

**RULES
OF
THE STATE BOARD OF EDUCATION
OFFICE OF THE COMMISSIONER**

**CHAPTER 0520-12-1
STANDARDS FOR CHILD CARE CENTERS AND SCHOOL-AGE CHILD CARE PROGRAMS**

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0520-12-1-.01 INTRODUCTION.

- (1) Scope of Rules. These rules are applicable to: public, school-administered care programs, programs administered by approved Montessori schools and private church-related schools, as defined in T.C.A. § 49-50-801, Title I preschools, school age care, school-administered head start, and even start, monitored by the Department of Education pursuant to T.C.A. § 49-1-302(l), providing child care services to children ages six (6) weeks through minority.
- (2) Purpose of Child Care Certification of Approval. The primary purpose of child care certification of approval is the protection of children. These minimum requirements seek to maintain adequate health, safety, and supervision of children while in child care. Developmental child care provides educational experiences and guidance, health services, and social services to children and their families.
- (3) Child Care Services may be offered by family child care homes, group child care homes, child care or child development centers, nursery schools, day nurseries, kindergartens, public schools, and recreational organizations (e.g., YMCA or Boys Club), among others.
- (4) Legal Basis For Inspection and Certification of Approval Process. T.C.A. § 49-1-302(l) and T.C.A. §§ 49-1-1101 through 49-1-1109 provide for the defining, inspection, certifying, and regulation of school administered care programs. The Tennessee Department of Education regulates child care provided by schools pursuant to T.C.A. § 49-2-203 (b)(11)(A) and by church-related schools as defined in T.C.A. § 49-50-801.

Authority: T.C.A. §§4-5-201 et seq., 49-1-201(c)(24), 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2-203(b)(11), and 49-5-413. **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.02 DEFINITIONS.

For purposes of this chapter, the following definitions are applicable:

- (1) Approval. A preschool, school-age care or child care program is in accordance with the provisions of the law and the requirements (rules) of the State Board of Education. Approval is not transferable from one location to another or from one agency to another. The approval may be revoked at any time upon ninety (90) days notice to the agency; or if the health,

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- safety, or welfare of the children in care imperatively requires it, may be suspended immediately.
- (2) Approved capacity. The designated maximum number of children permitted in a facility as determined by the department based upon available space, age of children, adult:child ratios, and group size. Capacity shall be designated on the certificate.
 - (3) Auxiliary staff. Full and part-time employees of the center who provide non-caregiving services.
 - (4) B.S.N. Bachelor of Science in Nursing.
 - (5) Caregiver or Care Provider. The entity or person(s) responsible for meeting the supervision, protection, and basic needs of the child, including the primary caregiver.
 - (6) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers, or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all child care homes and child care centers in the system and shall sign the application for a certificate of approval for each center.
 - (7) Certificate of Approval. A written form of approval issued by the Department of Education to agencies providing care to children. Issuance of a Certificate of Approval is not an endorsement of child care methods or of the agency's operational philosophy. A Certificate of Approval is not transferable from one location to another or from one school and /or system to another.
 - (8) Child or Children. A person or persons under eighteen (18) years of age.
 - (9) Child Care. As defined by T.C.A. § 71-3-501(a)(3), the provision of supervision, protection, and meeting, at a minimum, the basic needs of a child for more than three (3) hours a day, but less than twenty-four (24) hours a day.
 - (10) Child Care Advisory Council. A director of a local school system, a representative of private, church-related school organization as defined by T.C.A. § 49-50-801, a representative from an institution of higher education, a parent of a child in a child care program, a coordinator of child care programs, a representative of the Department of Education, a representative of the Child Care Services of Department of Human Services and four other members appointed by the State Board of Education to advise in the establishment of child care standards and regulations and to act as a hearing tribunal for appeals from actions of the State Department of Education regarding the certificate of approval issued to child care programs.
 - (11) Child Care Center. Any place or facility operated by any entity or person who provides child care for thirteen (13) or more children.
 - (12) Child Care System. The existence of two (2) or more facilities used for child care purposes which facilities are under the ownership, administration, or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.
 - (13) C.N.A. Certified Nursing Assistant.
 - (14) Child Welfare Agency. Includes "child abuse agency," "child-caring institution," "child-placing agency," "child care center," "family boarding home or foster home," "family child care home"

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“group care home,” “group child care home,” “maternity home,” “prescribed child care center,” and “temporary holding resources” as defined in T.C.A. § 71-3-501(b).

- (15) Commissioner. The executive head of the Department of Education, appointed by the Governor.
- (16) Day Care. Synonymous with definition of child care, above.
- (17) Department (SDE). The Tennessee Department of Education and its representatives.
- (18) Developmentally Appropriate. As defined by the National Association for the Education of Young Children, developmentally appropriate practice is the use of child development knowledge to identify the range of appropriate behaviors, activities, and materials for a specific age group. This knowledge is used in conjunction with understanding about individual children’s growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. Developmentally appropriate curriculum provides for all areas of a child’s development: physical, emotional, social and cognitive through an integrated approach.
- (19) Director. The person with overall responsibility for the child care program.
- (20) Field Trip. A trip that is not part of the regular curriculum which is off the general premises and beyond reasonable walking distance.
- (21) Group. A specific number of children comprising an age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distraction.
- (22) High School Diploma. As used in the context of caregivers’ qualifications, refers to a document recognizing graduation from a legally approved institution, public or private, based on the issuing state’s required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as or for a high school diploma.
- (23) Infant. A child who is six (6) weeks through twelve (12) months of age.
- (24) Kindergarten. For approval purposes, the definition of a child care center excludes kindergarten programs for five-year-old children operated on essentially the same time schedule as public school kindergartens. A kindergarten may be part of a public or private school system or may be operated independently. If the agency serves children under five years of age or exceeds the time schedule normally observed by public kindergartens, it shall be subject to the approval process for compliance with child care rules.
- (25) Law. Statutory or regulatory provisions affecting the operation of a child welfare agency including, but not limited to, the law as contained in T.C.A. § 49-1-302(l) and T.C.A. §§ 49-1-1101 through 49-1-1109 7, Chapter 0520-12-1, and these rules.
- (26) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, through their authorized representative(s), assumes or is legally required to assume, ultimate responsibility for the control of a child care agency.
- (27) Parent. A biological, legal, or adoptive parent, guardian, or legal or physical custodian who has primary responsibility for a child.

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- (28) Preschool Child. A child who is six (6) weeks through five (5) years of age.
- (29) R.N. Registered Nurse
- (30) School-age Child. A child who is five (5) years of age and enrolled in kindergarten or older (generally through grade six).
- (31) Staff. Full and part-time caregivers and other employees of the center.
- (32) Substitute. Defined by Rule 0520-1-2-.04 (6).
- (33) Supervision. Children six weeks of age through two (2) years of age shall be within sight and sound of an adult at all times. Children three (3) years through five (5) years of age shall be safely protected by an adult in close proximity and not distracted by other tasks. Children six (6) years through nine (9) years of age shall be protected by an adult who adjusts restrictions appropriately for different ages and abilities. Children ten (10) years of age and older shall have an adult who is responsible for knowing the whereabouts and activities of the children at all times.
- (34) Temporary Approval. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing begin child care operations to begin. It is valid, unless suspended, for one hundred and twenty (120) days or until the application for an annual certificate of approval is finally determined, and it is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the one hundred and twenty (120) day period, evidence is provided by the applicant that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual certificate of approval to the child welfare agency.
- (35) Toddler. A child who is twelve (12) months through thirty (30) months of age.
- (36) Volunteer. A person who provides services for a child care center without payment and who is used to supplement the regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the center.
- (37) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

Authority: T.C.A. §§4-5-201 et seq., 49-1-201(c)(24), 49-2-203(b)(11)(B), 49-1-302(l), and 49-1-1102.
Administrative History: Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.03 BASIS FOR CERTIFICATION OF APPROVAL.

- (1) Annual Certification of Approval: Tennessee law requires that all child care programs, as defined in T.C.A. § 49-1-302(l), shall be reviewed annually by the Department of Education. The inspection/approval process is based on rules developed and published in accordance with T.C.A. § 49-1-302(l)(1)(B) and based upon the following criteria:
 - (a) The safety, welfare and best interests of the children in the care of the agency;
 - (b) The capability, training and character of the persons providing or supervising the care to the children and the use of such judgment by a caregiver in the performance of any

(Rule 0520-12-1-.03, continued)

of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;

- (c) The quality of the methods of care and instruction provided for the children;
 - (d) The suitability of the facilities provided for the care of the children; and
 - (e) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.
- (2) Falsification of Records / Information
- (a) Falsification of any information, records or other documents required for approval shall be grounds for denial, suspension, or revocation of a certificate of approval.
- (3) Specifications of the Certificate of Approval
- (a) All programs shall be operated within licensed capacity, specific age ranges, and at the address designated on the certificate; and
 - (b) All programs shall operate within the restrictions stated on the certificate.

Authority: T.C.A. §§4-5-201 et seq., 49-1-201(c)(24), 49-1-302 et seq., 49-1-1101 through 49-1-1109, and 49-2-203(b)(11). **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.04 LEGAL REFERENCES.

- (1) Issuance of Certificate of Approval. The provisions of T.C.A. § 49-1-1101, are applicable.
- (2) Inspection of Agencies. The provisions of T.C.A. § 49-1-1106 are applicable.
- (3) Penalty for and Injunctions Against Unapproved Operation. The provisions of T.C.A. § 49-1-1104 are applicable.
- (4) Denial, Suspension and/or Revocation of Certificate of Approval. The provisions of T.C.A. § 49-1-1105 are applicable.
- (5) Violations of certificate regulations, probation, civil penalties, suspension, denial, and revocation; appeal procedures. The provisions of T.C.A. § 49-1-1107 are applicable.
- (6) Annual Reports. The provisions of T.C.A. § 49-1-1108 are applicable.
- (7) Collaboration with Department of Human Services. The provisions of T.C.A. § 49-1-1109 are applicable.
- (8) Investigation of Applicants for Child Care Positions. The provisions of T.C.A. § 49-5-413 are applicable.

Authority: T.C.A. §§4-5-201 et seq., 49-1-201(c)(24), 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2-203(b)(11), and 49-5-413. **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.05 PROCEDURES FOR OBTAINING A CERTIFICATE OF APPROVAL.

- (1) The Department of Education offers consultation and instruction sessions to before and after school child care, as described in T.C.A. § 49-2-203(b)(11), school administered early childhood education programs, school-administered Head Start and Even Start programs, approved Montessori programs and private, church related schools, as defined in T.C.A. § 49-1-302(l)(1) and T.C.A. § 49-50-801. A consultant is available to serve schools in each major region of the state, east, middle and west.
- (2) The department will offer application training to schools announcing interest in developing child care programs.
- (3) Upon satisfaction of the following minimum requirements, a temporary approval may be issued if:
 - (a) Director's qualifications meet the requirements. See Rule 0520-12-1-.07(3)(e);
 - (b) Three satisfactory references for the director are verified;
 - (c) Physical facilities receive fire safety and environmental approval; and
 - (d) Proof that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, and the Department has determined after appropriate inspection that the site is suitable for child care activities and does not endanger the welfare or safety of children.
- (4) Receipt of an application begins the evaluation process, which is completed with the issuance or denial of an annual certificate of approval. This process includes:
 - (a) At least two visits to the child care center, one of which may be unannounced;
 - (b) Observation of caregivers' interaction with children;
 - (c) Review of agency records; and
 - (d) Request for-information related to certificate of approval requirements.
- (5) Upon issuance of a certificate of approval, the child care program is expected to maintain compliance with requirements throughout the year.
- (6) Renewal And Re-Evaluation.
 - (a) Application for renewal must be made annually prior to the expiration of the existing certificate of approval.
- (7) Certification Action and Appeal Rights.
 - (a) Procedures for applications, suspensions, denials, revocations of certificate of approval and appeal rights are governed by T.C.A. §§ 49-1-1103 and 49-1-1107.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), and 49-1-1101 et seq. **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.06 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.

- (1) Statement of Purpose and Need.
 - (a) An applicant for approval to operate a child care agency shall submit a written statement to the Department of Education governing the following areas:
 1. A description of the services to be offered to children and parents and reasons these services are needed at the proposed location;
 2. Ages of children to be served;
 3. Hours of operation;
 4. A Description of meal provision or preparation;
 5. Admission requirements and enrollment procedures; and
 6. Provision for emergency medical care.
 - (b) If, after being approved, a child care provider wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.
- (2) Organizational Structure.
 - (a) The organization of every child care center shall be such that legal and administrative responsibility is clearly defined in writing and must accompany the application for a license.
 - (b) Every child care center shall have an on-site director. See Rule 0520-12-1-.07 Staff.
 - (c) Following the issuance of an initial approval, a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the annual approval year.
- (3) Finances.
 - (a) An applicant must demonstrate a reasonable plan for the financial support of a center which would assure adequate staffing, equipment and safe operation. Adequate financing of the center's operation shall be maintained. Proposed budgets and other relevant financial records shall be available to the appropriate Department of Education personnel (child care consultant or auditor) upon request.
 - (b) Liability and Medical Payment Insurance Coverage.
 1. General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.
 2. Automobile liability coverage shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000) combined single limit of liability. The requirement of this part only applies to child care programs that transport children.

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3. General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) general aggregate coverage.
 4. Medical payment coverage as the primary coverage shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency under part 2 of Rule 0520-12-1-.06(3)(b) and in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children resulting from the operation of the child care agency under part 3 of Rule 0520-12-1-.06(3)(b).
 5. The requirements of this subparagraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.
 6. Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department's child care consultants.
- (4) Records and Reports.
- (a) Admission of Children and Communication with Parents.
 1. At the time of admission written policies and procedures of the child care center shall be provided to parents or other applicants. Policies shall also include criteria for disenrollment of children. Parents/guardians shall receive a signed copy of policies and a signed receipt shall be kept in the child's file.
 2. A pre-enrollment visit to the center by the parents, legal custodian or guardian is required and shall be documented.
 3. Upon enrollment of a child, the parents shall receive the Department's summary of the Department's licensing requirements; receipt shall be documented by parent's/guardian's signature.
 4. Parents shall be permitted to see the professional credential(s) of staff upon request.
 5. Each center shall implement a plan for regular and ongoing communication with parents. This plan shall include but not be limited to communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.
 6. During operating hours, parents shall be permitted access to their children, and ready access to all areas of the child care facility shall be granted SDE representatives and inspection authorities (i.e., fire safety, sanitation, and health).
 7. Parents shall give written permission in advance of the child's removal from the premises including each individual field trip. Exceptions shall be cases of

(Rule 0520-12-1-.06, continued)

emergencies or investigative procedures conducted pursuant to the child abuse laws. [See also: 0520-12-1-.10(5)(d).]

8. Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances (e.g., acute illness of or injury to parents, natural disaster, unusual work hours). In such cases every effort shall be made to minimize the amount of time spent in the center. Individualized plans for extended care in special circumstances shall be signed by parent and director, and approved by the licensing counselor after alternatives have been explored and documented. (i.e., part time care or a break with a relative, etc.).
9. Upon reaching the center all children shall be signed in by the custodial parent or attendance recorded by the appropriate staff person.
10. An abuse prevention awareness program for parents shall be offered at least once a year. The program shall include a child abuse prevention component, approved by the Department of Education, with information on the detection, reporting, and prevention of child abuse in child care centers and in the home.
11. Pre-school: A child shall be at least six weeks old before being accepted in a center.
12. Prior to admission of the child, the parent shall supply the center with a completed application, immunizations' record, and health history. See Rule 0520-12-1-.06(b)(1) Children's Records and Rule 0520-12-1-.01(1) Children's Health Records.
13. "Drop-in" children shall be counted in the ratio and group size and shall have required records on file before care is provided.
14. When a decision to revoke, or deny a license is heard by the Child Care Advisory Council to the State Board of Education, the agency shall immediately notify parents and funding sources of the decision of the Board.

(b) Children's Records.

1. The following records shall be maintained in an organized manner at the center and made available to the Department upon request. The following information shall be maintained for each child:
 - (i) A current information form, which includes the child's name, date of birth, name of parent(s), child's and parents' home address, parents' business addresses, phone numbers, work hours, social history, and the name and address (home and business or school) of a responsible person to contact in an emergency if parent(s) cannot be located promptly. This information shall be updated annually, or as changes occur.
 - (ii) Name, address, and telephone number of a physician to call in case of an emergency.
 - (iii) Written consent of parent(s) regarding emergency medical care.
 - (iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk.

(Rule 0520-12-1-.06, continued)

- (v) Written transportation agreement between parent and center regarding daily transportation between home and center and center and school.
 - (vi) Health record as directed under Section 0520-12-1-.10 Health and Safety.
 - (vii) Daily attendance records for each child to include time in and time out.
 - (viii) Written permission of parent for each field trip away from the premises.
 - (ix) School-age: The information form shall list the name of the school the child attends.
 - (x) Pre-school: The same records shall be kept on infants/toddlers as on other children in the center. Additional information shall be recorded and shared with parent(s) daily for infants, toddlers and all non-verbal children which includes: time and amount of feeding, excessive spitting up, toilet training, times of diaper changes, sleep patterns, and developmental progress.
 - (xi) Daily record for non-verbal children as directed under Section 0520-12-1-13 Care of Children with Special Needs.
- 2. A child's records shall be kept for one year following the child's leaving the agency. (The health record shall be returned upon request when the child leaves the center.)
 - 3. The records of any child who is five (5) years old in a center which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment of the child's parents that recognizes that the child's attendance does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in first grade. The statement of acknowledgment shall be signed by parent(s).
- (c) Staff Records.
- 1. The following information shall be secured when employing staff, contained in each employee's record, kept current, and made available to the Department upon request. The individual employment record shall be maintained for at least one year following the separation of the employee from the agency.
 - (i) Name, birth date, social security number, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency.
 - (ii) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year.
 - (iii) Health records as directed under Section 0520-12-1-.10 Health and Safety.
 - (iv) At least three written references, with documented interviews of each reference, on each new staff member.
 - (v) Written record of employment which has been verified.

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- (vi) Documentation of annual performance reviews.
 - (vii) Date of employment and date of separation from the agency.
 - (viii) Daily attendance (including time in/out) of staff.
 - (ix) Results of requirements as contained in Rule 0520-12-1-.07 (1) (i) and (2) through (6) shall be maintained.
- 2. Professional credentials of staff shall be maintained.
 - 3. All information protected as confidential under T.C.A. § 4-4-125 and 10-7-504(f), or any other applicable statute or regulation, shall be maintained as confidential and shall not be disclosed except under the criteria set out by law. The protected information includes, but is not limited to, an individual's social security number.
- (5) Right to Privacy/Confidentiality.
- The child care operator and agency staff shall not disclose or knowingly permit the use of any information concerning a child or family except as required by law or regulation or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for health, safety, or welfare of any child enrolled at the center or his or her family.
- (6) Posting of Certificate of Approval and other required documentation.
- (a) During the hours of operation, the current Certificate of Approval to operate a child care center child shall be posted near the main entrance in a conspicuous location.
 - (b) The Department of Human Services toll free complaint number shall be posted in a conspicuous location-
 - (c) The agency shall post any other materials as directed by the Department.
- (7) Release of Children
- (a) Children shall only be released to a responsible designated person in accordance with the child release plan in Rule 0520-12-1-.06 (4)(b)(1)(iv).
 - (b) Children should not be released to anyone whose behavior, as deemed by a reasonable person, may place the child(ren) in imminent risk. Call the local law enforcement agency, local judge, having juvenile jurisdiction, and/or Department of Children's Services immediately, prior to the release of children.
- (8) Transportation.
- (a) Management Responsibility
 - 1. If a center provides transportation or contracts for transportation, the center's management shall be fully responsible for all transportation of children, including between home and center, to and from school, and on field trips. Public school transportation for school-age shall meet the rules and regulations T.C.A. § 49-6-2102.

(Rule 0520-12-1-.06, continued)

- (i) Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 0520-12-1-.06(3). Verification of liability insurance must be made available to the licensing counselor.
 2. The driver shall comply with the same health requirements as other staff members. (Not applicable for contracted services or occasional field trips.) For preschool and school-age programs transporting children in school buses, certification of school bus drivers and equipment must be in compliance with T.C.A. §§ 49-6-2107 and 49-6-2108.
 3. Vehicles used for transporting children shall have a clearly visible identifying sign. (Not applicable to occasional transportation by volunteers).
 4. Children shall not be transported on field trips without parents' written permission prior to each trip.
 5. The center shall maintain a written plan that makes provisions for addressing situations in which children, who are scheduled to be picked up, are not at the designated place at the designated time.
 6. If a child is expected for transport (based on the roster) but is not present at the location, the driver may not leave the location without checking with a designated member of staff and the center. If the designated member of staff is not present in the loading area and there is not an additional adult on the vehicle, all children will accompany the driver into the facility to verify the whereabouts of the child.
- (b) Transportation Laws, Vehicle Safety and Suitability
1. Transportation provided by the center or under center auspices shall comply with state law.
 2. All children and the driver shall be properly secured in individual passenger restraint devices at all times during transportation by the center or under center auspices. Any child, between four (4) and eight (8) years of age who weighs less than forty (40) pounds shall be properly secured in a passenger motor vehicle using a separate carrier, an integrated child seat or a belt-positioning booster seat. Exception: Children four (4) years of age and older transported by a school bus or public transportation are not required to be restrained because these vehicles are not required to be equipped with restraint devices.
 3. No child shall be allowed to ride on the floor of a vehicle, and no child shall be placed with another child in the same restraint device.
 4. Drivers of any vehicle used to transport children shall have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required by state law.
 5. The driver of a vehicle designed to carry more than fifteen (15) passengers (including the driver) is required to have a commercial driver's license.

(Rule 0520-12-1-.06, continued)

6. A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit, and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced by all staff responsible for transporting children on a regular basis. (Not applicable to occasional transportation by volunteers)
7. Firearms are prohibited in vehicles used to transport children.
8. Vehicles used to transport children shall be maintained in safe working condition, in accordance with State Board of Education Rule 0520-1-5-.01(4).
9. Regularly scheduled vehicle inspections shall be completed as defined in Department of Safety Rules 1340-3-3-.03 (Not applicable to occasional transportation by volunteers.)
10. Pre-school: Seats must provide enough space for required safety seats to be installed properly;
11. Pre-school: Children ages 4 and above must have a minimum of ten (10) inches seat space;
12. School-age: Children must have a minimum of eleven (11) inches seat space per child in the vehicle.

(c) Verification Procedures When Transporting Children

1. Local education agency (LEA), private school or approved Montessori school, or other covered child care program shall develop a transportation plan in accordance with the transportation policy adopted by the State Board of Education and Department of Education, T.C.A. § 49-6-2102. The plan must describe provisions to guarantee the safety of children transported. The plan shall address child safety on entering the vehicle, child safety during transport, supervision during transport, time in transit and child safety on exiting the bus. The plan shall detail the process to be implemented to guarantee no child is left unattended in the vehicle.
2. An adult attendant in addition to the driver is required on the vehicle for the transportation of three (3) or more children ages six (6) weeks to four (4) years of age.
3. Transportation of children with special needs shall be in compliance with the Individual Education Plan (IEP) for each child. Bus drivers who do not return to a central depot shall stipulate that all buses will be checked at the end of every run to make sure that no person remains on the bus as defined in T.C.A. § 49-6-2114.
4. The transportation plans must be submitted to the Department of Education.

(d) Release of Transported Children

1. Children shall be directly released only to a custodial parent or other responsible authorized person at the designated place in accordance with section 0520-12-1-.06 (4)(b)(v) and (7).

(Rule 0520-12-1-.06, continued)

2. School-age: When children are transported to school they shall be released in accordance with the procedures established by the school to include:
 - (i) unloading children at the location designated by the school;
 - (ii) provider/driver watches children walk through the entrance door indicated for use by the school; and
 - (iii) children are delivered during the time the school is open to receive children.

(e) Supervision of Children During Field Trips

1. On field trips, the number of adults at the destination shall be double the requirement for classroom supervision shown on the chart in Section 0520-12-1-.07 (4) Staff. Notwithstanding the provisions of 0520-12-1-.02(27), volunteers may be counted as the additional required adult in these circumstances.
2. An adult attendant in addition to the driver is required on the vehicle for the transportation of three (3) or more children ages six (6) weeks to four (4) years of age. Children with special needs require transportation in compliance with the Individual Education Plan (IEP). Notwithstanding the provisions of 0520-12-1-.02(33), volunteers may be counted as the additional required adult in these circumstances.

Field Trip Chart

Field Trips	The Number Of Adults At The Destination Shall Be Double The Requirement For Classroom Supervision Shown On The Ratio Charts
Transportation For 3 Or More Children Ages 6 Wks To 4 Years	Requires An Adult Attendant In Addition To The Driver

(f) Staff Training for Transporting

1. All staff responsible for transporting children shall receive adequate training in the transportation plan and the transportation rules contained in this section, as well as any other agency procedures which are not in conflict with these rules, prior to first performing those duties, as defined in the Department of Safety Rules and Regulations for School Bus Inspection Procedures Chapter 1340-3-3-.07 and T.C.A. § 49-6-2102.
2. All staff responsible for transportation shall complete in-service training as defined in Chapter 1340-3-3-.07, promulgated by the Department of Safety.
3. Completion of such training shall be documented in the staff's records.

(g) Limits on Time Children Are Transported/Transportation Waivers.

1. Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.

(Rule 0520-12-1-.06, continued)

- (i) School-bus transit, no pupil shall be allowed to remain in transit to or from school on a school bus more than one and one-half (1 1/2) hours in the morning and one and one-half hours (1 1/2) hours in the afternoon T.C.A. § 49-6-2105.
2. If extended transportation beyond the limits in part (g)(1) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and director and approved by the appropriate Department staff after alternatives have been explored with the child care agency and documented by child care consultant staff.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), 49-1-1109 through 49-1-1109, 49-6-2101, 49-6-2105, 49-6-2107, 49-6-2108, 49-2-2110, 49-6-2114, 49-6-2116, 55-9-602 et. seq., 55-50-301 et. seq., 37-1-403(a)(8), and 55-50-401 et. seq. **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.07 STAFF

(1) Responsibility for Staff.

- (a) The board, owner, applicant, or other designated agent of the child care center shall be responsible for selecting individuals qualified and of suitable character to work with children.
- (b) The director, with the guidance of the board or owner of the center, shall be responsible for staff and program and the day-to-day operation of the center.
- (c) Each location where children are kept shall have an on-site director.
- (d) To be designated as such, the on-site director of a child care center in operation up to twelve (12) hours a day shall be physically present in the center daily at least half of the total hours of operation. If a program operates more than one shift the on-site director shall be physically present at least one shift.
- (e) To be designated as the director or person in charge (on a daily basis) of a multi-site child care program, he/she shall not have any non-child care director/administrator responsibilities during the hours of operation.
- (f) A staff member at the center shall be designated to be in charge in the absence of the director. Staff members shall be notified of this designee. This person shall be at least eighteen (18) years of age, and shall have a high school diploma, one year of experience in child care, be familiar with agency policy and procedures, and meet the same training requirements as caregivers.
- (g) The behavior of staff shall reflect knowledge and understanding of the special needs, growth and developmental patterns of young children and understanding of appropriate activities, as reflected in staff's performance evaluations.
- (h) School-age: An adult shall be designated as the person responsible for administration of the school-age program. This person can be a director or a teacher.
- (i) Criminal history and abuse registry background checks; exclusions; appeals; exemptions.

1. Each person:

(Rule 0520-12-1-.07, continued)

- (i) Applying to work with children as a paid employee, a director, or manager of a child care agency;
 - (ii) Applying to work as a new substitute in a child care agency;
 - (iii) Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in T.C.A. § 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or
 - (iv) Fifteen (15) years of age or older who resides in a child care agency facility or who moves into a child care agency following initial certification of approval shall:
 - (I) Agree to the release of all investigative records to the local Board of Education or child care program, as defined in T.C.A. § 49-1-1102, shall require any person applying for a position as a teacher and any person applying for any other position requiring proximity to school children or to children in a child care program.
 - (II) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation.
 - (III) Complete the criminal history records check as defined by T.C.A. § 49-5-413. Be responsible for any reasonable costs incurred by the Tennessee Bureau of Investigation in conducting such investigation of an applicant. The costs shall be paid by the applicant the first time such applicant applies for a position with a local Board of Education or child care program. The applicant shall be provided a copy of all criminal history records check documentation provided to the local Board of Education or child care program to which the applicant first applies. In lieu of additional criminal history records checks for subsequent applications, the applicant may submit copies of the applicant's initial criminal history records check documentation and shall not be required to pay any additional costs. Any Board of Education or child care program may establish a policy authorizing payments for investigations of an applicant who provides school maintenance, clean up, administrative or teaching functions or duties. A local Board of Education or child care program may pay for an investigation of such applicant regardless of whether the applicant accepts an offer for employment with such Board of Education or child care program.
2. The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the administrator or operator of a child care agency, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the application for a certificate of approval or seeking operator status, or, within ten

(Rule 0520-12-1-.07, continued)

(10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.

3. Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a certificate of approval or for operator or for a substitute position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of part 7 of Rule 0520-12-1-.07(1)(d) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to hold a certificate of approval, or be an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.
4. A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable person's registry shall be maintained in the child care agency's records for review by the Department of Education.
5. The child care agency shall immediately review the report of the background check received from the Department and the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having access to children as described in part 7 of Rule 0520-12-1-.07(1)(i), the child care agency shall immediately exclude such person from access to children. Failure to exclude the person under this part or part 4 of Rule 0520-12-1-.07(1)(i) will result in immediate suspension of the child care agency's certificate of approval.
6. Exclusions from access to children based upon criminal history or other status.
 - (i) No person shall be employed, or otherwise act, as a caregiver or as a substitute caregiver for children in a child care agency, nor shall any person be an administrator, director, or be an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to or contact with children in a child care agency, nor shall any other person have any access to children in a child care agency whatsoever, who:
 - (I) has any pending warrant, indictment or presentment;
 - (II) has been convicted, pled guilty to or pled no contest to any crime or charge, or
 - (III) has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:
 - I. Any crime, including a lesser included offense derived from any crime involving the physical, sexual, or emotional abuse or gross neglect of a child or any other crimes involving a threat to the health, safety or welfare of a child; or
 - II. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or

(Rule 0520-12-1-.07, continued)

- III. Any crime involving, or lesser included offenses derived from any crime involving, the manufacture, sale, distribution or possession of any drug; or
 - IV. A violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed as or serve as a driver transporting children for a child care agency.
- (IV) Is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; or
- (V) Known to the management of a child care agency as a perpetrator of child abuse or child sexual abuse or who is identified to the child care agency's management or licensee by the Department of Education, Department of Human Services or by the Department of Children's Services as a validated or indicated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; and
- I. who is associated in providing care or ancillary services in any manner within a child care agency; or
 - II. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or
 - III. who has unrestricted access to children in the child care agency as determined by the Department of Education.
- (ii) An employee or volunteer who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.
7. Appeals of exclusions.
- (i) Any person who is excluded or whose certificate of approval or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the Department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.
 - (ii) If timely appealed, the Department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been

(Rule 0520-12-1-.07, continued)

promulgated by the Department pursuant to part 8 of Rule 0520-12-1-.07(1)(i).

- (iii) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.

8 Exemptions from exclusions.

- (i) The Department will consider the granting of exemptions from the prohibitions under part 6 of Rule 0520-12-1-.07(1)(i).
- (ii) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
- (iii) Advisory group to review exemption requests.
 - (I) The Department will establish an advisory group composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers issued a certificate of approval by the Department to review the requested exemption and advise the Department as to whether such request is warranted.
 - (II) At the Department's request, the advisory group shall review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.
 - (III) Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.
- (iv) Appeal of exemption decision.
 - (I) The Department shall notify in writing the person making the request for exemption of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the

(Rule 0520-12-1-.07, continued)

person shall be granted an administrative hearing under the provisions of T.C.A. §§ 4-5-301 et seq.

- (II) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported, pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.

9. Alternate and Supplementary Criminal Background Checks.

- (i) The Department of Education may, at its own expense, utilize background checks pursuant to the provisions of T.C.A. § 49-5-413 and T.C.A. § 71-3-507 (g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check. The Department may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.
- (ii) The Department may require such individuals to complete a disclosure form as required by part 1 of Rule 0520-12-1-.07(1)(i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.
- (iii) Status Pending Background Check.
 - (I) Pending the outcome of the background check, if required, the applicant for employment operator status or for a substitute or volunteer position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.
 - (II) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing certified programs or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after issuance of certificate of approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subparagraph, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.
- (iv) Names Searches.
 - (I) As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision T.C.A. §§

(Rule 0520-12-1-.07, continued)

71-3-501(g)(1) and T.C.A. § 49-5-413 or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating the criminal history of such person.

- (II) The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to subparts (i) and (ii).
 - (v) All provisions of part 6 of Rule 0520-12-1-.07(1)(i) including, but not limited to, the exclusion of individuals from providing care, from being licensed for the care of children or having access to children upon determination of the criminal background or perpetrator of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds or perpetrator status as determined by the processes established by this part.
 - (vi) Any person disqualified from care for or access to children based upon the results of the criminal history background review or the determination of perpetrator status under this part may appeal that determination to the Department as provided in part 8 of Rule 0520-12-1-.07(1)(i).
 - (vii) Nothing in subparagraph, Rule 0520-12-1-.07(1)(i), shall be construed to prevent the exclusion of any individual from providing care for, from being issued a certificate of approval for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background or perpetrator status is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph, Rule 0520-12-1-.07(1)(i), for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
10. Nothing in subparagraph, Rule 0520-12-1-.07(1)(i), shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, operator status, for substitute or volunteer positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of part 9 of Rule 0520-12-1-.07(1)(i) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

(2) Staff Qualifications.

(Rule 0520-12-1-.07, continued)

- (a) Every staff person, including auxiliary staff, substitutes, volunteers, and practicum students, shall be physically, mentally, and emotionally capable of using the appropriate judgment for the care of children, and otherwise performing his/her duties satisfactorily.
- (b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.
- (c) Caregivers shall be of suitable character to work with young children.
- (d) Prior to assuming duties, each new employee shall receive orientation in, and be able to explain program philosophy, job description, emergency procedures, policies regarding discipline of children, and policies for receiving and dismissing children. Within the first two weeks on the job, each employee (including auxiliary staff, such as bus driver, cook, etc.) shall receive instruction in child abuse detection, reporting, and prevention, in parent-center communication, disease control and health promotion, an overview of certificate of approval requirements, and information on risks of infection to female employees of childbearing age. Such training shall be documented in the agency's records.
- (e) Each new employee must be provided a written summary of current child care approval rules. In addition, the agency must maintain written documentation that each employee has read the full set of applicable child care certificate of approval rules.
- (f) A copy of all current child care certificate of approval rules shall be maintained in a central space and available to all staff and parents.
- (g) Multi-Site Personnel
 - 1. Multi-Site Coordinator
 - (i) The multi-site coordinator must meet the same requirements listed below for a single site child care center director.
 - 2. On-Site Director Under a Multi-site Coordinator
 - (i) The on-site director shall have at least two (2) years of college training or a department-recognized credential. In addition, the on-site director shall have one year of full-time documented work experience with young children in a group setting; or
 - (ii) The on site director shall have earned a high school diploma or its equivalent and two years of full-time (paid or unpaid) documented work experience with young children in a group setting.
- (h) Director of a Single Site Child Care Center
 - 1. The director shall have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
 - 2. The director shall have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or related field. In addition, the

(Rule 0520-12-1-.07, continued)

director (in this category) shall have two years of full-time documented work experience with young children in a group setting; or

3. The director shall have earned a high school diploma or its equivalent and have four years of full-time documented work experience with young children in a group setting.
4. Prior to issuance of the first annual certificate of approval, owners and directors shall complete a child care orientation sponsored by the Department of Education. New directors shall complete post application training within three months of assuming their position.
5. During the first year a new director shall have evidence of receiving at least thirty-six (36) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety, inclusion of children with special needs, or other related field. At least six (6) hours shall be in administration, management or supervisory training. This rule applies to new hire situations where the person has not been employed in child care for the last three years. Persons with at least an Associates degree in child development or early childhood education are exempted from this rule.
6. The director shall have evidence of receiving at least eighteen (18) clock hours annually in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety, inclusion of children with special needs, or other related field. At least six (6) hours shall be in administration, management or supervisory training. After the first year, no more than two (2) hours shall be credited for Child and Adult Care Food Program (CACFP) training. Up to four (4) hours credit may be earned by conducting training.

(i) Director of Child Care Center

1. The director shall:
 - (i) have graduated from an accredited four-year college and have completed one year of full-time documented work experience with young children in a group setting; or
 - (ii) have sixty (60) semester hours (two (2) years) of college training. At least thirty (30) hours shall be in business or management, child or youth development, early childhood education or a related field. In addition, the director (in this category) shall have two (2) years of full-time documented work experience with young children in a group setting; or
 - (iii) have earned a high school diploma or its equivalent and have four (4) years of full-time documented work experience with young children in a group setting.
 - (iv) The director shall complete any mandatory training that may be offered by the Department.

(Rule 0520-12-1-.07, continued)

- (v) No child care agency issued a certificate of approval under these rules shall receive a certificate of approval unless the child care agency director shall have, at a minimum:
 - (I) received a Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training; or
 - (II) received comparable training recognized by the Department, has a high school diploma and has four (4) years of full-time work experience with young children in a group setting; or
 - (III) meets the requirements of parts 1. (i), 1. (ii), or 1. (iii); or
 - (IV) was employed as an on-site child care director or a child care agency owner as of July 1, 2000.
- 2. Prior to issuance of the first annual certificate of approval:
 - (i) owners and directors shall complete a child care orientation with the Department of Education.
 - (ii) new directors of child care agencies currently certified shall complete the child care orientation within three (3) months of assuming their position.
- 3. During the first year of employment, a new director:
 - (i) shall have evidence of receiving at least thirty-six (36) hours in workshops, training, or one-to-one consulting sessions. (At least six (6) hours of the required training shall be in administration, management or supervisory training.); or
 - (ii) shall earn credit for the year in one academic course in administration, child development, early childhood education, health/safety or other related field.
- 4. The requirements of part 3 of Rule 0520-12-1-.07(2)(i) apply to new hire situations where the person has not been employed in child care during the last three (3) years. Persons with at least an Associates degree in child development or early childhood education are exempted from this rule.
- 5. After the first year of employment, the director shall:
 - (i) have evidence of receiving at least eighteen (18) clock hours annually in workshops, training, or one-to-one consulting sessions, or
 - (ii) shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field.
- 6. At least six (6) hours of the training required in part 5 of Rule 0520-12-1-.07(2)(i) shall be in administration, management or supervisory training. After the first year, no more than two (2) hours for required training, such as Child and Adult Care Food Program (CACFP) shall be included. Up to four (4) hours credit may be earned by conducting training.

(Rule 0520-12-1-.07, continued)

(j) Caregivers.

1. Each caregiver shall be at least eighteen (18) years of age. At least one (1) caregiver who is present in each group must be able to read and write English. Exception, sixteen and seventeen-year-old students currently enrolled in a vocational child care program may be counted in the adult-child ratio. They shall always be under the direct supervision of an adult and shall not be left alone with a group of children.
2. Each group shall have at least one caregiver present who has a high school diploma or its equivalent, a department-recognized credential, or a diploma from a state area vocational school.
3. During the first year new caregivers shall have evidence of receiving at least eighteen (18) clock hours in workshops, training, or one-to-one consulting sessions, or shall earn credit during the year in one academic course in administration, child development, early childhood education, health/safety, inclusion of children with special needs, or other related field. This rule applies to new hire situations where the person has not been employed in child care during the last three years. Persons with at least an Associates degree in child development early childhood education are exempted from this rule.
4. Caregivers shall have evidence of receiving at least twelve (12) clock hours annually in workshops or in-service training in child development, early childhood education, health/safety, inclusion of children with special needs, or other related field. After the first year, no more than two (2) hours shall be credited for Child and Adult Care Food Program (CACFP) training. Six (6) hours shall be obtained out of center. Up to four (4) hours credit may be earned by conducting training.
5. If a new caregiver elects to complete the thirty (30) hour TECTA orientation during their first year, these hours will satisfy the annual training requirements for the first two years of employment.
6. New caregivers shall complete two (2) clock hours of pre-service orientation training approved by the Department and shall complete an additional six (6) hours of the required training within the first six (6) months of employment. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first six (6) months of employment shall require that the employee be removed from caregiver duties for children until completion of the training.
7. The remaining ten (10) hours of the required training for new caregivers must be completed before the end of the first year of employment.

(3) Supervision and Grouping of Children.

- (a) The management of the center shall maintain a system that allows personnel to know the whereabouts of each child in their care. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no children have been unintentionally left.

(Rule 0520-12-1-.07, continued)

(b) Children must have adult supervision at all times.

1. Children six weeks of age through two (2) years of age shall be within sight and sound of an adult at all times. Children three (3) years through five (5) years of age shall be safely protected by an adult in close proximity and not distracted by other tasks.

Children six (6) years through nine (9) years of age shall be protected by an adult who adjusts restrictions appropriately for different ages and abilities.

(i) Caregivers shall not leave the room until replacements have arrived.

2. Youth/children ten (10) years of age and older shall be supervised by an adult at all times but need not be in the adult's physical presence at all times. Youth/children shall have the opportunity to develop independence.

(i) Staff shall position themselves strategically for adequate supervision and quick response.

(ii) Staff shall be aware of the dynamics (interactions) and activities of the entire group even when dealing with only part of the group at a time.

(c) The center shall maintain a plan approved by the child care consultant that enables a caregiver in an emergency situation to call a second adult while maintaining as much supervision of the children in care as is possible under the circumstances.

(d) When more than twelve (12) children are present, a second adult shall be on the premises.

(e) Age Categories, Group Sizes, Adult:Child Ratios, and Implementation Dates.

1. Groups shall comply with the definitions in 0520-12-1-.02.
2. The adult:child ratios in this subparagraph are required to be provided by the child care agency while the children are indoors and on the playground.
3. Maximum group size requirements shall be maintained at all times when children are indoors with the exception of meals served in common dining rooms.
4. When infants are cared for in a center with older children, they shall not be grouped with children three years of age and over, and a separate area shall be provided for them.

(4) Adult:Child Ratio Charts - Effective Prior to February 1, 2002

Single Age Grouping and Adult Child Ratio Chart:

Age At Beginning of School Year	Maximum Group Size and Adult:Child Ratios							Notes
	10	12	14	16	18	20	25	
Single-Age Grouping								
Infants: 6 wks-15 mos.	1:5							Non- handicapped and not walking
Toddlers:12 mos. – 30 mos.			1:7					Non-handicapped and walking

(Rule 0520-12-1-.07, continued)

2 years: (24 mos.-35 mos.)				1:8				
3 years						1:10		
4 years						1:15		
5 years						1:20		
6 years and above							1:25	

Multi-Age Grouping and Adult:Child Ratio Chart:

Age At Beginning of School Year	Maximum Group Size and Adult:Child Ratios							
Multi-Age Grouping	10	12	14	16	18	20	25	Notes
Infants/ Toddlers:6 wks.-30 mos.		1:6						At least 3 children must be walking
2-3 years (24 mos. 47mos.)				1:8				
2-4 years				1:8				
2 1/2-3 years (30-47mos.)					1:10			
2 1/2-5 years						1:12		
2 1/2 - 12 years	1:10							
3-5 years (includes 3-4 year olds)						1:15		
4-5 years						1:20		
5-12 years							1:25	

(5) Adult:Child Ratio Charts – Effective February 1, 2002:

Single Age Grouping and Adult:Child Ratio Chart

Single-Age Grouping	Maximum Group Size And Adult:Child Ratio							
	8	12	14	16	18	20	25	
Infants: 6 wks. – 15 mos.	1:4							
Toddlers (12 mos. – 30 mos.)		1:6						
2 years (24 mos. – 35 mos.)			1:7					
3 years						1:10		

(Rule 0520-12-1-.07, continued)

4 years						1:15		
5 years						1:20		
6 years and above							1:25	

Multi-Age Grouping and Adult:Child Ratio Chart

Multi-Age Grouping	Maximum Group Size and Adult:Child Ratio								Notes
	8	10	12	14	16	18	20	25	
Infants/Toddlers: 6 wks. – 30 mos.	1:5								
2-3 years (24 mos. – 47 mos.)					1:8				
2-4 years					1:8				
2.5 - 3 years (30 – 47 mos.)						1:10			
2.5 - 5 years							1:12		
2.5 – 12 years		1:10							
3 - 5 years (includes 3 – 4 years)							1:15		
4 - 5 years							1:20		
5 - 12 years								1:25	

(a) Combined grouping -first / last hour of each day only

1. Groups excluding infants and toddlers may be combined, for up to one hour at the beginning and for up to one hour at the end of the day, as set forth in the following chart.

	Maximum Group Size And Adult Child Ratio							
	10	15	20					
2 – 12 years	1:10							
3 – 12 years		1:15						
4 – 12 years			1:20					

- (i) Any number of children in excess of the adult:child ratios requires a second adult.
- (ii) Section 504 of the Rehabilitation Act of 1973 and ADA guidelines shall be consulted for care of children with disabilities relative to the number of caregivers which a reasonable accommodation of a child's disability may require.

(6) Adult:Child Ratio Charts - Effective July 1, 2002:

Single Age Grouping and Adult:Child Ratio Chart

	Maximum Group Size And Adult:Child Ratio

(Rule 0520-12-1-.07, continued)

Single-Age Grouping	8	12	14	16	18	20	25	
Infants: 6 wks. – 15 mos.	1:4							
Toddlers (12 mos. – 30 mos.)		1:6						
2 years (24 mos. – 35 mos.)			1:7					
3 years					1:9			
4 years						1:15		
5 years						1:20		
6 years and above							1:25	

Multi-Age Grouping and Adult:Child Ratio Chart

Multi-Age Grouping	Maximum Group Size and Adult:Child Ratio								Notes
	8	10	12	14	16	18	20	25	
Infants/Toddlers: 6 wks. – 30 mos.		1:5							
2-4 years					1:8				
2.5 - 3 years (30 – 47 mos.)						1:9			
2.5 – 5 years							1:12		
2.5 – 12 years		1:10							
3 - 5 years (includes 3 – 4 years)							1:15		
4 - 5 years							1:20		
5 - 12 years								1:25	

(a) Combined grouping -first / last hour of each day only

1. Groups excluding infants and toddlers may be combined, for up to one hour at the beginning and for up to one hour at the end of the day, as set forth in the following chart.

Multi-Age Grouping	Maximum Group Size And Adult Child Ratio							
	10	15	20					
2 – 12 years	1:10							
3 – 12 years		1:15						
4 – 12 years			1:20					

- (i) Any number of children in excess of the adult:child ratios requires a second adult.
- (ii) Section 504 of the Rehabilitation Act of 1973 and ADA guidelines shall be consulted for care of children with disabilities relative to the number of

(Rule 0520-12-1-.07, continued)

caregivers which a reasonable accommodation of a child's disability may require.

(7) Adult:Child Ratio Charts - Effective July 1, 2003:

Single Age Grouping and Adult:Child Ratio Chart

Maximum Group Size and Adult Child Ratios							
Single-Age Grouping	8	12	14	16	18	20	No Max
Infants: 6 wks. – 15 mos.	1:4						
Toddlers (12 mos. – 30 mos.)		1:6					
2 years (24 mos. – 35 mos.)			1:7				
3 years					1:9		
4 years						1:13	
5 years						1:16	
School-Age (K and above)							1:20

Multi-Age Grouping and Adult:Child Ratio Chart

Maximum Group Size and Adult:Child Ratio										
Multi-Age Grouping	8	10	12	14	16	18	20	22	24	No Max
Infants/Toddlers: 6 wks. – 30 mos.	1:5									
2-4 years					1:8					
2.5 - 3 years (30 – 47 mos.)						1:9				
2.5 - 5 years							1:11			
2.5 – 12 years	1:10									
3 – 5 years (includes 3 – 4 years)								1:13		
4 - 5 years									1:16	
5 - 12 years										1:20

(a) Combined grouping -first / last hour of each day only

1. Groups excluding infants and toddlers may be combined, for up to one hour at the beginning and for up to one hour at the end of the day as set forth in the following chart.

MAXIMUM GROUP SIZE AND ADULT CHILD RATIO									
	10	15	20						
2 – 12 years	1:10								
3 – 12 years		1:15							

(Rule 0520-12-1-.07, continued)

4 – 12 years			1:20					
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- (i) Any number of children in excess of the adult:child ratios requires a second adult.
 - (ii) Section 504 of the Rehabilitation Act of 1973 and ADA guidelines shall be consulted for care of children with disabilities relative to the number of caregivers which a reasonable accommodation of a child's disability may require.
- (b) When children are swimming, the following requirements shall be met:

AGE GROUP	RATIO
Infants (6wks-12 months)	1:1
Toddlers/Twos (13 -35 months)	1:2
Three Year Olds	1:4
Four Year Olds	1:6
Five Year Olds	1:8
School-Age (K and above)	1:10

1. Infants and toddlers/twos group swimming is not recommended.
 2. One adult present shall have a current certificate in advanced aquatic lifesaving skills. This person must supervise from above the level of the swimmers, preferably from an elevated lifeguard chair or otherwise from the pool deck. If non-enrolled children are also monitored by the lifeguard, he/she may not be included in the required staff:child ratio.
 3. Remaining caregivers should supervise both in and out of the water.
- (c) Children for whom care is provided by the center at any one time shall be included in the agency's enrollment, square footage allowance, and approved capacity. They shall have the security of stable classroom space at the center.
 - (d) Groups may, excluding infants and toddlers, may be combined for short periods for a regularly scheduled activity of no more than sixty (60) minutes duration per day as long as adult:child ratios are met.
 - (e) Children shall be greeted, as they enter the center, by the staff person to whom they are assigned. This staff person shall inform the child of their availability as a specific contact person should the child need assistance, and shall be the responsible person during the time that the child is in the center.
 - (f) If one room has enough floor space based on requirements, it can be divided and used for more than one group. However, each group shall have the security of a stable classroom space. For school-age child care programs, which change classroom space, the Director shall provide a secure, stable routine.
 - (g) The auxiliary staff shall not be included in the adult:child ratio but can be used as emergency substitutes if their duties and qualifications permit.

(Rule 0520-12-1-.07, continued)

- (h) If meals are served, the person who is responsible for preparing meals and washing the dishes shall not be included in the adult:child ratio while preparing these meals.
 - (i) When centers, caring for multiple ages, ranging from infancy to age twelve (12), provide school-age care, separate space and a separate program shall be provided for them.
- (8) Requirements for Naptime and Nighttime Care.
- (a) At naptime and during nighttime care, after the children have settled down, adult:child ratios may be relaxed so long as the children are adequately protected and all of the following requirements are met:
 - 1. If there are sleeping or resting children, there shall be at least one adult awake and supervising the children in each nap room/sleeping area.
 - 2. The adult:child ratio can be fifty percent (50%) of the required ratio if there are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately in an emergency. Exception: Infant/toddler ratios shall be maintained.
 - 3. Maximum group size limits do not apply as long as the appropriate adult:child ratio is met at the fifty percent (50%) level.
 - 4. Infant/toddler ratios and group sizes shall be maintained.
 - 5. Sudden Infant Death Syndrome: Because of the possibility of Sudden Death Syndrome, the following requirements shall be met:
 - (i) Infants under six (6) months of age shall be positioned on their backs or sides when placed in a crib for sleeping.
 - (ii) Soft bedding shall be avoided for infants under six months of age.
 - (iii) Infants under six (6) months of age should not be wrapped tightly in blankets.
 - (iv) Infants under six (6) months of age shall be checked by a caregiver every thirty (30) minutes by touching them.
 - (v) Pillows shall be prohibited for infants under six (6) months of age.
 - (vi) If a child appears not to be breathing, emergency medical assistance shall be immediately provided.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109, 49-5-413, and 71-3-507 (g) & (h). **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.08 EQUIPMENT FOR CHILDREN.

- (1) General.

(Rule 0520-12-1-.08, continued)

- (a) Manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.
 - (b) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, no sharp edges, splinters, nails sticking out, no open S-hooks or pinch points within children's reach.
 - (c) Damaged equipment shall be repaired or removed from the room or playground immediately.
 - (d) Equipment shall be kept clean by washing frequently with soap and water.
 - (e) There shall be developmentally-appropriate equipment and furnishings for each age group in attendance.
 - (f) Individual lockers, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for the belongings of each child, infant - preschool.
 - (g) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.
 - (h) A place shall be provided for each school-age child's belongings.
- (2) Indoor Play Equipment.
- (a) Pieces of equipment, such as television sets, bookcases, and appliances, shall be secured or supported so that they will not fall or tip over.
 - (b) Indoor equipment, materials, and toys shall be available to:
 - 1. Meet active and quiet play needs of all children enrolled;
 - 2. Provide a variety of developmentally appropriate activities so that each child has at least three choices during play time; and
 - 3. Adequately provide for all the activities required in Section 0520-12-1-.09 Program.
 - (c) Toys, educational, and play materials shall be organized and displayed within children's reach so that they can select and return items independently.
 - (d) Teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.
- (3) Outdoor Play Equipment.
- (a) There shall be developmentally appropriate outdoor play equipment for children who are in care more than three (3) daylight hours.
 - (b) All outdoor play equipment shall be sufficient in amount and variety so that children have an opportunity to participate in different types of play.
 - (c) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" shall be used for guidance on playground construction and maintenance.

(Rule 0520-12-1-.08, continued)

- (d) Resilient surfacing material shall cover fall zones at a recognized acceptable depth in accordance with CPSC guidelines.
 - (e) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend six (6) feet away from the perimeter of equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths. Centers with playgrounds in existence prior to January 1, 2002 shall be permitted to maintain fall zones of at least four (4) feet. Compliance with six (6) feet fall zone must be met on any expansion or addition.
 - (f) Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.
- (4) Naptime and Sleeping Equipment.
- (a) There shall be equipment for napping or sleeping for each preschool child who is in care for six (6) hours or more.
 - (b) A quiet rest area and cots or mats shall be available for children who want to rest or nap. However, no child shall be forced to nap.
 - (c) All nap/sleep equipment shall be in good condition and comply with the following requirements:
 - 1. Individual cots or two-inch mats shall be provided for mature toddlers and children through age five (5) and labeled with each child's name.
 - 2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.
 - 3. A clean sheet or towel shall be used to cover whatever the child sleeps on.
 - 4. A clean coverlet shall be available to each child.
 - 5. Each infant shall have an individual crib (at least 22" x 36") with an open top. Mattresses and foam pads shall be covered with safe, waterproof material. Soiled sheets and coverlets shall be replaced immediately.

Authority: T.C.A. §§4-5-201 et seq., 49-1-201(c)(24), 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2-203(b)(11), and Executive Order No. 24 (November 11, 1988). **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.09 PROGRAM.

- (1) Schedule and Routines.
 - (a) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.
 - (b) There shall be a balance between child's choice and adult-directed activities.

(Rule 0520-12-1-.09, continued)

- (c) There shall be alternating periods of vigorous activity and quiet play or rest throughout the day.
- (d) Television, Videos, And Computers:
 - 1. If television, video tapes, games, and movies are used, they shall be limited to two hours per day, or the length of a movie if more than two (2) hours in the case of school-agers, and to programs designed for children's education and/or enjoyment. Programs/movies with violent or adult content (including "soap operas") shall not be permitted in children's presence. Programs/movies shall be developmentally appropriate for the viewers. Parents shall be informed of movie showings and ratings. Videos and movies must be previewed by staff for content. An opportunity for discussion is to be provided following the viewing to facilitate communication and comprehension skills. Other activities shall be available to children during television/movie viewing or computer use.
 - 2. When computers are used, programs should be developmentally (or age) appropriate. Programs and games containing violent themes shall not be permitted. Up to one additional hour per day, but not more than three (3) days per week, can be added to viewing time for computer use. Computer use must be monitored by staff. School-agers may use computers for completion of homework with no time limitations.
 - 3. The use of electronic toys shall be limited in order to encourage the development of children's imagination.
- (e) An opportunity for outdoor play shall be extended to children of all ages. Preferably, children should be allowed to experience a variety of weather conditions, so long as children are properly dressed and the length of time outside is adjusted according to the conditions and the age of the children. The minimum expectation is that children go outside when the temperatures (adjusted for wind chill and heat index) are between thirty-two (32) degrees and ninety-five (95) degrees and not raining. Outdoors, staff shall interact with children in a manner that will ensure adequate supervision of activities and will facilitate the development of age appropriate physical and social skills. Care givers shall be alert for signs of dehydration, heat stroke, frost bite, etc., dependent upon the season. In warm weather water shall be readily available.

Exception: For centers where outdoor play is prohibitive or dangerous, unoccupied indoor space providing fifty (50) square feet per child is acceptable.
- (f) A reclining rest period of at least one hour shall be provided for all preschool children in care for six (6) hours or more.
- (g) Special consideration shall be given to providing early morning and late afternoon activities that will help children cope with possible unhappiness over separation from parents and end-of-day fatigue.
- (h) Each caregiver shall be responsible for providing consistent care for a specific infant(s)/toddler(s). "Consistent care" includes, but is not limited to, planning, record-keeping, communication, and routine care.
- (i) Time shall be provided for an adult to give individual attention to each child, in addition to the time devoted to diapering and feeding. Children shall also have opportunities to interact with one another.

(Rule 0520-12-1-.09, continued)

- (j) Each child shall be allowed to form his own patterns of sleep. A child shall not be left in a crib or on a cot for an unreasonable length of time.
 - (k) Opportunities shall be provided for children to be by themselves to play alone or do homework, if they choose, in a small quiet area away from other activities.
 - (l) Youth ten (10) years and older shall be encouraged to participate in the planning of their schedules and activities.
- (2) Behavior Management and Guidance.
- (a) Attention spans and skills of children shall be considered so that caregivers do not require children to engage in developmentally inappropriate behavior.
 - (b) Discipline shall be reasonable, appropriate, and in terms the children can understand.
 - (c) Punishment that is shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.
 - (d) Punishment shall not be related to food, rest, or toileting.
 - (e) Spanking or any other type of corporal punishment is prohibited. ("Corporal punishment" is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)
 - (f) Caregivers shall not focus solely upon unacceptable behavior.
 - (g) Praise and encouragement of good behavior shall be used.
 - (h) Efforts shall be made to help infants and toddlers develop a feeling of self-worth. A desirable activity shall be substituted for one that is undesirable, or the child's attention shall be distracted from the undesirable activity.
 - (i) When a child is engaging in unacceptable behavior the caregiver should distract the child's attention and substitute a desirable activity.
 - (j) Time out shall be reasonable and developmentally appropriate.
 - 1. Time out shall take place in an appropriate location based upon the development of the child.
 - 2. The length of each time out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child.
- (3) Physical Care - Toilet Training.
- (a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.
 - (b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.
 - (c) Children shall not be made to sit on the potty or toilet for more than five minutes.
- Children shall be diapered or cleaned immediately in a safe, sanitary manner.

(Rule 0520-12-1-.09, continued)

- (4) Educational Activities.
- (a) Activities shall be based on developmentally appropriate educational practices.
 - (b) A daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science, and health.
 - (c) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.
 - (d) Staff shall plan ahead for developmentally appropriate activities; written lesson plans shall be provided for children of each age group.
 - (e) For ages three to school-age, the curriculum shall include instruction in personal safety as needed but at least once a year. The personal safety curriculum shall include a prevention of child abuse component, recognized by the Department of Education.
 - (f) For school-age children the curriculum shall include instruction on reporting physical, verbal or sexual abuse.
 - (g) Activities for infants/toddlers shall provide experiences for the development of the following skills:
 - 1. language;
 - 2. gross motor;
 - 3. fine motor;
 - 4. social/personal; and
 - 5. cognitive.
 - (h) A portion of the day shall include floor time for these activities. Examples of such activities include:
 - 1. music;
 - 2. dramatic play;
 - 3. storytime;
 - 4. free activity periods;
 - 5. outdoor play; and
 - 6. the opportunity to explore many materials, situations, and roles.
 - (i) Children shall not be left to amuse themselves for extended periods (in excess of thirty (30) minutes), in restraining devices such as swings, car seats, or high chairs. Care shall be given to provide stimulation to children in those settings.

(Rule 0520-12-1-.09, continued)

- (j) Because of the importance of language development and communication skills, to infants and toddlers shall experience the following language experiences on a daily basis:
 - 1. talked to;
 - 2. listened to;
 - 3. read to; and
 - 4. sung to.
 - (k) In addition to the activities outlined in the previous item, infants and toddlers shall also experience language activities such as:
 - 1. finger plays;
 - 2. patty cake; and
 - 3. flannelboard stories.
- (5) Nighttime Care.
- (a) Agencies providing nighttime care shall meet the following additional requirements:
 - 1. Calming activities preceding bedtime shall be provided, including such things as listening to a story or soft music. In addition, individual/adult attention shall be provided as needed.
 - 2. Routine personal hygiene shall be encouraged and supervised. A plan shall be made with parents for brushing teeth, baths, bed dress, etc.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302 (l), 49-1-1101 through 49-1-1109. **Administrative History:** Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002.

0520-12-1-.10 HEALTH AND SAFETY.

- (1) Children's Health Records.
 - (a) Before an infant or toddler is accepted for care, the parent shall have proof of the child's physical examination within three (3) months prior to admission, signed or stamped by a physician or health care provider. Each infant/toddler shall have on file an official health record of the initial medical checkup and health history prior to entering the program.
 - (b) Each child shall be immunized according to the current Department of Health guidelines.
 - (c) A copy of each preschool child's immunization record, signed or stamped by a certified health care provider, shall be on file in the child care center and shall be available to the appropriate staff.
 - (d) A copy of the child's health history provided by the child's parent or other caretaker, which need not be signed or certified by a health care provider, shall also be on file in the center and shall be available to appropriate staff. The immunization record and health history shall be returned to the child's parents, or other caretaker when the child is removed from enrollment at the center.
 - (e) Before a school-age child is accepted for care, the center shall have on file a statement from the parent (or school) that the child's immunizations are current and that his/her health record is on file at the specified school which the child attends.
 - (f) Exceptions to requirements in subparagraphs (a) and (b) of this paragraph may be made only if:
 1. The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
 2. The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.
 3. Immigrant children. Schools may request information but may not deny enrollment to undocumented immigrant children regardless of their immigrant status. *Plyler v. Doe* 457U.S.202 (1982).
 - (g) If children with mental, physical, or other impairment, or with a medical disorder, are enrolled and special care is needed, their health records shall include a physician's statement which identifies the condition and which gives the physician's or other appropriate care professional's special instructions for the child's care. An update must be provided as needed, but at least yearly.
- (2) Children's Health.
 - (a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved. Every sign of illness shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.

(Rule 0520-12-1-.10, continued)

- (b) Use of oral and rectal thermometers is prohibited. A child's temperature should be taken using a non-invasive method unless otherwise prescribed by a physician.
- (c) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the child care center: hepatitis A, foodborne outbreaks, food poisoning salmonella, shigella, measles, mumps, rubella, pertussis, polio, haemophilus influenza type B, meningococcal meningitis. (Note that this requirement does not apply in the case of HIV infection as the center may not be aware of such infection, and HIV may be present without apparent symptoms.)
- (d) Providers shall report the occurrence of the above diseases to the local health department.
- (e) Universal precautions shall be followed when handling or cleaning bodily fluids.
- (f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed, or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual. Following blood spillage, surfaces shall be cleaned and sanitized.
- (g) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission to the center. Children having scabies or lice shall have proof of treatment to be readmitted. The center shall provide care and/or isolation for a child with a contagious condition only if written instructions of a licensed physician or certified health care provider are obtained first.
- (h) Accidents and injuries to children shall be documented immediately following the incident, including date and time occurred, description of circumstances, and action taken by caregivers. The center shall make all reasonable attempts to report injuries to the parent as soon as possible, but no later than the end of the day in which they occurred.
- (i) All medications, prescription and non-prescription, whether requiring refrigeration or not, must be received from the parent by a designated staff person or management level staff person who must verify in writing the following:
 - 1. The parent's written authorization to administer medication;
 - 2. That medicines or drugs are in the original prescription container and labeled with the child's name;
 - 3. The specific dosage and times medication is to be administered to the child;
 - 4. That the parent has shown the center staff person or management level staff person how to use the container to administer medication;
 - 5. Documentation of the following items: times medications administered, noticeable side effects, name of staff person administering medication to child, the fact that information was reported to parent, and the parent shall sign that the above information was received, and that unused medication was returned to the parent.
- (j) Medication shall not be handled by children or administered in bottles or infant feeders unless authorized by a physician. There must be an alternate staff person or

(Rule 0520-12-1-.10, continued)

management level staff person to perform these duties in the event the designated staff person or management level staff person is out of the center.

- (k) Exception to item (i) above: A physician's authorization for the current school year shall be on file for school-age children who must have self-administered medication.
- (l) All medicines, prescription and non-prescription, whether requiring refrigeration or not, shall be made inaccessible to children by storing them in a locked compartment or container. If medicine requiring refrigeration is kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof locked container. Keys for these compartments shall be inaccessible to children. No medicine shall be stored in children's classrooms.
- (m) Unused medication shall be returned to the parent.
- (n) Prohibited practices and products.
 - 1. Smoking is not permitted in the presence of children. Under state law, smoking in child care centers that are not private homes is restricted within a child care facility to areas where children are not permitted access, and parents must be given notice that the facility has a smoking area. No smoking signs must be posted conspicuously within the facility as provided by state law. Federal law prohibits smoking in any part of a child care facility that is not a private residence if the facility is constructed, operated, or maintained with Federal funds.
 - 2. The use of alcoholic beverages is not permitted in child care centers during the hours of operation of the center, and alcoholic beverages shall not be present in areas where children are permitted access in the child care facility.
 - 3. Illegal activities on the premises, property, or vehicle, or which otherwise places children at risk are prohibited.
- (o) Children shall be diapered/changed and cleaned immediately when wet or soiled.
- (p) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.
- (q) The diapering area shall be off the floor and have a washable surface. The diapering area and/or toilet training area shall be located near a handwashing lavatory and shall not be in a food preparation/service area.
- (r) For older children, appropriate diapering area shall be in a private area, separated from sight of other students. The diapering area (whether on or off the floor) shall have a washable, non-absorbent surface; be located near a handwashing lavatory with anti-bacterial soap and running water and shall not be in a food preparation/service area.
- (s) All diapering surfaces must be nonporous and shall be sanitized after use with each child by using solutions described or otherwise permitted in subparagraph (t) below.
- (t) Cleaning Solutions for General Cleaning and Sanitizing Purposes.
 - 1. For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one (1) tablespoon bleach to one (1) quart of water) shall be made daily.

(Rule 0520-12-1-.10, continued)

2. Substitutions for the bleach solution required in part 1 of Rule 0520-12-1-.10(2)(t), approved for the child care setting by the Department of Health are permissible.
 3. Note that the solution required in part 1 of Rule 0520-12-1-.10(2)(t) is not appropriate for items associated with food preparation or for items that children frequently place in their mouths. The Health Department requires that the bleach solution used for sanitizing utensils, food contact surfaces and in three (3) compartment sinks be fifty (50) to two hundred (200) parts per million chlorine. For items such as large mixing bowls, etc. which do not fit in the sink, the solution may be doubled to one hundred (100) to four hundred (400) parts per million chlorine. The Health Department does not permit the use of higher concentrations than these in food preparation areas. Specific jurisdictions may have even more stringent requirements, therefore, the local environmentalist should be consulted for this reason. For reference purposes, one (1) teaspoon per one (1) gallon water is approximately one hundred (100) parts per million chlorine solution.
- (u) Requirements for Tuberculosis Screening of Child Care Populations.
1. The Centers for Disease Control and Prevention no longer recommends pre-employment tuberculosis screenings for the general population. Furthermore, they do not recommend routine tuberculosis screening for staff, volunteers, or children in child care settings.
 2. Tuberculosis screening prior to on-going contact with children is recommended for any individual who:
 - (i) is a recent immigrant to this country.
 - (ii) is HIV positive.
 - (iii) has been recently exposed to tuberculosis.
 3. Any person who has had a cough for three weeks or longer should be evaluated by a physician for tuberculosis.
- (3) Staff Health.
- (a) All staff members, within 36 hours of beginning employment, shall have on file written evidence of a physical examination within the last three years and a statement that their general physical and mental condition will permit them to direct and actively participate in the activities of a group of young children with reasonable accommodation, if necessary. The form or statement shall have the signature or stamp of a licensed physician, a certified nurse practitioner, or a certified physician's assistant.
 - (b) An updated statement of each staff member's physical health shall be obtained every third year or more often if deemed necessary by the Department. A statement of mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.
- (4) Safety.

(Rule 0520-12-1-.10, continued)

- (a) At least one staff member who has current certification or equivalent in infant/child CPR shall be on duty at all times. The initial course shall be a minimum of four hours and shall be taught by a currently certified CPR instructor.
 - (b) When school age children are present at least one staff member who has current certification or equivalent in adult CPR shall be on duty at all times. The initial course shall be a minimum of four hours and shall be taught by a currently certified CPR instructor.
 - (c) At least one staff member who has current certification or equivalent in infant/child first aid shall be on duty at all times. The course shall be a minimum of three hours and shall be taught by a certified first aid instructor.
 - (d) Current and comprehensive first aid information shall be available to all staff who interact with children and they shall be familiar with such information.
 - (e) A standard first aid kit (such as one approved by the American Red Cross) shall be available to the staff.
 - (f) Firearms shall not be on the premises of a child care agency or in the presence of a child. Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.
 - (g) The center, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan. The center shall implement these emergency procedures through timely practice drills to meet local regulations and shall maintain documentation of drills for one year.
 - (h) Emergency telephone numbers shall be posted next to the telephone and readily available to any staff member as follows: fire department, police department/sheriff, hospital, child abuse hotline, and local emergency management agency. Rescue squad, ambulance, and poison control center telephone numbers shall also be posted if available in the community. If a generic number (such as, but not limited to, 911) is operable in the community, it shall be posted in addition to the above numbers. Numbers where parents can be reached shall be readily available to staff.
- (5) Investigations of Child Abuse and Neglect; Custodial Authority of Children.
- (a) Suspected child abuse or neglect shall be reported immediately to the local department of children's services office by the staff of the child welfare agency. Any citizen is required by law to cooperate with the Department of Children's Services (DCS), law enforcement, and other investigators. Failure to do so for children in the care of an approved child care agency is, by itself, grounds for suspension, denial or revocation of the agency's license.
 - (b) A child care provider shall further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff. (Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.) Interference with a DCS investigation by the child care provider may result in criminal charges.

(Rule 0520-12-1-.10, continued)

- (c) A child care provider shall protect the child by requesting the investigator's identification.
- (d) A parent shall be notified before the child leaves the premises except in emergency circumstances, or as follows: An investigator may take a child off the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order, or through emergency assumption of custody under T.C.A. § 37-1-113 without parental permission, or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.
- (e) Upon notification of a pending DCS investigation of any center staff member or resident of a home based center, the certified approved agency shall enter into a safety plan as approved by Department of Education and based upon consultation between Department of Education and DCS.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109, 37-1-113, 37-1-401 et seq., and 37-1-601 et seq. **Administrative History:** Original rule filed April 30, 2002; effective July 14, 2002.

0520-12-1-.11 FOOD.

- (1) Nutritional Needs.
 - (a) The agency shall provide developmentally appropriate meals, snacks, and drinks, for each child, of sufficient proportions and nutritional value, to meet each child's health needs.
 - (b) For children in the agency at least four hours, one snack (defined as two of these four choices) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided:
 - 1. fluid cow or soy milk;
 - 2. meat or meat substitute;
 - 3. fruits, vegetables, or 100% juice; or
 - 4. whole grain or enriched bread.
 - (c) For children in the agency five to ten hours, one meal (defined as meat or meat substitute, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours.
 - (d) For those in the agency longer than 10 hours, two complete meals and two snacks shall be furnished.
 - (e) Breakfast (defined as fruit, vegetable or 100% juice; cereal or bread product; and fluid cow or soy milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.
 - (f) All special needs diets shall be prepared as prescribed by a physician or by the written instructions of the parent.

(Rule 0520-12-1-.11, continued)

- (g) The week's menus shall be planned and posted by the first day of each week and remain posted until the following week, so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible, if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (Information on menu planning is available upon request.)
 - (h) Food shall not be forced on or withheld from children. Foods served as part of the meal/supplement pattern shall not be used as reward; nor shall food be used or withheld as punishment. Desserts and sweets must not be used as rewards or punishment.
 - (i) New foods shall be introduced to infants and toddlers one at a time over a five (5)-to-seven (7) day period with parent's approval.
 - (j) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour. (Infants fed breast milk may require more frequent feedings than formula-fed babies.)
 - (k) Staff shall support parent's decision to continue breast feeding.
 - (l) Appropriate foods shall be encouraged; highly inappropriate foods, e.g. foods high in sugar and/or fat content but containing low nutritional value, shall not be served.
 - (m) Parents and caregivers shall work together when weaning an infant to insure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.
 - (n) Children shall not be permitted to carry a bottle with them throughout the day.
- (2) Meal Service.
- (a) Caregivers and children shall wash their hands according to prescribed handwashing techniques.
 - (b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized prior to and after snacks and meals.
 - (c) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
 - (d) Napkins, individual forks and/or spoons shall be provided for children who feed themselves. Individual dishes as necessary for the type of feeding shall be provided. Routine food service dishes, utensils, and bottles shall be break-resistant.
 - (e) Solid foods (including cereal) shall not be given in bottles or with infant feeders to children with normal eating abilities unless authorized by a physician.
 - (f) At mealtime, children shall be seated at appropriately sized tables and chairs, and adults shall sit with them.
 - (g) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Once milk has been warmed, it shall not be rewarmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.

(Rule 0520-12-1-.11, continued)

- (h) Frozen breast milk shall be dated when expressed.
- (i) Microwave ovens shall not be accessible to preschool children.
- (j) School-age children shall use microwaves only under direct supervision.
- (k) Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven. Other bottle warming devices shall be used safely, according to directions, and shall not be accessible to children.
- (l) To prevent scalding, extreme caution shall be taken when a microwave oven is used to heat food.
- (m) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.
- (n) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (o) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon. Children shall not be left unattended while eating.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), and 49-1-1101 through 49-1-1109. **Administrative History:** Original rule filed April 30, 2002; effective July 14, 2002.

0520-12-1-.12 PHYSICAL FACILITIES.

- (1) Inspections: Facilities that have been certified as approved, relocated, and/or renovated, and new construction, major renovations, additions to existing facilities, and /or changes in occupancy shall:
 - (a) comply with the standards of the fire prevention division of the Tennessee Department of Commerce & Insurance; and
 - (b) comply with the standards of the division of food and general sanitation of the Tennessee Department of Health.
- (2) Fire safety requirements and environmental standards shall be met before a certificate of approval can be issued.
- (3) Requests for inspections are made by the child care consultant, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals.
- (4) Plans: Plans for new construction must be drawn by a registered architect or engineer and submitted to the fire prevention division of the Department of Commerce & Insurance and to the local health department when required by such departments and in accordance with the respective departments' procedures.
- (5) Continuing compliance. Physical facilities shall meet all requirements and codes applicable to child care as set forth by the fire safety section of the Department of Commerce and Insurance and the food and general sanitation section of the Department of Health, as well

(Rule 0520-12-1-.12, continued)

as any updated fire safety or environmental standards for child care adopted by these departments. See Rule 0520-1-4-.01.

- (6) Annual inspection. All facilities shall be inspected and approved annually by either state codes enforcement officers or authorized local fire safety inspectors and by environmentalists. Exception: Public and private schools are inspected based on a schedule established by the fire marshal and/or fire officials of partnering jurisdictions. See Rule 0520-1-4-.01.
- (7) The center shall not be located in a building used for purposes which would be hazardous to the children or would prohibit outdoor play. Exception: Inner city centers may not have outdoor play space. See Rule No. 0520-12-1-.09(1)(e).
- (8) There shall be a working telephone in the center. If answering machines/voice mail must be used, they shall be monitored at thirty-minute intervals (except when staff and children are off premises) so that emergency messages can be received. Parents shall be informed that answering machines/voice mail are used.
- (9) Facilities shall provide at least thirty (30) square feet of usable indoor play space per child, not including restrooms, halls, kitchen, or office space and space taken by cribs or large pieces of furniture. Each naproom must also contain thirty (30) square feet of floor space per child.
- (10) Teen parenting vocational classes shall have separate space for the group of young children with thirty (30) square feet of usable play space per child apart from the classroom space for the students.
- (11) Occupational/career and technical child care classes shall have separate space for the group of young children, with thirty (30) square feet per child of usable space, apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four (4) feet in height.
- (12) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at one time.
- (13) Outdoor Play Area.

For initial certificate of approval, after January 1, 2002, the outdoor play area must be enclosed by a fence or barricade at least four (4) feet in height. Provided, however, the Department may in at its discretion grant a waiver from this provision when the Department determines that the lack of such fence or barricade poses no apparent or potential risk to children.

- (14) The areas where children play or are cared for shall be properly maintained:
 - (a) These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures.
 - (b) These areas shall present no conditions which are hazardous to children.
 - (c) All such areas shall be free of all animal wastes.

Authority: T.C.A. §§4-5-201 et seq., 49-1-202, 49-1-302(l), and 49-1-1101 through 49-1-1109.
Administrative History: Original rule filed April 30, 2002; effective July 14, 2002. Amendment filed September 6, 2007; effective January 28, 2008.

0520-12-1-.13 CARE OF CHILDREN WITH SPECIAL NEEDS.

In addition to the preceding rules, if children with special needs are cared for in the center, the following rules shall be met:

- (1) When children with special needs are enrolled, all reasonable and appropriate efforts shall be made to provide those children equal opportunity to participate in the same program activities as their peers. Parents should be encouraged to provide training to care givers regarding special needs/techniques/emergency measures, as utilized in the child's home to ensure the child's well-being.
- (2) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.
- (3) Efforts to provide specialized service (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded) either directly or by referral, shall be conducted only with written permission by the parent and documented in the child's record. Any information exchange regarding these services that is shared with or received from third parties shall also be documented.
- (4) The center shall have written individualized emergency plans, which have been approved by the child care consultant and are practiced monthly, for every child with a disability enrolled who requires more assistance in emergencies than other children of the same age or in the same group.
- (5) Each non-verbal child's daily activities, including, as applicable to the individual child, the time and amount of feeding, elimination, times of diaper changes, sleep patterns, and developmental progress, shall be recorded and shared with the parent(s) or other caretaker(s) daily.

Authority: T.C.A. §§4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109. **Administrative History:** Original rule filed April 30, 2002; effective July 14, 2002.

0520-12-1-.14 CIVIL PENALTIES

- (1) Pursuant to T.C.A. §49-1-1107(c)(2) the following are the minimum and maximum civil penalties that may be assessed against a child care program authorized pursuant to T.C.A. §49-1-1101, et seq.
- (2) The department shall assess the civil penalty in an order which states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty. The order may not be imposed solely upon the recommendation of an agent of the department. All orders shall be reviewed by the department's legal staff before being imposed.
- (3) Prior to the department's assessment of a civil penalty, a program determined by an agent of the department to be in violation of these rules may be prescribed a plan of corrective action. Failure to follow a plan of corrective action as prescribed by the department may result in the assessment of a civil penalty.
- (4) Definitions.
 - (a) "Negligence" is the failure of a child care program, owner, staff, auxiliary staff, director or other employees to comply with the duties or standards imposed by these rules,

(Rule 0520-12-1-.14, continued)

federal, state and local laws, or the standards of care generally required of school-administered child care programs.

- (b) "Intentional disregard" is the knowing forbearance of a child care program, owner, staff, auxiliary staff, director or other employees to comply with the duties or standards imposed by these rules, federal, state and local laws, or the standards of care generally required of school-administered child care programs.
 - (c) "Plan of corrective action" is a plan which provides a schedule for the completion of work to bring a program into compliance with these rules, federal, state and local laws, or the standards of care required of school-administered child care programs. The plan must include specific strategies to be implemented in program design during the completion of the work. The plan must ensure that children will not be placed in danger due to the program area which is not in compliance and it must ensure that children will not be placed in danger by the work being done to bring the area into compliance.
- (5) Civil Penalties Schedule.
- (a) Major Violations.
 - 1. For any violation of a law or regulation that, due to negligence or intentional disregard of a law or regulation, results in serious injury to, or death of, a child, the department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the law or regulation. Consideration of the program's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
 - 2. For any violation of a law or regulation that, due to negligence or intentional disregard of a law or regulation, results in an injury to a child, the department may assess a civil penalty in a range from Three Hundred Dollars (\$300.00) up to Five Hundred Dollars (\$500.00). The department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the regulation. Consideration of the program's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
 - 3. For violations of the following categories of regulations the department may impose a civil penalty of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Four Hundred Dollars (\$400.00) for the third and any subsequent such violation:
 - (i) Failure to follow any regulation related to organization, ownership and administration of a program pursuant to Section 0520-12-1-.06 of these rules;
 - (ii) Failure to follow any regulation related to health and safety pursuant to Section 0520-12-1-.10 of these rules;
 - (iii) Failure to follow any regulation related to food, nutritional needs and meal service pursuant to Section 0520-12-1-.11 of these rules;

(Rule 0520-12-1-.14, continued)

- (iv) Failure to follow any regulation related to maintenance of equipment pursuant to Section 0520-12-1-.08 of these rules;
 - (v) Failure to follow any regulation related to maintenance of physical facilities pursuant to Section 0520-12-1-.12 of these rules;
 - (vi) Failure to follow any regulation related to adult: child ratios pursuant to Section 0520-12-1-.07 of these rules;
 - (vii) Failure to follow any regulation related to supervision of children pursuant to Section 0520-12-1-.07 of these rules;
 - (viii) Failure to follow any regulation related to dispensing or storing medications pursuant to Section 0520-12-1-.10 of these rules;
 - (ix) Failure to follow any regulation related to care of children with special needs pursuant to Section 0520-12-1-.13 of these rules;
 - (x) Failure to follow any regulation related to program staff pursuant to Section 0520-12-1-.07 of these rules;
 - (xi) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items pursuant to Section 0520-12-1-.10 of these rules;
 - (xii) Failure to properly remove or secure firearms within the physical facility and under the ownership or control of the program, or its staff or other persons permitted access to the children, or failure to prevent exposure of children in the program's care to firearms which are under the control of the program, or its staff, or other persons who have been permitted by the program to have access to the children pursuant to Section 0520-12-1-.10 of these rules; or
 - (xiii) Failure to follow or failure to complete a plan of corrective action.
- (b) Minor Violations.
1. A minor violation shall be any violation of a law or regulation not described as a major violation in part 1.
 2. Each minor violation may subject the program to the proscription of a corrective action plan by the department or to a civil penalty of Fifty Dollars (\$50.00).
 3. The existence of six (6) or more minor violations of any type in any period of twelve (12) months shall constitute a major violation and may be subject to a civil penalty imposed by the department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of twelve (12) months shall constitute a major violation and may be subject to a civil penalty imposed by the department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation.

Upon timely notice of a request for an appeal pursuant to T.C.A. §49-1-1107(c)(5), the department shall appoint a hearing officer to conduct the appeal proceedings before the council. The hearing officer shall have the authority of an administrative law judge of the Department of State and shall conduct the appeal

(Rule 0520-12-1-.14, continued)

process pursuant to the rules of procedure for hearing contested cases as provided in Chapter 1360-4-1 of the Rules and Regulations of the Tennessee Department of State.

Authority: T.C.A. § 49-1-302 and 49-1-1107(c)(2). **Administrative History:** Original rule filed March 1, 2005; effective July 29, 2005.