

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2008 AUG 26 AM 10: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Human Services
~~West Virginia Department of Health and Human Resources~~ TITLE NUMBER: 78

CITE AUTHORITY: §49-2B-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Child Care Centers Licensing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Martha Yeager Walker
Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 21, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Health and Human Resources
Division of Early Care and Education
350 Capitol Street, Room B-18
Charleston, WV 25301
(304)558-1885

LEGISLATIVE RULE TITLE: Title 78, Series 1, Child Care Centers Licensing

1. Authorizing statute(s) citation §49-2B-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 19, 2008

b. What other notice, including advertising, did you give of the hearing?
WVDHHR web site, List Serv notification to child care centers, announced at conferences and trainings.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
8/16/2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 29, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Beth Hall, Program Manager

WVDHHR

Division of Early Care and Education

350 Capitol Street, Room B-18

Charleston, WV 25301

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The Department's proposed rule change is simply to permit a center to choose whether or not to permit food brought into a child care center by a child, therefore having no fiscal impact.

However, the inclusion in the National School Lunch Program versus the Child and Adult Care Food Program (CACFP) may have an impact on those families not eligible for free meals.

Date
6/16/08

Agency
Department of Health and Human Resources

Authorized Representative
Martha Yeager Walker
Martha Yeager Walker
Secretary

**TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HUMAN SERVICES**

**SERIES 1
CHILD CARE CENTERS LICENSING**

Statement of Circumstances Which Require the Rule Revision

On August 13, 2007, the West Virginia Department of Education, Office of Child Nutrition, issued written guidance regarding reimbursement of meals for children enrolled in WV Pre-k. This guidance directs that children enrolled in West Virginia (WV) Pre-k community programs can no longer be claimed for meals served during pre-k hours under the Child and Adult Care Food Program (CACFP). CACFP is the national feeding program available to child care facilities and Head Start programs. Instead, children in WV Pre-k community programs are deemed to be enrolled in the public school system and thus are automatically included in the National School Lunch Program (NSLP), which is the feeding program for public schools.

Child care centers and some Head Start programs are licensed according to Legislative Rules Title 78 under the authority of West Virginia Code §49-2B-1 et seq. The rule requires licensed programs to provide appropriate and adequate meals and snacks, with no food allowed from the child's home. Under CACFP, food costs are included in the daily, weekly or monthly rate parents pay for child care services. Under the NSLP, meal costs are based on family income guidelines and parents are billed accordingly if the child eats the meal provided. If parents prefer, they may send food from home for their child.

Under the new guidance, parents with children in community pre-k programs are now going to be automatically billed by the school if families are not eligible for free meals. However, since the current licensing rule does not permit meals prepared at home to be brought in, parents who prefer to prepare a meal from home are forced to pay for meals provided by the child care center. In addition, since some parents prefer to send lunches rather than pay extra under NSLP, child care centers are placed at a disadvantage in keeping children in their pre-k program. To allow child care centers to fully participate in WV Pre-k, the child care centers licensing rule must be changed to allow parental choice in the area of providing or paying for food.

Accordingly, the West Virginia Department of Health and Human Resources is submitting an amended Child Care Centers Licensing Rule, 78 CSR 1, for filing as authorized by WV Code §49-2B-4.

Brief Summary of the Rule Change

Section 16 of the rule has been revised by deleting the requirement prohibiting food from an unapproved source and inserting requirements that would permit a center to choose whether or not to permit food brought into a

child care center by a child. The requirements guide the policies to be developed by the center and requires the center to remain responsible for the health and nutrition of the child while at the center.

78CSR1

**TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 1
DAY CARE CENTERS LICENSING**

Summary of Changes Made Based on Public Comment

16.12.a.1. - 16.12.a.3 Staff will be provided with the same information as parents regarding nutrition, food preparation and prohibited foods.

16.12.e. No longer requires a center to supplement a meal that is not nutritionally sound, but requires a center to provide a meal if the parent does not.

16.12.f. Clarified that children with allergies are to be included in the group and all children closely supervised at meal time.

78CSR1

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 1
DAY CARE CENTERS LICENSING

Comments Summary and Response

Comments to the proposed rule fall into three general categories:

- 1) Parents that agree with the change so that they may choose what their children eat while in care
- 2) Providers that agree with the change but some are concerned that a requirement to supplement a meal that is not nutritious would be burdensome and difficult to plan
- 3) Providers that are opposed to the change because it hinders efforts to achieve a quality setting that promotes healthy eating and social interaction at meal time and the difficulty staff members will have in trying to supervise various meal options of very young children.

The rule change was originally intended to be submitted as an emergency rule. Therefore, a public comment period occurred in 2007 as well as in 2008. All the comments are included in this summary and response.

Comments in Category 1

Comment: Please reconsider amending Section 16 of the Child Care Licensing Requirements and allowing parents who would prefer to pack their children's lunch to do so.

We are concerned that the nutritional value of the food our three pre-kindergarten grandchildren are being served is less than the standards we hold for their growth and development. Two of these grandchildren live in our home and are fed organically home grown fruits, vegetables and eggs. They are given whole grain breads and fresh ground peanut butter. Both of these children have allergies and asthma and we go to great efforts to give them only whole, fresh, and unprocessed food. The packaged and processed food they are being served at school is a complete contradiction to the standards we adhere to in our home.

When we enrolled our grandchildren in a private Christian school we fully expected to have control and authority over what they are eat. We realize that the food you serve meets certain nutritional standards and meets needs in many cases, but we feel that as parents and grandparents of these children, we should be given the right to choose.

We send our grandchildren to a private school at a substantial financial cost to us, and the added burden of \$8.00 a day (for two children) is both unnecessary and unwanted.

Thank you for your thoughtful consideration of our request. Name: Gary & Eula Walters

Comment: I think this rule change should be accepted. This will allow those parents in our collaborative classrooms for 4 year old, who do not qualify for free and reduced meals to have an option for providing breakfast and lunch meals for their children. Even though these parents may not qualify for free and reduced meals, they may not be able to afford the full costs of the meals.

Thank you for considering this important change. Name: Frances L. Jackson

Comment: I am very encouraged that this regulation is being reviewed and may be amended. As the regulation stands now, parents are being forced into using or purchasing a lunch program beyond their control. The amendment that has been suggested seems a more fair alternative which would meet the needs of different families. Parents who work would have the option of relying on the center to provide a nutritional lunch for the child. Parents who are budget conscious would not be forced into purchasing a lunch that may stretch them financially. Parents who are health conscious would have the choice of packing organic foods. Parents who have a child with a severe food allergy would have the peace of mind that the food they pack is not going to hurt the child. Parents of picky eaters would have the assurance that their child is actually eating what they are packing. Giving families the option of purchasing a lunch or packing from home is a way to protect the rights of parents.

As a director of a faith based pre-school, our parents sacrifice a great deal of money for tuition costs because they desire the atmosphere and education we provide. Asking them to purchase a hot meal, on top of other school related expenses, stretches some families financially.

Consider the message that is being sent to these families. By forcing them to use the center's lunch program, the state is assuming that it can care for the child's nutritional needs better than the parents. This assumption should not be made until a parent proves otherwise.

In conclusion, I am in favor of amending Section 16 of the child care licensing requirements to permit a center to choose whether or not to allow food brought from home for a child to eat.

Thank you for your time and consideration to the public's opinion.

Comment: My husband and I feel that the state is overstepping it's bounds in trying to force us to have our children eat foods that the state qualifies as nutritious. We have 5 boys, and we feed our children whole foods, and not fried, breaded, or preservative filled anything. The children who are participating in full day academic pre-school programs are being made to eat these foods, at great expense. While we understand the need to ensure that children in daycare situations are provided proper nutrition, academic pre-schools which are under the administration of and on the grounds of accredited private schools are not comparable to home based day cares, or child-care centers whose primary focus is not education, but care. It seems silly to require a 4 year old to be fed by the state, but a 5 year old can be fed from home. Parents should be entrusted with the dietary provision for their children, unless they malnourish their child, and only then should the state step in to aid the family with food stamps or WIC and nutrition education. Name: Tara Oliver

Comment: I feel that mandating lunches and not allowing the option to pack lunches from home is unfair to the child. Especially when we are paying for

a lunch that the child does not eat or care for. I find that my son is coming home very hungry and would do much better if we were able to pack a lunch for him to eat. I truly would love to see this ruling change to allow the parents the option to pack lunches for their child. Name: Christine Foster

Comment: My child has allergies and is a picky eater. I feel I should be given a choice whether or not I choose to pack a lunch or pay for hot lunches the school provides.

Comment: I agree wholeheartedly with the changes in Section 16. The centers should be able to choose if the parents can bring food for their child. This makes sense, especially with the exponential rise of food allergies in young children. Make this change happen! Name: Jeff

Comment: For the most part, I agree with the amendment of section 16. A center should be able to choose whether or not food may be brought from home. Age should not be a determinant as to whether or not we as parents can provide food from home for our children. As previously written, the law states that parents are to provide breast milk or formula and baby food for children 0 to 12 months, but older children we can not provide their nutrition. I can pack a lunch for my 7 year old, but not my 3 year old. As long as we provide nutritious food, we should be able to choose whether or not we send lunch and snacks to pre school with our children.

In reference to section 16.12.b., some establishments may not be able to provide refrigeration of food brought from home, such as private or public school settings with several different classes. In this case, for clarification, provisions to parents could include food being brought in on a daily basis (packed lunch) to be used the same day, keeping food chilled with an ice pack if needed (as I provide for my school age children who bring a lunch from home). name: April Guessford

Comment: I would prefer to send my child to school with a lunch that was packed from home. I think that I should have that right and not the state. Name: Paulette

Comment: I am strongly opposed to any rule that dictates to me, as a parent, what my child may and may not eat.

I am very particular about what my children eat. I try to prepare whole, organic foods, and I avoid processed foods with additives and preservatives. While the lunches they are currently serving my daughter at school (against my wishes) are balanced from a nutritional standpoint, they are often processed and contain additives. Hot dogs, for instance, are a food that I absolutely do not want my children to eat, yet my daughter is regularly served hot dogs in her school lunch. Processed chicken nuggets and lunch meats, canned vegetables high in sodium, etc. are more examples of what I do not want my daughter to eat regularly. Please! Reconsider this rule! I am the one that should decide what my child eats... Not the state of West Virginia or her school! Thank you for reconsidering this unfair rule, and thank you for the opportunity to be heard. Name: Jennifer Frauenfelder

Comment: I am currently opposed to the requirement mandated by Section 16 of the Child Care Licensing Requirements. I have two children who have been affected by this requirement. Both of my children have and one is currently enrolled in a state licensed preschool program which requires that a hot meal be offered to these students. While I don't disagree that meals should be offered, I feel that parents should have the option of packing their child's meals for a variety of reasons. The cost of the meals being offered is my first reason. Currently we are paying 4.00 each day for lunch which costs us

approximately 96.00 a month on top of the regular child care bill. My second reason is that I am sure that my child is not eating most of the meal being offered to her. I know from past experience with my oldest child that he only consumed the portions of the meals that were most appealing to him (most of the fruit and an occasional vegetable). Since preschool children are often picky eaters, it is important to offer them items we know they will eat and allow parents the opportunity to introduce new foods at home. As a family there are also particular foods that we don't consume. Since these dietary exclusions are my choice my doctor won't provide an exemption because neither of my children have displayed an allergy to any foods. I can recall days when I'd pick my oldest up from school and couldn't get him food fast enough because he hadn't eaten much of his lunch. I don't know any parent who wants their child to spend the day hungry because they didn't like the foods being offered. Research also shows that students learn better when their basic needs are met. One of our most basic needs is the need to have a full stomach. While I can certainly understand the need for section 16, for the above stated reasons, I feel that the requirement mandated by section 16 needs to be revisited and re evaluated. Name: Heather Murray

Comment: I would greatly appreciate lifting this law and allowing parents to pack their children's lunch. My 4 year old is a very picking child when it comes to eating. We provided a note from her pediatrician that she would benefit better by bringing her own lunch to school. We provide our daughter with healthy food and would prefer she be able to eat from home.

Thank you for your consideration. Name: Kristie Hadley

Comment: My son was born with severe food allergies, which actually weakened his entire immune system. I had to give up my career, sell our double-income home and relocate. Following our then doctor's plan, we limited our son's diet for a while, to those few items he wasn't allergic to, purchasing them at a very high cost from health food stores. They tasted so awful that my son developed severe food aversions that persist to this day (he just turned 10). We've tried everything (under the guidance of a new doctor), from counseling to forced diets -- he simply starved himself to the point of almost being hospitalized. Our doctors then determined to just allow time and maturity to correct the problem.

Imagine having to explain and re-explain this to the school system every year. Imagine the school system trying to come up with foods that are "nutritional" for my son to eat -- who then refuses them. Imagine our frustration as parents just to ensure he takes in a minimum amount of calories per day. Now imagine having to force my child to "eat" at school, when I can simply send him in the food I know he will eat, so at least he won't act out and get in trouble at school due to hunger, and might even learn something on a full belly.

Allowing parents the option of purchasing lunches at daycares, or to send in appropriate lunches for their children is simply a win-win situation for everybody. No waste of money for food that won't be consumed is also a winning situation. Please allow parents the flexibility to determine what is best for their children, which is what stay-at-home parents are permitted to do every day. I acknowledge that ours is an extreme case, but the same principles really do apply to each unique situation. Name: Annemarie C. Ford

Comment: This country is starting to look less like the "free world" with everyday that passes. Who has the right to tell any parent what they may or may not feed their own child? If childcare centers are worried a child with an allergy might eat something that could possibly harm them, they should

over see the children more carefully. Of course, child care centers are already being paid for that from what I'm told.

Comment: It is my opinion that parents should be allowed to send packed lunches with their child to a day care facility. A parent knows best what the child is willing to eat and will not waste. Too many children already throw away food that parents pay for, but if the choice to provide a lunch is taken away from parents not only will there be wasted food but extreme financial burden to cover the costs of a day care provided lunch. Name: Christi Smailes

Comment: Child care centers should be able to allow food brought from home for a child to eat.

A child and parent should have the right to make their own choice if the child eats food provided by the center or if the child would prefer to bring their own food from home. Name: Sandy Hanson

Comment: We believe that parents should make the decision as to whether or not their child eats the child care center's lunch, or brings their own lunch. Name: Katherine Lang

Comment: please allow us to continue to provide our children with home cooked lunches.

Comment: To whom it may concern,

I think this rule/law needs to be amended. I have a child in Private school (not a day care center), the school is Faith Christian Academy in Martinsburg WV. This policy is like so many other policies and laws within the state of West Virginia that reflect poor judgment when it comes to schools. Making blanket rules and regulations that affect the whole state without giving the counties the ability to control their own destiny. The state should not be able to force me to pay for a meal that is not up to my personal standards. I should have the choice to chose weather I want to make my child his lunch versus me being forced to buy a four dollar lunch that is not healthy at all. My child's school is not a day care center, but the states guidelines say it is. This doesn't make any sense! Not only does this need to be amended to allow me to chose what is best for my child. The regulations that determine what the definitions of what a daycare facility is compare to a private school also needs to look at also. The two are very different. They are not the same and can not be lump together. I was very upset that I was being forced to comply with this rule and it needs to be changed. I should have the choice. I already have to pay my taxes for schools I don't use. Then the state is telling me to pay more on something as bad as pizza and other foods that are loaded with nitrates and cholesterol. Please take positive action that will allow the counties and parents to make their own choices. It only makes sense. Name: Dale Oliver

Comment: I am a parent of a pre-k student at Faith Christian Academy in Martinsburg. The law that mandates my child to purchase lunch from the school effects my family by forcing us to either pay \$4 per day for a lunch he won't eat or ending his school day early because he is not a participant in the lunch program. I applaud the States effort to ensure nutritious meals for all children, however this policy forces my child to miss out on educational oppourtunities that the tuition I have paid for provide. The policy may work in some areas where a quality and cost-effective food provider contract can be obtained, apparently that is not possible here. As a parent, I know what fresh fruits and vegetables, proteins, grains, etc. that my child will eat and that is what I serve him. However healthy the

school lunch is (which I do question), it does nothing for the child who will not or can not eat it.

As well as providing a nutritious lunch for my child that exceeds that of the schools, I am also capable of following rules and guidelines as to which foods can be allowed and which are not due to allergies or other reasons. If the policy is changed, it will benefit my child and family greatly. Thank you for your consideration. Name: Marjorie Shepard

Comment: I think these changes are acceptable, but a firmer statement on the supervision of children with food allergies need to be made.

Comment: I'm writing in hopes that this rule will be changed to allow me to pack my child's lunch. My child is in a Pre-K4 class at Faith Christian Academy. I understand the general idea behind having lunch provided for these children is to try to ensure that they have an nutritious and healthy meal. For my child, who is a very picky eater, these provided lunches are having the opposite effect. She does not care for much of the food provided, and has lost some weight since the beginning of school. At the end of most days, she is so hungry that we have to make sure we have a snack for her in the car when we pick her up from school. She rarely eats the fruits and never eats the vegetables, as they are not fixed in a way she likes. In general, when she does eat, she is eating pizza, chicken nuggets, french fries and tater tots. These are not foods that I consider to be "healthy" and would prefer she not eat on a regular basis. I should have the ability to pack the type and variety of foods that I consider healthy and that I know my child will eat. I should also to be able to drop her off at school in the morning and not wonder if she's going to be hungry all day. Name: Beth Hott

Comment: I do not believe that purchasing a preschoolers lunch through the school should be mandated. While it may be offered, I should be able to opt to pack my own child's nutritional lunch. Faith Christian Academy has contracted with a food service provider at a cost of \$4 per day for each child. That's an additional \$80-\$100 per month. I don't spend that amount of money on my own lunch as an adult! There is an outrageous amount of food that is wasted due to student's dislike and refusal to eat. As my child repeatedly tells me she did not eat such and such provided in the school's lunch ~ she's not receiving a good balanced meal for lunch, despite the mandated desire.

However, if I'm given the option to send my child with a packed lunch, I can ensure she's eating all of it and receiving the nutritional value available. She's happy, eating a complete lunch, and I've saved a great deal of expense!

Please make the decision to allow parents the option of sending their child to school with a packed lunch from home. Please do so immediately, that we may benefit from this decision this school year in question. I appreciate your consideration! Name: Sharon Doub

Comment: I only hope that Section 16 will be changed to permit the center or school to allow food to be brought from home for a child to eat. In my case I have a four year old that attends a private school {Faith Christian Academy}and about 70% of the time goes Hungry for the best part on the day because she doesn't like the food being prepared for her, and you can't force a child to eat what they don't like. I know that when I pack her lunch that it will be food that she likes to eat and in a lot cases more healthier then the food being provided to her.

Comment: The amendment to the Child Care Centers Licensing Requirements Section 16 permitting a center to choose whether or not to allow food brought

from home for a child to eat should not be changed for two reasons. First, the process of packing lunch can be a tool for enhancing quality time while providing opportunities to teach children good eating habits and important nutritional values, based on individual family and cultural differences. Second, and most relevant, is permitting each center to remain independent in making this choice based on factors such as allergy concerns, center size, and funding issues.

Comment: I am a mother of a 1 year old child who has been in day case since he was 6 months old. Upon him beginning to eat some solid foods, I was going to bring in the homemade baby food that I had made for him. Once I mentioned this to the workers, I was told that I was not allowed to bring home made food, it had to be in an unopened jar. I was very upset by this regulation. It didn't make sense to me that I was trusted to make my child's bottles at home but could not make other food for him. As he is getting older, he will be eating regular table food. I have discovered that I do not have a whole lot of options if I do not agree with the food that is being offered at his center. They participate in the reduced lunch program which effects what I can provide my child and I do not even qualify for any of the programs that put these restrictions on the centers.

I feel that as long as the state is not paying for my child in any way, then I should be able to send any food that I deem appropriate for him. If that requires my having to sign a statement waiving the day cares responsibility in the case of food poisoning or such, then so be it.

I feel that because I have to work, that many of my decisions as a parent are taken away from me because I have no other choice than to use day care. The state is in essence responsible for making decisions for my child. Name: Megan

Comment: I believe it is totally unfair to not allow us to send our daughter to daycare without her own food prepared at home. Most days the food provided is overly processed, greasy, and does nothing to contribute to eating "5 healthy servings of fruit and vegetables a day". I realize that it meets governmental guidelines, but it does not encourage healthy eating habits. Our center does not allow any outside food to enter the building and my daughter is now learning that biscuits and gravy is an acceptable breakfast every day of the week. I would like to send her with something more nutritious (as their breakfast occurs after I drop her off) but we are not allowed. This policy is more about protecting the few with allergies than fostering a healthy eating lifestyle. Name: Michael Noto

Comment: I feel that children should be allowed to bring food from home to eat. It's no different than public education. Let's be reasonable about this. Name: courtney mckenzie

Comment: I believe it should be the center's right to choose whether they want to allow food brought from home. This would most likely be on special occasions for most centers such as holidays or birthdays. I wouldn't think that they would typically allow food to be brought in from home on a daily basis. Although it some may, this should still be the centers policy, not the states.

Name: Melodee Price

Agency Response to Category 1:

The proposed rule will not guarantee that a center will permit food from home, but will provide the center with a choice. This will be an opportunity for the parent and the center to have a meaningful

dialogue regarding nutrition, safe meal preparation and the learning that takes place at meal time.

Comments in Category 2

Comment: I am the owner of a child care center and I feel the once the children have a WVEIS #, they should be treated like any other school age child and be permitted to bring in a lunch or snack if they desire to. (No name)

Comments: It looks like the changes align with the NAEYC guidelines for providing nutritious meals and snacks as well as addressing any food allergies children may have. Looks great. Jeanette Barker, Playmates

Comment: As a child care provider, who is motivated in establishing a well rounded learning environment for children, I am in agreement in allowing children to bring their own food to the center. The reason for my agreement is as follows:

- 1) many of my children have food allergies, which make it difficult to prepare snacks and meals that meet everyone's needs.
- 2) Some children are picky eaters, therefore may go without eating because of their limited meal choices.
- 3) As long as parents are given a list of set choices from the food chain, and they abide by it, I see no reason to exclude this option from the regulations.
- 4) It makes it less costly to the center, which does not receive subsidies for meals, while keeping tuition lower. Thank you

Name: Norma Oviedo

Comment: Regarding section 16: whether or not to allow food brought from home to the Center: I own a Montessori preschool/childcare center and have been licensed in WV since 1979. Years ago I requested a variance to this policy because I only had a dozen children staying on in the afternoon, at that time, and the cost of hiring a cook was a hardship. I had a carefully layed out plan to insure nutritious meals were sent in, which included educational materials regarding nutrition, suggestions for meals and clearly stated prohibitions against certain foods that are regarded as harmful (ex:soda) to the health of the child. My request was turned down, without explanation, except: I must follow regulations. Years later, here's how I feel: Parents should have the right to decide what foods they want their child to eat (or not eat) while away from home. It makes no sense to refuse them that right until the child becomes 5 years old (kindergarten)-- and then: nevermind? What changes in that year between 4 and 5? It has never been clear to me why the state has such a rule in the first place, unless it is 'lack of trust in the parents' to protect the health of their own child. (I have always wanted an explanation for this ruling.)

There are ways to encourage nutrition and to control the quality of foods that arrive in the child's lunch box. I have every confidence that my parent body would send in a wide variety of nutritious foods, representing all the major food groups, and would appreciate having that option. Name: Virginia L. Zuboy

Comment: I have been a preschool aide for 17 years and have found that snacks from home are more nourishing than the ones that can be purchased from local stores. We used to have wonderful snacks arriving for children's birthdays but since the law passed that only store-bought food can come in, we get cupcakes from Kroger, WalMart, cookies, etc. I believe that individual

preschools can determine what is a healthy snack and talk to their individual families about what can/can't come into their setting.

Name: Pam Morgan

Comment: This comment is made in relation to a WV pre-k classroom located in a daycare center.

I feel that parents should have the right to send a cold lunch if a hot lunch requirement will incur an expense on the part of a parent. Education, whether through parent meetings and/or brochures need to be provided to parents as to what constitutes a nutritious meal should be provided. Children may be introduced to new foods through the snack program. Name: Marty Davis

Comment: I do feel that children should be allowed to send food from home as long as it is considered healthy (follows the state guidelines for healthy eating.) Many parents worry that their children won't eat the foods provided and will be hungry throughout the day. This is one of the major concerns that I hear from parents, and the first question that I am asked by many of my parents is "what did my child eat today?" I think that by allowing children to bring their lunch would give parents peace of mind throughout the day. I feel that it is our job as educators to provide information about healthy eating and promote healthy eating however, I feel that in a way children are forced to eat the meals provided by the centers or go hungry. Name: Stacie

Comment: I'd like to see the wording changed to exclude child care centers from the requirement to supplement the meal brought from home in order to meet the School Lunch Program meal requirements. Any adult who works with children will voluntarily offer supplements to the meal if the adult sees that the meal is lacking in nutrition or amount of food available to the child. Requiring the adults to supplement the meal implies that the center is legally/regulatorily liable for the entire meal without (1) reimbursement; (2) accountability; and (3) ability to totally monitor meals brought from home.

Comment: I think that food should not be brought from home if it would require the time to go through each child's lunch, etc., to ensure it was healthy and nutritious. Child care professionals already have a demanding job, why add more stress and confusion? I do think, however; parents should be able to bring in packaged baby food products for their infants who attend the infant rooms of a child care center. I think the rule should apply to children who can eat table foods and no longer require baby food. As for allergies, I believe for each individual case, it is up to the parent and child care center to decide and agree on what kind of action needs to be taken in order to provide an alternate meal if needed. I think it is important that children learn about diversity even if it starts with the lunch room and an allergy. I also feel that it is important that the child with the allergy should not be singled out and made to feel bad and the same with the child without the allergy.

Agency Response to Category 2:

The proposed rule will not require that a center permit food from home, but will provide the center with a choice. This will be an opportunity for the parent and the center to have a meaningful dialogue regarding nutrition, safe meal preparation and the learning that takes place at meal time. Concerns of the center having to supplement a meal lacking in nutrition has been addressed by removing

that requirement and replacing it with a requirement that the center will provide a meal if the parent does not.

Comments in Category 3

Comment: I do not believe this amendment should be passed. Some children do not have the means by which to bring food from home. Some parents would also send nothing but "junk" with their children. I believe with the obesity rate as high as it is in West Virginia, our children would be better served to receive a balanced meal. Thank you for your time and consideration. Name: Margarete Clark

Comment: Comment regarding amendment 16.12:

This amendment would cause much confusion, danger to children with allergies, a decrease in healthy nutritional intake in children, and unnecessary hardship on center staff. To allow children to bring snacks and meals into a center is opening Pandora's box. To police what is brought into the center would require more employed staff that stretched center budgets cannot absorb.

The danger of someone bringing food with allergens into the center would greatly increase and the chance of an allergic child being exposed to those allergens would greatly increase as well.

16.12.a.2. Centers cannot guarantee the proper preparation and storage of food in the home, yet we will be feeding these foods to young children and assuming the responsibility for that food intake.

It simply is not just to require centers to abide by the CACFP nutritional guidelines and then allow parents to bring food into the center that has not been purchased by the center to meet those guidelines. We do not have nor can afford to have the manpower that would be needed to meet 16.12.a.4. This will promote a negative relationship between centers and parents and that will negatively impact the team-approach to quality early care.

As early care and education providers, we are ever-teaching and modeling sharing. How will a large group of young children understand 16.12.a.5.?

16.12.b. Cannot be met by this center due to storage constraints at this time. We cannot store the food we purchase and food brought from home also. And then in turn, purchase and store more food to meet 16.12.e.

16.12.f. An amendment to this rule will unfairly increase the liability of centers.

Centers will lose reimbursement incomes from the CACFP if children bring their meals to the center, children's positive nutritional intake will decrease, and the hard work that centers have done to assure good nutrition in a safe setting will be negatively impacted. Name: Michele Forsythe

Comment: Allowing children to bring in a brown bag lunch to child care center pre-K programs places an undo burden on the teachers at the child care facilities. Teachers will be required to inspect each lunch for allergens and to be sure the appropriate portions/food are in each lunch. This would require teachers to have special training on the food program and also take away instructional time while a teacher inspects the meals. In addition, because the child care facility would have to have a lunch prepared for every child in case one or more of the brown bag lunches is inappropriate, it places a financial burden on the center because they can not claim

reimbursement for those brown bag lunches, but must prepare food for all children.

Child care is expensive, but so is operating a child care facility. The centers need every penny they can get. With Pre-K programs being free to parents, the financial burden to parents of children enrolled in the program is much less than the burden they had prior to the Pre-K program.

Parents have the option of sending lunches already if they have a medical form to do so- obesity is a medical condition allowable for bringing in special foods.

According to state regulations, children can not be billed for lunches if in a child care setting anyway, so the bill should not be going to the parents of the children enrolled in the Pre-K Program, but rather to the center providing those programs. Then, the center could reimburse the Board of Education for those meals and the Board could cut the \$2.47 per lunch per child reimbursement rate check back to the center. This is win-win for schools, centers and families.

Comment: I am worried about Pre-K collaboratives. I worry that eventually we will be made to allow children to bring lunches if they are a collaborative even if our center policy states otherwise. Allowing children to bring their own lunches goes against the philosophy of family style eating: eating nutritious foods, trying new foods, table manners-passing and serving etc. Children will have 13 years to pack lunches. Our job is to educate by active participation. Having the children actively participate in family style eating will start them on the pathway to nutritious eating. Name: Helen Post-Brown

Comment: I'd like to see the wording changed to exclude child care centers from the requirement to supplement the meal brought from home in order to meet the School Lunch Program meal requirements. Any adult who works with children will voluntarily offer supplements to the meal if the adult sees that the meal is lacking in nutrition or amount of food available to the child. Requiring the adults to supplement the meal implies that the center is legally/regulatorily liable for the entire meal without (1) reimbursement; (2) accountability; and (3) ability to totally monitor meals brought from home.

Offering/providing milk for meals brought from home is less burdensome for centers to bear the cost, account for the drink, and easier to monitor that the drink is available and whether it was consumed by the child.

If a childcare center has a policy that no food can be brought from home and that all children must eat all meals served at the center, preK collaborative should contractually abide by this policy, regardless of the School Lunch Program's requirement that children should be able to bring meals from home. Name: Karen Cochran

Comment: I think that food should not be brought from home if it would require the time to go through each child's lunch, etc., to ensure it was healthy and nutritious. Child care professionals already have a demanding job, why add more stress and confusion? I do think, however; parents should be able to bring in packaged baby food products for their infants who attend the infant rooms of a child care center. I think the rule should apply to children who can eat table foods and no longer require baby food. As for allergies, I believe for each individual case, it is up to the parent and child care center to decide and agree on what kind of action needs to be

taken in order to provide an alternate meal if needed. I think it is important that children learn about diversity even if it starts with the lunch room and an allergy. I also feel that it is important that the child with the allergy should not be singled out and made to feel bad and the same with the child without the allergy.

Comment: I believe that the regulations regarding food brought from outside the center should be left as it is. There is no way to guarantee that a parent will follow heating and storage guidelines. Our center participates in the food program and we are able to provide meals and snacks for our children. There is no reason that outside food needs to be brought in. This helps to ensure that all food that will be eaten by any child in the center is handled in the appropriate manners.

Thank you. Jaime Price, Assistant Director, Discovery Corner Daycare

Comment: I hope that this rule does not change. That would be a nightmare!!! Centers will still have to check to assure that food meets nutritional guidelines and centers would have to provide storage...it's hard enough doing this now.

Lynn Wallace

Comment: We prefer that the previous regulation be maintained which states that parents may NOT bring in food for their children. Thanks, Jennifer Spinks/Doodlebugs Morgan County

Comment: I feel this is a terrible idea. Not only will we lose control of the food which is brought into the Center, we will potentially expose all of our children to food items which they may have an allergic reaction too. In addition, nutritional guidelines will be significantly undermined by this action. We participate in the National Food Program and we believe this gives us the best chance at positively influencing children's nutritional health for the remainder of their lives. If a parent feels it is appropriate to feed her child Soda and Potato Chips for lunch, we will have a difficult time discouraging the choices. Obesity is a national problem and adding to the problem does not seem like wise policy. Name: Andrew Fizer

Comment: We feel that at our center we would not want to allow food from home. We would have concerns that not all food from home will meet the nutritional requirements for the children. Also, the other children who are not bringing food from home may want what that child is having, especially if it is deemed a more desirable food item than what is being served on the center menu. We would have concerns that we may have to supplement a meal or remove items in order for the meal to meet nutritional guidelines. We would have problems creating a food budget not knowing how many days and for how many children we may or may not have to serve a meal to or supplement a meal from home with something from our kitchen.

Comment: I am opposed to any changes in the current Child Care Center Licensing Requirements. I believe the proposed food changes would be cost prohibited for Child Care Centers.

Comment: In my opinion, I do not think it is fair to the other children in the day care center for a child to be able to eat what is brought for him. We are a family oriented center and everyone sits together at the table, even staff. Also, everyone eats the same thing, whether they like what is served or not. If you let children bring their own food then how are you going to count them on the food program? We lose out on our funds, which we need.

Comment: Not only am I shocked that this is even being considered, but moreover I am concerned. In the past, before participating in the food program, we allowed school age children to bring their lunches (we enroll children ages 6 weeks to 12 years) and I saw alot of candy bars and potato chips. I have so many concerns with this change that it is easier to simply list them:

1) The children are not encouraged to try new, healthy foods. I have found that the power of influence by other children is great. Children will try something because their friend is eating it and they'll find they actually like it (AKA just because mom doesn't fix it at home doesn't mean children won't eat it). I have seen many children broaden their list of foods they like simply because they were invited/encouraged/influenced to try it here at our center.

2)The children who don't have lunches packed will feel bad and most likely begin to shy away from healthy, colorful foods like brussels sprouts and fresh cantaloupe when they see the child beside them eating Doritos and Fudge Rounds. The children who pack their lunch will actually become damaging to our nutrition program and cause more obstacles for us to overcome in our fight to help children become fit and healthy.

3)Adding all the regulations to our Parent Handbook will make the information the parents receive even more overwhelming. Already our parents do not read all the information because there is too much of it. I literally read over all the information and Handbook when I do an enrollment and it usually takes about two hours. This requires more paperwork and wasted time.

4)I think parents are actually happy that their children cannot bring their lunches. When we made it a policy that "no outside food can be brought into the center" only two parents were temporarily upset about it, and they adjusted quickly (as did the kids). The others were thankful that they could blame us for their child not being able to spend 30 minutes in the morning telling mom what to pack and mom actually saved time in the mornings by NOT having to pack lunch. All of our children and parents discovered that the children liked alot more foods than they thought. One or two of the children tried not eating anything so mom and dad would feel bad that there wasn't anything on the menu they liked, but when they discovered that they couldn't change the policy by not eating they started eating. Ironically, 80% of the items on our menu are things that children eat and enjoy at home, like hamburgers, hotdogs, and pizza. When the parents realized that their child liked the things on the menu they would say to them "You eat it at home" and gradually and in a very short time frame, everyone adjusted and we even present children with a "Good Fish" for trying foods they've never tried before.

5)Over the course of time (or perhaps right from the "get go") children would start bringing in things that needed to be microwaved like Spaghetti O's and this would take staff away from the children to heat such items. If the staff spend their time heating food how are they supposed to eat with the children and teach them social skills and good table manners?

6)Parents often need babysat more than children; no matter how much I could preach to them on food allergies there is a great risk that a child would be exposed to an item of food that could cause a severe reaction. We have one child at our center who is so severely allergic to strawberries that she had a reaction resulting in a trip to the hospital because a staff member was wearing some lotion that apparently had some strawberry aloe in it. There

have been incidences and people on planes with peanuts who never touched a peanut, but died from asphyxiation just from being near them. This is not anything to gaff off. We, the provider, are aware of each our children's allergies and can protect them if we don't have foods coming from all sorts of places.

7) It is probable that centers could start charging an additional rate if they begin losing money from CACFP due to children bringing their lunches and not being able to be claimed on the program. In theory, if you're not feeding them it's not costing you anything, but many centers consider their reimbursement from CACFP as part of their debt to income ratio and if that becomes compromised the centers would need to find other avenues of income, such as higher childcare rates or various fees.

I am sure that I have not listed all the concerns that the consideration of allowing children to bring food from home would cause, but I hope I have given enough reasons to consider NOT allowing children to bring food from home.

We need the support of our states if we are to continue educating our children and exposing them to different foods and cultures.

Thank you for your time and all the effort you already make... let's not go backwards with the progress we have made with our children. Thank you, Robin Zimmerman

Comment: I am opposed to the proposed changes to the Children Care Center requirements.. I feel they will be cumbersome and burdensome to the day cares. Name: Phyllis J. Lewis

Comment: I feel that if parents would be allowed to bring in food for their children it may not be of good nutritional value. I realize we would need to add to the meal the recommended nutritional foods. I believe that the child would not eat what was offered to make the meal nutritional. I believe that due to the different ages of children enrolled in our facility, the other children would not understand why they have to eat food prepared by the center and the other children can eat foods brought in by parent. Name: Linda Lafferty

Comment: I do have concerns with the proposed amendment to Section 16. If this section is determined to be amended, I most definitely agree with the phrase "to permit a center to CHOOSE whether or not to allow food brought from home." This director and center will choose not to allow food to be brought from home for these reasons:

1. I cannot successfully assure that parents will follow nutritional guidelines or preparation or storage guidelines. It is unfair to require a center to assure that these guidelines are met when the center has no control over what happens outside of the center. This will increase center liability and staff documentation time if a child becomes ill from cross-contamination and may increase the likelihood of a child's illness.
2. It will also increase the chance of exposure of food allergens to other children, which in turn will increase a child's risk of an allergic reaction and again, the liability of the center.
3. Food costs are the second largest percentage of this center's budget. Our already very challenged budget cannot accommodate providing meals and snacks for children on an inconsistent basis. Meals are catered to this center. They must be ordered in advance. We would not be able to accommodate a "standby" meal or snack for those children whose parents did not comply with the many guidelines that are required for nutritionally sound, safely prepared meals.

4. We are very limited in storage facilities. We would not be able to adequately and safely store foods brought from children's homes. Name: Michele Forsythe

Comment: I have read the proposed child care licensing revision which will allow children to bring food for meals or snacks into the center. As an early childhood professor, I strongly believe this is not a positive change and it should not be approved.

Developmentally appropriate practices encourages the use of family style meal service. In my home, I would not prepare and serve SOME of my family a meal and have the rest of my family opening a brown bag or lunch box meal. Why would we do this in a child care setting where food experiences provide an opportunity to model good manners and best practices?

I am also concerned about 16.12.e which states that "The center shall supplement any meal or snack not meeting nutritional guidelines". Who is the nutrition "watchperson" assigned this duty in the center? Many of our child care teachers are making minimum wage or slightly above. Are we now going to assign another responsibility to them since they are with the children at meal time? Are all teachers going to be trained to know and understand nutritional guidelines? Supplying healthy, nutritious foods is very important and we should not do anything that will put children in jeopardy.

16.12.f. says that children shall not be segregated based on food allergies during meal or snack time. Who is responsible when a teacher is distracted during a small emergency or accident and does not see a small child's hand reach into another child's lunch brought from home? What if that little hand picks up a food, eats it, and an allergic reaction results? Are we willing to take this risk in our state?

As an early childhood professional, I want what is best for our children and I continue to work and teach to improve the quality of care provided around our state. I can not understand how the proposed licensing changes will improve the quality of child care in West Virginia. I sincerely hope the proposed changes are not approved. Name: Nancy Cheshire

Agency Response to Category 3:

The proposed rule will not require that a center permit food from home, but will provide the center with a choice. This will be an opportunity for the parent and the center to have a meaningful dialogue regarding nutrition, safe meal preparation and the learning that takes place at meal time. Concerns of the center having to supplement a meal lacking in nutrition have been addressed by removing that requirement and replacing it with a requirement that the center will provide a meal if the parent does not. The language to the requirement prohibiting segregating a child with an allergy has been changed and clarified. We have also included in changed language that staff persons will receive the same information as parents. The Division of Early Care and Education shares many of the concerns in this category, but feels it must permit a center a choice so that those centers that need to permit food from home in order to participate in a pre-k collaborative can do so in a manner that safeguards children and allows the center to control the process.

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HUMAN SERVICES

FILED

2008 AUG 26 AM 10:52

SERIES 1
CHILD CARE CENTERS LICENSING

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§78-1-1. General.

1.1. Scope. -- This rule established standards and procedures for the licensure of child care centers under the provisions of West Virginia Code §49-2B-1 et seq., and related federal and state code. This rule should be read in conjunction with the provisions of West Virginia Code §49-2B-1 et seq. The West Virginia Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. - West Virginia Code §49-2B-4.

1.3. Filing Date. - ~~July 28, 2006~~

1.4. Effective Date. -

§78-1-2. Application and Enforcement.

2.1. Application. This rule applies to any individual, firm, corporation, association or organization, public or private, that operates child care centers for the care of thirteen (13) or more children on a nonresidential basis.

2.2. Enforcement. This rule is enforced by the Secretary of the Department of Health and Human Resources.

§78-1-3. Definitions.

3.1. Active Media. - Materials that the child can control while participating in an activity such as taking pictures with cameras, making audio or video tapes, playing video games or working on a computer.

3.2. Adequate Supervision. - The observation, oversight, and guidance of the individual child or groups of children, by the staff member taking responsibility for the ongoing activity of each child or group of children so that the staff member is close enough to intervene, if necessary, to protect the child from harm. Adequate supervision requires the staff member's physical presence, knowledge of the child's program of activities, individual needs, habits, interests and special problems, if any, and the acceptance of accountability for the child's or groups of children's care.

3.3. Approved Training. - Training that has been approved by the Secretary.

3.4. Approved Training Source. - A training provider that has been approved by the Secretary.

3.5. Authorization and Release for Protective Services Record Check. - A document provided by the Department, signed by a center's prospective staff member or employee, granting permission to conduct a search of Department records related to his or her involvement in child or adult abuse and neglect allegations, or other investigations documented by the Secretary.

3.6. Certificate of Approval. - A written certificate issued by the Secretary stating that a child care center operated by the state meets requirements in accordance with the terms and conditions of the certificate and this rule.

3.7. CDA (Child Development Associate) Credential. - The national early childhood credential administered by the Council for Early Childhood Professional Recognition.

3.8. Child. - For the purpose of this rule, an individual who is less than 13 years of age.

3.9. Child Abuse and Neglect. - Physical injury, mental or emotional injury, sexual abuse, sexual exploitation, the sale or the attempted sale, or negligent treatment or maltreatment of a child by a parent, guardian or custodian responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

3.10. Child Care Center. - A facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than 30 days per year per child, except:

3.10.a. A kindergarten through grade twelve education program, that is operated by a public school or that is exempt from the compulsory school attendance law by the state department of education;

3.10.b. A West Virginia Pre-K classroom operated by a county Board of Education in a public school setting;

3.10.c. Any other kindergarten, preschool or school program that operates with sessions not exceeding four (4) hours per day for any child;

3.10.d. An individual or facility that offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

3.10.e. Hospitals or other medical facilities that are primarily used for temporary care of children for treatment, convalescence, or testing; and

3.10.f. Persons providing care solely for children related to them.

3.11. Continuous Supervision. - The availability and responsibility of a staff member to assist with child care at all times.

3.12. Core Knowledge and Core Competencies of Early Childhood Educators. - The sets of observable skills and knowledge that represent common standards of satisfactory practice in the early childhood field in the state of West Virginia.

3.13. Criminal Identification Bureau Record (CIB). - The State Police documentation, as a result of a fingerprinting process, that identifies a person who has been arrested or convicted of criminal behavior.

3.14. Day Camp. - A school-age program that is operated when school is not in session, for no more than twelve (12) hours per day and is not primarily outdoor based.

3.15. Designated Activity Area - Room divisions within the center that define limits and reduce distractions. These divisions shall include a temporary wall or physical barrier that is at least three (3) feet in height.

3.16. Direct Supervision. - When a qualified staff member is physically present in the same room, area, or vehicle with the child or group of children, visually monitoring the interactions of the children.

3.17. Disinfect. - Eliminate virtually all germs from an inanimate surface through the use of chemicals or heat.

3.18. Driver. - A staff member who transports center children more than three (3) times per week or a staff member whose job function is to transport children served by the child care center.

3.19. Early Care and Education Field. - An area of study that relates to child development, early childhood from birth to eight (8) years of age, child and family studies, early childhood special education or other early childhood fields.

3.20. Evening Care. - Care provided after seven o'clock in the evening to a child who does not stay overnight.

3.21. Field Trip. - An excursion or special outing away from the site where program activities regularly occur.

3.22. Full-time Director. - A director who is present at the center for a minimum of one-half ($\frac{1}{2}$) of the hours the center is in operation during a seven day period, or thirty-five (35) hours during the same seven day period, whichever is less.

3.23. GED. - A certificate verifying passage of a test of General Educational Development recognized as equivalent to a high school diploma.

3.24. Governing Body. - The individual owner of the center or the group of persons that have the administrative control and legal authority to set policy and oversee operations of a child care center.

3.25. Group. - A specific number of children, distinct from the larger population of children, who regularly meet together and interact with each other and with one (1) or more specific staff members, in an

assigned space. The size of the group and required number of staff are determined by the staff:child ratio set out in this rule.

3.26. Level I Field Trip. - An excursion or outing to a destination that is thirty (30) minutes or less from the center or from the site where program activities regularly occur.

3.27. Level I Water Activity. - Any activity occurring in or near water eighteen (18) inches deep or less.

3.28. Level II Field Trip. - An excursion or outing to a destination that is more than thirty (30) minutes from the center or from the site where program activities regularly occur.

3.29. Level II Water Activity. - Any activity occurring in or near water with a depth of more than eighteen (18) inches.

3.30. License. - A written certificate issued by the Secretary authorizing a person, corporation, partnership, voluntary association, municipality, county, or any agency thereof, to operate a child care center in accordance with the terms and conditions of the license and this rule.

3.31. Licensed Capacity. - The maximum number of children permitted in a center.

3.32. Licensed Health Care Provider. - For the purpose of this rule, an individual who holds a license to practice in West Virginia as a physician, Doctor of Medicine or (MD), Doctor of Osteopathy (DO) or, physician's assistant (PA), chiropractor or nurse practitioner .

3.33. Licensee. - The holder of a license or certificate of approval obtained from the Secretary to operate a child care center in West Virginia.

3.34. Medication Error. -

3.34.a. Failure to administer a dose of medication; or

3.34.b. The administration of a medication:

3.34.b.1. To the incorrect child;

3.34.b.2. In the incorrect dosage;

3.34.b.3. At the incorrect time, other than within thirty (30) minutes before or after the scheduled time;

3.34.b.4. In the incorrect form;

3.34.b.5. By the incorrect method or route; or

3.34.b.6. That is incorrect itself.

3.35. Night Time Care. - Care provided to the child who stays during nighttime hours or overnight, which may include the time usually designated as sleep time.

3.36. Out-of-school Time Program. - A program that offers activities to children before and after school, on school holidays, when school is closed because of an emergency, and on school calendar days set aside for teacher activities.

3.37. Parent. - The biological or adoptive parent or parents of a child, a person or persons, or the Department, who has legal custody of a child, or the lawful guardian of a child.

3.38. Passive Media. - Materials that the child cannot control while participating in an activity such as watching television, films and video tapes.

3.39. Person-in-Charge. - The qualified staff member with responsibility for the daily operation of the center at any specific time.

3.40. Plan of Correction. - A written agreement between the Department and a center, approved prior to implementation, that outlines the steps the center shall take to correct deficiencies identified by the Secretary through an inspection or the investigation of a complaint.

3.41. Practicum Contact Hour. - A period of supervised experience recognized for credit toward a credential by an educational institution or similar organization.

3.42. Qualified Staff. - A staff member who has a high school diploma or GED and meets the requirements under this rule for the position of director, assistant director, lead teacher, teacher, assistant teacher, or teaching assistant.

3.43. Registered Apprenticeship Certificate for Child Development Specialist. - A nationally recognized credential awarded by the United States Department of Labor for the successful completion of a combination of classroom and on-the-job training.

3.44. Related Field. - As approved by the Secretary, an area of study that may be associated with the early child care and education field, including education, social work, recreation and leisure studies, nursing, counseling, psychology, and administration related to the care and education of the child from birth through twelve (12) years of age.

3.45. Relevant Work Experience. - Work that is directly with or on behalf of children from birth through twelve (12) years of age, and their families in areas of supervision, leadership or management; program coordination, development or regulation; training, instruction or technical assistance; or evaluation or research. Private or family child care is considered relevant work experience only if the care was regulated care and can be verified.

3.46. Responsible Person. - A parent, center staff member, or other person designated by the parent in written information, to drop off or pick up the child.

3.47. Sanitize. - Destroy pathogens on food contact surfaces, such as utensils, cups and glasses, through the use of processes involving chemicals or heat that do not pose a threat to food safety.

3.48. Secretary. - The Secretary of the Department of Health and Human Resources or his or her designee.

3.49. School -Age Child. - A person who is between five (5) and thirteen (13) years of age and is eligible to attend school or is enrolled in grades K-12.

3.50. School-Age Program. - Services provided by a center for the care and supervision for school-age children. These programs include summer recreation camps, day camps and out-of-school time programs.

3.51. Serious Occurrence. - An event that either harms or could potentially harm a child. It may include:

3.51.a. A child who dies while in care;

3.51.b. A child who is injured while in care to the extent that the child requires medical care beyond immediate first aid;

3.51.c. A diagnosed reportable communicable disease that is introduced in the center;

3.51.d. A medication error that occurs;

3.51.e. A legal action involving or affecting the operation of the center;

3.51.f. A serious violation of a licensing requirement, such as use of physical punishment or failure to supervise; or

3.51.g. A report given to Child Protective Services of suspected abuse or neglect of a child at the center.

3.52. Special Activities. - Potentially dangerous organized recreation that require special technical skills, safety equipment, safety regulations, or involve fire or heat-producing equipment. These include, but are not limited to, Level II water activities, archery, gymnastics, karate, horseback riding, bicycling, rock climbing, spelunking, hiking and cookouts.

3.53. Staff Member. - Any center personnel, including substitutes and student interns, whether or not he or she receives compensation.

3.54. Staff:Child Ratio. - A relationship which describes the number of children that one (1) qualified staff member or substitute is permitted to supervise. The number varies according to the ages and developmental levels of the children and the types of activities in which they are participating.

3.55. Statement of Criminal Record. - A Department provided document signed by a person of his or her arrests or convictions and the authorization for the Department to do a search for a criminal record and release the findings to the center.

3.56. Substitute. - An individual who is present at the center to maintain the staff:child ratio when a qualified staff member is absent.

3.57. Summer Recreation Camp. - A school age program that operates during the summer months, whose program orientation is primarily recreational, and of which eighty percent (80%) of the program occurs outdoors.

3.58. Support Staff. Staff who carry out duties not regularly involving the supervision of children.

3.59. Teen Aide. - An individual who is between thirteen (13) and eighteen (18) years of age who works with or without compensation under the direct supervision of a qualified staff member who has a minimum of the qualifications of an assistant director or lead teacher.

3.60. Time-out Period. - A length of time when the child is removed from regular activities as a consequence for specific behavior.

3.61. Training. - Classroom instruction and programs of self-instruction including distance education provided through a variety of media, seminars, workshops, conferences, on-the-job training, and mentoring designed to impart knowledge or skills.

3.62. Type I Center. - A child care center with a capacity of thirty (30) or fewer children.

3.63. Type II Center. - A child care center with a capacity of thirty-one (31) to sixty (60) children.

3.64. Type III Center. - A child care center with a capacity of sixty-one (61) or more children.

3.65. Universal Precautions. - Procedures to be followed for infection control in all situations to prevent the transmission of blood borne germs that may be spread through blood or body fluids that might contain blood.

3.66. Use Zone. - The surface under and around a piece of equipment onto which the child falling from or exiting from that the equipment is expected to land.

3.67. Variance. - A written declaration by the Secretary that a certain requirement of this rule may be satisfied in a manner different from that set forth in the rule.

3.68. Volunteer. - An individual who provides a direct service to the center for two (2) or more hours a week on a scheduled basis, without compensation, and is eighteen (18) years of age or older; provided, that a parent of an enrolled child working directly with his or her own child is not considered a volunteer under this rule.

3.69. Waiver. - A written declaration by the Secretary that a certain requirement may be treated as inapplicable in a particular circumstance.

3.70. West Virginia Training Certificate in Early Care and Education (WVTCECE). - A certificate for completing one hundred twenty (120) hours

of training in the core competencies of early childhood education awarded through the WV STARS Professional Development System.

\$78.-1-4. Licensing Information and Provisions.

4.1. Requirements for a License or Certificate of Approval.

4.1.a. Before establishing or operating a child care center:

4.1.a.1. A center operator and each member of the governing body shall verify in writing that he or she has read this rule and is responsible for compliance with its requirements;

4.1.a.2. A child care center, other than one operated by the state, shall obtain a license from the Secretary; and

4.1.a.3. A child care center operated by the state shall obtain a certificate of approval from the Secretary.

4.1.b. A license or certificate of approval is valid for up to two (2) years from the date of issuance, as determined by the Secretary, unless revoked or modified to provisional status.

4.1.c. A license or certificate of approval is valid only for the center and its location named in the application and is not transferable.

4.1.d. A licensee shall post the license or certificate of approval in a conspicuous place in the center.

4.1.e. If the ownership of a center changes, the new owner shall apply for a license and shall not operate until an initial license is issued.

4.1.f. Before the location of a center changes, the licensee shall:

4.1.f.1. Inform the Secretary of the planned change at least sixty (60) days prior to the relocation; and

4.1.f.2. Apply for a new license or certificate of approval and shall not operate at the new location until an initial license or certificate of approval is issued.

4.2. Application for a License or Certificate of Approval.

4.2.a. For each center to be licensed or approved, an applicant shall submit a completed application as prescribed by the Secretary.

4.2.b. A licensee shall submit an application for renewal of a license or certificate of approval to the Secretary not less than sixty (60) days prior to the expiration of the current license.

4.3. Waivers and Variances.

4.3.a. A center shall comply with the provisions of West Virginia Code §49-2B-1 et seq., the requirements of this rule, terms of its license or certificate of approval and any plan of correction, unless a written waiver or variance has been granted by the Secretary. A center may not obtain a waiver of the requirements of this rule on the basis of the inability to achieve compliance with the rule.

4.3.b. A request for a variance or waiver shall be submitted to the Secretary in writing. The request shall include:

4.3.b.1. The specific requirement of this rule requested to be waived or varied; and

4.3.b.2. The reason or reasons for seeking a waiver or variance.

4.3.c. A waiver or variance of a specific provision of this rule may be granted by the Secretary only if the following criteria are met:

4.3.c.1. The center has documented and demonstrated that the provision of the rule is inapplicable in a particular circumstance, or that the center complies with the intent of the provision in the rule in a manner not permitted by the rule;

4.3.c.2. The health, safety, and well-being of a child is not endangered; and

4.3.c.3. The waiver or variance agreement contains provisions for a regular review of the waiver or variance.

4.3.d. The waiver or variance agreement is subject to immediate cancellation if a center fails to comply with the stated terms of this rule.

4.4. Amendment of a License or Certificate of Approval.

4.4.a. A current licensee shall apply for an amendment of a license or certificate of approval when:

4.4.a.1. Implementing an additional program or changing a program described in the statement of purpose; or

4.4.a.2. Seeking to change the licensed capacity of the center.

4.4.b. In addition to a completed application requesting an amendment, a licensee shall submit to the Secretary in writing any of the following that apply to the change:

4.4.b.1. A copy of the center's revised statement of purpose as described in Subsection 6.2 of this rule;

4.4.b.2. The qualifications of the director and staff members;

4.4.b.3. A copy of the center's revised plan for meeting program requirements and staff:child ratios;

4.4.b.4. A floor plan reflecting changes to the structure being used by a child care center;

4.4.b.5. A positive inspection report from the State Fire Marshal following any changes to the center's operation and premises;

4.4.b.6. A positive inspection from the county Department of Health, including the Department of Health Child Care Center Inspection Report and the Department of Health Inspection Report for Food Service Establishments;

4.4.b.7. A menu review and certificate of approval as evidenced by a copy of the Child Care Center Menu Checklist or a written statement from Child and Adult Care Food Program administered by the Office of Child Nutrition in the Department of Education; and

4.4.b.8. A Pest Management Report as required by the West Virginia Department of Agriculture.

4.5. The Secretary may issue the following types of licenses or approvals:

4.5.a. An initial six month license or certificate of approval for applicants establishing a new service;

4.5.b. A regular or renewal license for a period of up to two (2) years for a licensee in compliance with this rule;

4.5.c. A provisional license for a licensee not in full compliance with this rule, but does not pose a significant risk to children. A provisional license expires six (6) months from the date of issuance, and may not be consecutively reissued.

4.6. Conditions of a License or Certificate of Approval. As a condition of issuing a license or a certificate of approval the Secretary may:

4.6.a. Limit the age, problems, type of behaviors, physical or mental conditions of children allowed admission to a particular center;

4.6.b. Prohibit intake of any children; or

4.6.c. Reduce the number of children that the center is licensed to receive.

4.7. Denial or Revocation of a License or Certificate of Approval.

4.7.a. The Secretary may deny, refuse to renew, or revoke a license or certificate of approval if the center materially violates any provisions of West Virginia Code §49-2B-1 et seq, violates any terms or conditions of the license or certificate of approval, or fails to maintain established requirements of child care.

4.7.b. When the Secretary denies, refuses to renew, or revokes a license or certificate of approval, the licensee shall not operate the center without a court order pending administrative or judicial review.

4.8. Closing of Center by the Secretary.

4.8.a. If the Secretary finds that the operation of a child care center constitutes an immediate danger of serious harm to the children served by the center, the Secretary shall issue an order of closure terminating the operation of the center.

4.8.b. A center ordered closed by the Secretary may not operate pending administrative or judicial review without a court order.

4.9. Administrative and Judicial Review.

4.9.a. Administrative and judicial review are subject to the provisions of §29A-5-1 et seq. of the West Virginia Code.

4.9.b. A decision issued by the Secretary may be made effective from the date of issuance. Immediate relief may be obtained upon a showing of good cause made by a verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected center is located.

4.9.c. The pendency of administrative or judicial review shall not prevent the Secretary from obtaining injunctive relief pursuant to the West Virginia Code §49-2b-5.

§78-1-5. Inspection and Investigation.

5.1. An applicant or licensee shall permit the Secretary access to the center to conduct announced and unannounced inspections of all aspects of the center's operation and premises.

5.2. A licensee shall provide all information requested by the Secretary.

5.3. When an inspection or complaint investigation finds non-compliance with this rule, the Secretary may require a plan of correction.

5.4. The Secretary may request the licensee to submit the results of a health examination, psychological examination or drug and alcohol screening result on the licensee or any personnel of the center if good cause is found during an inspection or investigation.

§78-1-6. Governance.

6.1. Administrative Structure.

6.1.a. General. The Licensee is legally accountable for the operation of the center and shall:

6.1.a.1. Ensure the center's compliance with the provisions of West Virginia Code §49-2B-1 et. seq. and the requirements of this rule.

6.1.a.2. Implement a statement of purpose as described in this rule; and

6.1.a.3. Develop policies and procedures to be kept in an administrative manual as described in this section to guide the operation of the center.

6.1.b. A center shall have a governing body to ensure that the responsibilities of the licensee are carried out.

6.1.b.1. The governing body shall be comprised of at least one (1) parent of a child currently served by the center, or when no parent is available for the governing body, a parent advisory committee shall be established as described in this section;

6.1.b.2. No staff member, staff family member, or employee of a public agency that regulates or makes eligibility decisions for the center may serve, but the director may be an ex-officio non-voting member;

6.1.b.3. The governing body shall meet at least four (4) times in a twelve month period and preserve in writing the minutes of each meeting, including but not limited to, the meeting's date and time, members in attendance, issues considered, and decisions made.

6.1.b.4. The governing body shall appoint a full-time director to manage the daily operations at each site where a center operates; submit the director's qualifications in writing for approval by the Secretary prior to employment; conduct an annual evaluation of the director; and oversee any necessary action regarding the director's job performance.

6.1.c. An unincorporated, individual licensee (owner) may act as the governing body. In addition to the requirements listed in paragraph 6.1.b.4. of this subsection, the owner shall appoint a parent advisory committee comprised of parents of children currently served by the center that meets at least four (4) times in a twelve month period.

6.2. Statement of Purpose.

6.2.a. An applicant or licensee shall ensure that each center has a written statement of purpose that includes:

6.2.a.1. The type of care and programs offered by the center;

6.2.a.2. The goals and objectives for each of the offered programs;

6.2.a.3. The ages of the children served;

6.2.a.4. The licensed capacity;

6.2.a.5. The scheduled days and hours of operations;

and

6.2.a.6. The admission and discharge policies.

6.2.b. An applicant or licensee shall ensure that the statement of purpose is:

6.2.b.1. Available to staff members at all times; and

6.2.b.2. Reviewed with all staff members whenever changes are made.

6.3. Administrative Manual.

6.3.a. An applicant or licensee shall ensure that each center has an administrative manual that includes the center's policies and procedures with the dates they were implemented or revised, regarding:

6.3.a.1. Confidentiality and information disclosure and secure disposition of records;

6.3.a.2. Admission and discharge;

6.3.a.3. Personnel:

6.3.a.3.A. Employment;

6.3.a.3.B. Termination;

6.3.a.3.C. Use of uncompensated personnel;

6.3.a.3.D. Background checks including criminal convictions and abuse and neglect findings;

6.3.a.3.E. Compensation;

6.3.a.3.F. Circumstances under which the center reserves the right to require drug and alcohol screening for drivers, other staff and volunteers; and

6.3.a.3.G. Periodic performance evaluations;

6.3.a.4. Behavior management;

6.3.a.5. Reporting of abuse;

6.3.a.6. Health, including, at a minimum, immunization, any parental objection to treatment, exclusion and re-admittance of the child with a communicable illness, and medication administration;

6.3.a.7. Attendance;

6.3.a.8. Emergencies;

6.3.a.9. Transportation; and

6.3.a.10. Grievance procedures.

6.3.b. An applicant or licensee shall ensure that the administrative manual is:

6.3.b.1. Available to staff members at all times; and

6.3.b.2. Reviewed with all staff members when changes are made.

6.4. Standards of Ethical Conduct. A center shall not misrepresent or operate a program in any way that is misleading, deceptive or illegal.

6.5. Grievance Procedure. A center shall develop and implement a written grievance procedure for families and employees. The procedure shall be written in clear and simple language and shall include at least the following provisions:

6.5.a. A center shall ensure that families and employees can express concerns or make complaints without fear of retaliation;

6.5.b. The center shall explain the procedure to parents and employees and obtain written acknowledgment that an explanation of the procedure has been provided.

6.6. Records and Information Disclosure.

6.6.a. Records. A center shall maintain the confidentiality of all records, including:

6.6.a.1. Child records according to the following guidelines:

6.6.a.1.A. A center where the child is currently enrolled shall keep the child's records on the premises and have a procedure for the maintenance, security and disposition of records;

6.6.a.1.B. A center shall store and secure records against loss, tampering, or unauthorized use and establish procedures restricting access to records and unauthorized use under the provisions of West Virginia. Code §61-3C-1 et seq.; and

6.6.a.1.C. A center shall retain records for a minimum of three (3) years following the child's discharge.

6.6.a.2. Staff records according to the following guidelines:

6.6.a.2.A. A center shall keep all current staff records on file on the premises and have a procedure for the maintenance, security and disposition of records;

6.6.a.2.B. A center that operates at more than one (1) site shall keep current staff members' emergency medical information on file at each location where a staff member is employed and at a central location; and

6.6.a.2.C. A center that operates at more than one (1) site may keep all staff records at a central location as long as the central location is in West Virginia.

6.6.b. Information Disclosure.

6.6.b.1. A center shall keep all information about the child confidential and shall only disclose it to staff members caring for the child in accordance with the center's policies and procedures.

6.6.b.2. A center shall obtain the written consent of the child's parent before disclosing information about the child, including photographs, audio or video recordings, or verbal statements about the child, except when disclosing information to the Secretary or his or her designee.

§78-1-7. The Child and Family.

7.1. Admission, Discharge, Basic Rights and Records.

7.1.a. A center shall develop, implement and maintain an admission policy and procedure ensuring that prior to the admission of the child to the center:

7.1.a.1. The parent completes and submits an application for child care services;

7.1.a.2. The director or designated staff member documents in the child's file, a meeting with the parent to exchange information about the center's programs and the specific needs of the child, including information about any individual characteristics and personality factors that may influence the child's behavior and well-being at the center, and any special family considerations that are relevant to child care;

7.1.a.3. A center provides to the parent a copy of its statement of purpose and discusses it with the parent;

7.1.a.4. A center provides information about its liability insurance coverage; and

7.1.a.5. A center informs the parent of the details of the agreements to be signed by the parent, including, but not limited to, an agreement that:

7.1.a.5.A. The center prohibits corporal punishment on its premises and during off-site center activities while the child is participating;

7.1.a.5.B. The parent has access to the center when his or her child is in attendance; and

7.1.a.5.C. The parent has received and discussed a copy of the center's policies on:

7.1.a.5.C.1. Behavior management and the reporting of child abuse and neglect;

7.1.a.5.C.2. Immunization, parental objections to treatment, the dismissal and re-admittance to the center of the child with a communicable illness, procedures for notifying the child's parent in advance of its policies on the exclusion and re-admittance of ill children, procedures for informing the parent of each child of the exclusion policy, and medication administration;

information disclosure; and 7.1.a.5.C.3. Confidentiality and

7.1.a.5.C.4. Meal and nutrition policy;

sheltering procedures; and 7.1.a.5.C.5. Emergency evacuation and

7.1.a.5.C.6. Discharge policies.

7.1.b. The center shall ensure the parent has access to a copy of this rule;

7.1.c. The center shall inform the parent of its requirements for signed permission prior to the child's participation in field trips, water activities and other special activities; and

7.1.d. The center shall inform the parent of his or her right to report to the Secretary any complaints related to compliance with the provisions of West Virginia Code §49-2B-1 et seq. and the requirements of this rule.

7.2. Discharge Policies. A center shall develop, implement and maintain policies and procedures, including criteria, for a child's discharge from the center:

7.2.a. When the parent withdraws the child from a center;

child; and 7.2.b. When a center asks a parent to remove his or her

request for discharge, except in cases of emergencies or investigations related to child abuse and neglect. 7.2.c.

7.3. Basic Rights. A center shall ensure that the child and the child's family have equal access to programs regardless of race, religion, ethnicity, gender, ability, or sexual orientation.

7.4. Information About Child. For each child enrolled at a center, the center shall maintain a file in one central location that includes the following current information:

7.4.a. The child's name, address, gender and date of birth;

and work telephone numbers and addresses; 7.4.b. The name of the child's parent, and the parent's home

7.4.c. The name, physical address and telephone number of at least one (1) additional individual who can assume responsibility if the center cannot locate the parent;

7.4.d. The names, addresses and telephone numbers of the child's sources of primary medical care and emergency medical care;

7.4.e. The child's health insurance coverage and policy number;

7.4.f. A signed permission from the parent for emergency medical treatment and transportation;

7.4.g. A signed permission to release the child to someone other than the parent, with the names, addresses and telephone numbers of the one (1) person or several persons permitted to take the child from the center;

7.4.h. Information and special instructions from the child's parent or licensed health care provider about any special dietary or other needs because of a medical or other reason;

7.4.i. A signed permission from the parent to take photographs or make audio and/or video recording of the child;

7.4.j. Legal verification of custody when one (1) parent is the sole legal guardian of the child by virtue of a court proceeding;

7.4.k. Health records as described in Subsections 15.1 and 15.2 of this rule;

7.4.l. The dates of enrollment and discharge;

7.4.m. Scheduled days and hours of attendance; and

7.4.n. The name and telephone number of the school-age child's school.

7.5. Information for emergency purposes. A center shall keep two (2) copies of the information in Subdivision 7.4.a. through 7.4.h. of this rule, with the parent's original signature on both copies, and shall keep:

7.5.a. One (1) copy in the center's files to be easily accessible at all times; and

7.5.b. The other copy in the center's emergency file, described in this rule, where it is available to accompany the child when the child is off-site.

7.6. Exchanging information with the parent. The center shall develop a plan for ongoing communication with the parent that includes a pre-admission meeting in which the center:

7.6.a. Discusses with the parent an oral or written system for exchanging information regularly about the child including the child's health and any events at home or at the center that may influence the child's behavior and well being; and

7.6.b. Provides the parent opportunities to volunteer at the center.

§78-1-8. Staffing.

8.1. This section applies to all center personnel including the private owners, volunteers, and parents who receive compensation for their duties or who are used by the center to meet staff:child ratios.

8.2. Persons at a child care center who are not subject to this rule include:

8.2.a. An adult who is in the center for brief periods in the normal course of carrying out business or professional activities and is not left alone with the children; or

8.2.b. A parent of an enrolled child who is at the center only for the purpose of performing parental responsibilities in relation to his or her own child.

8.3. Staffing Procedures.

8.3.a. A center shall provide each new staff member with a notification letter that includes his or her position title, qualifications, duties and responsibilities at the time of hiring.

8.3.b. A center shall conduct performance evaluations:

8.3.b.1. On all staff at least once a year; and

8.3.b.2. On all newly employed staff members and staff members new to their positions, initially, at three (3) months, six (6) months, and twelve (12) months.

8.3.c. A center shall provide each staff member with a written copy of his or her most recent evaluation, signed by the center director and the evaluated staff member, and a continuing education plan based on the evaluation.

8.3.d. A center shall maintain a file for each staff member that includes:

8.3.d.1. A current job description;

8.3.d.2. Written references, including three (3) references for the center director and two (2) references for other staff members; and

8.3.d.3. Records of employment, including a duplicate copy of all performance evaluations.

8.4. Staff Character and Background.

8.4.a. A center shall use staff members and volunteers with:

8.4.a.1. A good reputation and character;

8.4.a.2. Sufficient education, training and experience to provide the skills necessary for carrying out the essential functions of his or her job with or without reasonable accommodation;

8.4.a.3. Sound judgment, emotional maturity, and an understanding of children;

8.4.a.4. A demonstrated ability to perform assigned tasks;

8.4.a.5. The ability to correct hazards that might harm the health, safety and well-being of the children;

8.4.a.6. The ability to work with children without mistreatment or abuse;

8.4.a.7. The ability to encourage children and to provide them with a variety of learning and social experiences appropriate to the age of the children;

8.4.a.8. The ability to support children's physical, emotional, psychological, social and personal development; and

8.4.a.9. The ability to communicate effectively and to respect confidentiality.

8.4.b. No person shall be on the premises or have contact with the children in care whose health or behavior would harm the children, or who is under the influence of a controlled substance, including alcohol or a legal pharmaceutical that impairs his or her functioning.

8.4.c. Other than the exceptions cited in Subdivision 8.4.e. of this subsection, a center shall ensure that a criminal background investigation is performed on each staff member and volunteer through the West Virginia Department of Military Affairs and Public Safety, Criminal Identification Bureau (CIB) and an authorized agency in a previous state of residence, if applicable, and shall keep the following information on file:

8.4.c.1. A completed, signed and witnessed Statement of Criminal Records. A copy of the statement shall be on file no later than the date of hire;

8.4.c.2. A CIB records check, except as described in this section; and

8.4.c.3. A report of a Federal Bureau of Investigation (FBI) records check, for any staff member who has lived outside West Virginia within the past five (5) years, or has established residence outside West Virginia for more than one (1) year since turning eighteen (18) years of age;

8.4.d. A center shall ensure that each staff member and volunteer has a completed, signed, and dated Authorization and Release for

Protective Services Record Check. The release shall be on file no later than the date of hire.

8.4.e. A center does not require a criminal records check on the following:

8.4.e.1. A new staff member who has on file at the center documentation of the required criminal history investigations within the previous twelve (12) months;

8.4.e.2. An individual not associated with the center, but contracted to provide lessons or other services for brief periods to the children while center staff are present; or

8.4.e.3. A parent who transports children on an irregular basis for field trips without pay or compensation.

8.4.f. Prior to receiving the CIB and FBI reports required under this rule on any staff member, a center shall have in place a safety plan that ensures that the staff member works under direct supervision and is not left alone with a child.

8.4.g. The Secretary may require a CIB or FBI check for good cause.

8.4.h. For individuals over thirteen (13) and under eighteen (18) years of age, prior to permitting them direct contact with the children on a regular basis, a center shall have on file a signed affidavit from the individual's parent stating that his or her child has never been arrested or convicted of an offense against a person.

8.4.i. A center shall update the following reports in each staff member's file:

8.4.i.1. The Statement of Criminal Record every two (2) years; and

8.4.i.2. The completed CIB and, if required, FBI report at least every five (5) years.

8.5. Hiring Prohibitions

8.5.a. A center shall not employ or use an individual who is currently under indictment or charged with any crime, is currently on parole or probation for a felony conviction, or has been convicted or entered a plea of guilty or no contest to any of the following:

8.5.a.1. A violent felony crime including, but not limited to, abduction, rape, sexual assault, homicide, hate crimes, kidnapping, felonious assault or battery;

8.5.a.2. Child or adult abuse or neglect, or the exploitation of a child or an incapacitated adult;

8.5.a.3. Domestic violence or spousal abuse;

8.5.a.4. Felony arson;

8.5.a.5. A felony or misdemeanor crime against a child or incapacitated adult;

8.5.a.6. Felony conviction for Driving Under the Influence (DUI) or drug-related offenses within the last ten (10) years;

8.5.a.7. Neglect or abuse by a care giver; or

8.5.a.8. Pornography and sexual offense crimes involving children or incapacitated adults, including purchase or sale of a child, incest, sexual abuse, or indecent exposure.

8.5.b. A center shall not hire or continue to employ or use any individual who is determined by the Department to have abused or neglected a child or incapacitated adult. The effective date for this requirement is July 1, 2003. The date of the finding of abuse or neglect may occur prior to July 1, 2003.

8.5.c. A center may not employ or use an individual who has entered a plea of guilty or no contest, or has been convicted of a felony, or two (2) or more misdemeanor crimes that are not listed in Subdivision 8.5.a. unless the Secretary grants a waiver.

8.5.d. A center may not use an individual who failed to disclose a conviction on a Statement of Criminal Record or failed to disclose a finding of abuse or neglect on an Authorization and Release for Protective Services Record Check unless the Secretary grants a waiver.

8.5.e. A center shall have policies and procedures that include protocols requiring:

8.5.e.1. A staff member or volunteer to report his or her criminal arrest, charge, indictment, or conviction for a criminal offense to the center director within twenty-four (24) hours;

8.5.e.2. A staff member to report to the center director that he or she is subject of an abuse or neglect investigation;

8.5.e.3. The center to notify the Secretary of the staff member's report within twenty-four (24) hours; and

8.5.e.4. That the center prohibit a staff member or volunteer who is accused of having sexually abused or otherwise injured a child or incapacitated adult from caring for or having contact with children pending the outcome of an investigation.

8.5.f. If a center chooses to advocate for a waiver for an employee, then it shall have policies and procedures regarding waivers that do not conflict with Department policies. The policy must include procedures for:

8.5.f.1. Informing the staff member of the waiver process and time limit for requesting a waiver;

8.5.f.2. Providing a statement of support for the waiver request from the center director;

8.5.f.3. Ensuring that the staff member does not have contact with, or is removed from contact with, the children until the Secretary reaches a decision on the waiver unless the licensee, staff member and the Department agree to a written safety plan that permits the staff member to continue in a staff position until the Secretary reaches a decision.

8.5.g. A center shall secure from the employee a recent health assessment performed not more than 90 days prior to the date hired for the employee and signed by a licensed health care provider. The health assessment shall be on file no later than 30 days from the first date of employment. A health assessment for a volunteer shall be on file if the volunteer is scheduled to work at least forty (40) hours per month in the center. The health assessment shall include:

8.5.g.1. A significant health history which the center needs to know in order to protect the health of the employee or the health and safety of children in care;

8.5.g.2. A physical examination, including vision and hearing screening;

8.5.g.3. A statement that the prospective staff member has no known condition or disease which would interfere with the proper care of children; and

8.5.g.4. A tuberculosis risk assessment that is repeated annually or a tuberculosis screening by the Mantoux method, if a screening is indicated by the tuberculosis risk assessment.

8.5.h. For staff currently employed, a center shall keep on file a health assessment that is updated every two (2) years.

8.6. Staff Responsibilities, Qualifications and Training Requirements.

8.6.a. A center shall assign one (1) individual the responsibility for monitoring and implementing training and maintaining training records.

8.6.b. A center shall require all staff to meet training requirements and pre-service education qualifications other than that noted in requirement 8.6.c. of this subsection. Provided: Staff persons who have remained employed by the center since July 1, 2003 and have been in continuous employment in that position or one requiring greater qualifications in a child care setting since July 1, 1998, shall be considered to meet the qualification of their position.

8.6.c. A center may offer an applicant for a lead teacher or teacher position conditional employment for a period of up to six (6) months pending completion of the pre-service education and training requirements described in this section.

8.6.d. Prior to or during the first week of employment and prior to having sole responsibility for a group of children, a center shall provide orientation to the staff member that includes a review of:

8.6.d.1. Licensing, other regulatory requirements, and a center's administrative manual;

8.6.d.2. Policies, staff duties and professional development plans;

8.6.d.3. Policies and procedures for confidentiality and information disclosure, behavior management, reporting child abuse and neglect, and emergencies;

8.6.d.4. Policies and procedures for basic sanitation and infection control;

8.6.d.5. Policies and procedures for safety, including prevention of injury both indoors and outdoors, and fire safety, including the use of fire extinguishers;

8.6.d.6. The statement of purpose;

8.6.d.7. The daily schedule of the center and the specific schedule for the group of children to which the staff person is assigned, including the planned program of activities, routines and transitions; and

8.6.d.8. Communication at a center, including procedures to inform staff of any special dietary or other needs of the children for whom they will be responsible.

8.6.e. A center shall document that orientation training was provided by having the staff member and center director sign a statement acknowledging receiving orientation training and shall keep the statement in the staff member's file.

8.6.f. A center shall ensure that all staff members receive approved training in:

8.6.f.1. Cardiopulmonary Resuscitation (CPR) and First Aid. Within six (6) months of employment or use staff members shall have current CPR certification appropriate to the age of the children in care and current first aid training. Except in the first year of employment or use, training in CPR and First Aid is in addition to the requirement for annual professional development.

8.6.f.2. Abuse Recognition and Prevention. Within six (6) months of employment or use, staff members shall have training in child abuse recognition and prevention. Training in child abuse recognition and prevention may be used to meet the requirement for annual professional development described in this section.

8.6.g. Prior to administering medication, the qualified staff member shall have training from an approved training source in medication administration. Training in medication administration may be used to meet the requirement for annual professional development described in this section.

8.6.h. A center shall ensure that prior to assuming management duties, including supervising other qualified staff members, assisting the director or serving as the designated person-in-charge of a center, a qualified staff member:

8.6.h.1. Completes the requirements for orientation training and management orientation training that includes a detailed review of the center's administrative manual and management practices; and

8.6.h.2. Co-signs with the director a statement which is kept in the staff member's file acknowledging he or she received management training.

8.6.i. A center that operates or plans to operate programs for children twenty-four (24) months of age and under shall meet the requirements of this Subdivision for staff training:

8.6.i.1. Prior to starting the program, shall ensure that each qualified staff member caring for the child has received a minimum of forty (40) hours of approved training related to the care of children twenty-four (24) months of age and under, and shall submit documented evidence of the training to the Secretary.

8.6.i.2. For an existing program which has been approved to expand the program or experiences staff turnover, shall ensure that within six (6) months of beginning to care for children twenty-four months of age and under, each qualified staff member shall have a minimum of forty (40) hours of approved training related to the care of children twenty-four (24) months of age and under. Until all staff members meet the requirements of this section, the center shall ensure:

8.6.i.2.A. That at least one (1) qualified staff member, who has completed the minimum approved training, is present in the program for at least seven (7) hours daily during the time when most children under 24 months of age are present;

8.6.i.2.B. That each staff member has a written plan for the completion of training that is agreed upon during orientation; and

8.6.i.2.C. That the center develops a mentoring plan which provides for weekly mentoring by a qualified and trained staff person for each staff member that has not completed approved training.

8.7. Professional Development

8.7.a. All qualified staff shall complete fifteen (15) hours of approved training within the first year of employment according to the following:

8.7.a.1. A director shall have six (6) hours in management training within the required fifteen (15) hours; and

8.7.a.2. Qualified staff members shall have six (6) hours of training related to the age group of children for which they care, within the required fifteen (15) hours.

8.7.b. All qualified staff shall apply for credentialing on the WV STARS Career Pathway.

8.7.c. All qualified staff shall complete the approved training which is necessary to keep the credential current.

8.7.d. All staff in positions that are not qualified staff positions shall have training within the first six (6) months of employment related to their responsibilities, renew child abuse and neglect recognition every three years and keep first aid and CPR certification current.

§78-1-9. Staff Responsibilities and Qualifications.

9.1. The Director shall:

9.1.a. Manage the daily operations of the center, including administering finances and human resources;

9.1.b. Supervise the teaching staff and the daily activities of support staff who provide services to the center and conduct a staff meeting at least once a month;

9.1.c. Make curricular decisions and plans and supervise all aspects of the children's program;

9.1.d. Communicate with staff members, children, parents, and the public;

9.1.e. Communicate with the Department and regulatory agencies to ensure compliance with all requirements;

9.1.f. Keep a record of any hours and days he or she has regular responsibility for an assigned group of children in a Type I or Type II center;

9.1.g. Not have regular responsibility for an assigned group of children in a Type III center;

9.1.h. Have the following qualifications:

9.1.h.1. Be at least twenty-one (21) years of age, provide evidence of at least one (1) year of relevant work experience; and have a minimum of a high school diploma or equivalent and;

9.1.h.2. In a Type I center, have a minimum of:

9.1.h.2.A. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12) college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children; or

9.1.h.2.B. A total of ten (10) years of relevant work experience.

9.1.h.3. In a Type II center, have a minimum of:

9.1.h.3.A. A registered Apprenticeship Certificate for Child Development Specialist;

9.1.h.3.B. Twenty-eight (28) college credits, with at least nine (9) credit hours in early childhood development; or

9.1.h.3.C. Fifteen (15) years of relevant work experience.

9.1.h.4. In a Type III center, have a minimum of:

9.1.h.4.A. An associate's degree in early care and education;

9.1.h.4.B. A degree in a related field with twelve (12) hours in early childhood development and ninety (90) practicum contact hours;

9.1.h.4.C. A degree in a related field and a total of two (2) years of relevant work experience; or

9.1.h.4.D. A degree in a business, management or administration field with twelve (12) credit hours in early childhood development and three hundred (300) hours of relevant work experience working with young children.

9.1.i. Designate a person-in-charge to perform the duties of the director during all hours of operation when the director is not present at the center. The person-in-charge shall be a qualified staff member.

9.2. Assistant Director or Lead Teacher.

9.2.a. The duties and role of assistant director or lead teacher may be shared by the director and a teacher.

9.2.b. The assistant director or lead teacher may have responsibility for supervision, care and education of children and may be regularly assigned to a group of children.

9.2.c. The assistant director or lead teacher shall:

9.2.c.1. Plan and adopt programming that conforms to the core competencies of early childhood education and may implement daily program activities;

9.2.c.2. Coordinate the activities of teachers, assistant teachers, teaching assistants, and assist the director with designated activities;

9.2.c.3. Be at least twenty-one (21) years of age and have a minimum of one (1) year of relevant work experience and one of the following additional qualifications:

9.2.c.3.A. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12) college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children;

9.2.c.3.B. A total of two (2) years of relevant work experience;

9.2.c.3.C. A registered Apprenticeship Certificate for Child Development Specialist, or twenty-eight (28) college credits, with at least nine (9) credit hours in early childhood development.

9.3. A teacher shall:

9.3.a. Have responsibility for the supervision, care and education of children and be regularly assigned to a group of children;

9.3.b. Practice the core competencies of early childhood educators, and plan and implement daily program activities;

9.3.c. Coordinate the activities of assistant teachers and teaching assistants, and may assist the director, assistant director or lead teacher with designated activities; and

9.3.d. Be at least eighteen (18) years of age and have a minimum of one (1) year of relevant work experience and have one of the following additional qualifications:

9.3.d.1. A West Virginia Training Certificate in Early Care and Education (WVTCECE) or its equivalent;

9.3.d.2. A CDA credential and three hundred (300) hours of relevant work experience working with young children or twelve (12) college credits in an early care and education field and three hundred (300) hours of relevant work experience working with young children; or

9.3.d.3. A total of two (2) years of relevant work experience.

9.4. Assistant Teacher. An assistant teacher shall:

9.4.a. Practice the core competencies of early childhood educators;

9.4.b. Work with young children with guidance from a qualified staff member who qualifies, at a minimum, as a teacher;

9.4.c. Coordinate daily activities and supervise teaching assistants in the absence of the teacher; and

9.4.d. Have the following qualifications:

9.4.d.1. Be at least eighteen (18) years of age and have a minimum of one (1) year of relevant work experience;

9.4.d.2. Have a West Virginia Training Certificate in Early Care and Education (WVTCECE) or its equivalent.

9.5. Teaching Assistant. A teaching assistant shall:

9.5.a. Assist other qualified staff members with the care and education of the child, but shall not have responsibility for a group of children;

9.5.b. Work under the continuous supervision of a qualified staff member who qualifies, at a minimum, as an assistant teacher;

9.5.c. Have the following qualifications:

9.5.c.1. Be at least eighteen (18) years of age; and

9.5.c.2. Be enrolled in the WVTCECE program or its equivalent.

9.6. Teen Aide. A teen aide shall:

9.6.a. Be at least two (2) years older than the oldest child in the group with whom he or she is working; and

9.6.b. Not be left alone with a child other than his or her own child.

9.7. Student Intern. A center that uses student interns shall ensure that:

9.7.a. The student intern fulfills the requirements of an educational or training program;

9.7.b. The student intern performs duties under the direct supervision of a qualified staff member who has at least the qualifications of an assistant teacher;

9.7.c. The student intern receives periodic supervision from the educational or training program teacher-coordinator;

9.7.d. The student intern is not left alone with a child other than his or her own child;

9.7.e. A copy of the student intern's training plan and training agreement developed jointly by the educational or training institution and the center are on file at the center.

9.8. Substitute. The center shall ensure that a substitute does not have sole responsibility for a group of children and works under the continuous supervision of, at a minimum, an assistant teacher.

9.9. Support Staff. The center shall ensure that support staff have appropriate qualifications for providing services to the center and meet the general and health requirements set forth in this rule.

9.10. Driver. A driver shall:

9.10.a. Be at least 21 years of age;

9.10.b. Have a valid driver's license that authorizes the driver to operate the vehicle being driven;

9.10.c. Upon hire, have evidence of a safe driving record for the five year period prior to hiring and have no record of DUI related convictions for a five year period;

9.10.d. Not be impaired to drive at the time of transporting children including impairment caused by prescription medication;

9.10.e. Submit to a drug and alcohol testing if required by center policy; and

9.10.f. Not be used if he or she refuses a required drug and alcohol test or tests positive.

9.11. Volunteer. The center shall ensure that prior to providing a direct service to the center, a volunteer:

9.11.a. Is not less than eighteen (18) years of age;

9.11.b. Receives direct supervision from a qualified staff member who is not less than twenty-one (21) years of age; and

9.11.c. Is not left alone with a child other than his or her own child.

§78-1-10. Supervision of Children in Groups.

10.1. A center shall ensure that:

10.1.a. The children have adequate supervision at all times;

10.1.b. Staff members are awake and performing their duties during work hours;

10.1.c. When a play area is used that is accessible to the public, the boundaries of the play area are clearly marked and known to the children;

10.1.d. The children remain in areas approved for daily program activities and do not go into other areas including the kitchen, unless it is part of the planned, supervised experience.

10.1.e. Children are accompanied by staff when utilizing public restroom or restrooms at the center that the general public is permitted to use.

10.2. Children shall be assigned to distinct groups according to the following:

10.2.a. Each group shall be assigned a room or area of a room as a home base, even if the group moves to other areas, inside and outside a center, for daily activities;

10.2.b. When more than one (1) group of children up to school-age uses the same room, a center shall divide the room into a designated activity area for each group;

10.2.c. A center shall separate indoor areas regularly occupied by older children from children twenty-four (24) months of age and under;

10.2.d. A center shall ensure that a common outdoor area is not regularly used at the same time by groups of school-age children and by groups five (5) years of age and younger.

10.2.e. During brief times when children are normally arriving and departing, and for short periods of scheduled activities such as eating, the center may combine groups of children, including groups of children twenty-four (24) months and under and groups of older children; and

10.2.f. During short periods of time for special occasions such as field trips, the center may combine school-age groups of children with children over the age of twenty-four (24) months.

10.3. Staff:Child Ratios.

10.3.a. When children are on the premises, a center shall ensure that at least two (2) staff members are on duty at all times.

10.3.b. When only one (1) qualified staff person is required to meet ratios at the beginning and end of the day, the second staff member may be a support staff member who is readily available in case of emergencies. A center shall ensure that while children are on the premises, the qualified staff member has completed a course in child first aid and has current certification in CPR appropriate to the age of the children I care.

10.3.c. A center shall assign each group of children to a qualified staff member or team of qualified staff members, maintaining at all times the staff:child ratios required under this rule. When groups are combined, a center shall continue to maintain the staff:child ratios required under this rule.

10.3.d. When more than one (1) qualified staff member is assigned to a group, a center shall designate one (1) qualified staff member as group leader with responsibility for planning the activities of the group to ensure that each child in the group receives developmentally appropriate care and adequate supervision on a day-to-day basis.

10.3.e. When only one (1) qualified staff member is assigned to a group, there shall be a plan enabling the qualified staff member to call a second staff member for help without leaving the group.

10.3.f. In determining and maintaining the staff:child ratio, a center shall not include any qualified staff member who is performing other duties such as cooking, bookkeeping, or life-guarding; or another individual with designated responsibility for a special activity; or a support staff member who is not directly working with the children except

in an emergency situation when staff may be reassigned to supervise the children.

10.3.g. In determining and maintaining the staff:child ratio, a center shall have a plan to ensure that a qualified substitute is available if needed and is available when a staff person is absent for longer than a continuous two (2) week period.

10.4. A student intern who is at least 17 years of age, a Youth Apprentice, and in the second year of classes in the Child Development Specialist program approved by the WV Department of Education may count in the staff:child ratio, but may not work alone.

10.5. A center shall group children and consider their ages when determining the staff:child ratio as follows:

10.5.a. A center shall count each child twelve (12) years of age and under who is present and being cared for in the child care center, including a child of the director or a staff member, and shall not consider a teen aide to be a child;

10.5.b. When children are at the center, the center may use either a single grouping or a mixed-age combination to calculate the ratio according to the following:

10.5.b.1. For each single-age group at a center, the center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 F of this rule;

10.5.b.2. For each mixed age group at a center, the center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 F of this rule for the youngest child in the group; and

10.5.b.3. When providing evening and nighttime care, a center shall maintain the staff:child ratio and group size described in Table A of Appendix 78-1 F of this rule. In addition, a center shall ensure that:

10.5.b.3.A. At least one (1) qualified staff member is in each room visually supervising the children at all times and checking at least hourly on each sleeping child; and

10.5.b.3.B. Each qualified staff member required to meet the staff:child ratio is on the premises and within calling distance of the rooms occupied by the children.

10.5.c. Special circumstances with staff:child ratio are:

10.5.c.1. During nap time or sleep time:

10.5.c.1.A. For groups of children twelve (12) months of age and under, a center shall ensure that each qualified staff member required to meet the staff:child ratio described in Table A of Appendix 78-1 F of this rule, is present in the nap or sleep area and able to see and hear all of the children at all times;

10.5.c.1.B. For groups of children over twelve (12) months of age who participate in a nap-time program, a center shall ensure that at least one (1) qualified staff member is in each area visually supervising the children and each qualified staff member required to meet the staff:child ratio is on the premises and within calling distance of the areas occupied by the children;

10.5.c.2. During transportation:

10.5.c.2.A. At all times when transporting a child, a center shall ensure that no child is unattended in a vehicle;

10.5.c.2.B. During Pick-up and Drop-off service:

10.5.c.2.B.1. A second staff person or volunteer shall accompany the driver during routine transportation for the purpose of pick-up and drop-off service when the vehicle will transport more than two children and at least one of those children is under the age of two years;

10.5.c.2.B.2. A second staff person or volunteer shall accompany the driver during routine transportation for the purpose of pick-up and drop-off service when the vehicle will transport more than four children of any age.

10.5.c.2.B.3. There shall be a staff or designated responsible person present outside the vehicle to supervise when children are loading or unloading from a vehicle.

10.5.c.3. Water activities.

10.5.c.3.A. When a child is participating in a Level I or Level II water activity, except a swimming lesson with a qualified instructor, a center shall maintain staff:child ratios described in Table B of Appendix 78-1 F of this rule; and

10.5.c.3.B. When two (2) or more children twenty-four (24) months of age and under are participating in a Level I or Level II water activity in a mixed age group, except a swimming lesson with a qualified instructor, the center shall ensure that at least two (2) qualified staff members are present;

10.5.c.4. Field Trips.

10.5.c.4.A. A center shall ensure that when a child is participating in a Level I field trip, that the staff:child ratio is maintained in accordance with Table A of Appendix 78-1 F of this rule and that at least one staff member or volunteer accompanies one (1) qualified staff member who must be present at all times;

10.5.c.4.B. A center shall ensure that when a child is participating in a Level II field trip that the staff:child ratio is maintained in accordance with Table A of 78-1 F of this rule and that at least two (2) qualified staff members are present at all times.

§78-1-11. Supervision of the Individual Child.

11.1. Guidance, Behavior Management, and Discipline. A center shall:

11.1.a. Develop, implement and maintain policies and procedures for behavior management that include the prohibitions described in Subsection 11.4. of this rule;

11.1.b. Ensure that the guidance, behavior management and discipline practices are constructive and educational in nature, appropriate to each child's age and circumstances, and in keeping with the center's policies and procedures;

11.1.c. Ensure that staff members are aware of behavior issues relating to an individual child, and treat behavior problems individually and in private;

11.1.d. Delegate behavior management to qualified staff members who have an ongoing relationship with a child; and

11.1.e. Ensure that when it appears that a child is developing a pattern of unacceptable behavior, the staff member with the delegated responsibility for the child discusses the child's behavior in private with the director and informs the child's parents.

11.2. Guidance. At all times, staff members are responsible for providing positive guidance that is appropriate to each child's age, understanding and circumstances. Staff members shall:

11.2.a. Teach by example;

11.2.b. Recognize and encourage acceptable behavior;

11.2.c. Make eye contact with the child and kneel or sit beside the child whenever possible when speaking to the child;

11.2.d. Supervise with kindness, understanding and firmness;

11.2.e. Define clear limits, set fair and consistent rules and, when appropriate, permit an older child to participate in the development of rules and procedures;

11.2.f. Help a child develop self control to assume responsibility for his or her own actions;

11.2.g. Guide a child's activities in an orderly manner;

11.2.h. Prepare a child for his or her next activity a few minutes ahead of time, and allow the child a brief transition time before beginning the new activity;

11.2.i. Help a child avoid long waiting periods when the child has nothing to do by ensuring that the environment includes materials that hold his or her attention; and

11.2.j. Help a child feel successful at tasks and provide options if chosen tasks prove to be too difficult.

11.3. Behavior Management and Discipline. When a behavior problem arises, qualified staff members shall:

11.3.a. Redirect the child to alternative behavior or other activities;

11.3.b. Encourage the child to control his or her own behavior, cooperate with others and solve problems by talking things out;

11.3.c. Speak so that the child understands that feelings are acceptable, but inappropriate behaviors and actions are not;

11.3.d. Use appropriate time-out periods only as necessary for a child to calm down or gain control of his behavior and not for over one (1) minute for each year of a child's age. Time-out may be used only for children over the age of three (3) years;

11.3.e. Ensure that during a time-out period the child is within sight and hearing of a staff member in a safe, lighted and well-ventilated space;

11.3.f. Maintain perspective about the minor misbehavior of the school-age child and recognize that every infraction does not warrant staff attention or intervention; and

11.3.g. Take action that relates to inappropriate behavior and ensure that any action that is taken is without bias and in proportion to the child's act.

11.4. Handling Behavior Problems. Staff members and other adults at a center shall not handle behavior problems by:

11.4.a. Subjecting a child to physical punishment of any kind, including, but not limited to, shaking, striking, spanking, swatting, thumping, pinching, popping, shoving, spitting, biting, hair pulling, yanking, slamming, excessive exercise or any cruel treatment that may cause pain;

11.4.b. Putting anything in or on a child's mouth as punishment;

11.4.c. Restraining a child by any means other than a firm grasp around a child's arms or legs and then for only as long as is necessary for the child to regain control;

11.4.d. Subjecting a child to psychological punishment of any kind, including, but not limited to, ridicule, humiliation, or negative remarks about the child or the child's family, including remarks about race, gender, religion, or cultural background;

11.4.e. Using harsh or profane language, or actual or implied threats of physical punishment;

11.4.f. Punishing or threatening a child in association with food, rest or toilet training;

11.4.g. Isolating a child without supervision or placing the child in a dark area such as a box, closet, or similar confined space;

11.4.h. Permitting a child to discipline other children;

11.4.i. Punishing an entire group for the actions of one child or a few children; or

11.4.j. Seeking or accepting parental permission to use physical punishment or other actions prohibited by this rule.

11.5. Difficult Behavior Plan. When a child's behavior problems continue over time, the director and staff member with delegated responsibility shall develop and implement a plan for managing the difficult behavior. The director shall ensure that:

11.5.a. When possible, a parent participates in the development of the plan and, in all cases, the center shall provide the parent with a copy of the completed plan and regular written reports of the child's progress;

11.5.b. When necessary and appropriate, other professionals also participate in the development and implementation of the plan and, when necessary, receive written reports of the child's progress; and

11.5.c. Staff members cooperate in implementing the plan and keep on file at the center a copy of the plan, a record of the steps taken during implementation, and the child's progress in meeting the goals of the plan.

11.6. Abuse and Neglect. A center shall develop, implement and maintain policies and procedures for the reporting of child abuse and neglect that include:

11.6.a. The definition of child abuse and neglect;

11.6.b. The requirement to report immediately, in accordance with West Virginia Code 49-6A-1 et seq., any suspected incident of child abuse and neglect to the director or designated person-in-charge, and to Child Protective Services; or when the staff member believes that the director or designated person-in-charge would not or has failed to report the suspected incident to the Child Abuse Hotline, 1-800-352-6513; and

11.6.c. A statement posted at the center in clear public view stating that the center reports suspected child abuse and neglect to Child Protective Services.

11.7. Informing Staff about Behavior Management and Report Procedures. The center shall inform staff about behavior management procedures and child abuse and neglect reporting by:

11.7.a. Providing each staff member a copy of its policies on behavior management and the reporting of child abuse and neglect, and providing revised policies when changes occur;

11.7.b. Obtaining a signed and dated acknowledgement that the staff member has read and understands the policies or revised policies; and

11.7.c. Placing the signed acknowledgement statement in the staff member's file.

11.8. Informing Parents about Behavior Management and Reporting Procedures. At the time of a child's admission, a center shall inform parents about the center's behavior management procedures and child abuse and neglect reporting requirements by:

11.8.a. Providing to each child's parent written copies and an oral explanation of a center's policies on behavior management and the reporting of child abuse and neglect, and updating parents on policy changes when they occur;

11.8.b. Obtaining a signed and dated acknowledgement that the center has explained the policies and provided the parent with a copy. The statement shall bear the child's name, the date of enrollment, and, if different, the date the parent signs the statement; and

11.8.c. Placing the signed statement in the child's file for as long as the child is enrolled.

§78-1-12. Space Requirement.

12.1. Licensed Capacity. A center shall ensure that at all times the maximum number of children participating in activities on or off the premises does not exceed the licensed capacity determined by the separately computed area of indoor space, outdoor space and bathroom facilities, not to exceed the lowest number of the three computations. Personnel and group size may be factored into the maximum capacity for certain age groups.

12.2. Indoor Space.

12.2.a. A center shall provide a minimum of thirty-five (35) square feet per child of usable indoor space that is approved by the Secretary for daily program activities. A center shall make the rooms and areas of the center that are not approved for a child's use inaccessible to the children.

12.2.b. Indoor space for daily program activities does not include any space that is not available for a child's activities including space occupied by columns, vestibules and corridors; fire escapes; areas used exclusively for eating; areas used exclusively for napping; bathrooms; staff lounges; adult work areas including offices, laundry and furnace rooms; kitchens; permanently equipped isolation areas; storage spaces, and areas occupied by furniture except for areas that have:

12.2.b.1. Children's chairs and tables;

12.2.b.2. Adult sized comfortable chairs or a couch;

12.2.b.3. Moveable play equipment and shelves for children's activities; or

12.2.b.4. A surface for changing diapers.

12.2.b.5. For centers that have a separate and distinct designated activity area for children under twelve (12) months of age, cribs may be considered part of that useable indoor space, provided that no more than thirty (30) percent of the useable space is occupied by cribs.

12.2.c. A center shall not provide activity space in a basement area unless the basement area is approved by the State Fire Marshal.

12.3. Outdoor Space.

12.3.a. A center shall provide an outdoor activity area that includes a minimum of seventy-five (75) square feet of space per child, or if the outdoor activity area has less than that a center shall:

12.3.a.1. Establish an outdoor activity schedule for rotating groups of children to meet the minimum space requirement and to ensure that each child has an opportunity to play outdoors each day; and

12.3.a.2. Submit to the Secretary for his or her approval a copy of the current outdoor activity schedule and shall use the outdoor space only after receiving the Secretary's written approval that shall be displayed at the center for public view.

12.3.b. A center shall:

12.3.b.1. Provide an outdoor activity area that is on its premises or immediately adjacent to its premises; or

12.3.b.2. When neither of the options in Paragraph 12.3.b.1. of this rule is possible, shall submit a plan for the Secretary's approval for alternate outdoor activity space to meet the children's outdoor activities requirement and shall use the outdoor space only after receiving the Secretary's written approval.

12.4. Bathrooms. The center shall provide one (1) flush toilet and one (1) lavatory per fifteen (15) children, excluding children in diapers who are not receiving toilet training.

§78-1-13. Furnishings, Equipment and Materials.

13.1. General Requirements. A center shall provide furnishings, equipment and materials that:

13.1.a. Are available in sufficient quantity for the number of children;

13.1.b. Are appropriate in type, arrangement and use for the developmental needs of the children;

13.1.c. Are durable and safe;

13.1.d. Are in good repair and free of sharp points or corners, pinch or crush points, splinters, protruding nails or bolts, loose rusty parts, hazardous small parts that may be swallowed, identified poisons or paint that contains lead, and are regularly inspected by staff for potential hazards;

13.1.e. Are regularly cleaned and disinfected;

13.1.f. Are evaluated at regular intervals by the director and teacher to ensure their ongoing appropriateness for the age and number of children; and

13.1.g. Support the children's linguistic and intellectual development, and assist in providing for their physical, emotional, psychological, social and personal needs.

13.2. Specific furnishings shall include:

13.2.a. Children's chairs and tables that are multipurpose and not stationary;

13.2.b. Moveable play equipment;

13.2.c. Open shelves for play equipment for children's daily activities; and

13.2.d. Sleeping equipment as required in this rule.

13.3. Furnishings for Centers with Children Twenty-Four (24) Months of Age and under.

13.3.a. In centers that enroll children twenty-four (24) months of age and under, or children that cannot function independently, a center's furnishings shall include:

13.3.a.1. Adult-sized comfortable chairs and a table or other surface for changing diapers that has raised sides or other features that prevent the child from falling and that are located in an area that is removed from the activities of the other children;

13.3.a.2. Furniture that is child-sized or adapted for children; and

13.3.a.3. Feeding equipment that is appropriate and sufficient for the children's sizes, ages, and numbers served. When feeding equipment is a high chair, the chair shall have a wide base and a T-shaped safety strap;

13.3.b. Jumpers and infant walkers are prohibited.

13.4. Sleeping Equipment. A center's sleeping equipment:

13.4.a. For children who participate in a nap-time program shall include:

13.4.a.1. One (1) crib or playpen with a firm mattress for each child twelve (12) months of age and under or who is up to thirty-five (35) inches tall;

13.4.a.2. One (1) crib or playpen with a firm mattress, mat or cot for each child between thirteen (13) and twenty-four (24) months of age; and

13.4.a.3. One (1) mat, cot, or bed for each child over twenty-five (25) months of age;

13.4.b. For evening and nighttime programs shall not include mats as sleeping equipment;

13.4.c. For the care of an ill child shall include at least one (1) disinfected cot;

13.4.d. Shall be cleaned and disinfected at least once a week, or before another child uses it, or immediately after it is soiled;

13.4.e. Includes the following specifications for cribs and playpens;

13.4.e.1. The distance between the slats, side and end panels of the crib or playpen shall not be more than two (2) and three-eighths ($3/8$) inches. A playpen with mesh siding shall have mesh that is less than $1/4$ inches in size and the mesh shall be securely attached to the sides;

13.4.e.2. The mattress shall be manufactured for sale in the United States as infant sleeping equipment and fit the crib snugly with no more than one half ($1/2$) inch between it and the crib side;

13.4.e.3. The crib shall be sturdy and non-collapsible;

13.4.e.4. The minimum height from the top of the mattress to the top of the crib rail shall be twenty (20) inches;

13.4.e.5. The crib and playpen drop-side latch shall hold the side securely in the raised position, be out of the reach of the child in the crib or playpen, and the rail shall be in the highest raised position when the crib is in use. The playpen side shall never be down when a child is in the playpen;

13.4.e.6. There shall be no corner-post extensions over one-sixteenth ($1/16$) inch or decorative cutout areas in the end panels of the crib that could entrap the child's head or catch on clothing;

13.4.e.7. The playpen pad shall be at least one (1) inch thick;

13.4.e.8. Each mattress or pad shall have a form fitting cover that is durable and able to be easily disinfected; and

13.4.e.9. Playpens with mesh sides and covered top rails shall not have holes, tears, loose threads or exposed staples.

13.4.f. Includes the following specifications for mats:

and 13.4.f.1. They shall be at least two (2) inches thick;

13.4.f.2. They shall have form-fitting covers that are durable, waterproof and able to be easily disinfected;

13.4.g. Includes the following specifications for cots:

13.4.g.1. The bottom of the cot's sleeping surface shall not be less than three (3) inches and not more than eighteen (18) inches off the floor;

13.4.g.2. The cot shall be firm enough to support the child;

13.4.g.3. The cot shall be of sufficient size to comfortably accommodate the size and weight of the child; and

13.4.g.4. The cot shall be constructed of a material that can be easily disinfected.

13.4.h. Shall not permit children to:

13.4.h.1. Sleep on the floor;

13.4.h.2. Sleep on the floor in a sleeping bag or on bed linens alone;

13.4.h.3. Sleep in a stacked crib or consecutively attached crib;

13.4.h.4. Share a bed or cot, even with a family member; or

13.4.h.5. Use a crib if they are over thirty-five (35) inches tall.

13.4.i. Includes the following specifications for bedding:

13.4.i.1. Mattresses, playpen pads or cots shall be waterproof or have a waterproof cover;

13.4.i.2. Bedding, including sheets and blankets, shall be clean and in good condition;

13.4.i.3. Bedding shall not be used by more than one child at a time;

13.4.i.4. Bedding shall be used to cover all sleeping surfaces before being used;

13.4.i.5. Seasonally appropriate covers shall be used, sufficient to maintain adequate warmth. For children 12 months of age and younger a sleeper may be worn or a thin blanket used for a covering. If a

blanket is used, it shall be tucked around the mattress of the crib and only cover the child as high as his or her chest;

13.4.i.6. Pillows or soft, fluffy bedding shall not be used for the child twelve (12) months of age and under;

13.4.i.7. Pillows or soft fluffy bedding made of substances of animal origin other than wool, including feathers and animal hair, that commonly cause allergic reactions, shall be prohibited; and

13.4.i.8. A center shall change bedding when soiled, prior to use by another child and at least weekly, except sheets on cribs that shall be changed at least daily.

13.4.j. Includes the following requirements when providing evening or nighttime care:

13.4.j.1. Each cot or bed shall have a pillow, pillow case and two (2) sheets; and

13.4.j.2. When the sleeping surface is a mattress, the bottom sheet shall be secure.

13.5. Indoor activity Equipment and Materials. A center shall provide equipment and materials for indoor activities that:

13.5.a. Are appropriate to the child's age and developmental level;

13.5.b. Support many types of activities, including social and fantasy play; exploration and mastery of skills and language; music, art and movement; and gross motor experiences as described in Appendix 78-1 A of this rule;

13.5.c. Are available in sufficient quantity to permit each child to choose from among several of each type, to allow for sharing and prevent conflict, and to allow staff to keep reserves for rotation;

13.5.d. Represent diverse cultures, ethnic groups, gender roles and abilities in ways that do not reinforce stereotypes;

13.5.e. Are clearly organized within activity areas that support programming goals and allow for adequate supervision;

13.5.f. Are complete, sturdy, clean and in good working condition;

13.5.g. Are lead-free and otherwise nontoxic; and

13.5.h. Maximize safety by ensuring that:

13.5.h.1. Indoor play equipment, shelves, and large objects, such as televisions and computer monitors, are firmly anchored;

13.5.h.2. Use zones are extended by at least six (6) feet in all directions from the perimeter of indoor climbing equipment, and landing mats are provided that are at least four (4) inches thick,

constructed of materials such as rubber or a rubber composition, and securely fixed in place;

13.5.h.3. Small objects, toys and toy parts that have diameters of less than one (1) and one quarter (1/4) inch that can be swallowed are not accessible to children less than four (4) years of age; and

13.5.h.4. Plastic bags, latex gloves and styrofoam objects are not accessible to the child less than four (4) years of age, and that balloons are completely prohibited in a center that serves children less than school age.

13.6. Outdoor Activity Equipment and Materials. A center shall provide equipment and materials for outdoor activities that:

13.6.a. Are appropriate to the child's age and developmental level;

13.6.b. Support many types of experiences as listed in Appendix 78-1 A of this rule;

13.6.c. Are available to the child in sufficient quantity to permit each child to choose at least two (2) types of outdoor play experiences and to allow for sharing and prevent conflict;

13.6.d. When a child is not ambulatory, are appropriate for outings, such as a stroller or carriage; and

13.6.e. Maximize safety by ensuring that:

13.6.e.1. All outdoor equipment is installed, maintained and used in accordance with the manufacturer's instructions;

13.6.e.2. The position of the outdoor equipment prevents hazards from conflicting activities;

13.6.e.3. The use zones are free of obstacles, except for the support structures for the swings;

13.6.e.4. The supports for climbers, swings, and other heavy equipment are securely anchored so that they pose no threat to the children's safety, even when the equipment is designed to be portable;

13.6.e.5. Each swing frame for the child twenty-four (24) months of age and under has a maximum of two (2) seats;

13.6.e.6. Metal equipment is in the shade, if at all possible;

13.6.e.7. When the center has a sand box, that the box permits drainage, is covered when not in use, and that the sand does not contain toxic or other harmful materials and is free of animal excrement and other debris; and

13.6.e.8. The outdoor area is free of wading pools and other equipment that might hold water which pose a drowning hazard to the child or a breeding environment for mosquitoes.

13.7. Storage of Equipment, Materials and Supplies. A center shall provide storage for equipment, materials and supplies that includes:

13.7.a. Open shelves, at the appropriate level from the floor, for activity items so that children may select, remove and replace items independently;

13.7.b. A container, shelf, or cupboard that is inaccessible to children but permits staff to reach supplies, such as clean diapers, without leaving a child unattended;

13.7.c. A closet when used that is accessible to children and has a latch with an internal release so that the door can be opened by a child inside the closet; and

13.7.d. Separate storage areas for each child's personal belongings, including appropriate safe storage for the school-age child's money and ongoing projects.

§78-1-14. Program.

14.1. For each program offered, a center shall prepare and follow a written daily schedule that:

14.1.a. Reflects the goals and objectives set out in the statement of purpose;

14.1.b. Is based on knowledge of child development and learning, and on the needs of the enrolled children;

14.1.c. When necessary to accommodate the needs of a child, follows a written individualized plan, developed with advice from a variety of professional sources, including, but not limited to, an early intervention specialist or a licensed health care provider; and

14.1.d. Is posted in clear, public view.

14.2. A center shall ensure that each program includes flexible program activities that:

14.2.a. Are appropriate to a child's age and developmental level;

14.2.b. Include an appropriate balance of:

14.2.b.1. Indoor and outdoor activities;

14.2.b.2. Activities that use both large and small muscles;

14.2.b.3. Quiet and active play periods;

14.2.b.4. Active and passive learning experiences;

14.2.b.5. Individual and several types of group activities; and

14.2.b.6. Teacher-initiated and child-initiated activities;

14.2.c. Provide opportunities for a child to choose from among several possible activities, or choose not to participate in structured activities at certain times of the day;

14.2.d. Provide a variety of social experiences through grouping arrangements, including mixed-age experiences, that take into account each child's level of maturity;

14.2.e. Include routines at regularly scheduled times, such as sleeping, eating, dressing, toileting, hygiene and diapering;

14.2.f. Are planned so that a child has sufficient time to progress at his or her own developmental rate and does not experience a prolonged waiting period between activities or tasks;

14.2.g. Provide a child with the freedom to get a drink of water or go to the toilet as he or she feels the needs, in keeping with the requirements of this rule; and

14.2.h. Respect cultural diversity and incorporate aspects of a child's culture, including his or her language, traditional food and celebrations.

14.3. A center shall ensure that each program follows guidelines for:

14.3.a. Sleeping routines. A center shall:

14.3.a.1. Provide a designated area where a child can sit quietly or lie down to rest;

14.3.a.2. Ensure that a child twenty-four (24) months of age and under is able to nap according to his or her developmental needs;

14.3.a.3. Ensure that the schedule for a child between twenty-five (25) months of age and school-age who is in care for more than four (4) daytime hours includes a regular nap period of at least one (1) hour each day for the child who sleeps, an opportunity for rest and quiet play for the child who is unable to sleep during the nap period, and a regular nap period for the school-age child who needs it; and

14.3.a.4. Ensure that staff members initially place the child twelve (12) months of age and under, or under the age when he or she can turn over independently, on his or her back unless the parent provides a written statement from a licensed health care provider prohibiting the child from being placed in that position for sleep;

14.3.b. Brushing Teeth. A center shall provide appropriate opportunities for the children in care to have supervised practice of brushing teeth on a daily basis; and

14.3.c. Outdoor Activity. A center shall provide a minimum of one (1) hour of outdoor activity daily when:

14.3.c.1. A child is in care for more than four (4) daytime hours; and

14.3.c.2. Weather and circumstances permit and there are no weather or condition advisories indicating to remain indoors.

14.4. For children twenty-four (24) months of age and under, a center shall follow these additional daily program requirements:

14.4.a. Beginning with the pre-admission meeting between the director or designated staff member and the parent, a center shall work with a child's parent to prepare a written schedule that:

14.4.a.1. Respects a child's normal pattern of activities, sleeping and eating;

14.4.a.2. Is consistent with a child's needs and capabilities;

14.4.a.3. Provides a child with opportunities to interact with staff members, participate in program activities, be outdoors daily as appropriate, and be diapered or toileted as needed; and

14.4.a.4. Identifies qualified staff who will primarily care for the child.

14.4.b. A center shall ensure that the schedule is available for reference in the child's program area.

14.4.c. A center shall ensure that qualified staff members:

14.4.c.1. Evaluate and modify the schedule on a frequent and regular basis, according to the child's developmental needs and in consultation with the child's parent; and

14.4.c.2. For each child twelve (12) months of age and under, prepare a written daily report with information about a child's activities in the following areas:

14.4.c.2.A. Food intake;

14.4.c.2.B. Sleeping patterns;

14.4.c.2.C. Bowel movements;

14.4.c.2.D. Developmental milestones, such as sitting and crawling; and

14.4.c.2.E. Unusual events.

14.5. Staffing Pattern. A center shall arrange its staffing pattern so that each child has a primary care giver who is a qualified staff

member. Staff members shall interact personally with the infant, toddler, and child under school age by:

14.5.a. Holding, rocking and playing whenever possible, including while bathing, dressing and carrying the child;

14.5.b. Encouraging positive communication and language development by making eye-to-eye contact with the child, singing, talking, reacting to the child's communications, naming objects, reading stories and playing musical games;

14.5.c. Paying attention to crying and meeting the immediate needs of the child;

14.5.d. Ensuring that no child is routinely left in a crib or playpen, except for sleep or rest; and

14.5.e. Providing a child who is awake play equipment and opportunities to play freely on a clean, safe floor.

14.6. Night Time Care. When a center provides evening or nighttime care, the center shall:

14.6.a.1. Plan a program that respects the normal sleeping periods, and evening and morning routines of the child;

14.6.a.2. Establish and post a schedule for the child in consultation with the child's parent that provides for:

14.6.a.2.A. Quiet activities before bedtime and opportunities for the older child to complete homework or work on projects or hobbies;

14.6.a.2.B. Meals and snacks;

14.6.a.2.C. Routine preparations for bed; and

14.6.a.2.D. Dressing in the morning, when appropriate.

14.6.a.3. Ensure that no child remains in care for more than eighteen (18) hours in a twenty-four (24) hour period.

14.6.a.4. Ask the parent to provide for the child's personal use a clean, comfortable, nonflammable or flame retardant sleeping garment and other personal items, such as a comb or brush, and label the child's personal use items; and

14.6.a.5. Ensure that staff members supervise a child's bath or individual shower, respecting the child's privacy according to the child's developmental needs.

14.7. Active Media. When a center plans an activity that involves active media, the center shall ensure that:

14.7.a. The active media supplements but does not replace traditional early childhood materials;

14.7.b. A child has a choice of other activities and materials;

14.7.c. Staff members are available to support the activity by discussing the use of the active media with the child;

14.7.d. The computer software chosen is developmentally appropriate and supports creative play and learning; and

14.7.e. No video games or computer software with sexual or violent content, profanity or aggressive behavior are used.

14.8. Passive Media. Regarding passive media, a center shall ensure that:

14.8.a. Passive media is not routinely part of the daily schedule;

14.8.b. When passive media is used, that staff members are available to support the use of it by discussing what is viewed with the child;

14.8.c. When a center allows the child to watch television programs and movies, the contents are designed to benefit the child, viewing time is limited and the child who does not wish to watch has a choice of other activities;

14.8.d. No television programs, cartoons or movies with sexual or violent content, profanity or aggressive behavior are viewed; and

14.8.e. Television, video or other such electronic media is not used with children 24 months of age and younger.

14.9. Special Activity. When a center participates in a special activity, the center shall provide staff who are trained and supervised to enforce safety regulations, provide necessary instructions, and identify and manage environmental and other hazards related to the special activity. Prior to the special activity, the center shall:

14.9.a. Have on file an activity plan that includes, but is not limited to:

14.9.a.1. The qualifications of the supervisor of the special activity;

14.9.a.2. The special qualifications, if any, of any other staff member necessary for adequate supervision of the activity;

14.9.a.3. A supervision plan that includes the number of staff members needed to adequately supervise the activity;

14.9.a.4. The conditions under which a child may participate in the activity, such as the child's age or skills;

14.9.a.5. Any special equipment necessary, such as life jackets, helmets, or other safety gear; and

14.9.a.6. Special safety practices and emergency procedures;

14.9.b. Provide the parent with copy of the activity plan and have written permission dated and signed by the parent for the child's participation in the activity; and

14.9.c. Assign appropriate staff to the activity by:

14.9.c.1. Choosing a staff member for the special activity who has appropriate experience, training or certification in the activity;

14.9.c.2. Having on file at the center verification of the responsible staff member's experience, training or certification; and

14.9.c.3. Ensuring that the responsible staff member is present at the site of the activity.

14.10. Water Activities. When a center plans water activities, the center shall:

14.10.a. Have on file at the center written permission dated and signed by the parent prior to the child's participation in any water activity;

14.10.b. Ensure constant supervision of a child participating in any aspect of any activity involving water;

14.10.c. Ensure adequately prepared staff who are in the water or prepared to enter it at any time and have a system, known to the children and staff members, for checking to ensure that each child is safe when in the water;

14.10.d. Ensure that when a child is participating in a level I or Level II water activity, a staff member is present who has successfully completed training in first aid and CPR, appropriate to the age of the child;

14.10.e. Ensure that when a child is participating in a Level II water activity, the activity is also guarded by an individual who:

14.10.e.1. Is an appropriately certified lifeguard;

14.10.e.2. Has skills in rescue and emergency procedures specific to the aquatic area and activities guarded; and

14.10.e.3. Is trained and supervised to enforce safety regulations, provide necessary instructions, and identify and manage environmental and other hazards related to the aquatic activity; and

14.10.f. Ensure proper equipment and safety further by:

14.10.f.1. Evaluating the child and classifying the child as either a swimmer or a non swimmer, prior to allowing a child to participate in a Level II water activity;

14.10.f.2. Assigning equipment, facilities and activities equivalent to the child's individual abilities and based on a child's classification; and

14.10.f.3. Ensuring that rescue equipment is in full working condition, available and accessible to a child at each water activity site.

14.11. Field Trip. When a center plans a field trip, the center shall:

14.11.a. Have on file a written field trip plan that includes:

14.11.a.1. The names of the children, staff members, and any other participants on the field trip;

14.11.a.2. The departure and return times;

14.11.a.3. The means of travel and routes to be taken;

14.11.a.4. An alternate plan in case of bad weather;

14.11.a.5. The name of a contact person at the center;

14.11.a.6. The name, address, and telephone number, if applicable, of each destination;

14.11.a.7. Relevant safety rules to be followed; and

14.11.a.8. Special emergency procedures;

14.11.b. Obtain written permission from the child's parent prior to the field trip; and

14.11.c. Identify the name or names of the assigned qualified staff member or members responsible for the field trip who shall take with him or her a copy of the written field trip plan, first aid supplies and emergency information for each participating child.

§78-1-15. Health.

15.1. Child Immunization Records.

15.1.a. Within thirty (30) days of admitting a child, a center shall have on file a record of a child's immunizations or a plan for completion signed by the child's licensed health care provider.

15.1.b. If center policy allows, exemptions from immunization requirements shall be available for parents who provide written documentation of religious objections to immunization.

15.1.c. Exemption from immunization requirements shall be available for parents who provide a signed statement from the child's licensed health care provider indicating that immunization is contraindicated based on the child's medical condition

15.2. Child Health Assessment.

15.2.a. A center shall have on file no later than thirty (30) days after the admission, the child's health records, including a record of a health assessment signed by the child's licensed health care provider, that includes the following medical and developmental information, and any special required instructions for the center:

15.2.a.1. The child's current height and weight;

15.2.a.2. A description of any allergy, current health problem or condition that may affect the child's adaptation to care, including abnormal results of screening tests, for vision, hearing, tuberculosis, or lead poisoning;

15.2.a.3. Prescribed daily medications and any potential side effects; and

15.2.a.4. The child's health history, including, as applicable, information about a serious illness or significant communicable disease, an injury that required medical attention or hospitalization, a previous surgery, or a history of prematurity.

15.2.b. A center shall provide parents with a West Virginia Health Check periodicity chart for child health exams and shall ensure that a child's health assessment is updated with new or current information at least every two (2) years for the child under the age of six (6) years.

15.2.c. If a child is between six (6) weeks and three (3) months of age, a center shall have on file a statement signed by the child's licensed health care provider permitting the child to enter group care.

15.3. Medical Treatment.

15.3.a. A center shall develop, implement and maintain health policies and procedures that include protocols to follow when medical treatment is required by a child whose parent has on file a signed statement objecting to treatment.

15.3.b. When the child's parent objects to medical treatment on the grounds that it conflicts with the convictions of his or her religion or conscience, the center shall have on file a statement of the objection to treatment signed by the child's parent.

15.4. Child Illness at the Center.

15.4.a. A center shall ensure that staff members observe a child daily and watch for changes that may indicate injury, infestation or illness, and record any observed changes in the child's file. Changes include:

15.4.a.1. Behavior or appearance that is unusual for a child;

15.4.a.2. A skin rash, itchy skin, or itchy scalp; or

15.4.a.3. A complaint of pain or not feeling well.

15.4.b. When staff members observe changes in a child that may indicate illness or when a child is ill, staff members shall:

15.4.b.1. Remove the child to a designated quiet area to rest comfortably under supervision;

15.4.b.2. Take the child's temperature and record it in the child's file;

15.4.b.3. Use universal precautions, as required; and

15.4.b.4. Contact the child's parent or other individual authorized by the parent to assume responsibility for the child.

15.4.c. When taking a child's temperature, staff members shall not use a mercury thermometer or the rectal method for any child.

15.4.d. A center shall inform the parent and suggest that the parent consult a licensed health care provider for a child who has a fever:

15.4.e. A center shall exclude a sick child from the center:

15.4.e.1. Immediately when a child has a serious communicable illness;

15.4.e.2. When the illness prevents a child from participating in routine activities;

15.4.e.3. When a child's illness results in a greater need for care than staff members can provide without compromising the health and safety of the other children;

15.4.e.4. When a child appears to have any of the following symptoms, unless a licensed health care provider determines that they do not indicate a communicable disease:

15.4.e.4.A. Fever with stiff neck, lethargy, irritability, or persistent crying;

15.4.e.4.B. Diarrhea in addition to signs of dehydration, such as a decrease in urination as indicated by a reduction in the number of wet diapers, no tears when crying or a decrease in activity, or blood or mucus in the stool;

15.4.e.4.C. Vomiting three (3) or more times, or with signs of dehydration;

15.4.e.4.D. Undiagnosed rash that is accompanied by a behavior change, difficulty in breathing or joint pain, or that is characterized by open sores, blood, red or purple pin-head spots, or bruises not associated with an injury, or lasts more than one (1) day;

15.4.e.4.E. Mouth sores with drooling;

lice; 15.4.e.4.F. Infestation, such as scabies or head
intermittent with other signs such as a fever; 15.4.e.4.G. Abdominal pain that is persistent, or
play; and 15.4.e.4.H. Difficulty in breathing; or
15.4.e.4.I. Lethargy such that the child does not

15.4.e.5. When a child has any of the following
diagnosed conditions;

15.4.e.5.A. Diarrhea and blood or mucus in the
stool;

15.4.e.5.B. Contagious signs of pertussis,
measles, mumps, chicken pox, rubella or diphtheria;

15.4.e.5.C. Streptococcal infection until treated
with antibiotics for twenty-four (24) hours;

15.4.e.5.D. Pinkeye with yellow or white
discharge;

15.4.e.5.E. Untreated tuberculosis; or

15.4.e.5.F. Other conditions as determined by a
licensed health care provider.

15.4.f. When excluding a child to prevent transmission of
illness or readmitting a child who has been excluded, the center shall
abide by the following guidelines:

15.4.f.1. During the course of an identified outbreak of
any communicable illness, the center shall exclude the child if a licensed
health care provider determines that the child is contributing to the
transmission of the illness;

15.4.f.2. When a child has been diagnosed with a
vaccine-preventable communicable disease, a center shall exclude the child
who has not been immunized against the disease until a licensed health
care provider determines that a risk of disease transmission has passed;

15.4.f.3. When a licensed health care provider excludes
a child because of a communicable illness, a center shall readmit the
child only after the child's parent provides a signed statement from a
licensed health care provider that the risk of transmission is no longer
present and the child is well enough to participate in center activities;
and

15.4.f.4. After receiving a signed statement from a
licensed health care provider that the child poses no health risk to the
children at the center, the center may permit the child to remain at the
center.

15.4.g. Guidelines for handling reportable diseases introduced in a center include that:

15.4.g.1. A center shall report to the local health department the introduction of a diagnosed reportable disease as listed in Appendix 78-1 B of this rule, including, chickenpox, diphtheria, giardia lamblia, hepatitis A, mumps, meningitis, pertussis (whooping cough), rheumatic fever, rubella (German measles), rubeola (measles), salmonella, shigella, and tuberculosis;

15.4.g.2. A center shall inform the parent of each child immediately of the presence of the disease and the need to contact a licensed health care provider for further information; and

15.4.g.3. A center shall complete a serious occurrence report as required under this rule.

15.4.h. Medication Administration. With advice from a licensed health care provider, a center shall develop, implement and maintain health policies and procedures that include the following procedures for the administration of medication:

15.4.h.1. A center shall only administer medication with written permission from the child's parent, and with a prescription or a written order from a licensed health care provider except as provided for in Section 15.4.h.7.;

15.4.h.2. The center shall secure instructions from the child's parent for each medication to be administered. The center may not accept instructions that indicate to administer the medication on an as needed basis unless the order is accompanied by a medical treatment plan written by the child's licensed health care provider which describes the as needed condition. All medication instruction must be legibly written, signed by the parent, attached to the medication log and shall include:

15.4.h.2.A. The child's first and last name;

15.4.h.2.B. The name of the medication to be given;

15.4.h.2.C. The reason the medication is being given; and

15.4.h.2.D. Directions for the administration of the medication including the specific dosage, specific frequency or time to be given, route to be given and the time of the last dosage administered by the parent.

15.4.h.3. A center may secure a parent's written permission to apply sun screen supplied by the center provided the center gives the parent information, in writing, about the product prior to its application.

15.4.h.4. A center shall store all medication in its original bottle or package and shall place medication other than sun screen and diaper ointment in a locked cabinet or container that is

inaccessible to children and can be opened only by key or combination. The container or cabinet shall be away from food, and refrigerated or unrefrigerated according to instructions on the prescription, order or label.

15.4.h.4.A. Refrigerated medication shall be in a container which cannot leak.

15.4.h.4.B. If the container used is plastic, it shall be a hard molded plastic container. Plastic bags are prohibited for storage.

15.4.h.5. A center shall ensure that medication is only administered by designated qualified staff members with training in medication administration.

15.4.h.6. A center shall ensure that prescription medication is only administered when the prescriptive medicine bottle or package has the original pharmacy label showing the prescription number, name of the medication, date the prescription was filled, the licensed health care provider's name, the child's first and last names, specific, legible directions for administration and storage, and the expiration date.

15.4.h.7. A center shall ensure that non-prescription medication is only administered when the following criteria are met:

15.4.h.7.A. The center administers oral non prescription medication for no more than three (3) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider;

15.4.h.7.B. The center applies non prescription topical products (ointments, creams, or lotions) for no more than five (5) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider. Sunscreens or lip balms used for preventative purpose are excluded from this requirement;

15.4.h.7.C. The original non prescriptive medicine bottle or package has a label with the child's first and last names written by the parent, specific, legible directions for administration including the appropriate dosage based on weight or age, directions for storage, and verification that the medicine will not expire during the time to be used;

15.4.h.7.D. Medication to reduce fever does not contain aspirin or any product containing aspirin listed as an ingredient such as sodium bicarbonate (Alka-Seltzer®) or bismuth subsalicylate (Pepto-Bismol®);

15.4.h.7.E. Medication for cough, cold or congestion does not contain codeine;

15.4.h.7.F. Any topical containing diphenhydramine hydrochloride (Benydryl®) shall not be applied without written instruction from a licensed health care provider;

15.4.h.7.G. That the medication shall not be administered in a manner inconsistent with the manufacturer's recommendations without written instructions from the child's licensed health care provider;

15.4.h.7.H. The center shall ensure that a staff member applies sunscreen or lip balm for a child up to school age. The sunscreen shall be applied in accordance with the product labeling guidelines; and

15.4.h.7.I. The center shall permit a school age child to apply his or her own sun screen or lip balm under the direct supervision of a staff member.

15.4.h.8. A center shall ensure that before administering medication when the directions are not legible, the parent checks with the child's licensed health care provider or, if applicable, the pharmacy that filled the prescription;

15.4.h.9. When a child no longer needs the medication or its expiration date passes, a center shall return the medication to the parent, and document the date of its return. A center shall not administer medication after its expiration date;

15.4.h.10. A center shall ensure that records of medication administration are individual and kept:

15.4.h.10.A. In a medication log that is cumulative; and

15.4.h.10.B. Completed in ink by the staff member who administers the medication, and includes the child's name, the name of the medication, the date and time of the administration, the dosage and route of the medication, the child's reaction, if any, and the name of the staff member who administered it.

15.4.h.10.C. Sunscreen and lip balm application are not required to be logged.

15.4.h.11. A center shall ensure when a documentation error is made that a single line is drawn through the error with the staff person correcting the error initialing it.

15.4.h.12. A center shall ensure if and when a medication error is made, the staff member who makes the error:

15.4.h.12.A. Informs the center director and the parent of the child affected by the error;

15.4.h.12.B. Completes a serious occurrence report as required under this rule; and

15.4.h.12.C. Observes the child for any reaction to the error and, if the child shows a reaction, contacts 911. If 911 service is not available to the area then emergency services shall be contacted.

15.4.h.13. A center may permit a child to self-administer his or her own medication under the following circumstances:

15.4.h.13.A. With written permission from the child's parent and licensed health care provider and in accordance with procedures established in this rule, a child may self-administer asthma medication, emergency allergy medication or other similar emergency medication;

15.4.h.13.B. With written permission from the child's parent and licensed health care provider, the center may establish procedures to permit the child, under supervision, to self-administer insulin or other injected medication that the child requires; and

15.4.h.13.C. When the child self-administers medication, qualified staff members shall keep a written record of the administration in the medication log.

15.4.h.14. A center shall have a procedure that requires medication logs be reviewed on a daily basis to ensure that medicine is being properly administered and documented.

15.4.h.15. A center shall post the "Seven Rights of Medication Administration" near to the storage of medication.

15.5. Dental Health.

15.5.a. A center shall develop a dental health plan that provides for staff training in oral health concepts and child oral health education, appropriate to the age of the children at the center.

15.5.b. Staff members shall not give a child a bottle, a sipping cup of milk or juice as a pacifier.

15.5.c. For a child twenty-five (25) months and over, a center shall ensure that the child:

15.5.c.1. Has a personally labeled toothbrush with bristles in good condition, that is stored in a sanitary manner so that it does not touch another toothbrush and that its bristles are exposed to the air to dry;

15.5.c.2. Does not share his or her toothbrush with other children; and

15.5.c.3. Uses toothpaste that is dispensed in a sanitary manner.

§78-1-16. Nutrition and Food.

16.1. Dietary Guidelines for children beginning at age two (2). A center shall provide children with meals and snacks that are consistent with the United States Department of Agriculture's current Dietary Guidelines for Americans (Appendix 78-1-C).

16.2. Dietary guidelines for children under 24 months of age:

16.2.a. At a minimum, meals and snacks the facility provides for infants and toddlers shall contain food in the meal and snack patterns shown in Appendix 78-1 C of this rule. Food shall be appropriate for infants' individual nutritional and developmental stages as determined by written instruction from the parent or health care provider.

16.2.b. The center shall offer solid foods and fruit juices to infants 6 months of age and younger only upon the recommendation of the parent and the child's licensed health care provider.

16.3. Special Dietary Needs. When planning meals and snacks a center shall:

16.3.a. Consider information provided by the parent or a licensed health care provider about a child's special dietary needs, including special needs because of a medical condition or religious prohibition; and

16.3.b. Keep information about the child's special dietary needs in a location that is accessible to staff who prepare and serve food, while protecting a child's right to confidentiality.

16.4. Food Groups. A center shall include foods from the four (4) basic food groups: milk, meat/beans, fruits and vegetables, and grains, for the child thirteen (13) months of age and over as follows:

16.4.a. Breakfast shall include at least one (1) item from three (3) of the food groups;

16.4.b. Lunch or supper shall include at least one (1) item from each of the four (4) food groups; and

16.4.c. Snacks shall include at least one (1) item from two (2) of the food groups.

16.5. Frequency of Meals. A center shall ensure that no more than four (4) hours elapse between meals and snacks, unless a child is asleep. A center shall provide meals and snacks according to the following requirements:

16.5.a. A center that is open from morning through afternoon shall serve a morning snack or breakfast, lunch and afternoon snacks;

16.5.b. A center that provides care before seven (7) o'clock in the morning shall serve breakfast; and

16.5.c. A center that provides care to the child whose planned attendance extends until after seven (7) o'clock in the evening shall serve supper;

16.6. Quantity for Daily Requirements. A center shall follow the current meal patterns of the USDA Child and Adult Food Program and serve a child:

16.6.a. Who is in attendance from four (4) hours to seven (7) hours, a quantity of food that will supply a minimum of one-third (1/3) of the daily requirements of the current Dietary Guidelines for Americans listed in Appendix 78-1 C of this rule;

16.6.b. Who is in attendance for eight (8) or more hours, a quantity of food that will supply one third (1/3) to one-half (1/2) of the daily requirements of the current Dietary Guidelines for American; and

16.6.c. Servings of food appropriate to the age of the child, and make additional food available for the child who has eaten the food served and is still hungry.

16.7. Requirements for Milk and Juice.

16.7.a. A center shall serve the child only pasteurized, inspected, Grade A approved milk to drink, and shall not use powdered milk except for cooking.

16.7.b. A center shall serve the child only commercially pasteurized, one hundred (100) percent, vitamin C fortified fruit juice to drink.

16.8. Food Service. A center shall serve food according to the following:

16.8.a. A center shall provide a child with age-appropriate and developmentally suitable eating utensils;

16.8.b. Staff members shall encourage a child to eat the food served, but shall not coerce or force feed a child;

16.8.c. Staff members shall eat or participate in meals and snacks with a child twenty-five (25) months of age and over and shall model healthy eating habits; and

16.8.d. The meals shall be served in a setting that encourages socialization, where the children and staff members are seated when eating, and staff members provide supervision and model positive eating behaviors and social interactions.

16.9. Menus.

16.9.a. A center shall post menus for all food served a minimum of one (1) week in advance for the parent to see.

16.9.b. A center shall follow written menus as planned and write any changes on the posted menus.

16.9.c. A center shall date menus and keep them on file for a minimum of two (2) months.

16.10. Food Safety. A center shall ensure that:

16.10.a. Food preparation areas, service areas, storage areas, and equipment and utensils are clean and in good repair;

16.10.b. An off-site supplier of meals or snacks has a Food Service Permit;

16.10.c. The Bureau for Public Health has approved the method of transporting and distributing the food taken for a child to consume during a field trip;

~~16.10.d. With the exception of bottles of formula, expressed breast milk, or previously unopened containers of baby food brought to a center by a parent for consumption by his or her own child, a center serves only food and beverages provided by a center or brought into a center from an approved source as defined by the health department.~~

~~16.10.e.~~ 16.10.d. Leftover portions of food that have been served are discarded;

~~16.10.f.~~ 16.10.e. Prior to serving milk to a child, except when its original container is a single service container, staff pours the milk from the original container into a clean, sanitized and labeled bottle or a disposable, sterile bottle liner, or into a sanitized glass or single-service cup and shall not pour the milk back to its original container or store it for later use;

~~16.10.g.~~ 16.10.f. Ice is made with water from an approved source; and

~~16.10.h.~~ 16.10.g. Ice used for cooking is not consumed by the child, and water from melted ice used for cooling does not contaminate food to be served.

16.11. Additional Nutrition and Feeding Requirements for a Child Twelve (12) Months of Age and Under.

16.11.a. A center caring for a child twelve (12) months of age and under shall feed the child according to a plan developed in consultation with the parent and may include advice from the child's licensed health care provider.

16.11.b. When a child is being breast fed, a center shall ensure that the child's plan makes a provision for the mother to provide sufficient portions of breast milk or an alternative to satisfy the child throughout the day, and a center shall not give commercial formula to the child receiving breast milk without written permission from the mother.

16.11.c. For the child between six (6) months and three (3) years of age a center shall not replace formula or breast milk with water.

16.11.d. Until a child is able to hold a bottle securely, a staff member shall hold the child while bottle feeding. When a child is no longer being held for feeding, the staff shall ensure that seating is age-appropriate and shall not prop bottles or allow the child to carry a bottle while moving about or walking.

16.11.e. For food safety a center shall:

16.11.e.1. Store perishable food, formula and expressed breast milk in the refrigerator;

16.11.e.2. Have the parent clearly label each bottle of formula with the child's name, contents and the date received;

16.11.e.3. Have the parent clearly label each bottle of breast milk with the child's name, date expressed, date frozen if applicable, and date received;

16.11.e.4. Cap bottles of formula or breast milk during storage;

16.11.e.5. Ensure each staff person follows the hand washing requirement found in Section 17 of this rule prior to preparing a bottle;

16.11.e.6. Thaw frozen breast milk in the refrigerator or under cold running water. The center must not refreeze breast milk;

16.11.e.7. Not use a microwave oven to warm a bottle of formula or breast milk;

16.11.e.8. Not give any formula or breast milk to a child that is not labeled;

16.11.e.9. Discard any unused breast milk after each feeding;

16.11.e.10. Clean and sanitize bottles, bottle caps, and nipples by washing in a dishwasher and storing them in a sanitary manner, or by boiling them for five (5) minutes immediately before filling them; and

16.11.e.11. Handle baby food in the following manner:

16.11.e.11.A. A center shall not accept previously opened baby food containers;

16.11.e.11.B. A center shall remove commercially packaged baby food from its container and serve it in a clean bowl or cup;

16.11.e.11.C. A center shall not place solid food in a bottle or feeder apparatus and shall use a spoon to feed solid food in a sanitary manner; and

16.11.e.11.D. A center shall discard leftover food that has come into contact with the feeding spoon;

16.11.e.12. A center shall handle breast milk and formula in the following manner:

16.11.e.12.A. A center shall store breast milk in hard plastic or glass bottles with tight lids only;

16.11.e.12.B. A center shall remove breast milk and bottles of formula from the refrigerator immediately before using only;

16.11.e.12.C. A center shall discard breast milk or formula when it remains at a temperature higher than forty-one (41) degrees Fahrenheit for more than one (1) hour or within thirty (30) minutes after a child has finished feeding; and

16.11.e.12.D. A center shall use fresh refrigerated breast milk within forty-eight (48) hours of receipt, breast milk that has been frozen and properly thawed within twenty-four (24) hours of receipt and frozen breast milk within two (2) weeks of receipt if it is reported that it has been stored in the back of a freezer.

16.11.f. In order to provide sufficient amounts of safe drinking water, the center shall ensure that:

16.11.f.1. Drinking water is available to children and staff members and is freely accessible at all times to a child thirteen (13) months of age and over; and

16.11.f.2. A single service drinking cup is discarded after one use, and a non-disposable cup or glass is washed and sanitized after each use.

16.12. A center may choose to allow a child to bring meals and snacks to the center provided:

16.12.a. The center has written policies that address:

16.12.a.1. The provision to parents and staff of nutritional guidelines as stated in this rule;

16.12.a.2. The provision to parents and staff of guidelines on the proper preparation and storage of food so that foods do not present a cross-contamination threat;

16.12.a.3. The provision to parents and staff a list of foods the center will not permit, including known food allergens to other children;

16.12.a.4. An explanation to parents of how the center will address the issue if a child does not bring meals or snacks, or if the meals or snacks the child does bring are not within the nutritional guidelines or guidelines provided by the center;

16.12.a.5. That the food prepared from an unapproved source is for consumption by the child and not to be shared with other children or the group.

16.12.b. The center shall have safe storage and refrigeration of the food as needed. Storage must be approved by the health department;

16.12.c. Each child's meal or snack is clearly labeled with the child's first and last names and the date brought to the center;

16.12.d. No additional food preparation is required by the center;

16.12.e. The center shall provide a meal or snack when the parent fails to provide a meal or snack from home;

16.12.f. The center shall include children with food allergies in the group during meal or snack time and shall closely supervise all children under school age during meal or snack time to prevent the cross-contamination of food or accidental ingestion of a food allergen;

16.12.g. The center shall have milk available at meal times in accordance with meal patterns described in Appendix 78-1-C.

§78-1-17. Sanitation.

17.1. Personal Hygiene. All individuals on the center premises or participating in center activities shall practice good personal hygiene, including:

17.1.a. Hand Washing.

17.1.a.1. Staff members shall wash their hands before starting work; and

17.1.a.2. Staff members and children shall wash their hands with soap and warm, running water for at least twenty (20) seconds:

17.1.a.2.A. When hands are contaminated with body fluids;

17.1.a.2.B. Before preparing, handling or serving food, or setting the table;

17.1.a.2.C. After toileting, handling diapers or assisting a child with toilet use;

17.1.a.2.D. Before and after eating meals or snacks;

17.1.a.2.E. After handling pets or other animals;

17.1.a.2.F. Before giving medication;

17.1.a.2.G. After playing outdoors;

17.1.a.2.H. After handling garbage; and

17.1.a.2.I. After removing gloves used for any purpose.

17.1.b. Universal Precautions. With the exception of breast milk, staff members shall adopt universal precautions when exposed to blood and body fluids that might contain blood; and

17.1.c. Diapering and Toileting. A center shall ensure that diapering and toilet training follow the guidelines in Appendix 78-1-D of this rule.

17.1.c.1. Toilet Training.

17.1.c.1.A. A center shall discuss with the parent and document in the child's record the toilet-training methods to be used with the child being trained.

17.1.c.1.B. Staff members shall not use any form of punishment in connection with toilet training.

17.1.c.1.C. Staff members shall not force a child to sit on a potty or training chair.

17.1.c.2. Toilet Equipment and Fixtures.

17.1.c.2.A. A center shall disinfect the potty or training chairs after each use; and

17.1.c.2.B. A center shall provide toilet fixtures that are sized so that the child can use them without assistance, and provide step stools, or modified toilet seats that are safe and easily disinfected.

17.2. Physical Facilities.

17.2.a. A center shall keep all areas of the premises and all equipment clean and in a neat and orderly condition at all times.

17.2.b. The center shall ensure that floors, walls and ceiling are of easily cleanable material.

17.2.c. The center shall ensure that the floor area immediately adjacent to the diaper changing table has a moisture-resistant, non-absorbent surface extending three (3) feet from the base of the table on all sides, except when one side of the table is against a wall.

§78-1-18. Animals.

18.1. A center shall ensure that animals on the premises show no signs of disease or illness.

18.2. The center shall maintain documentation of current vaccinations on all dogs and cats.

18.3. A center shall not have on the premises ferrets, birds, reptiles, including snakes, lizards and turtles, or any wild or dangerous animals.

18.4. A center shall ensure that a staff member is always present when a child is with an animal.

18.5. A center shall inform the child's parent in advance of the presence of animals at the center.

§78-1-19. Safety and Emergency Operating Procedures.

19.1. A center shall develop, implement and maintain attendance policies and procedures to ensure that it has a current and updated written record of the first and last name of each child who is participating in center activities, onsite and offsite, and who is being transported in a vehicle provided by the center.

19.2. Daily Attendance Sign-In and Sign Out.

19.2.a. A center shall ensure that the responsible person bringing the child to the center signs the child in as the child arrives and that the responsible person picking up the child signs the child out as the child departs the center.

19.2.b. A center shall require the following sign-in and sign-out information:

19.2.b.1. Arrival time including the date and time;

19.2.b.2. Departure time including the date and time;

19.2.b.3. The name and signature of the responsible person who drops off the child; and

19.2.b.4. The name and signature of the responsible person who picks up the child.

19.2.c. A center shall have an attendance procedure for notifying the parent when a school-age child does not arrive as scheduled.

19.3. Transportation Log.

19.3.a. A center shall provide a passenger log to be kept by the driver of the vehicle, the designated staff member, or the volunteer riding in the vehicle that shall include the first and last names of each child boarding the vehicle. There shall be a notation on the log each time a child boards the vehicle or departs the vehicle.

19.3.b. Immediately upon unloading the last child from a vehicle, or before parking the vehicle, the driver or the designated staff member shall physically search the vehicle to ensure that all children have been unloaded. The transportation log shall then be reviewed either by the driver or the designated staff member to check that the information is correct.

19.3.c. The driver or the designated staff member shall deliver the transportation log to the person responsible for maintaining attendance records.

19.4. Daily Roster.

19.4.a. A center shall prepare a written, daily roster that includes the first and last names of each child in each group of children, the name of the staff member responsible for the group, and the space designated for use by the group both at the center and at off-site locations used during field trips.

19.4.b. Periodically throughout the day, the staff member responsible for each group of children shall check the daily roster to ensure that all children are present or accounted for.

19.4.c. A center shall keep each daily roster in a designated location where it is readily available in case of emergencies and can be used to confirm attendance following an evacuation from the premises or upon returning from a field trip.

19.4.d. A center shall ensure that its attendance procedures include accounting for a child at all times and taking action when a child is lost on or off the premises.

19.5. Emergency File. A center shall develop and maintain an emergency file with information for each enrolled child that is accessible to all staff members, including at off-site activities.

19.6. Emergency Policies, Procedures and Plan. A center shall develop, implement and maintain policies and procedures for responding to an emergency, including a plan:

19.6.a. For medical and non medical emergencies and for situations that could pose a hazard to staff and children, including, a fire, storm, flood, chemical spill, power failure, bomb threat, persons coming onto the premises whose health or behavior may be harmful to a child or staff member or kidnapping;

19.6.b. For evacuation from the center in the event of an emergency that could cause damage to the center or pose a hazard to the staff and children;

19.6.c. For evacuation from a vehicle used to transport children;

19.6.d. That considers the age and physical and mental abilities of the enrolled children; types of emergencies that are likely to affect the area; the requirements of the State Fire Marshal; and advice from the Red Cross or other health and emergency professionals;

19.6.e. For documenting the review of its emergency plans with new staff during orientation and with all staff at least once a year;

19.6.f. For a medical emergency that identifies staff responsible for implementing the plan and includes;

19.6.f.1. The procedures to be followed;

19.6.f.2. The location of a center's first aid kit and other emergency supplies;

19.6.f.3. The location of the child's emergency information;

19.6.f.4. The name, address and telephone number of a health professional or facility available to provide medical consultation to the center;

19.6.f.5. The name, address, telephone number and location of the emergency facility to be used when a center cannot reach the child's parent or licensed health care provider, or when transporting the ill or injured child to the preferred hospital could result in a serious delay in obtaining medical attention;

19.6.f.6. Identification of a means of transportation that is always available in case of an emergency, and telephone numbers for an ambulance or other transportation that might be required; and

19.6.f.7. Other emergency telephone numbers as required in this rule; and

19.6.g. For a non medical emergency that identifies staff members responsible for implementing the plan and includes:

19.6.g.1. The procedures to be followed;

19.6.g.2. The location of the center's first aid kit and other emergency supplies;

19.6.g.3. The location of the child's attendance records and emergency information;

19.6.g.4. The identification of a safe location within a center where a children and staff members can stay until the threat of danger passes;

19.6.g.5. A diagram of the routes to be used by the child and staff members to reach the safe location and a copy of the plan for moving to the safe location that the center shall post by the telephone and in each room of the center;

19.6.g.6. A procedure for notifying the local fire department when a center offers evening or night time care;

19.6.g.7. A procedure for practicing moving to the safe location within a center at least two (2) times a year;

19.6.g.8. A procedure for maintaining a written record of the dates and times when the practice sessions are conducted; and

19.6.g.9. A procedure for ensuring that a staff member determines that all of the children attending at the time of the non medical emergency are safe during an emergency or practice.

19.7. Evacuation and Drill Plan.

19.7.a. A center shall have a plan for evacuating the center in an emergency posted by the telephone in each room of the center that identifies staff members responsible for implementing the plan that includes:

19.7.a.1. The procedures to be followed;

19.7.a.2. The location of the child's attendance records and emergency information;

19.7.a.3. A diagram of safe routes by which the child and staff members may exit each area of the center used by the child; and

19.7.a.4. The name and address of a location with a telephone, such as another center, school or public building, that is available for a child and staff members to use until the center can contact the child's parent.

19.7.b. A center shall conduct a fire drill at least two (2) times a month during its regular hours of operation, keeping a written record of the dates and times when fire drills are conducted.

19.7.c. When a center offers evening or night time care, a center shall also conduct fire drills during the hours of operation of its evening or night time program at least once a month.

19.7.d. A center shall ensure that a staff member is responsible for determining that all of the children attending at the time of the event have been evacuated safely during an emergency evacuation or practice.

19.8. Evacuation from a Vehicle.

19.8.a. A vehicle evacuation plan shall be posted in each vehicle regularly used by the center to transport a child that includes:

19.8.a.1. The procedures to be followed;

19.8.a.2. The location of the vehicle's first aid kit and other emergency supplies;

19.8.a.3. The location of the vehicle's transportation passenger log and the children's emergency information; and

19.8.a.4. The name and address of the emergency medical facilities closest to the vehicle's route.

19.8.b. When it provides transportation according to a regular schedule, a center shall conduct a vehicle evacuation drill at least two (2) times a year.

19.8.c. A center shall maintain a written record of the dates and times when vehicle evacuation drills are conducted.

19.8.d. A center shall ensure that a staff member is responsible for determining that all of the children have been evacuated safely during an emergency evacuation or practice.

19.9. Staff Responsibility Regarding Medical Emergencies and Evacuation.

19.9.a. For a medical emergency at a center, a center shall develop, implement and maintain procedures for ensuring that staff members:

19.9.a.1. Attend to the injured child with first aid or follow appropriate emergency procedures if the child is experiencing an acute condition, including an asthma attack, seizure, or life-threatening anaphylactic reaction;

19.9.a.2. Notify the parent or other individual designated by the parent to assume responsibility for the child and inform him or her of the child's illness or injury and the center's response; and

19.9.a.3. Complete the required documentation.

19.9.b. For a medical emergency requiring treatment at a medical facility, a center shall provide staff to:

19.9.b.1. Accompany the ill or injured child to the medical facility;

19.9.b.2. Ensure that signed authorization for treatment accompanies the ill or injured child to a medical facility;

19.9.b.3. Notify the parent or other individual designated by the parent to assume responsibility for the child and inform him or her of the child's illness or injury and the center's response;

19.9.b.4. Inform the medical facility that the ill or injured child is being transported for treatment; and

19.9.b.5. Obtain substitute staff, if needed, to provide adequate supervision for the children who remain at the center.

19.9.c. A center shall ensure that staff members are informed of their responsibilities in the event of an evacuation of the premises or a center's vehicle, as required by the center's procedures and notify the Secretary.

19.10. First Aid Kit. A center shall provide a first aid kit for every twenty (20) children that is stored where it is easily accessible to staff members, but out of reach of the children. The location of the first aid kit shall be clearly marked and in view of the staff member. The kit shall be:

19.10.a. Equipped with band aids, a non mercury thermometer, gauze, tape scissors, tweezers, disposable nonporous gloves, a first aid guide, the telephone number of a poison control center, and pencil and paper. A bottle of clean water shall be stored with or accompany the first aid kit; and

19.10.b. Readily available at all times, including in the outdoor activity area, on all field trips away from the center and in each vehicle provided by the center for the transportation of children.

19.11. Telephone. A center shall provide at least one (1) operable, direct-line telephone that is in the center space, is not a pay station or locked telephone, and is available during the center's hours of operation. Close to the location of each telephone, a center shall post:

19.11.a. The name, address and telephone number of the center;

19.11.b. A list of emergency numbers, including 911, the fire department, police department, ambulance service, the center's medical consultant and a poison control center;

19.11.c. When a center operates at more than one (1) site, the name and telephone number of the center's principal place of business; and

19.11.d. When a center occupies space it does not own, the name and telephone number of the owner of the building.

19.12. Reporting a Serious Occurrence. A center shall:

19.12.a. Immediately inform the parent or parent's authorized designee when a child is involved in a serious occurrence;

19.12.b. Verbally report the occurrence within twenty-four (24) hours or by the next work day to the Secretary, and before the end of the day, ensure that the staff member in charge prepares and signs a serious occurrence report; and

19.12.c. Complete a report of each serious occurrence ensuring that the report is signed by the staff member completing it and by the child's parent. Copies of the report are to be placed in the child's file and in a separate cumulative file maintained by the center.

§78-1-20. Environmental Safety.

20.1. A center shall take all necessary precautions to ensure an accident-free and smoke-free environment for the children, staff members and visitors to the center.

20.1.a. Smoking and tobacco product use by anyone is prohibited on the premises and everywhere in the presence of children.

20.1.b. Smoking is prohibited anytime in vehicles operated by the center, even in the absence of children.

20.1.c. All tobacco products, lighters and matches shall be kept out of the children's reach and sight.

20.2. Safety of Premises, Furnishings, Equipment and Supplies. A center shall:

20.2.a. Ensure that the premises, furnishings, equipment and supplies are in good repair and present no hazard to the health and safety of the children;

20.2.b. Only use furnishings, equipment and supplies that meet the standards of the Consumer Product Safety Commission (CPSC) and shall not use any product recalled by the CPSC;

20.2.c. Position indoor and outdoor furnishings, equipment and supplies to:

20.2.c.1. Allow a child freedom to participate in center activities;

20.2.c.2. Permit direct access to emergency exits; and

20.2.c.3. Provide clear sight lines for staff supervision;

20.2.d. Ensure that sleeping equipment, including cribs, playpens, cots and beds are a minimum of twenty-four (24) inches apart from each other on all sides;

20.2.e. Maintain a temperature not less than sixty-eight (68) degrees Fahrenheit at floor level and not higher than eighty-five (85) degrees Fahrenheit, in all rooms occupied by a child;

20.2.f. Ensure sufficient lighting by:

20.2.f.1. Providing a minimum of fifty (50) foot candles of illumination at floor level, in rooms occupied by a child for program activities;

20.2.f.2. Providing at least thirty (30) foot candles of illumination at floor level in areas not occupied by a child;

20.2.f.3. Providing light for supervision when a child is sleeping; and

20.2.f.4. Provide outdoor lighting at all entrances and exits used by a child when a center operates evening or night time programs.

20.3. Potential Hazards of Premises, Furnishings, Equipment and Supplies.

20.3.a. Firearm Prohibition. A center shall prohibit firearms unless carried by a regulatory or law enforcement professional in the line of duty; and projectile weapons, including pellet or BB guns, darts, cap pistols, bows and arrows, slingshots and paint ball guns.

20.3.b. Hazardous Chemical and Toxic Items. A center shall ensure that:

20.3.b.1. Products containing potentially hazardous chemicals, including identified poisons, medications, certain cleaning supplies, and art supplies, not clearly labeled as "nontoxic," are inaccessible to the children in a locked cabinet away from food, and when possible, stored in their original containers and never in containers originally designed for food; and

20.3.b.2. For each product containing potentially hazardous chemicals, a center has on file a material safety data sheet, available at the point of purchase or from the manufacturer.

20.3.c. Lead Paint. A center shall seal or remove lead paint from the premises according to current safety standards and at a time when the children are absent during the entire sealing or removal process. The center shall secure approval from the Health Department prior to implementing a plan to deal with lead paint.

20.3.d. Electrical Equipment.

20.3.d.1. Electrical cords. A center shall ensure that each electrical cord is insulated and in good repair.

20.3.d.2. Extension cords and plug-in strips. A center shall not use an electrical extension cord except on a temporary basis, but if using it shall ensure that the cord is in good repair. A center may use an electrical multiple plug-in strip with a circuit breaker in good repair.

20.3.d.3. Electrical Outlet. A center shall ensure that when an electrical outlet within reach of a child younger than school age is not in use, it is protected by a cover.

20.3.d.4. Electrical Appliance. A center shall not locate an electrical appliance in an activity area used by a child except for a brief period when an adult supervises the use of the electrical appliance for a program.

20.3.e. Microwave Oven. If a center uses a microwave oven, the center shall train staff members in the correct use and potential dangers of the oven and post a warning on or near the oven to check the temperature of food heated in the oven before feeding it to a child.

20.3.f. Heating Devices. A center shall provide a shield to protect the children from a hot pipe or radiator and shall not use unvented fuel fire heaters.

20.3.g. Doors. A center shall ensure that:

20.3.g.1. All doors close properly and fire doors are closed at all times; and

20.3.g.2. All clear glass doors are clearly marked at the children's eye level.

20.3.h. Floors. A center shall firmly anchor all floor coverings.

20.3.i. Barriers and Gates. The center shall ensure that:

20.3.i.1. All temporary walls or items being used as physical barriers are firmly anchored or cannot be moved or tipped by a child so that they pose no threat to the safety of the child; and

20.3.i.2. Stairways to which the child has access have appropriate railings and safety gates or other barriers at the top and bottom.

20.3.j. Strings, Cords and Hanging Items.

20.3.j.1. When a child wears a piece of clothing with a drawstring, a center shall:

20.3.j.1.A. Inform the child's parent of the potential risk of strangulation; and

20.3.j.1.B. Ensure that prior to the child's participation in an activity, staff members remove or secure any drawstring that might pose a risk to the child.

20.3.j.2. Pacifiers. A center shall ensure that a pacifier attached to a string or ribbon that is six (6) inches or more in length, is not placed around a child's neck or affixed to the child's clothing.

20.3.j.3. A center shall ensure that a child under school age does not have access to a string or cord that is six (6) inches or more in length and attached to a fixed object, such as a window shade, or access to other hanging items, such as a tablecloth.

20.4. Outdoor Safety.

20.4.a. Barriers and Exits.

20.4.a.1. A center shall ensure that the outdoor activity area for a child under school age:

20.4.a.1.A. Is enclosed on all sides by a natural barrier or secure fence that is at least four (4) feet high with a bottom edge that is less than three and one-half (3 ½) inches from the ground;

20.4.a.1.B. If it has a fence, the fence has no openings greater than three and one-half (3 ½) inches;

20.4.a.1.C. If it has a natural barrier, the barrier has the strength and density to prevent humans and animals from entering or exiting the playground;

20.4.a.1.D. If it is attached to a building, the barrier or fence provides at least two (2) exits from the play area, including one (1) exit that is at a distance from the building; and

20.4.a.1.E. When it has an exit that does not lead directly indoors, that it is protected by a gate equipped with a closure mechanism that is out of the reach of a small child and prevents the child from leaving the play area, but can be easily opened by an adult.

20.4.a.2. A center may use an unenclosed outdoor activity area for school-aged children if it is determined to be hazard-free by the Secretary.

20.4.b. Surfaces for Play Area. A center shall ensure:

20.4.b.1. That the play area has more than one (1) type of surface, including a surface that is suitable for children's wheeled vehicles and pull toys;

20.4.b.2. That the surface of the play area in an equipment use zone is composed of:

20.4.b.2.A. Loose fill, including sand, pea gravel, shredded tires, wood chips or wood mulch, to a depth of at least six (6) inches, increasing with the height of the equipment to twelve (12) inches as recommended by the Consumer Product Safety Commission as specified in Appendix 78-1 E of this rule;

20.4.b.2.B. A unitary surface, such as rubber tiles or mats, or rubber poured in place; or

20.4.b.2.C. An appropriate combination of loose fill and unitary surface material;

20.4.b.3. That hard surface materials, such as asphalt, concrete, bricks, blocks, dirt and grass, are not used in equipment use zones;

20.4.b.4. That appropriate surface materials are located directly under equipment and extend six (6) feet in all directions from the perimeter of the equipment, except from swings where they extend according to the following:

20.4.b.4.A. For single-axis, traditional swings, through a use zone that is twice the height from the ground to the crossbar, front and back; and

20.4.b.4.B. For tire swings that rotate, six (6) feet beyond the farthest reach of the tire in all directions; and

20.4.b.5. That concrete footing are covered by surface material to a depth that is adequate to prevent injury from a fall as recommended by the Consumer Product Safety Commission as specified in Appendix 78-1 E of this rule.

20.4.c. Hazards. A center shall ensure that:

20.4.c.1. The play area is well drained and free of debris;

20.4.c.2. The outdoor environment is clear of hazards, including pits and abandoned wells, tree roots, appliances and all potential hazards, including heat pumps, air conditioning units and external wiring, meters and telephone boxes, are inaccessible to the child;

20.4.c.3. The child is protected from moving vehicles; and

20.4.c.4. When there is reason to believe that exposure to the soil in the outdoor activity area might harm the child, it has on file evidence that the soil does not contain hazardous levels of any toxic chemical or substances.

§78-1-21. Pest Management.

21.1. A center shall document that it has an integrated pest management program as required by the WV Department of Agriculture.

21.2. A center shall provide for insect and rodent control that does not compromise the safety of children.

§78-1-22. Transportation. When providing transportation, a center shall ensure that:

22.1. The vehicle used is currently licensed, inspected, insured, and is equipped with signs and warning lights or alternative warning devices as required by West Virginia Code §17C-12-7a;

22.2. By September 1, 2012, any vehicle used for transportation that has a capacity that exceeds ten (10) passengers meets the National Highway Traffic Safety Administration (NHTSA) standards for a school bus. Provided, that any vehicle used prior to September 1, 2012 for transportation that has a capacity that exceeds ten (10) passengers and does not meet the NHTSA standards shall follow the recommendation of the NHTSA for preventing rollover;

22.3. By July 1, 2008, any center which provides transportation in a vehicle with a capacity that exceeds ten (10) passengers and does not meet the standards for a school bus shall submit a plan to the Secretary for how the center will comply with requirement 22.2. of this subsection;

22.4. The driver holds a current driver's license for the type of vehicle being driven;

22.5. The driver or a qualified staff member ensures that each child is in an approved child safety restraint system that meets the federal recommendations of the National Highway Traffic Safety Administration (NHTSA), either a child safety seat or booster seat or seat belt, and is secured with seat belts at a ratio of one child per seat belt;

22.6. The vehicle is equipped with emergency supplies, including a first-aid kit, fire extinguisher, and, if only one adult is in the vehicle, a mobile telephone or two-way radio;

22.7. When the center owns the vehicle, identifying information is placed on the outside of the vehicle, which can be read by a pedestrian or other passing vehicle, that includes the name, address and telephone number of the center; and

22.8. When the center owns the vehicle, a weekly safety check is conducted and recorded. The safety check shall include vehicle tire pressure, headlights, windshield wipers, emergency flashers, brake lights, turn signals, first aid kit, gas gauge, oil and other fluids.

§78-1-23. School-Age Program.

23.1. Centers which operate school-age programs shall comply with previous sections of this rule except as follows:

23.2. Training.

23.2.a. Prior to working with children, staff in a summer recreation camp or day camp shall have:

- 23.2.a.1. Current CPR certification appropriate to the age of the children in care;
 - 23.2.a.2. Current child first aid training;
 - 23.2.a.3. Training in child abuse recognition and prevention;
 - 23.2.a.4. Approved training in medication administration if applicable;
 - 23.2.a.5. Training in guidance and discipline, behavior management, and conflict resolution related to the age of children in care; and
 - 23.2.a.6. An additional four (4) hours of instructional training related to camp responsibilities.
- 23.2.b. Summer recreation camp and day camp staff are not required to maintain a WVTCECE credential.
- 23.2.c. Summer recreation camps and day camps shall have a plan for training late-hires and substitutes who were unable to attend pre-camp training.

23.3. Staff Responsibilities and Qualifications.

23.3.a. In addition to the qualifications stated in Section 9 of this rule, qualified staff members acting as a person in charge in a summer recreation camp or day camp shall:

- 23.3.a.1. Be at least 21 years of age;
- 23.3.a.2. Have at least one (1) season of leadership experience in a summer recreation program; and
- 23.3.a.3. Have knowledge of the camp administrative practices.

23.3.b. Director

23.3.b.1. When the center operates a school-age program only, the director may substitute the early childhood credit hours described in Section 9 of this rule with credit hours in elementary education;

23.3.b.2. The director of a summer recreation camp shall substitute the early childhood credit hours described in Section 9 of this rule with credit hours in recreation or elementary education;

23.3.c. Qualified staff positions may substitute the early childhood credit hours described in Section 9 of this rule with credit hours in elementary education.

23.3.d. Teen aides used in school-age programs shall be at least 16 years of age.

23.4. Supervision of children in groups.

23.4.a. In determining and maintaining the staff:child ratio, the school-age program shall not include any staff member who is performing other duties such as cooking, bookkeeping, or any individual with designated responsibility for a special activity except in an emergency situation when staff may be reassigned to supervise the children.

23.4.b. In a summer recreation camp program, a certified lifeguard employed by the center may be used to meet staff:child ratio provided the program is using a pool that is reserved exclusively for the program and at least one other staff person who is not lifeguarding is present to supervise the group.

23.4.c. An individual school-age child may be permitted to go to a non-public rest room unattended if the restroom is within vision of a supervising staff person.

23.4.d. Two or more school-age children going to the same restroom at the same time must be accompanied to the restroom by staff and be within staff hearing at all times.

23.5. Staff interaction, Guidance and Supervision

23.5.a. The school-age program shall group children according to their developmental levels and skill levels taking into account that the physical, emotional, intellectual, and social development of early middle childhood differs from that of older middle childhood and pre-adolescence.

23.5.b. A center shall ensure that staff members in school-age programs have the skills and training to respond to the needs of the older child and recognize that interactions with the school-age child differ significantly from interactions with the younger child. The staff members shall:

23.5.b.1. Be available and responsive to the child;

23.5.b.2. Engage the child in meaningful conversation about events of importance and topics of interest, encouraging the child to share experiences, ideas and emotions;

23.5.b.3. Listen to the child with attention and respect;

23.5.b.4. Help a child develop problem-solving skills by describing problems and encouraging him or her to evaluate the situation;

23.5.b.5. Facilitate learning by guiding, providing positive reinforcement, encouraging efforts and recognizing accomplishments; and

23.5.b.6. Have developmentally appropriate expectations of a child's social behavior.

23.5.c. At all times, staff members shall provide positive guidance that is appropriate to each child's age, understanding and circumstances. Staff members shall:

23.5.c.1. Teach by example;

23.5.c.2. Recognize and encourage acceptable behavior;

23.5.c.3. Make eye contact with the child whenever possible when speaking to the child;

23.5.c.4. Supervise with kindness, understanding and firmness;

23.5.c.5. Set expectations for behavior, define clear limits, set fair and consistent rules and when appropriate, permit the school-age child to participate in the development of rules and procedures;

23.5.c.6. Help a child develop self control to assume responsibility for his or her own actions;

23.5.c.7. State expectations in the positive; and

23.5.c.8. Visually post expectations so that children are encouraged to regulate their own behaviors.

23.5.d. When unacceptable behavior persists with the school-age child, the qualified staff member in accordance with the child's age and developmental level shall:

23.5.d.1. Talk with the child privately and calmly;

23.5.d.2. Help the child to verbalize the expectation that is not being met;

23.5.d.3. Help the child to verbalize the reason for the expectation;

23.5.d.4. Help the child to verbalize acceptable choices and possible solutions; and

23.5.d.5. Help the child to verbalize possible consequences if the unacceptable behavior continues.

23.5.e. When conflict between children becomes physical, staff shall intervene immediately and use positive problem-solving methods.

23.6. Space. When a center operates a summer recreation camp:

23.6.a. The center shall provide at least ten (10) square feet of useable indoor activity space per child inside or provide a covered permanent structure that has the required activity space;

23.6.b. The center shall submit a plan for the Secretary's approval for outdoor activity space to meet the children's outdoor

activities requirement and shall use the outdoor space only after receiving the Secretary's written approval.

23.7. Toilets. A summer recreation camp program that receives written approval from the local health department may use a commercial portable toilet and warm water, soap, paper towels, rinse water and a pit or other method for disposing of waste water.

23.8. Program. Programs for school-age children shall:

23.8.a. Meet the goals of the center as established by the statement of purpose;

23.8.b. Be based on knowledge of child development for the school-age child;

23.8.c. Have a schedule for routines that is posted and is predictable and in accordance with Subsection 14.1 of this rule other than the following:

23.8.c.1. Out-of-school time programs shall reflect the time of day and the number of hours that care is provided before school, after school, and on days when school is closed;

23.8.c.2. Out-of-school time programs shall provide activity that transitions the child from home to school in the morning and from school to home in the evenings;

23.8.c.3. Summer recreation camps shall have a schedule that provides for outdoor and/or off-site activity 80% of the time weather permitting;

23.8.d. Have varied and well-planned activities;

23.8.e. Have a qualified staff person verbally communicate the expectations for each activity;

23.8.f. Have activities which are age appropriate, offer challenges and incorporate skill level progression of the school-age child;

23.8.g. Offer options when it is recognized that the skill level is too difficult for the child;

23.8.h. Engage children in decision making and program activity development;

23.8.i. Offer the opportunity for projects that can be completed independently with only guidance from staff;

23.8.j. Offer group projects, group play and interest group involvement;

23.8.k. Offer interest centers such as art, dramatic play, school work, science, nature, music, reading, construction, physical activity;

23.8.1. Include activities within the community such as field trips, community work projects or volunteer activities;

23.8.m. Include diversity within activities;

23.8.n. Offer activities without bias to gender; and

23.8.o. Encourage the development of life skills.

23.9. A center operating a summer recreation camp may allow for an occasional overnight activity. When offering the overnight activity the summer recreation camp shall:

23.9.a. Have a written plan of the activity and its oversight that is kept in an administrative file;

23.9.b. Provide staff with written instructions on the operation of the activity;

23.9.c. Provide parents with written information and any special instructions for the activity;

23.9.d. Ensure that the child's daily nutritional requirements are met;

23.9.e. Ensure there is safe drinking water available;

23.9.f. Provide a mat, cot or bed for each child;

23.9.g. Not have a child in care for more than 24 hours; and

23.9.h. Ensure that no staff member must remain awake for more than 18 hours and that if children are sleeping at least one staff member is awake at all times.

23.10. Nutrition. A center with an out-of-school time program shall serve a snack to the school-age child arriving after school;

23.11. Emergency procedures. A summer recreation camp and day camp shall comply with Section 19 of this rule regarding emergency procedures except as set forth in this subsection:

23.11.a. The camp shall have a procedure for practicing moving to the safe location within the first two (2) days of camp and mid-way through the summer;

23.11.b. The camp shall teach and implement a system that has staff and children taking account of children in the camp and immediately reporting if a child is missing;

23.11.c. A qualified staff member assigned to each group of children shall be responsible for carrying or having immediately available a first aid kit; and

23.11.d. When a center operates a summer recreation camp program or day camp program at a site where a direct-line telephone is not available then the center shall ensure that staff members have access to a

working communication device that will allow contact to emergency personnel.

§78-1-24. Enforcement Actions.

The secretary may revoke or make a license provisional, or issue an order of closure to a Child Care Center in accordance with West Virginia Code §§49-2B-11 and -12.

78CSR1

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HUMAN SERVICES

SERIES 1
CHILD CARE CENTER LICENSING

APPENDICES

- 78-1 A: EQUIPMENT AND MATERIALS FOR PROGRAM ACTIVITIES
- 78-1 B: REPORTABLE ILLNESSES
- 78-1 C: NUTRITION - FOOD GROUPS AND MEAL PATTERNS
- 78-1 D: DIAPER CHANGING AND TOILET TRAINING
- 78-1 E: OUTDOOR SURFACES
- 78-1 F: STAFF:CHILD RATIO

APPENDIX 7B-1 A: EQUIPMENT AND MATERIALS FOR PROGRAM ACTIVITIES

TABLE A: EQUIPMENT AND MATERIALS FOR THE CHILD UP TO 6 MONTHS OF AGE	
Type of Materials	Types of Supplies and Equipment
Social and Fantasy	Non-breakable Mirrors: well-secured crib and wall mirrors; Dolls: soft-bodied or rag dolls; Stuffed Toys: washable stuffed toys and play animals; Puppets: simple hand puppets of visual and social interest for holding by adults.
Exploration and Mastery of Skills and Language	Visuals: materials that provide a focus for the child's eyes; Grasping Toys: simple rattles, teething toys, squeeze toys, sturdy cloth toys, disks or keys on a ring, interlocking rings, grasping balls.
Music, Art and Movement	Musical Instruments: bell on a handle, wrist or ankle bells, rattles; Audio-Visual: adult-operated music boxes, tapes or discs with gently rhythmic songs or lullabies.
Gross Motor	Large-Movement: balls to clutch.

TABLE B: EQUIPMENT AND MATERIALS FOR THE CHILD 7 TO 12 MONTHS OF AGE	
Type of Materials	Types of Supplies and Equipment
Social and Fantasy	Non-breakable Mirrors: well-secured wall mirrors, unbreakable hand mirrors; Dolls: soft-bodied or rag dolls; Stuffed Toys: washable stuffed toys and play animals, soft rubber or vinyl animals for grasping and exploring; Puppets: simple hand puppets of visual and social interest for holding by adults; Transportation: simple transportation toys of one piece with wheels or rollers that may make a noise when pushed (for the child who can sit and is mobile).
Exploration and Mastery of Skills and Language	Grasping Toys: teething toys, beads on rings, rubber or plastic pop beads, squeeze-squeak toys, sturdy cloth toys, disks or keys on a ring, interlocking rings, grasping balls; Construction: light-weight blocks for grasping and stacking; Puzzles: simple two- or three-piece fit-together objects used as grasping toys; Skill-Development: pop-up boxes, simple activity boxes or cubes, texture pads, simple nesting cups, stacking ring cones, container to empty and fill; Books: small picture books of cloth or plastic or cardboard to hold; simple picture books for lap reading.
Music, Art and Movement	Art and Crafts: large, nontoxic crayons, large paper taped to a surface; Musical Instruments: bell on a handle, wrist or ankle bells, rattles or materials that make a sound when shaken, banging materials that are simple and light-weight; Audio-Visual Materials: adult-operated tapes or discs with simple rhymes and songs.
Gross Motor	Large-Movement: push and pull toys without rods, such as simple cars on large wheels or rollers; Balls and Sports: balls, including clutch and texture balls, chime, flutter and action balls; Outdoor and Gym: safe swings sized and designed for infants, low soft or padded climbing platforms for the child who crawls.

TABLE C: EQUIPMENT AND MATERIALS FOR THE CHILD 13 - 24 MONTHS OF AGE

Type of Materials	Types of Supplies and Equipment
Social and Fantasy	<p>Non-breakable Mirrors: well-secured unbreakable wall mirrors, unbreakable full-length and hand mirrors; Dolls: soft-bodied or washable rubber or vinyl baby dolls (no moving eyes or articulated limbs), simple accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, and (from about 18 months) small peg or other people figures that can not be swallowed; Stuffed Toys: washable, soft animals with features that are painted, stitched or molded and soft rubber or vinyl animals for exploration and beginning pretend play; Puppets: hand puppets for holding by adults and (from about 18 months) small hand puppets sized to fit the child's hand; Transportation: simple, light-weight vehicles, with large wheels or rollers, that are light-weight, rounded or molded in appearance and may make a noise when pushed, first trains with one or two cars and a simple or no coupling system but no tracks, and (from about 18 months) more detailed vehicles or trains with simple coupling systems such as wood links, blunt hooks or magnets; Role-Play: play telephone, simple housekeeping and work-role equipment, simple doll equipment; Play Scenes: (from about 18 months) small people or animal figures with simple supporting materials such as a vehicle or barn, or unit blocks to make familiar scenes.</p>
Exploration and Mastery of Skills and Language	<p>Grasping Toys: (the child may be losing interest in small hand-held manipulatives); Sand and Water: simple floating objects that are easily grasped in one hand, a small shovel and pail, and (from about 18 months) nesting materials for pouring, funnels, colanders, water activity centers and small sand tools; Construction: light blocks made of soft cloth, rubber or rounded plastic, wooden cubes for grasping and stacking (15 - 25 pieces) and (from about 18 months) unit blocks (20 - 40 pieces), large plastic bricks of the press together type; Puzzles: simple pre-puzzles or form boards in familiar shapes (2-3 pieces) and (from about 18 months) fit-in puzzles with very firmly attached knobs (3-5 pieces); Skill-Development: pop-up boxes that operate easily, simple activity boxes or cubes with doors, lids or switches, simple nesting cups and stacking materials, and (from about 18 months) activity boxes with more complex mechanisms such as a turning knob or dial or simple key, simple lock boxes, more complex nesting materials, objects in closed containers that may be opened, stacking materials (4-5 pieces), cylinder blocks, pegboards with a few large pegs, simple matching and lotto materials; Books: picture books made of cloth, plastic or cardboard, simple picture and rhyme book with repetition for lap reading, and (from about 18 months) touch-me or tactile books.</p>
Music, Art and Movement	<p>Art and Crafts: a few large, nontoxic crayons and large paper taped to a surface; Musical Instruments: rhythm instruments operated by shaking (bell, rattles) and (from about 18 months) instruments for banging (cymbals, drums); Audio-Visual Materials: adult-operated tapes or discs, music with simple repeating rhythms, rhymes and songs, and (from about 14 months) music to "dance" (bounce) to, and (from about 18 months) simple point-to and finger-play games and songs.</p>
Gross Motor	<p>Large-Movement - Push and Pull Toys: push toys with rods with handles on the ends, toys to push along the floor, including simple cars or animals on large wheels or rollers, and (from about 18 months) simple doll carriages and wagons and push and pull toys filled with multiple objects; Balls and Sports: soft, light-weight balls especially balls with interesting audio or visual effects, larger balls including balls the size of beach balls, and (from about 18 months) balls for beginning throwing and kicking; Ride-On Equipment: stable ride-ons propelled by pushing with the feet, ride-ons with storage bins; Outdoor and Gym: climbing platforms that are low, sort or padded, tunnels for climbing through, baby swings made of energy-absorbing materials with seats curved or body shaped and a front closing, and (from about 18 months) low toddler stairs with handrails.</p>

TABLE D: EQUIPMENT AND MATERIALS FOR THE CHILD 24 - 36 MONTHS OF AGE

Type of Materials	Types of Supplies and Equipment
Social and Fantasy	<p>Non-breakable Mirrors: well-secured unbreakable wall mirrors, unbreakable hand mirrors; Dolls: soft-bodied or washable rubber or vinyl baby dolls, simple accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, small peg or other people figures for fantasy scenes; Stuffed Toys: soft rubber, wood or vinyl animals for exploration and pretend play, including mother and baby animals; Puppets: small hand puppets sized to fit the child's hand and representing familiar human and animal figures and community diversity; Transportation: small cars and vehicles to use with unit blocks; larger vehicles for pushing and fantasy play, large wood trucks to ride on, simple trains with coupling systems but no tracks; Role-Play: dress-up materials, housekeeping equipment, simple doll equipment; Play Scenes: small people or animal figures with simple supporting materials such as a vehicle or barn, or unit blocks to make familiar scenes.</p>
Exploration and Mastery of Skills and Language	<p>Sand and Water: people, animals and vehicles for fantasy play, small containers for pouring, small tools such as a shovel or scoop; Construction: wooden unit blocks, large plastic bricks, large nuts and bolts; Puzzles: 4-5 pieces fit-in puzzles (from 24 months), and (from 30 months) 6-12 pieces fit-in puzzles; Skill-Development: 5-10 pieces to nest or stack, simple lock boxes, hidden-object pop-up boxes, safe pounding/hammering toys, cylinder blocks, shape sorters, matching materials, color or picture dominoes, feel bags or boxes or smell jars; Books: sturdy books with heavy paper or cardboard pages, tactile or touch-me, pop-up or hidden picture and dressing books; Pattern-Making: peg-boards with large pegs, color cubes, magnetic boards with forms; Dressing, Lacing, Stringing: large beads, cards and frames.</p>
Music, Art and Movement	<p>Art and Crafts: large, nontoxic crayons and markers, adjustable easel, large paint brushes, nontoxic paint and finger paint; large paper, colored construction paper, blunt-ended scissors, chalkboard and large chalk; Musical Instruments: rhythm instruments operated by shaking (bell, rattles) or banging (cymbals, drums) and more complex instruments (tambourine, sand blocks, triangle, rhythm sticks); Audio-Visual Materials: adult-operated tapes or discs, music with repeating rhythms for rhythm instruments, music to "dance" (bounce) to, simple point-to and finger-play games and songs, short films and videos of familiar objects and activities.</p>
Gross Motor	<p>Large-Movement - Push and Pull Toys: simple doll carriages and wagons, push toys that look like adult equipment; Balls and Sports: balls of all sizes, especially balls for kicking and throwing; Ride-On Equipment: stable ride-ons propelled by pushing with the feet, bouncing or rocking ride-ons, and (as the child nears 36 months) small tricycles; Outdoor and Gym: tunnels, appropriately sized and safe swings, low climbing structures and slides.</p>

TABLE E: EQUIPMENT AND MATERIALS FOR THE CHILD 36 -72 MONTHS OF AGE

Type of Materials	Types of Supplies and Equipment
Social and Fantasy	<p>Mirrors: full-length mirrors, unbreakable hand mirrors; Dolls: washable rubber or vinyl baby dolls and (for the child over 60 months), child-proportioned dolls with culturally relevant features and skin tones, accessories for care giving (feeding, diapering and sleeping), dolls clothes that are simple and removable, small peg or other people figures for fantasy scenes; Stuffed Toys: rubber, wood or vinyl animals for pretend play and to provide replicas of real domestic and wild animals for learning; Puppets: small hand or arm or finger puppets sized to fit the child's hand and representing familiar human and animal figures and community diversity, simple puppet theater; Transportation: cars and vehicles to use with unit blocks; larger vehicles with simple working parts for pushing and fantasy play, large wood trucks to ride on, small trains with magnetic or hook connections and simple wood tracks; Role-Play: detailed and culturally-relevant dress-up materials and props, housekeeping equipment, doll equipment; Play Scenes: small people or animal figures with simple supporting materials such as a vehicle or road sign or barn, to use with blocks or other materials to make familiar scenes.</p>
Exploration and Mastery of Skills and Language	<p>Sand and Water: people, animals and vehicles for fantasy play, small containers for pouring or measuring, large and small sand tools, and (after 48 months) sand molds and a water pump; Construction: wooden unit blocks, large hollow blocks, plastic bricks, and (from 48 months) most types of interlocking blocks, except metal or very small blocks; Puzzles: (at 36 months) fit-in or framed - puzzles up to 30 pieces; (at 48 months), 20-30 pieces; (at 60 months) up to 50 pieces; simple jig-saw puzzles - 10-25 pieces; number and letter puzzles, puzzle clocks; Skill-Development: materials for matching and sorting and ordering, geometric concept materials, number materials that are simple and concrete, measuring materials, simple mechanical devices such as gears and levers, science materials, natural materials to sort, plants and animals to care for, printmaking materials, beginning computer software; Books: picture books with simple stories and rhymes, complex pop-up books, age-appropriate stories; Pattern-Making: peg-boards with smaller pegs, color cubes, magnetic boards with forms, and (from 48 months) a variety of beads for stringing, mosaic books, felt boards, and (by 60 months) block printing materials; Dressing, Lacing, Stringing: cards and frames for lacing and sewing and (from 60 months) beginning weaving materials; Games: dominoes based on color or picture, simple matching and lotto games, bingo, and (from 48 months) simple card games and games requiring fine motor coordination, first board games based on chance not strategy, and (from 60 months) dominoes based on number and bingo or lotto based on letter or number matching.</p>
Music, Art and Movement	<p>Art and Crafts: large, nontoxic crayons and markers in many colors, adjustable easel, paint brushes of various sizes, nontoxic paint and finger paint; large paper, colored construction paper, easy-to-use-round-ended scissors, chalkboard and large chalk, paste and nontoxic glue, collage materials, clay and dough and tools, and (from 48 months) workbench and hammer, and (from 60 months) smaller crayons and markers, watercolor paints and simple sewing forms with blunt needles; Musical Instruments: all rhythm instruments, blowing instruments (for one-child use only) Audio-Visual Materials: live or recorded music for singing, movement or use with rhythm instruments, adult-operated tapes or discs with songs, rhymes and stories for listening, short films and videos.</p>
Gross Motor	<p>Large-Movement - Push and Pull Toys: small wagons and wheelbarrows, push toys that look like adult equipment, and (from 60 months) full-sized wagons and sweepers that really work; Balls and Sports: balls of all sizes, especially balls for kicking and throwing, and (from 48 months) lightweight softballs and bats, and (from 60 months) jump rope and a lightweight flying disc; Ride-On Equipment: tricycles sized to the child, three and four-wheeled pedal toys, vehicles with a steering mechanism, full size rocking or bouncing "horse," ride-ons that several children can use together, and (from 48 months) low-slung tricycles; Outdoor and Gym: stationary outdoor climbing equipment, appropriately sized and safe swings, and (from 48 months) slides with side rails and ladders and ropes or hanging bars and rings on a swing or climbing equipment and outdoor building materials.</p>

TABLE F: EQUIPMENT AND MATERIALS FOR THE CHILD 6 -8 YEARS OF AGE

Type of Materials	Types of Supplies and Equipment
Social and Fantasy	<p>Mirrors: mirrors that adults would use, unbreakable hand mirrors; Dolls: washable rubber or vinyl baby dolls with culturally relevant features and skin tones and accessories for care giving (feeding, diapering and sleeping), small peg or other people figures for fantasy scenes; Stuffed Toys: realistic rubber, wood or vinyl animals to incorporate into scenes and models or show characteristics for learning; Puppets: puppets that represent familiar and fantasy figures for acting out stories, simple puppet theater; Transportation: generic small models of cars and vehicles, construction or workbench materials to make models of forms of transportation; Role-Play: materials for creating and practicing real-life activities and letter-creating materials; Play Scenes: small people or animal figures with supporting materials to create fantasy scenes or models related to curriculum themes.</p>
Exploration and Mastery of Skills and Language	<p>Construction: large number of varied materials for detailed construction and for creating models (including metal parts and nuts and bolts); Puzzles: three-dimensional puzzles, and jig-saw puzzles with 50 to 100 pieces; Skill-Development: materials for making books, math manipulatives and fraction and geometrical materials, measuring materials, science materials, natural materials to examine and classify, plants and animals to study and care for, computer programs for language arts and books at a wide variety of difficulty levels for children to read, story books for reading aloud, books made by the children; Books: picture books with simple stories and rhymes, complex pop-up books, age-appropriate stories; Pattern-Making: mosaic tiles, geometric puzzles, art and craft materials for creating permanent designs; Dressing, Lacing, Stringing: bead stringing, braiding, weaving, spool-knitting and sewing materials; Games: simple card and board games, games based on words, reading and spelling, memory, and numbers and counting (dominoes, Pachisi) and beginning strategy games (checker, Chinese checkers).</p>
Music, Art and Movement	<p>Art and Crafts: a large variety of materials - crayons, markers, colored pencils, art chalks and pastels - in many colors, paint brushes of various sizes, a variety of paints including water colors, a variety of art papers for drawing and tracing and painting, regular scissors, paste and nontoxic glue, collage materials, clay that hardens, tools, more complex printing equipment, craft materials - simple looms, leather for sewing and braiding, papier-mache, plaster of paris, beads for jewelry- and a workbench with tools and wood for projects; Musical Instruments: a wide range of real instruments Audio-Visual Materials: live or recorded music for singing, movement or use with rhythm instruments, adult-operated tapes or discs with songs, rhymes and stories for listening or for the child's independent use.</p>
Gross Motor	<p>Balls and Sports: youth or standard-size balls and equipment for beginning team play, materials for target activities; Ride-On Equipment: (riding bicycles is no longer considered a center activity); Outdoor and Gym: complex climbing structures including ropes, ladders, hanging bars and rings.</p>

Source: Adapted from Martha B. Bronson, *The Right Stuff for Children Birth to 8: Selecting Play Materials to Support Development* (Washington, D.C.: National Association for the Education of Young Children, 1995.)

APPENDIX 78-1 B: REPORTABLE ILLNESSES *

Reporting of the following communicable diseases* is required by State Law (West Virginia Code 16-3-1 and Division of Health Rule, "Reportable Diseases, Events and Conditions", 64CDR7. This list is updated periodically by the Bureau for Public Health.

AIDS (within 30 days)
Amebiasis (*Entamoeba histolytica*)
Anthrax (*Bacillus anthracis*)
Botulism (*Clostridium botulinum*) **
Brucellosis (*Brucella abortus*, *B. melitensis*, *B. suis*, *B. canis*)**
Campylobacteriosis (*Campylobacter jejuni*, *C. coli*)
Chancroid
Chickenpox (Varicella) - Numerical totals only
Chlamydia trachomatis
Cholera (*Vibrio cholerae*)
Cryptosporidiosis (*Cryptosporidium parvum*)
Cyclospora infection
Dengue Fever
Diphtheria (*Corynebacterium diphtheriae*)**
E. coli O 157:H7 Disease
Encephalitis, arboviral
 Eastern Equine Encephalitis
 LaCrosse Encephalitis (California Group)
 St. Louis Encephalitis
 West Nile Virus
Encephalitis, Other primary and unspecified
Food borne Disease
Giardiasis (*Giardia lamblia*)
Gonococcal Disease - Drug-resistant disease, Neonatal conjunctivitis, or Pelvic Inflammatory Disease (within 24 hours)
Gonococcal Disease - All other
Haemophilus Influenzae, Invasive Disease**
Hantavirus Disease**
Hemolytic Uremic Syndrome, postdiarrheal
Hepatitis A, acute**
Hepatitis B, acute or perinatal**
Hepatitis C/other non-A or non-B, acute**
Hepatitis Delta**
Herpes, Genital
HIV (within 30 days)
Influenza-Like Illness - Numerical totals only
Leptospirosis**
Listeriosis (*Listeria monocytogenes*)
Lyme Disease (*Borrelia burgdorferi*)**
Malaria**
Meningitis, Other Bacterial - organisms not otherwise listed**
Meningitis, Viral or Aseptic
Mumps
Outbreaks, suspect or confirmed
Pertussis (Whooping Cough) (*Bordetella pertussis*)**
Plague (*Yersinia pestis*)
Poliomyelitis**
Psittacosis (*Chlamydia psittaci*)
Rabies, human**
Rheumatic Fever
Rocky Mountain Spotted Fever**
Rubella Congenital Syndrome

Rubella (German measles)**
Rubeola (Measles)**
Salmonellosis (except Typhoid Fever - listed separately)
Shigellosis (*Shigella dysenteriae*, *S. boydii*, *S. flexneri*, *S. sonnei*)
Streptococcal Disease, Group A Invasive and/or Streptococcal Toxic Shock Syndrome (*S. pyogenes*)**
Streptococcus pneumoniae, drug-resistant invasive disease - include antibiotic susceptibility patterns**
Syphilis - primary, secondary, early latent, or congenital (within 24 hours)
Syphilis - late latent, late symptomatic, or neurosyphilis
Tetanus (*Clostridium tetani*)**
Trichinosis**
Tuberculosis - include antibiotic susceptibility patterns
Tularemia (*Francisella tularensis*)
Typhoid Fever (*Salmonella typhi*)**
Waterborne Disease
Yellow Fever

Unexplained or ill-defined illness, condition, or health occurrence of potential public health significance

*This is a general information list. The official list can be found in the reportable disease rule.

**A supplemental CDC or WVBPH report form is required in addition to the general case report

STDs, HIV/AIDS, and tuberculosis are reported on special forms. Other diseases are submitted on the general "Confidential Reportable Disease Case Report." All report forms (general, supplemental, STD, Tuberculosis, and HIV/AIDS) can be obtained from your local health department. For questions or disease reporting or for epidemiologic consultation, call your local health department or the WV Bureau for Public Health, Division of surveillance and Disease Control: HIV/AIDS Surveillance 1-800-423-1271; Immunization Program 1-800-642-3634; STD Program 1-800-642-8244; Tuberculosis Program 1-800-330-8126; all other diseases 1-800-423-1271 or 304-558-5358. The website address is: www.wvdhhr.org/bph.

For emergency contact information after hours, call 1-304-558-4117.

October, 2000

APPENDIX 78-1 C: NUTRITION -MEAL AND SNACK PATTERNS

When planning meals and snacks, centers can be guided by the following meals patterns that are consistent with the United States Department of Agriculture's Dietary Guidelines for Americans and were developed for the Child and Adult Care Food Program.

A: MEAL PATTERNS FOR THE CHILD UP TO 12 MONTHS OF AGE

Age	Breakfast	Lunch or Supper	Supplement
Birth through 3 months	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3}	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3 6}	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3}
4 through 7 months	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3} 0-3 Tbsp. Infant Cereal ^{1 4}	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3} 0-3 Tbsp/Infant Cereal ^{1 4} 0-3 Tbsp. Fruit and/or Vegetable	4-6 fl. oz. Formula ¹ or Breast milk ^{2 3}
8 through 11 months	6-8 fl. oz. Formula ¹ or Breast milk ^{2 3} 2-4 Tbsp. Infant Cereal ¹ 1-4 Tbsp. Fruit and/or Vegetable	6-8 fl. oz. Formula ¹ or Breast milk ^{2 3} 2-4 Tbsp. Infant Cereal ^{1 4} and/or 1-4 Tbsp. Meat, fish, poultry, egg yolk, cooked dry beans or peas or $\frac{1}{2}$ - 2oz. Cheese: or 1-4 oz. Cottage Cheese, cheese food or cheese spread; and 1-4 Tbsp. Fruit and/or Vegetable	2-4 fl. oz. Formula, Breast milk ^{2 3} , or fruit juice ⁵ .1/2 Bread ^{4,6} or 0-2 Crackers ^{4,6}

¹Infant formula and dry infant cereal shall be iron fortified

²It is recommended that breast milk be served in place of formula from birth through 11 months.

³For some breast fed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.

⁴A serving of this component shall be optional.

⁵Fruit Juice shall be full strength.

⁶Bread and bread alternates shall be made from whole grain or enriched meal or flour.

B: MEAL PATTERNS FOR THE CHILD BETWEEN 1 YEAR AND 12 YEARS OF AGE

	Age 1 and 2	3 through 5 years	6 through 12 years
BREAKFAST			
Milk, fluid	½ cup	¾ cup	1 cup
Juice or fruit or vegetable	¼ cup	½ cup	½ cup
Bread and/or cereal, enriched or whole grain			
Bread or	½ slice	½ slice	1 slice
Cereal: Cold dry or	¼ cup ¹	1/3 cup ²	¾ cup ³
Hot cooked	¼ cup	¼ cup	½ cup
MIDMORNING OR MIDAFTERNOON SNACK (SUPPLEMENT) (Select 2 of these 4 components)			
Milk, fluid	½ cup	½ cup	1 cup
Meat and meat alternate or yogurt, plain or sweetened and flavored	½ oz. 2 oz. or ¼ cup	½ oz. 2 oz. or ¼ cup	1 oz. 4 oz. or ½ cup
eggs (large)	½ egg	½ egg	½ egg
Juice or fruit or vegetable	½ cup	½ cup	¾ cup
Bread and/or cereal, enriched or whole grain			
Bread or	½ slice	½ slice	1 slice
Cereal: Cold dry or	¼ cup ¹	1/3 cup ²	¾ cup ³
Hot Cooked	¼ cup	¼ cup	½ cup
LUNCH OR SUPPER			
Milk, fluid	½ cup	¾ cup	1 cup
Meat or meat alternate Meat, poultry, or fish, cooked (lean meat with bone)	1 oz.	1 ½ oz.	2 oz.
Cheese	1 oz.	1 ½ oz.	2 oz.
Eggs (large)	½ egg	¾ egg	1 egg
Cooked dry beans and peas	¼ cup	3/8 cup	½ cup
Peanut Butter, soy nut, or other nut seed butter	1 Tbsp.	3 Tbsp.	4 Tbsp.
Peanuts, soy nuts, or tree nuts or seeds	½ oz. (50%)	¾ oz. (50%)	1 oz. (50%)
Yogurt	4 oz.	6 oz.	8 oz.
Vegetable and/or fruit (two or more)	¼ cup	½ cup	¾ cup
Bread or alternate, enriched or whole grain	½ slice ¼ cup	½ slice ¼ cup	1 slice ½ cup

¹ 1/4 cup (volume) or 1/3 ounce (weight), whichever is less

² 1/3 cup (volume) or 1/3 ounce (weight), whichever is less

³ 3/4 cup (volume) or 1 ounce (weight), whichever is less

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Source: the Child and Adult Care Food Program

APPENDIX 78-1 D - DIAPER CHANGING AND TOILET TRAINING

§64-21-9. Diaper Changing and Toilet Training.

9.1. Children shall be diapered or have soiled underwear changed in an established diaper changing area. The changing area shall not be located in food preparation areas.

9.2. Staff shall change children diapers or soiled underwear on a clean, safe, impervious, nonabsorbent surface that is used for no other purpose.

9.3. Staff shall clean the child's perineal (urinary and anal) area with disposable wipes.

9.4. After removing a soiled diaper and before putting a fresh diaper on a child, staff members shall wipe their own hands with a pre-moistened towelette or a damp paper towel.

9.5. Both the child's and the staff member's hands shall be thoroughly washed after each diaper change. If disposable gloves are used, they must be discarded immediately and hands washed.

9.6. Changing tables and surfaces shall be cleaned and disinfected after each use by cleaning to remove visible soil, followed by wiping with an approved disinfectant solution, whether or not disposable, nonabsorbent paper is used. If disposable paper is used, it shall be discarded immediately after each diapering.

9.7. Soiled cloth diapers and/or soiled training pants shall be stored in a labeled container with a tight-fitting lid provided by a commercial diaper service or in a sealed plastic bag that is sent home with the child at the end of the day. If diapers are laundered by a commercial diaper service, the service shall be accredited by the Diaper Service Accreditation Council. Feces from soiled cloth diapers or training pants shall be disposed of by dumping in a toilet.

9.8. Soiled disposable diapers shall be stored in conveniently located, washable, plastic-lined, tightly covered waste containers. Each container shall be labeled and kept clean and free of buildup of soil or odor.

9.9. Toilet training chairs, if used, shall be of easily cleanable construction and after each use shall be emptied into a toilet, and thoroughly cleaned and sanitized in a utility sink.

9.10. Hand washing sinks shall not be used for rinsing soiled diapers or clothing or for cleaning toilet training equipment.

Source: Division of Health rule, "Child Care Centers," 64CSR21, §64-21-9. (1997)

APPENDIX 78-1 E: OUTDOOR SURFACES

The following chart indicates the relationship between specific depths of surface materials and the critical height of play equipment that is the height below which a life-threatening head injury would not be expected to occur after a fall from the equipment. For example, six (6) inches of uncompressed wood chips is sufficient for equipment that has a critical height of seven (7) feet, but six (6) inches of medium pea gravel or fine or coarse sand is only sufficient for equipment that has a critical height of five (5) feet.

TABLE 1 - CRITICAL HEIGHTS (in feet) OF TESTED MATERIALS					
MATERIAL	UNCOMPRESSED DEPTH			COMPRESSED DEPTH	
	6 inch depth	9 inch depth	12 inch depth	9 inch depth	
Wood chips*	7-foot fall	10-foot fall	11-foot fall	10-foot fall	
Double Shredded Bark Mulch	6-foot fall	10-foot fall	11-foot fall	7-foot fall	
Engineered Wood Fibers **	6-foot fall	7-foot fall	>12-foot fall	6-foot fall	
Fine Sand	5-foot fall	5-foot fall	9-foot fall	5-foot fall	
Coarse Sand	5-foot fall	5-foot fall	6-foot fall	4-foot fall	
Fine Pea Gravel	6-foot fall	7-foot fall	10-foot fall	6-foot fall	
Medium Pea Gravel	5-foot fall	5-foot fall	6-foot fall	5-foot fall	
Shredded Tires***	10-12-foot fall	N/A	N/A	N/A	

* This product was referred to as Wood Mulch in previous versions of this handbook. The term Wood Chips more accurately describes the product.

** This product was referred to as Uniform Wood Chips in previous versions of this handbook. In the playground industry, the product is more commonly known as Engineered Wood Fibers.

*** This data is from test conducted by independent testing laboratories on a 6 inch depth of uncompressed shredded tire samples produced by four manufacturers. The test reported critical heights that varied from 10 feet to greater than 12 feet. It is recommended that persons seeking to install shredded tires as a protective surface request test data from the supplier showing the critical height of the material when it was tested in accordance with ASTM F1 292.

Source: Adapted from the Consumer Product Safety Commission Handbook for Public Playground Safety (Publication No. 325)

APPENDIX 78-1 F: STAFF/CHILD RATIO

Table A: Staff/Child Ratio for Single-Age Groups

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN TO BE CARED FOR BY ONE QUALIFIED STAFF MEMBER	MAXIMUM NUMBER OF CHILDREN IN A GROUP
6 weeks - 1 year (6 weeks - 12 months)	4	8
1 year - 2 years (13 months - 24 months)	4	12
2 years (25 - 35 months)	8	16
3 years (36 - 47 months)	10	20
4 years (48 - 59 months)	12	24
5 years - school-age (60 months - school-age)	12	24
School-age	16	32

Table B: Staff/Child Ratio While Children Are Participating in Water Activities - Single-Age Groups

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN	NUMBER OF QUALIFIED STAFF MEMBERS
12 months and under	1	1
13 months - 24 months	2	1
25 - 59 months	4	1
60 months and over	8	1