

WSR 22-24-069
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 2, 2022, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-060.

Title of Rule and Other Identifying Information: WAC 110-300-0005 Definitions, 110-300-0030 Nondiscrimination, 110-300-0035 Department access to licensed space, 110-300-0166 Emergency preparation and exiting, and 110-300-0210 Immunizations and exempt children.

Hearing Location(s): On January 10, 2023, telephonic. Make oral comments by calling 360-628-2151 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including January 10, 2023, will be considered.

Date of Intended Adoption: January 13, 2022 [2023].

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>, by January 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by January 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules clarify the department's authority to access licensed space and the consequences for refusing access. The proposals also require two emergency exits for each floor of licensed space in family home child cares and describe the specific criteria for each exit. The proposed rules better ensure nondiscrimination of LGBTQIA+ children enrolled in child care. Lastly, the proposed rules align immunization requirements with chapter 246-105 WAC under which child care providers who enroll unimmunized children must notify their parents or guardians that children who are not immunized within 30 days of enrollment will be excluded from care.

Reasons Supporting Proposal: The proposed rule clarifying the department's authority to access licensed space is needed to fully explain the department's authority to access and inspect child cares authorized by RCW 43.216.258 and 43.216.290, under what conditions the department will access child cares, as well as the consequences for refusing access. The proposed emergency exit requirements for family homes restore requirements of repealed chapter 190-296A WAC that were erroneously omitted in the development of chapter 110-300 WAC and are needed to promote the safety of children enrolled in care. Better clarifying nondiscrimination of LGBTQIA+ children participating in programs administered by the department aligns with the department's practice of inclusion and supporting the whole child. The proposed requirement to exclude children from care who are not immunized after 30 days is consistent with chapter 246-105 WAC and allows unimmunized children to enter child care while establishing an expectation that immunizations will be completed.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250.

Statute Being Implemented: RCW 43.216.250 and 43.216.265.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Bunkelman, 509-423-9152; Implementation and Enforcement: DCYF.

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 are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Clarifying language inserted in WAC 110-300-0030. Proposed changes to WAC 110-300-0210 are incorporating chapter 246-105 WAC requirements. WAC 110-300-0035 implements the requirement to periodically inspect child cares dictated by RCW 43.216.250(8) and access to child cares granted by RCW 43.216.290.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Exemption does not apply to WAC 110-300-0166.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

For proposed WAC 110-300-0166:

1. Describe the proposed rule, including:

- A brief history of the issue.
- An explanation of why the proposed rule is needed.
- A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Brief history: DCYF licenses and certifies child cares in Washington state, and its licensing standards must promote the continued safety of child care settings. Prior to August 2019, family home child cares were licensed or certified under chapter 170-296A WAC. WAC 170-296A-4500 required each level of a family home licensed for child care to have two emergency exits. In August 2019, chapter 170-296A WAC was repealed and replaced with aligned licensing standards codified at chapter 110-300 WAC. In the development of chapter 110-300 WAC, family home child care emergency exits were overlooked. The proposed rule corrects that inadvertent omission.

Why the rule is needed: The rule is needed to promote all occupants' safe evacuation in the event of fire or other emergency. A fam-

ily home may be licensed for 13 children, or more when certain conditions are met. More than one exit better ensures quick evacuation for all occupants. A second exit also better ensures a safe evacuation for all occupants if one exit is blocked by the fire or emergency situation triggering the evacuation.

Probable compliance requirements:

- All licensed and certified child cares and early learning programs must:
 - o Develop and follow an emergency preparedness plan (WAC 110-300-0166(1));
 - o Have a working flashlight and batteries or other emergency lighting device (WAC 110-300-0166(2)); and
 - o Have a working telephone (WAC 110-300-0166(2)).
- Only licensed and certified family home child cares and early learning programs must have:
 - o Two emergency exits for each level of the home that contains licensed space, excluding basements (WAC 110-300-0166(3)).

All programs must develop an emergency preparedness plan that is kept on site and shared with families who enroll children in the program. The flashlight and telephone requirements will require low-cost purchases and telephone service subscription or a cell phone plan. The door and window requirements of the residential building code will satisfy WAC 110-300-0166(3)'s emergency exit requirements for the ground level of family homes, which means that only family home child cares that are licensing space in an upper story must comply with WAC 110-300-0166(3). These programs may require construction or carpentry services in order to comply with the requirement.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS code (4, 5 or 6 digit)	NAICS Business Description	Number of Businesses in Washington	Minor cost threshold = 1% of average annual payroll	Minor cost threshold = 0.3% of average annual receipts
624410	Child day care services	4,741	\$2,991.80	\$1,014.95

3. Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue.

Emergency preparedness planning requires up to three hours of staff time for a total one-time approximate cost of \$45.00.

Purchased flashlight and batteries - one time cost of \$15 + minimal ongoing cost of replacement batteries.

Telephone and service plan - \$350 to \$500 annually.

Family homes' second story emergency exits - up to \$5,000 for permitting, materials, and labor.

Lost sales or revenue are not anticipated for child cares and early learning programs complying with the emergency preparedness plan, flashlight, and telephone requirements. A currently licensed or certified family home child care wanting to expand its capacity that has no other option than to expand to the second story would lose the potential revenue from the loss of capacity if it was not able to comply with the emergency exit requirement. Applications for an initial

license for a family home second-story would be denied if the home owner was not able to comply with the emergency exit requirement.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry. Cost projection was based on actual costs of a family home child care owner who, in 2022, created a second emergency exit from the upper level of their home by adding an 8'x8' landing/deck pad with six stairs to the ground beneath an exterior window. The owner used a mix of pressure treated wood, stained wood, trex decking and a trex stair rail and spent approximately \$1,000 for these materials. The owner did the labor but estimated the cost at \$1,500 for a total labor and materials cost of \$2,500. The distance from the window to the ground was less than half an average story. Based on these actual costs, our estimated cost for permitting, labor, and materials to equip a standard second-story window to be used as an emergency exit is \$5,000.

5. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Use one or more of the following as a basis for comparing costs:

- Cost per employee.
- Cost per hour of labor.
- Cost per \$100 of sales.

The proposed rule impacts only small businesses.

6. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. Include consideration of each of the following cost mitigation strategies:

(a) **Reducing, modifying, or eliminating substantive regulatory requirements:** To promote the safety of children in care, as well as the licensee and any employees, DCYF feels two emergency exits are needed. Rather than require two exterior doors, the proposed rule allows a window to be used as an emergency exit provided that a walking child or an adult carrying a child could navigate the exit.

(b) **Simplifying, reducing, or eliminating recordkeeping and reporting requirements:** Not applicable.

(c) **Reducing the frequency of inspections:** DCYF must periodically inspect licensed premises. The current frequency is once per year, which strikes a balance between ensuring the health and safety of enrolled children and the inconvenience that a program might experience during an inspection.

(d) **Delaying compliance timetables:** Compliance must occur concurrent with licensing to promote the safety of enrolled children.

(e) **Reducing or modifying fine schedules for noncompliance:** Not applicable since licensure is dependent on compliance.

(f) **Any other mitigation techniques suggested by small businesses or their advocates:** Licensing space in just the basement or on the ground floor of the family home.

If the costs cannot be reduced, provide a clear explanation of why.

7. Describe how small businesses were involved in the development of the proposed rule. Family home child cares represented by SEIU Local 925 and DCYF negotiated the language of proposed WAC 110-300-0166.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. Zero jobs are expected to be lost. The potential number of new jobs created is un-

known because most family home child cares license space on the ground floor and will not be required to comply with the upper level exit door requirement in the proposed rule. It is not possible to estimate how many new licenses could be issued for second story space or how many current licensees may apply to expand their licensed space to a second story.

9. Summarize the results of the analysis, including the determination if costs are disproportionate. All family home child cares are small businesses; however, only those that license space on their home's upper level will be impacted by the proposed rule's exit door requirement. For those who are impacted, more-than-minor costs will be incurred if any renovation is needed for compliance.

A copy of the statement may be obtained by contacting DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov.

December 2, 2022
Brenda Villarreal
Rules Coordinator

OTS-2729.5

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0005 Definitions. Unless the context requires otherwise, the following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires ~~((a))~~ early learning providers to see and hear the children they are responsible for during higher risk activities. ~~((The))~~ Providers must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, ~~((as now and hereafter amended))~~ 42 U.S.C. Sec. 12101, et seq.

"Aide" is a person who offers support to ~~((the))~~ early learning program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" or **"annually"** means ~~((the))~~ an event that occurs each calendar year, ((January 1st through December 31st)) not to exceed 365 days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children ~~((an))~~ early learning providers ~~((is))~~ are authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through ~~((twelve))~~ 12 years of age for periods of less than ~~((twenty-four))~~ 24 hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

"Center early learning program licensee" or **"center licensee"** means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" ~~((means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system))~~ has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of immunization status ~~((child))~~" ~~((means a form that is approved by the Washington state department of health and con-~~

sistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system)) has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of occupancy" means a document issued by a local government agency or building department that certifies a building complies with applicable building codes and other laws and indicates that the building is in a condition suitable for occupancy.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age ((~~thirteen~~)) 13, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than ((~~twenty-four~~)) 24 hours a day.

"Child care basics ((~~"or"~~)) (CCB)" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate ((~~"or"~~)) (CCA)" is a wood preservative and insecticide that contains roughly ((~~twenty-two~~)) 22 percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the department of health's website.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or "the department" refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

"Developmentally appropriate" means:

- (a) ((An)) Early learning providers interact((s)) with ((each child)) children in a way that recognizes and respects ((the)) each child's chronological and developmental age;
- (b) Knowledge about how children grow and learn;
- (c) Reflects the developmental level of the individual child; and
- (d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or "disabilities" has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

- (a) The application of a fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or
- (b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or "potable water" is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education and assistance program (ECEAP)" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Early childhood education (ECE) initial certificate" ((twelve)) 12 quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate," ((+) an initial certificate plus eight quarter credits(+)), is Washington's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate," ((+) a short certificate plus (~~twenty-seven~~) 27 quarter credits(+)), is Washington's state certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through (~~twelve~~) 12 years of age for periods of less than (~~twenty-four~~) 24 hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or "provider" refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

(~~("ECEAP" or "early childhood education and assistance program" is a comprehensive preschool program that provides free services and support to eligible children and their families.)~~)

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to (~~the Washington state department of children, youth, and families'~~) DCYF's current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or "exemption" means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a

child plans on attending or is attending a center early learning program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for ((~~twelve~~)) 12 or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

"Family home early learning program licensee" or **"family home licensee"** means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Gay" means physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or **"gender identity"** means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Good repair" means about ((~~eighty~~)) 80 percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have

been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through ((eleven)) 11 months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

"Inspection report" means a written or digital record developed by the department that identifies violations of licensing standards. An inspection report is separate from and does not include a facility licensing compliance agreement (FLCA).

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym (e.g., pansexual, gender nonbinary, and Two-spirit).

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or ((a)) wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children ((thirty)) 30 months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or "revoke" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program, ((+)) for example ((+)), feeding, diapering, toileting, napping, resting, playing, and learning((+)).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes must be agreed to in writing and signed by all participants at the meeting. Safety plans expire ((thirty)) 30 calendar days after being signed by all parties. Safety plans may only be extended for an additional ((thirty)) 30 days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child ((not less than)) who is five years of age through ((twelve)) 12 years of age ((who)) and is attending ((kindergarten or elementary)) a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requir-

ing professional medical care; poisoning; or an overdose of a chemical substance.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleep equipment" or "sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play pen, play yard or "pack and play" but does not include a car seat or infant swing.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

"Supervise" or "supervision" means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child ((~~twelve~~)) 12 months through ((~~twenty-nine~~)) 29 months of age.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

"Two-spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-spirit does not imply any specific sexual orientation.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"USDA" means the U.S. Department of Agriculture.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or

is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"WLAD" means the law against discrimination, chapter 49.60 RCW.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0005, filed 11/6/19, effective 12/7/19. WSR 18-14-078, recodified as § 110-300-0005, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0005, filed 6/30/18, effective 8/1/19. Statutory Authority: RCW 43.215.020, 43.215.060, 43.215.070, 43.215.201, and Governor Directive 16-06. WSR 17-10-032, § 170-300-0005, filed 4/26/17, effective 5/27/17.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0030 Nondiscrimination. (1) Early learning programs are defined by state law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably dis-

charged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability. For the purposes of this chapter, "sex" means gender and "sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity, also referred to as SOGIE, and includes all persons who identify as LGBTQIA+; and

(b) Comply with the requirements of the ~~((Washington law against discrimination--))~~ WLAD, chapter 49.60 RCW ~~((+))~~, and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0030, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0030, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0030, filed 6/30/18, effective 8/1/19.]

NEW SECTION

WAC 110-300-0035 Department access to licensed space. (1) Pursuant to RCW 43.216.250(8), licensees must grant reasonable access to department licensors during the licensees' hours of operation for the purpose of announced or unannounced monitoring. Licensors must be allowed to inspect the indoor and outdoor licensed space to verify compliance with the requirements of this chapter and chapter 43.216 RCW. For the purposes of this chapter "hours of operation" means the hours of the day that licensees offer early learning services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when licensees refuse to allow the department's authorized staff access to any of the following:

- (a) Information relevant to the early learning program;
- (b) The licensed space;
- (c) Child, staff, or program records or files; or
- (d) Staff members or children in care.

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AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, ~~((an))~~ early learning programs must have an emergency preparedness plan ~~((pursuant to))~~ required by WAC 110-300-0470.

(2) ~~((An))~~ Early learning providers must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function for at least five hours.

(3) To ensure a safe exit from the premises during an emergency, ~~((the))~~ early learning providers must comply with the following requirements:

(a) Emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the early learning program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;

(b) Exit doors that are not designated as an emergency exit door may be locked during operating hours. Locking interior doors in early learning program space must be designed to be unlocked from either side. An unlocking device must be readily available; and

(c) Exit doors must not be partially or entirely blocked (~~(+ and~~

~~(d) Family home early learning programs must have at least one pivoting or side-hinged swinging exit door. Other exit doors may be sliding glass doors)).~~

(4) For family home early learning programs:

(a) Each level or floor of the home licensed for early learning programming, except basements, must have at least two emergency exits that open directly to the exterior of the space.

(i) The emergency exits on each floor must be as widely spaced as possible, ideally at opposite ends of the floor.

(ii) At least one emergency exit on each floor must be an emergency exit door. At least one emergency exit door must be a pivoting or side-hinged swinging door. Other exit doors may be sliding glass doors.

(iii) The portion of a home that is partly or completely below grade (basement) must have at least one emergency exit window or door that leads directly to the exterior of the building.

(b) Every room licensed for early learning programming, except bathrooms, must have at least two emergency exits. These exits must be any combination of the following:

(i) An emergency exit door that leads directly to the exterior of the building;

(ii) An emergency exit window that leads directly to the exterior of the building; or

(iii) A door or doorway that leads to an emergency exit pathway. No two doors or doorways can lead to the same emergency exit pathway.

(c) Any window used as an emergency exit window must:

(i) Remain unlocked during operating hours except that a manufacturer-installed latch may remain latched;

(ii) Be designed to open from the inside of the room without the use of keys, tools, or special knowledge;

(iii) Be easy to open to the full position;

(iv) Have at least five point seven square feet of open area, except emergency exit windows on the ground floor which must have at least five square feet of open area;

(v) Be at least 20 inches wide and at least 24 inches tall when fully opened;

(vi) Have an interior sill height no more than 44 inches above the interior floor; and

(vii) Have a place to land outside that is no more than 48 inches below the exterior window sill.

[WSR 18-15-001, recodified as § 110-300-0166, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0166, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-14-076, filed 7/1/19, effective 8/1/19)

WAC 110-300-0210 Immunizations and exempt children. (1) On or before their children's first day of attending an early learning program, ((a child)) the parents or guardians of enrolled children must ((be vaccinated against or show)) give to early learning providers proof of vaccination or acquired immunity for the vaccine-preventable disease, ((pursuant to)) required under RCW 43.216.690 and chapter 246-105 WAC. ((An)) Early learning providers may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) ((Pursuant to WAC 246-105-050, an)) Early learning providers must receive for each enrolled child upon enrollment and annually thereafter, as required by RCW 43.216.690 and WAC 246-105-050:

(a) A current ((and)), complete ((department of health approved)), and medically verified certificate of immunization status (CIS) form;

(b) A department approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, ((an)) early learning providers must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) ((The)) Parents or guardians provides a signed and dated statement detailing when the child's immunizations will be brought up to date and stating they understand their child will be excluded from care if the immunizations are not completed within 30 days of the specified due date.

(4) ((An)) Early learning providers must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) ((An)) Early learning providers may accept homeless or foster children into care without the records listed in this section if the child's family, caseworker, or health care provider offers written proof that ((he or she is)) they are in the process of obtaining the child's immunization records.

(6) ((An)) Early learning providers must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify ((the)) parents or guardians of children exempt from immunization for

that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) ((An)) Early learning providers may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

[Statutory Authority: RCW 43.216.250 and 43.216.255. WSR 19-14-076, § 110-300-0210, filed 7/1/19, effective 8/1/19. WSR 18-15-001, recodified as § 110-300-0210, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0210, filed 6/30/18, effective 8/1/19.]