

WSR 24-23-100
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 20, 2024, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-010.

Title of Rule and Other Identifying Information: The licensing division is amending WAC 110-301-0331 Prohibited behavior, discipline, and physical removal of children and 110-302-0331 Prohibited behavior, discipline, and physical removal of children.

Hearing Location(s): On December 24, 2024, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing rules coordinator, or mailing comments to the department of children, youth, and families' (DCYF) physical mailing address. All comments must be received by the date and time listed below.

Date of Intended Adoption: December 25, 2024.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, beginning December 4, 2024, 8:00 a.m., by December 24, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is refileing the following proposed draft rules in WSR 24-22-108 as additional changes are being made in WAC 110-301-0331 and 110-302-0331, informing providers how to prevent harm to children; and WAC 110-301-0331 and 110-302-0331, mirror subsection (1) proposed language to match WAC 110-300-0331.

The substantial changes being made from the recently filed proposed rules in WSR 24-22-108 include revising subsection (1) to state a "provider is prohibited from using the following behaviors" instead of "must take steps to prevent, and once aware of, must not tolerate."

Reasons Supporting Proposal: For WAC 110-301-0331 and 110-302-0331, the language of the WAC does not clearly forbid child care providers from harming children. This rule requires an immediate and permanent change to the WAC chapters to protect children from harm.

Statutory Authority for Adoption: Chapter 42.56 RCW, RCW 43.215.070, 43.215.201, 43.216.055, 43.216.065, and 43.216.742.

Statute Being Implemented: Chapter 42.56 RCW, RCW 43.215.070, 43.215.201, 43.216.055.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 19, 2024
Brenda Villarreal
Rules Coordinator

OTS-5990.1

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

WAC 110-301-0331 Prohibited behavior(~~(7)~~) and discipline, and physical (~~(removal)~~) separation of children. (1) A school-age provider (~~(must take steps to prevent and, once aware of, must not tolerate)~~) is prohibited from using the following behaviors and discipline of children:

- (a) Profanity, obscene language, "put downs," or cultural or racial slurs;
- (b) Angry or hostile interactions;
- (c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;
- (d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;
- (e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;
- (f) (~~(Prevent)~~) Sexual abuse, pursuant to RCW 26.44.020;
- (g) Preventing a child from or (~~(punish)~~) punishing a child for exercising religious rights; (~~(or~~
- ~~(g) Anyone to:~~
- ~~(i) Restrict)~~) (h) Restricting a child's breathing;
- (~~((ii) Bind or restrict)~~) (i) Binding or restricting a child's movement unless permitted under WAC 110-301-0335;
- (~~((iii) Tape)~~) (j) Taping a child's nose, mouth, or other body part;
- (~~((iv) Deprive)~~) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;
- (~~((v) Force)~~) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;
- (~~((vi) Interfere)~~) (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

~~((vii) Withhold)~~ (n) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

~~((viii) Expose)~~ (o) Exposing a child to extreme temperatures as punishment;

~~((ix) Demand)~~ (p) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((x) Place)~~ (q) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

~~((xi) Use)~~ (r) Using a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may ~~((physically remove))~~ separate the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

OTS-5958.2

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0331 Prohibited behavior~~((7))~~ and discipline, and physical ~~((removal))~~ separation of children. (1) ONB providers ~~((must take steps to prevent and, once aware of, must not tolerate))~~ are prohibited from using the following behaviors and discipline of children:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ~~((Prevent))~~ Sexual abuse, pursuant to RCW 26.44.020;

~~((g) Preventing a child from or ((punish))~~ punishing a child for exercising religious rights; ~~((or~~

~~((g) Anyone to:~~

~~((i) Restrict))~~ (h) Restricting a child's breathing;

~~((ii) Bind or restrict))~~ (i) Binding or restricting a child's movement unless permitted under WAC 110-302-0335;

~~((iii) Tape))~~ (j) Taping a child's nose, mouth, or other body part;

~~((iv) Deprive))~~ (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

~~((v) Force))~~ (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

~~((vi) Interfere))~~ (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

~~((vii) Use))~~ (n) Using toilet learning or training methods that punish, demean, or humiliate a child;

~~((viii) Withhold))~~ (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

~~((ix) Expose))~~ (p) Exposing a child to extreme temperatures as punishment;

~~((x) Demand))~~ (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((xi) Place))~~ (r) Placing the separated child in a closet, bathroom, locked room, out of visual range in an approved tent, cabin, yurt or other structure; or in an unlicensed space; and

~~((xii) Use))~~ (s) Using confining space or equipment to punish a child or restrict movement.

(2) ONB providers must supervise to protect children from the harmful acts of other children. ONB providers must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) ONB providers may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, director, program director, assistant director, site director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, ONB providers must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If ONB providers follow all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, director, program director, assistant director, site director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical (~~removal~~) separation of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk them away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and (~~remove~~) separate them to a quiet place where the child cannot hurt themselves or others.