money order, which shall be sent by mail; or

(c) By electronic funds transfer. As used in this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) The department will not issue a background check clearance authorization to a subject individual:

(a) Who fails to pay the required fees in subsection (1) of this section; or

(b) Whose payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

An additional processing fee of twenty-five dollars will be charged by the department for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0044, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0044, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.-832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0044, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0045 Background checks for minor individuals under sixteen years of age.** (1) When applicable within chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DCYF minor individual background check application process for subject individuals:

(a) Fourteen to sixteen years of age, prior to the date of hire by a licensed or certified child care.

(b) Thirteen to sixteen years of age residing in a licensed or certified family home child care.

(c) Thirteen to sixteen years of age, within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1)(a), (b) or (c) of this section must not have unsupervised access to children in child care.

(3) When conducting a minor individual background check, the department:

(a) Requires the minor's parent or guardian to sign the noncriminal background check application;

(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and

(c) Does not immediately disqualify an individual for a conviction under WAC 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0045, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0045, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW

43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.-832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0045, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0046 Requirements for license-exempt in-home/relative providers.** (1) The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

(a) Submitting a completed background check application; and

(b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

(7) DCYF pays for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0046, filed 12/18/18, effective 1/18/19.]

**WAC 110-06-0050 Department action following completion of background inquiry.** As part of the background check process the department will conduct a character, suitability or competence assessment as follows:

(1) Compare the background information with the DCYF secretary's list, WAC 110-06-0120, to determine whether the subject individual must be disqualified under WAC 110-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

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

(b) If the conviction has been renamed it is given the same weight as the previous named conviction.

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

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

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

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

(2) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 110-06-0070(3).

(3) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 110-06-0070 (5), (6), or (7).

(4) If DCYF has reason to believe that additional information is needed to determine the character, suitability or competence of the subject individual to care for or have unsupervised access to children receiving early learning services, additional information will be requested. The subject individual must provide to the department any additional reports or information that it requests.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0050, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0050, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0050, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0050, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0050, filed 4/30/08, effective 5/31/08.]

### **WAC 110-06-0070 Disqualification.**

#### **Background information that will disqualify a subject individual.**

(1) A subject individual who has a background containing any of the permanent convictions on the secretary's list, WAC 110-06-0120(1), will be permanently disqualified from caring for children or having unsupervised access to children receiving early learning services.

(2) A subject individual who has a background containing any of the nonpermanent convictions on the secretary's list, WAC 110-06-0120(2), will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.

(3) A subject individual will be disqualified when his or her background contains a negative action, as defined in WAC 110-06-0020 that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 110-30 WAC.

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

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

(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0070, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0070, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0070, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215

and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0070, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0070, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0080 Notification of disqualification.**

(1) The department will notify the subject individual in writing if he or she is disqualified by the background check.

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

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

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0080, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0080, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0080, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0080, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0090 Administrative hearing to contest disqualification.** (1) A subject individual may request an administrative hearing to contest the department's disqualification decision under WAC 110-06-0070.

(2) The early learning services provider cannot contest the department's decision on behalf of any other person, including a prospective employee.

(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter 110-03 WAC.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0090, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0090, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0090, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0090, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0100 Request for administrative hearing.** (1) Any subject individual has a right to contest the department's disqualification decision under WAC 110-06-0070 and must request a hearing within twenty-eight days of receipt of the written disqualification decision, regardless of whether the subject individual requests a department reconsideration of the disqualification under WAC 110-06-0115.

(2) A request for a hearing must meet the requirements of chapter 110-03 WAC.

(3) Any decision by the department to disqualify a subject individual under this chapter will remain in effect pending the outcome of the administrative hearing or review under chapter 110-03 WAC, notwithstanding any provision of chapter 110-03 WAC to the contrary.

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[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0100, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0100, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0100, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0100, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0110 Limitations on challenges to disqualifications.** (1) If the disqualification is based on a criminal conviction, the subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the subject individual cannot contest the finding if:

(a) The subject individual was notified of the finding by the department of social and health services (DSHS) and failed to request a hearing to contest the finding; or

(b) The subject individual was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the subject individual's child to be dependent as defined in chapter 13.34 RCW, the subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based on a negative action as defined in WAC 110-06-0020 the subject individual cannot contest the underlying negative action in the administrative hearing if the subject individual was previously given the right of review or hearing right and a final decision or finding has been issued.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0110, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0110, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0110, filed 4/30/08, effective 5/31/08.]

**WAC 110-06-0115 Reconsideration of disqualification.** (1) Subject to the requirements contained in chapter 110-06 WAC the department may reconsider an earlier decision to disqualify a subject individual.

(2) For a disqualification based on WAC 110-06-0070 (5) or (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children receiving early learning services. For purposes of subsection (2) of this section a disqualification based on a "negative action," WAC 110-06-0070 (5) or (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

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

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

(3) For a disqualification based on any of the circumstances described in WAC 110-06-0070 (3) and (7)(b) or (d), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.

(4) The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(1).

(5) The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(2) for a period of five years from the date of the disqualifying conviction.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0115, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0115, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0115, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.-205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0115, filed 5/30/12, effective 7/1/12.]

**WAC 110-06-0120 Secretary's list.** (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.

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

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment

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

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

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0120, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0120, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.060, 43.215.-070 and chapter 43.215 RCW. WSR 14-13-002, § 170-06-0120, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0120, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.-832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]