



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Human Services

RULE TYPE: Legislative

TITLE-SERIES: 78-19

RULE NAME: FAMILY CHILD CARE HOME
REGISTRATION REQUIREMENTS

CITE AUTHORITY: 49-2-121

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 78

LEGISLATIVE RULE

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 19

FAMILY CHILD CARE HOME REGISTRATION REQUIREMENTS

§78-19-1. General.

1.1. Scope -- This rule establishes minimum standards and procedures for the registration of family child care homes under the provisions of W. Va. Code §49-2-101 and related federal and state codes. ~~The W. Va. Code is available in public libraries and on the State Legislature's web page at <http://www.legis.state.wv.us/>.~~

1.2. Authority -- W. Va. Code §49-2-121.

1.3. Filing Date -- ~~March 15, 2018.~~

1.4. Effective Date -- ~~April 1, 2018.~~

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on ~~April 1, 2023~~ August 1, 2028.

1.6. Purpose -- This rule governs the regulation of family child care homes in West Virginia.

§78-19-2. Application and Enforcement.

2.1. Application -- This rule applies to any family child care home that operates in West Virginia.

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

§78-19-3. Definitions.

In addition to the following definitions, the definitions in W. Va. Code §49-1-206 are applicable to this rule.

3.1. Approved Training -- Instruction or training approved by the secretary or provided by a trainer approved through or sponsored by the West Virginia State Training and Registry System (STARS).

3.2. Caregiver -- The person primarily responsible for child care in the family child care home.

3.3. Child Abuse and Neglect -- Physical injury, mental or emotional injury, sexual abuse, sexual exploitation, the sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian, or custodian who is responsible for the child's welfare.

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3.4. Child Care -- The services performed by a caregiver for a part of a day outside the child's home in relation to the child's physical, emotional, psychological, social, and personal needs. Responsibility for the care and protection of the child are delegated by the parent and assumed by the caregiver.

3.5. Child Care Setting -- Any regulated setting providing child care services to children, typically between six weeks through 12 years of age to include relative and informal child care homes, family child care homes, family child care facilities, child care centers, and Out-of-School Time programs.

3.6. Core Knowledge/Core Competencies of Early Childhood Educators -- Skills and knowledge that represent common standards of practice in the early childhood field in areas including health, safety, nutrition, child growth and development, positive interactions and relationships, curriculum, child observation and assessment, family and community, program management, and professionalism.

3.7. Corrective Action Plan -- A written agreement between the department and the family child care home when deficiencies are identified during an inspection or investigation of a complaint that includes the plan and time frame for correction.

3.8. Criminal History Background Check -- A review of information pursuant to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §16-49-1 *et seq.*, 69CSR10, and an examination of protective service records to determine eligibility for employment or participation under this rule.

3.9. Disinfect -- Eliminate most germs from a contact surface through the use of heat or chemical disinfectants, such as the bleach solutions described in Appendix 78-19-A of this rule.

3.10. Infant -- A child less than 12 months of age.

3.11. Parent -- A parent by blood, marriage, or adoption, or a legal guardian or other person standing in loco parentis.

3.12. Pre-service Training -- Training completed by all child care staff and applicable volunteers as required by the S1086 Child Care and Development Block Grant (CCDBG) Act of 2014, Section I. Health and Safety Requirements (~~+~~Pre-Service training modules 1-10 Safe Spaces, Emergency Preparedness, Hazardous Materials, Shaken Baby, Safe Sleep/Sudden Unexpected Infant Death Syndrome (SUIDs), Infectious Diseases, Medication Administration, Food Allergies, Transportation, and Child Development must be completed to meet compliance).

3.13. Relative -- Grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling.

3.14. Revocation -- The termination of a certificate of registration when a family child care home fails to maintain the minimum requirements established by the department under this rule.

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

3.16. School-Age Child -- A child aged five years to 13 years of age.

3.17. Serious Injury. -- An injury sustained while the child is in care that requires medical care beyond immediate first aid.

~~3.17.~~ 3.18. Substitute -- An individual who cares for children when the caregiver is absent and is responsible to the caregiver.

~~3.18.~~ 3.19. Toddler -- A child between the ages of 12 and 24 months.

~~3.19.~~ 3.20. Universal Precautions -- Procedures for infection control, as listed in Appendix 78-19-B of this rule, to use in all situations to prevent the transmission of blood borne germs that may be spread through blood and body fluids that might contain blood.

~~3.20.~~ 3.21. WV CARES Self-Disclosure Application and Consent Form -- A signed declaration of criminal convictions, indictments, and court ordered supervision, and authorization to allow a criminal history background check.

§78-19-4. Certificate of Registration Information.

4.1. Application for Registration.

4.1.a. Initial. -- The department shall issue an initial certificate of registration to a family child care home upon application and self-certification of compliance with this rule.

4.1.b. Renewal. -- The family child care home shall submit an application for renewal of a current certificate of registration at least 30 days before expiration of the certificate.

4.2. General Requirements.

4.2.a. A family child care home shall:

4.2.a.1. Be registered under the name of only one caregiver per residence;

4.2.a.2. Be located in the residence of the caregiver;

4.2.a.3. Operate no longer than 18 consecutive hours ~~in~~ within a 24-hour period. A six- hour break must be taken every 18 hours; and

4.2.a.4. Comply with the provisions of this rule.

4.3. Departmental Action on Applications for Registration.

4.3.a. Within 60 days of receipt of an application for certificate of registration, the secretary shall provide a written decision to the family child care home that does one of the following:

4.3.a.1. Issues a regular certificate of registration if the family child care home certifies compliance with all of the requirements of this rule;

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4.3.a.2. Issues a provisional certificate of registration if the family child care home is temporarily unable to certify compliance with all of the requirements of this rule; or

4.3.a.3. Denies a certification of registration if the family child care home does not certify substantial compliance with all of the requirements of this rule.

4.4. Terms and Conditions of Registration.

4.4.a. A certificate of registration is not transferable to another family child care home.

4.4.b. A certificate of registration applies only to the family child care home at the location identified in the application.

4.4.c. A family child care home shall publicly display a valid certificate of registration.

4.4.d. A record of all substantiated non-compliance complaints against registered family child care homes and subsequent corrective action shall be maintained by the department and made available to parents and the public upon request.

4.5. Types of Certificates of Registration.

4.5.a. A regular certificate of registration is valid for a period of up to two years from the date of issuance unless revoked or modified to a provisional status.

4.5.b. A provisional certificate of registration is valid for six months from the date of issuance and may not be reissued unless it is the recommendation of the State Fire Marshal.

4.6. Limitations on a Certificate of Registration.

4.6.a. The secretary may place limitations on a certificate of registration based on findings:

4.6.a.1. Of insufficient space in the home;

4.6.a.2. Of inadequate sleeping areas;

4.6.a.3. Of the provision of other home-based services, such as foster care and adult family care; or

4.6.a.4. That require a corrective action plan approved by the secretary.

4.6.b. The limitations may apply to:

4.6.b.1. The age, sex, and type of problems of children in care;

4.6.b.2. The intake of additional children; or

4.6.b.3. The total number of children in the home.

4.7. Waivers and Variances.

4.7.a. A family child care home may request a waiver or variance of any requirement in this rule if:

4.7.a.1. The health, safety, or well-being of children in the home is not adversely affected; and

4.7.a.2. The rule does not prohibit a waiver or variance for the requirement.

4.7.b. The request for a waiver or variance shall be in writing, addressed to the secretary, and shall include the following information:

4.7.b.1. The specific requirement to be waived or varied;

4.7.b.2. The reasons for seeking a waiver and why a specific requirement should not be applied in a particular circumstance; and

4.7.b.3. The reasons for seeking a variance and how compliance with a specific requirement of this rule can be accomplished in a manner different from that set forth in W. Va. Code §49-2-101 *et seq.*, or in this rule.

§78-19-5. Inspection and Investigation.

5.1. A caregiver shall allow a reasonable on-site monitoring inspection by the department.

5.2. The department may conduct inspections with or without advance notice.

5.3. During inspections, the caregiver shall provide access to the premises and to all aspects of the family child care home operation, including the children in care and the household members.

5.4. A family child care home shall ensure that its records are available in easily accessible files for inspection.

5.5. A family child care home shall cooperate in the investigation of complaints against the home.

§78-19-6. Caregiver, Substitute, and Household Member Requirements.

6.1. General Requirements.

6.1.a. The caregiver or substitute shall be:

6.1.a.1. At least 18 years of age; and

6.1.a.2. Able to read and write.

6.1.b. The caregiver or substitute shall ensure that alcoholic beverages or illegal substances are not used, and that no one present in the home is under the influence of those substances during the time children are in care.

6.1.c. A caregiver or substitute may not be impaired by any substance, medication, or medical cannabis to a level that would impair his or her ability to care for children.

~~6.1.c.~~ 6.1.d. The caregiver, substitute, and all household members shall keep information about children in care and about the families of the children confidential, except for required reporting to the department.

6.2. Health Requirements.

6.2.a. The caregiver shall obtain a medical examination and either a tuberculosis risk assessment, a TB skin test, or chest x-ray within 30 days of application for a certificate of registration and upon application for renewal of the certificate of registration.

6.2.b. Medical examinations completed up to six months prior to application or renewal are acceptable.

6.2.c. Examination forms shall indicate that the caregiver has no physical or mental condition that would negatively impact the provision of child care services. The results of the tuberculosis screening must be negative.

6.2.d. If an investigation determines a caregiver or household member may have a physical, mental, or emotional condition that could negatively impact the care of children, the caregiver shall provide a current physical or psychological exam report by a licensed physician or a licensed mental health professional assessing the condition and its impact on the provision of care for children, which will be used by the department to determine whether to continue, deny, or place limits on the certificate of registration.

6.2.e. The family child care home shall maintain a record of current medical examinations which includes the tuberculosis risk assessment, TB skin test, or chest-x-ray results completed within 30 days of the original application.

6.3. Training Requirements.

6.3.a. Within three months of initial registration, a caregiver shall obtain:

6.3.a.1. Approved training in ~~basic first aid that includes rescue breathing and choke saving~~ pediatric cardiopulmonary resuscitation (CPR) and pediatric first aid; and

6.3.a.2. Documentation verifying completion of approved pre-service health and safety training.

6.3.b. Within 12 months of initial registration, a caregiver shall obtain four additional hours of training in at least one other Core Knowledge/Core Competency area.

6.3.c. Thereafter, the caregiver shall complete eight hours of approved training annually, encompassing a minimum of two Core Knowledge/Core Competency areas.

6.3.d. Caregivers completing approved training modules lasting more than eight hours may elect to apply those training module hours over and above eight to the following year's training requirement. Training hours that may be carried over include hours earned through the West Virginia Infant and Toddler Professional Development Program, and the Apprentice for Child Development Specialist or other coursework approved by the department.

6.3.e. A family child care home shall maintain a training record with certificates of attendance for training completed during the registration period.

6.3.f. Caregivers completing approved training resulting in certification in basic first aid and rescue breathing shall renew the certification thirty days prior to the date the certification in such training expires.

6.4. Background Checks.

~~6.4.a. At the time of application and renewal for a certificate of registration as a family child care provider, each caregiver and adult household member shall:~~

~~6.4.a.1. Sign a WV CARES self disclosure application and consent form; and~~

~~6.4.a.2. Submit fingerprints for purposes of obtaining a state and federal criminal history background check. Fingerprinting must be done initially and repeated at the expiration of rap back enrollment.~~

6.4.a. A caregiver shall ensure that a state and federal fingerprint-based criminal background investigation is performed on the caregiver and each adult household member pursuant to the provisions of the West Virginia Clearance for Access: Registry and Employment Screen Act (WV CARES), W. Va. Code §16-49-1 et seq., 69CSR10, and shall keep the following information on file:

6.4.a.1. A completed and signed WV CARES self-disclosure application and consent form. A copy of the form shall be on file and uploaded to the WV CARES system no later than the date of approval to operate;

6.4.a.2. A variance or waiver if the individual has convictions or pending charges of disqualifying offenses;

6.4.a.3. A fitness determination of eligibility from the WV CARES unit; and

6.4.a.4. The caregiver shall update the documentation of a completed background check in the caregiver's and each adult household member's file at the expiration of rap back enrollment.

6.4.a.5. A state criminal background check shall be done in the state where the caregiver and each adult household member has resided in the past five years. Fingerprint checks for other states are optional.

6.4.b. A state check of the sex offender registry or repository shall be done in the state where the caregiver and any adult household member currently resides and shall be done in any other state where the caregiver and each adult household member has resided in the past five years.

6.4.c. A search shall be done of the state-based child and adult abuse and neglect registries and protective services databases in each state where the caregiver and each adult household member resided during the preceding five years. The same search shall be done in the state where the caregiver and each adult household member currently resides and shall be repeated every five years.

6.4.d. A new household member must have his or her criminal background check completed within 180 days of moving into the household.

~~6.4.b.~~ 6.4.e. The secretary shall not grant a certificate of registration to a family child care home if the caregiver or a household member:

~~6.4.b.1.~~ 6.4.e.1. Is currently under indictment or charged with any disqualifying offense as defined in W. Va. Code §16-49-1(8) and 69CSR10-2.10;

~~6.4.b.2.~~ 6.4.e.2. Is on parole or probation for a felony; or

~~6.4.b.3.~~ 6.4.e.3. Other crimes that the secretary determines may pose a risk to children.

~~6.4.c.~~ 6.4.f. If the caregiver or a household member has convictions of those listed in ~~paragraph 6.4.b.~~ subdivision 6.4.e. of this subdivision, a family child care provider shall not operate or continue operations unless the caregiver requests a waiver or variance, and it is approved by the secretary.

~~6.4.d.~~ 6.4.g. If the caregiver or a staff member or household member failed to report convictions to the department, a family child care home shall not operate or continue operations unless the caregiver requests a waiver or variance, and it is approved by the secretary.

~~6.4.e.~~ 6.4.h. The family child care home shall report pending charges, indictments, and convictions of caregivers and household members to the department within 24 hours of their occurrence.

~~6.4.f.~~ 6.4.i. The secretary shall not grant a certificate of registration to a family child care home if the caregiver or a household member is an active recipient of child or adult protective services or has a history of substantiated child or adult abuse or neglect as determined by a court of law or an investigation by the department's protective services staff.

6.5. Supervision of Children.

6.5.a. A caregiver shall be physically present at the family child care home and within sight or hearing of all children in care.

6.5.b. A caregiver shall frequently observe children in cribs and portable packs and play yards.

6.5.c. When supervising outdoor play, a caregiver shall remain outdoors with the children at all times when:

6.5.c.1. There is a pool, pond, hot tub, pail, or other body of water; or

6.5.c.2. There are children six years of age or younger present.

6.6. Family Child Care Home Capacity.

6.6.a. A family child care home shall have no more than six children in care under 13 years of age at any one time. No more than two of the children may be under 24 months of age.

6.6.b. The number of children in the family child care home includes:

6.6.b.1. Children under six years old who live in the home; and

6.6.b.2. Children under six years old who are visiting and not accompanied by a parent or a responsible adult.

6.7. Substitutes.

6.7.a. Substitutes shall be reliable and at least 18 years of age.

6.7.b. The caregiver may use a substitute to provide care for children during emergency situations, illness, and during occasional non-emergency situations such as vacations, child care training, and medical appointments.

6.7.c. The caregiver shall notify parents in advance when he or she plans to use a substitute for non-emergency situations.

6.7.d. The caregiver shall require the substitute to notify parents in emergency situations.

6.7.e. The caregiver shall use a substitute for no more than two consecutive full weeks annually or more than an average of eight hours weekly.

6.7.f. The caregiver shall not knowingly use an individual as a substitute who has a felony conviction or who has been convicted of one of the crimes listed in subdivision ~~6.4.b.~~ 6.4.d. of this rule.

§78-19-7. Home Safety Requirements.

7.1. Home Requirements.

7.1.a. A family child care home shall have heat, electricity, indoor plumbing, and a working telephone.

7.1.b. A family child care home shall meet the following requirements:

7.1.b.1. Bathrooms shall be equipped with a sink that has hot and cold running water and an operating toilet;

7.1.b.2. Kitchens shall have a sink that has hot and cold running water, a working stove for cooking, and a working refrigerator;

7.1.b.3. Interior doors shall lock from the inside and also shall be able to be unlocked from the outside;

7.1.b.4. Floors, walls, ceilings, steps, railings, doors, windows, and furnishings in the home shall be kept clean and in good repair;

7.1.b.5. Windows or artificial lighting shall supply sufficient illumination for children's activities;

7.1.b.6. A working flashlight shall be available in the home for emergency lighting; and

7.1.b.7. The home shall have a minimum of 35 square feet of indoor space per child. This space does not include hallways, bathrooms, or rooms not intended for or approved for children's use.

7.2. Safety Barriers.

7.2.a. All indoor or outdoor stairways, hallways, and exits shall be unobstructed except for safety barriers.

7.2.b. Stairs of four or more steps shall have hand railings when children under age five years are in care.

7.2.c. Safety gates shall be provided at the top and bottom of stairs to which infants and toddlers have access.

7.2.c.1. Accordion expansion gates are prohibited.

7.2.c.2. Pressure mounted gates shall not be used at the top of a set of stairs.

7.2.d. Balconies, decks, porches, ramps, and play or living areas that are elevated more than 36 inches shall be equipped with secure, child-proof railings and barriers.

7.3. Hazards. -- Family child care homes shall:

7.3.a. Keep children from areas undergoing remodeling or construction;

7.3.b. Store cleaning supplies, detergents, aerosol cans, pesticides, poisons, flammable materials, poisonous or unknown plants, medicines, medical cannabis, and alcoholic beverages or toxic materials out of the reach of children under six years of age;

7.3.c. Store hazardous materials separately from food items;

7.3.d. Store guns, ammunition, hunting knives, bows and arrows, and other weapons in a locked cabinet or closet, and store keys out of children's reach; and

7.3.e. Keep strings and cords long enough to encircle a child's neck (six inches or more) out of the children's reach.

7.4. Emergency Exits.

7.4.a. Rooms used by children, except bathrooms, shall have at least two exits.

7.4.b. All levels of the home used by children shall have two unobstructed outside exits. The second exit from a room and from a level may be a window.

7.4.c. Windows used as exits shall be located no more than 44 inches from the floor.

7.4.d. A basement used by children shall have a door that exits directly to the outside.

7.4.e. In apartment buildings, where two exits are not available from the apartment, safe and continuous passageways, aisles, or corridors that provide two exits shall serve to meet the requirements of subdivision 7.4.b. ~~of this Subsection.~~

7.5. Electrical Safety.

7.5.a. Electrical cords shall be maintained in good condition.

7.5.b. Extension cords shall be heavy duty UL approved and not run under carpets or rugs, nor through common walkways, unless stabilized to prevent tripping.

7.5.c. Protective covers shall be installed on all unused electrical outlets accessible to children who are under five years of age.

§78-19-8. Fire Safety and Evacuation Plan.

8.1. Evacuation Plan.

8.1.a. A family child care home shall develop and post a written plan for an emergency evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the family child care home. The plan shall include, but not be limited to:

8.1.a.1. A designated relocation site and evacuation;

8.1.a.2. Procedures for notifying parents of the relocation and ensuring family reunification;

8.1.a.3. Procedures to address the needs of individual children including children with special needs; and

8.1.a.4. Coordination with local emergency management officials.

8.1.a.5. The family child care home shall:

8.1.a.5.A. Update the evacuation plan by December 31 of each year and provide a copy to the child care regulatory specialist. If the provider fails to update the plan, the child care regulatory specialist shall take no action against the provider's certificate of registration until notice is provided and the provider is given 30 days after the receipt of notice to provide an updated plan.

8.1.a.5.B. Retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian, or guardian of each child at the time of the child's enrollment in the child care service and when the plan is updated.

8.1.b. The fire evacuation plan shall include a drawing of the primary and secondary exits from all areas of the house and meeting places for the children once they have exited the home.

8.1.c. A family child care home shall conduct monthly fire evacuation drills and maintain a written record of when they are conducted.

8.1.d. A family child care home shall develop, implement, and maintain a written procedure to practice with staff and volunteers moving to a safe location within the home at least two times a year and record the dates and times when the practice sessions are conducted;

8.1.e. A family child care home shall develop, implement, and maintain a written procedure for practicing relocation with the operator and volunteers two times per year and record the dates and times when the practice sessions are conducted;

8.2. Heating and Cooling.

8.2.a. Heating devices that require ventilation shall be vented to the outside.

8.2.b. Unvented gas heaters may be used as a supplemental source of heat when both of the following requirements are met:

8.2.b.1. A properly functioning digital carbon monoxide detector has been installed in a central location in the home; and

8.2.b.2. The heater is equipped with an oxygen depletion sensor that automatically shuts the heater off if a hazardous level of carbon monoxide accumulates.

8.2.c. Non-flammable protective barriers, guards, or screens shall be installed around wood burning stoves, open fireplaces, and unvented heaters to protect children from burns and flames and to prevent access.

8.2.d. Electric space heaters are allowed if they are UL approved, stable, and inaccessible to children.

8.2.e. Kerosene heating stoves shall not be used while children are in care.

8.2.f. Heating equipment and hot water tanks shall be kept clear of combustible materials.

8.2.g. Hot water tanks shall be equipped with a pressure relief valve and in an area inaccessible to children.

8.2.h. Family child care homes shall use air conditioning or fans that are either adequately shielded or out of children's reach when temperatures exceed 80 degrees Fahrenheit.

8.3. General Fire Safety.

8.3.a. One working smoke detector shall be installed on every level of the home.

8.3.b. Digital carbon monoxide detectors shall be installed in all residences that use gas appliances, fireplaces, pellet or wood-burning stoves, natural gas, oil, or propane heating systems.

8.3.c. Smoke detectors and carbon monoxide detectors shall have working batteries installed at all times.

8.3.d. Detectors shall be checked frequently, and batteries replaced semi-annually to insure proper functioning.

8.3.e. An ABC-rated multi-purpose fire extinguisher shall be available in the home at all times.

§78-19-9. Environmental Safety.

9.1. Tobacco Use.

9.1.a. A caregiver shall notify parents in advance if anyone in the home smokes or uses smokeless tobacco.

9.1.b. A caregiver shall provide a smoke-free environment while children are present.

9.1.c. Smoking is prohibited when the children are in vehicles with the caregiver.

9.1.d. All tobacco products, ashtrays, butts, ashes, spittoons, lighters, and matches shall be kept out of the children's reach.

9.2. Pets and Animals.

9.2.a. A family child care home shall:

9.2.1.a. When pets are living in the home, an acknowledgement must be signed by a parent of all children in care verifying that the following information was made available: the type of pet, breed of pet, spay/neuter status, and vaccination status. The caregiver must notify parents two weeks prior to a new pet being brought into the home.

~~9.2.a.1.~~ 9.2.a.2. Keep documentation available on site of rabies vaccinations for all cats and dogs kept on the premises;

~~9.2.a.2.~~ 9.2.a.3. Confine animals that are sick, aggressive, or injured in an area not accessible to the children;

~~9.2.a.3.~~ 9.2.a.4. Keep litter boxes out of areas used by children and away from food preparation areas; and

~~9.2.a.4.~~ 9.2.a.5. Keep pets such as birds, ferrets, reptiles, or wild animals in an area of the home or the premises that is not accessible to children.

9.2.b. If an animal bites a child and the skin is broken, the caregiver shall notify the parents immediately and notify the department within 24 hours.

9.3. Play Areas.

9.3.a. A family child care home shall provide for outdoor play space within reasonable walking or driving distance from the home.

9.3.b. Play areas shall be free from unsanitary or hazardous items, trash receptacles, burning facilities, abandoned cars, appliances, farm animals, animal waste, debris, combustible rubbish, unsafe toys, open sewage, chemicals, exposed roots, open or abandoned wells, tires, vehicular traffic, and any other hazardous items or conditions.

9.3.c. Outdoor play equipment shall be safe, in good repair, and free of sharp edges and protruding parts.

9.3.c.1. Anchored play equipment shall not be placed over, or immediately adjacent to, hard surfaces.

9.3.c.2. All outdoor activity areas shall be maintained in a clean and safe condition by removing debris, dilapidated structures, broken or worn play equipment, building supplies, glass, sharp rocks, toxic plants, and other injurious materials.

9.3.d. Trampolines shall not be accessible to the children in care.

§78-19-10. Health, Sanitation, and Nutrition.

10.1. Health.

10.1.a. A caregiver shall:

10.1.a.1. Observe the children daily upon their arrival and note signs of illness or injury;

10.1.a.2. Promptly report accidents, suspected illnesses, or exposure of a child to a communicable disease to the child's parents; and

10.1.a.3. Isolate a sick child from the other children.

10.1.b. A caregiver shall obtain written permission from parents to administer non-prescription and prescription medication according to the following guidelines:

10.1.b.1. Non-prescription medication, including medical cannabis, shall be administered according to a written schedule, with information about dosages, how to administer the medication, and times provided by the parents; and

10.1.b.2. Prescription medication shall be stored in original containers clearly labeled with the child's name and dosage, date, and name of medication.

10.1.b.3. The caregiver shall administer the medication according to the label.

10.1.c. Caregivers shall provide parents with the recommended guidelines for immunizations and the periodicity schedule for Health Check Exams recommended by the West Virginia Early and Periodic Screening, Diagnosis, and Treatment Program.

10.1.d. The caregiver shall maintain a record of each child's health examinations and immunizations according to the following guidelines:

10.1.d.1. A general medical examination for all children shall be obtained by the parents within 30 days of admission to the home, provided the examination was completed no more than six months prior to the child's admission to the home;

10.1.d.2. Children's medical examination records shall be updated every two years until the child is six years of age;

10.1.d.3. Immunization records shall be completed and updated according to the schedule recommended by the department;

10.1.d.4. If immunizations are not current, the caregiver shall obtain a schedule for completion from the parent for the family child care home's files, including children experiencing homelessness and children in foster care. The grace period will be based on the individual circumstances of the child; and

10.1.d.5. A family child care home shall not require immunization records for children whose parents provide written documentation when immunizations are contraindicated due to a medical condition documented by a physician.

10.2. Sanitation.

10.2.a. The family child care home shall have sufficient safe water for drinking, hand washing, and other household needs.

10.2.b. The family child care home shall have safe drinking water available to the children at all times either from a municipal water supply, well water that has been tested by the West Virginia Bureau for Public Health, or through use of commercially available bottled water.

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10.2.c. The caregiver and the children shall thoroughly wash their hands with soap and water for at least 20 seconds any time they are soiled, including at the following times:

10.2.c.1. Before eating;

10.2.c.2. Before handling or preparing foods;

10.2.c.3. After contact with animals;

10.2.c.4. Before and after diaper changing, assisting a child with toilet use, or personal bathroom use; and

10.2.c.5. When the caregiver or the children come into contact with blood or bodily fluids containing blood.

10.2.d. The caregiver shall employ universal precautions for protection from disease and infection, as detailed in Appendix 78-19-B of this rule.

10.2.e. The caregiver shall store food and drinks in closed containers and refrigerate as needed.

10.2.f. To ensure the cleanliness of the home the caregiver shall:

10.2.f.1. Cover garbage cans with lids, maintain them in a sanitary manner with liners, and empty them daily;

10.2.f.2. Clean bathroom facilities used by the children daily and when soiled, as listed in Appendix 78-19B of this rule;

10.2.f.3. Clean dishes in a dishwasher or in hot water and detergent. If they are washed by hand, they shall be rinsed thoroughly and allowed to air dry;

10.2.f.4. Maintain the family child care home and furnishings in a safe and sanitary condition to prevent accidents and illnesses;

10.2.f.5. Ensure that the family child care home is free of rodent or insect infestation; and

10.2.f.6. Ensure doors and windows that are left open have screens.

10.3. Nutrition.

10.3.a. Children shall receive nutritious meals and snacks, served in a sanitary manner and in amounts adequate to meet their nutritional needs, as detailed in the USDA Dietary Guidelines for Americans.

10.3.b. Children shall be encouraged, but not forced to eat.

10.3.c. Children who do not require a highchair shall be seated comfortably at a table when meals and snacks are served.

§78-19-11. Water Safety.

11.1. For all water play or swimming activities, or both, the caregiver shall:

11.1.a. Obtain prior written permission from parents for children to participate;

11.1.b. Be physically present at the site of any water play and provide constant, direct supervision of children;

11.1.c. Ensure that an adult swimmer is present when children are involved in swimming activities in pools deeper than 24 inches;

11.1.d. Ensure that life guards are present when taking children to a swimming area outside of the family child care home;

11.1.e. Provide simple water safety rules to children based on their ages and developmental levels;

11.1.f. Ensure that a second adult is available to supervise when:

11.1.f.1. Some children are not swimming; and

11.1.f.2. More than three children under six years of age are participating in swimming activities in pools deeper than 24 inches; and

11.1.g. Ensure that children who are not toilet trained wear swim diapers during water play of any kind.

11.2. Water Play.

11.2.a. Wading pools of less than 24 inches in depth may be used when the following requirements are met:

11.2.a.1. The pool is clean and free of debris;

11.2.a.2. The pool is emptied and disinfected before and after each play period or immediately when they become dirty or contaminated; and

11.2.a.3. The pool remains empty when not in use and does not collect water.

11.2.b. The caregiver shall store empty pools out of children's reach.

11.3. Pools and Hot Tubs.

11.3.a. A caregiver shall:

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11.3.a.1. Enclose all swimming pools deeper than 24 inches with a fence at least four feet high;

11.3.a.2. Ensure that entry gates remain locked when the pool is not in use;

11.3.a.3. Ensure that pools deeper than 24 inches used by children in care have working filtration systems and are maintained to prevent development of bacteria and algae;

11.3.a.4. Ensure that, if using a fence manufactured strictly for above ground pools, it extends at least two feet above the pool and has a locking ladder attached; and

11.3.a.5. Ensure that pools used by children in care are set up, maintained, and operated according to manufacturer guidelines and age recommendations.

11.3.b. A caregiver shall:

11.3.b.1. Equip hot tubs with a hard cover; and

11.3.b.2. Prohibit the children's use of hot tubs.

§78-19-12. Emergency Practices.

12.1. Emergency Information.

12.1.a. A family child care home shall ensure that written emergency information is available near the telephone within easy access of the caregiver, children, and substitutes that contains telephone numbers for the following:

12.1.a.1. Police and fire departments;

12.1.a.2. The child abuse and neglect hotline;

12.1.a.3. Ambulance service;

12.1.a.4. A poison control center or the universal poison control center telephone number, 1-800-222-1222;

12.1.a.5. Parents' work and home;

12.1.a.6. Numbers for each child's health care provider; and

12.1.a.7. An emergency substitute, if applicable.

12.1.b. Emergency information for each child and parental permission forms for emergency medical treatment shall be obtained prior to a child's placement in the home, maintained in the providers records, and updated when information changes.

12.1.c. Emergency information for each child includes emergency contacts, family information, permission to seek medical treatment, and permission to transport the child.

12.1.d. Emergency consent forms shall be notarized.

12.2. First Aid Supplies. A family child care home shall keep the following first aid supplies available in a portable container and ensure they are out of children's reach:

12.2.a. A digital thermometer;

12.2.b. Disposable gloves;

12.2.c. Blunt tipped scissors;

12.2.d. Tweezers;

12.2.e. Bandage tape;

12.2.f. Sterile gauze;

12.2.g. Non-medicated adhesive strips;

12.2.h. Sealed packages of alcohol wipes or antiseptic;

12.2.i. CPR mouthpiece;

~~12.2.i.~~ 12.2.i. Soap; and

~~12.2.j.~~ 12.2.k. A first aid guide.

§78-19-13. Transportation.

13.1. When transporting children, the caregiver shall:

13.1.a. Notify parents in advance when activities are planned that require transportation;

13.1.b. Make sure the children's emergency consent forms are carried in the vehicle in case of accident or illness;

13.1.c. Accompany children on activities that require transportation;

13.1.d. Ensure the driver transporting the children has a valid driver's license; and

13.1.e. Ensure the vehicle used to transport the children is maintained in safe running condition, with insurance and a current inspection sticker.

13.2. A family child care home shall ensure that each child is secured in an approved child safety seat or seat belt at a ratio of one child per seat belt as required by W. Va. Code §17C-15-56.

§78-19-14. Program and Equipment.

14.1. Daily Routine.

14.1.a. A family child care home shall post the daily routine.

14.1.b. The daily routine shall be appropriate to the ages of the children in care and include:

14.1.b.1. Specific meal times;

14.1.b.2. Nap times for children who need them;

14.1.b.3. Indoor play time;

14.1.b.4. Outdoor play time on days when temperatures are 40 degrees and above, weather and circumstances permitting;

14.1.b.5. A balance of active and quiet play; and

14.1.b.6. Time to learn self-help skills, such as hand washing, brushing teeth, dressing, and toileting.

14.2. Program.

14.2.a. A family child care home shall implement a program that:

14.2.a.1. Is appropriate to the ages and stages of development of children in care; and

14.2.a.2. Enhances the healthy growth and development of children.

14.2.b. A family child care home shall select toys, equipment, and activities referenced in the resource tables in Appendix 78-19-C of this rule. Examples include:

14.2.b.1. Art and craft activities, music, games, puzzles, and books;

14.2.b.2. Building blocks;

14.2.b.3. Outdoor play equipment, such as balls and riding toys;

14.2.b.4. Dress up clothes for dramatic play;

14.2.b.5. Manipulative toys;

14.2.b.6. Large muscle equipment; and

14.2.b.7. Science materials.

14.2.c. A family child care home shall ensure that age-appropriate books are read on a daily basis to children between the ages of six months and five years of age.

14.3. Equipment.

14.3.a. A family child care home shall ensure each child has an appropriately-sized place to rest, such as a crib, portable packs and play yard, bed, cot, sofa, or mat with clean individual bedding.

14.3.b. Toys and equipment used by the children shall be non-toxic, safe, sturdy, easy to clean and free of hazards, as specified in ~~Appendix 78-19-E~~ Appendix 78-19-C of this rule.

§78-19-15. Guidance and Discipline.

15.1. Guidance.

15.1.a. The caregiver and parents shall discuss and agree upon positive methods of guidance that encourage a child's acceptable behavior.

15.1.b. The caregiver shall use guidance that helps the children understand appropriate behavior and is appropriate to their ages.

15.1.c. A family child care home shall have rules that are fair, consistent, and relevant to the children's ages.

15.1.d. A family child care home may use a time-out that lasts no more than one minute for each year of a child's age only for the purpose of helping a child regain control.

15.2. Discipline.

15.2.a. A caregiver, household member, or substitute shall not use any of the following harmful forms of discipline:

15.2.a.1. Punishing a child physically including spanking, hitting, kicking, biting, shaking, swatting, thumping, pinching, popping, shoving, spitting, or other cruel treatment;

15.2.a.2. Punishing or threatening a child in association with food, sleep, rest, or toilet training;

15.2.a.3. Putting anything in or on a child's mouth as punishment;

15.2.a.4. Confining a child in a closet or locked room or using physical restraints for confinement;

15.2.a.5. Using loud, profane, or abusive language or threats of physical punishment;

15.2.a.6. Punishing a child psychologically including public or private humiliation, shaming, and negative remarks about the child or child's family;

15.2.a.7. Punishing a child emotionally including rejecting, terrorizing, ignoring, or isolating;
and

15.2.a.8. Allowing a child to discipline other children.

15.2.b. A caregiver shall not seek or accept parental permission to use any punishments or acts prohibited in this rule.

§78-19-16. Infants and Toddlers.

16.1. Equipment. -- A family child care home:

16.1.a. Is prohibited, effective December 28, 2012, from using traditional drop side cribs, or any crib manufactured prior to June 28, 2011. A family child care home shall:

16.1.a.1. Only use cribs and portable pack and play yards that comply with the Consumer Product Safety Commission standards, Cribs manufactured after June 28, 2011, and any portable pack and play yards manufactured after February 19, 2014; and

16.1.a.2. Supply separate cribs or portable packs and play yards for infants. Family child care providers shall not use portable packs and play yards for infants able to climb;

16.1.b. Shall not allow infants under 35 inches tall to sleep on any type of adult bed or sofa;

16.1.c. Shall not place soft pillows or stuffed animals in infant beds during sleep or nap times;

16.1.d. Shall not allow the use of mobile walkers;

16.1.e. Shall ensure that high chairs, infant swings, portable packs and play yards, and cribs are safe and in good working condition; and

16.1.f. Shall disinfect toys and play equipment used by infants and toddlers after each use. Resource tables are contained in Appendices 78-19-C of this rule.

16.2. Feeding and Care. -- A family child care home caring for infants and toddlers shall:

16.2.a. Keep milk and formula under refrigeration at all times;

16.2.b. Discard any unused breast milk within two hours of feeding;

~~16.2.b.~~ 16.2.c. Offer water to infants and toddlers several times daily;

~~16.2.c.~~ 16.2.d. Hold infants six months of age and younger while bottle-feeding. Bottle propping is prohibited;

~~16.2.d.~~ 16.2.e. Hold infants and toddlers with special needs over six months of age while bottle-fed until they are able to hold their own bottles securely;

~~16.2.e.~~ 16.2.f. Ensure that infants and toddlers participate in activities outside of cribs or portable packs and play yards;

~~16.2.f.~~ 16.2.g. Hold, cuddle, talk to, sing to, and respond to the particular needs of infants and toddlers; and

~~16.2.g.~~ 16.2.h. Place an infant who is unable to turn over independently on his or her back to sleep unless medical documentation prohibits sleep in that position.

16.3. Diapering and Toilet Training.

16.3.a. A caregiver caring for children in diapers shall:

16.3.a.1. Use a clean non-porous surface or pad for diaper changing and shall clean it after each use;

16.3.a.2. Have sufficient quantities of clean diapers available; and

16.3.a.3. Change diapers when soiled and dispose of them in a closed container that is emptied daily.

16.3.b. A family child care home caring for a child who is toilet training shall:

16.3.b.1. Discuss and agree with the child's parent on a schedule for toilet training; and

16.3.b.2. Empty and disinfect potty chairs after each use.

§78-19-17. Night Time Care.

17.1. Sleeping. -- A family child care home providing night time care:

17.1.a. Shall not place mats or sleeping bags directly on the floor for overnight sleeping;

17.1.b. Shall provide the children with clean linen, pillows, and additional coverings as needed for comfort;

17.1.c. Shall be awake while the children are awake and sleep only when all the children are asleep; and

17.1.d. Shall ensure that only children of the same family and sex sleep together in the same bed.

17.2. Bathing. -- When bathing a child, the caregiver shall:

17.2.a. Discuss bathing arrangements with the child's parents;

17.2.b. Provide age-appropriate bathing facilities for children for overnight care;

17.2.c. Supervise a child under six years of age while bathing;

17.2.d. Equip bathtubs and showers with safety devices to prevent slipping or falling;

17.2.e. Provide soap, clean water, clean individual wash cloths, and towels for each child: and

17.2.f. Thoroughly clean the tub between baths.

§78-19-18. Parent Involvement.

18.1. Responsibilities.

18.1.a. A family child care home shall maintain all completed parental forms required by the department, including emergency information and medical forms, on file.

18.1.b. The caregiver shall require parents to review and sign daily sign in and out sheets to document the time all children are in care.

18.1.c. A family child care home shall keep records on file for two years.

18.1.d. The caregiver shall work with parents, the school system, the Birth to Three Program, and other providers to plan for a child's transition to other programs.

18.2. Rights.

18.2.a. The caregiver shall give parents an opportunity for pre-enrollment visits to discuss services and requirements of the family child care home as well as the needs of the family and children.

18.2.b. The caregiver shall give custodial parents immediate and unlimited access to their children in care and follow these guidelines:

18.2.b.1. The caregiver shall release the children only to the individuals listed on the parent's emergency consent form; and

18.2.b.2. The caregiver shall require identification before releasing a child to someone unknown to the caregiver.

§78-19-19. Required Reporting to the Department.

19.1. A family child care home shall immediately report suspected child abuse or neglect to the department in accordance with W. Va. Code §49-2-801 *et seq.*

19.2. A family child care home shall immediately report to the department any accidents or illnesses resulting in emergency treatment, hospitalization, or the death of a child and follow up with a written report within 72 hours on a form designated by the department.

19.3. A family child care home shall report the following within 72 hours:

19.3.a. An adult added to the household so a criminal history background check can be completed;

19.3.b. Major damage to the home caused by fire, flood, or storms; and

19.3.c. A change in address.

§78-19-20. Enforcement Action.

This rule may be enforced by revocation of a certificate of registration, or by immediate closure, or both, in accordance with W. Va. Code §49-2-117 and W. Va. Code §49-2-118.

§78-19-21. Administrative and Judicial Review.

21.1. In accordance with the provisions of W. Va. Code §49-2-105, a family child care home may seek an administrative review of a decision made by the secretary by requesting a hearing within 30 days of receiving the notice of the decision.

21.2. A family child care home may also seek immediate relief from the decision of the secretary by a showing of good cause made by verified petition to the Circuit Court of Kanawha County or the circuit court of the county where the home is located.

**Appendix 78-19-A
DISINFECTANT SOLUTION**

DISINFECTANT SOLUTION

Add ¼ cup bleach to 1 gallon of water:



1/4 cup bleach + 1 gallon of cool water

OR

Add 1 tablespoon of bleach to 1 quart of water:



1 tablespoon bleach + 1 quart of cool water

Mix a fresh solution each day.

Use it to disinfect surfaces that have been cleaned.

Dispense it from a spray bottle that you keep out of the reach of children.

Wet the entire surface until glistening and *leave* solution on the surface at least 2 minutes. *Dry* with a paper towel or allow to air dry.

Source: *Healthy Young Children*, 4th Edition, 2012

**Appendix 78-19-B
Universal Precautions**

Spills of body fluids (i.e., urine, feces, blood, saliva, nasal discharge, and injury or tissue discharge) shall be cleaned up immediately as follows:

For spills of vomit, urine, and feces: walls, bathroom, table tops, toys, kitchen counter-tops, and diaper-changing tables shall be cleaned and disinfected.

For spills of blood or blood-containing body fluids and injury tissue discharges: the area shall be cleaned and disinfected. Gloves shall be used in these situations unless the amount of blood or body fluid is so small that it can easily be contained by the material used for cleaning. If disposable gloves are used, they shall be discarded immediately, and hands washed.

Persons involved in cleaning contaminated surfaces shall avoid exposure of open sores or mucous membranes to blood or blood-containing body fluids and injury or tissue discharges by using gloves to protect hands when cleaning contaminated surfaces.

Mops shall be cleaned, rinsed in sanitizing solution, wrung as dry as possible, and hung to dry. Persons cleaning mops shall wear gloves.

Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie.

Appendix ~~78-18-C~~ 78-19-C
Resource Tables for Sections 7 and 11 of this Rule

The following tables suggest examples of play equipment, types of toys, and materials that can be used with children of different age groups. All activities and equipment need to be suited to a child's age and stage of development.

Table A: Equipment and Materials for Infants

Type of Materials	Types of Supplies and Equipment
Music, Art, and Dramatic Play	Wrist or ankle bells; rattles; adult operated tape or cd player with assorted music; musical toys designed for infants; musical mobiles; banging materials that are simple and light weight; secured unbreakable infant mirrors; play telephones; soft washable dolls, animals, and puppets; simple toys with wheels or rollers.
Blocks and Manipulative Play	Soft and textured blocks, disks, or keys on a ring; squeeze toys; teething toys; interlocking rings; large connecting blocks, large hollow blocks; jumbo pop beads; nesting cups, stacking toys; simple peg boards; boxes.
Language and Science	Picture books; toy telephones; adult operated recordings, tapes, discs, and players; photographs; textured surfaces; floating toys; sponges; spoons and scoops.
Large Muscle Equipment	Low, soft, or padded climbing platform for crawlers; infant activity gym; foam or soft plastic balls; simple push toys; secure swings designed for infants.

Table B: Equipment and Materials for Toddlers

Types of Materials	Types of Supplies and Equipment
Music, Art and Dramatic Play	Well secured unbreakable mirrors; adult operated tape or cd player with assorted music accompanied by simple body and finger
Blocks and Manipulative Play	Large connecting blocks, large hollow blocks, large wooden blocks; jumbo pop beads; nesting cups; simple peg boards, simple puzzles; simple threading toys; mobile pull toys; simple dial, key and button toys; pop-up boxes; boxes.
Language and Science	Picture books, touch-me books, simple rhyming books, books for lap reading; toy telephones; adult operated recordings/tapes/discs and players; photographs; water play toys, scoops, and containers.
Large Muscle Equipment	Low, soft, or padded climbing platforms and slides; riding/rocking toys that are feet propelled; foam or soft plastic balls; gym mats; play tunnels; push toys; secure swings designed for toddlers

Table C: Equipment and Materials for Children aged 2-5 years

Types of Materials	Types of Supplies and Equipment
Music, Art, and Dramatic Play	Bells, cymbals, drums, tambourines, sand blocks, triangles, rhythm sticks, keyboards, blowing instruments; rattles; adult operated tape or cd player with assorted music; nontoxic art supplies such as play-dough, large crayons and finger paints; large paint brushes used with washable paint on paper; washable markers; glue sticks; chalk; sponges; adjustable easel; colored construction paper; blunt end scissors; unbreakable mirrors; dress-up and role playing materials; masks; housekeeping equipment; play house; doctor kit; doll equipment; play scene sets with people figures and animal figures; puppets; train and car sets.
Blocks and Manipulative Play	Connecting blocks, large hollow blocks, hardwood unit blocks and accessories; nesting cups, stacking toys; pop beads; peg boards, puzzles; threading toys; boxes; shape sorters; matching games; mosaic blocks.
Language and Science	Picture books, easy to read along books or beginning reader books, pop-up books; hidden pictures; child-oriented magazines; child dictionary; tape/cd players and recorders; photographs; beginning computer software; aquariums; terrarium; sandbox and play equipment; water play equipment such as cups, droppers, floating toys, containers; magnets; magnifying glasses; collections such as rocks and shells; simple gear and lever devices; simple math games.
Large Muscle Equipment	Low climbing platforms and slides; riding and rocking toys; foam or soft plastic balls; sports balls of all sizes matching the age of child; jump rope; flying disks; gym mats; play tunnels; push and pull toys that look like adult equipment; low child swings; stable ride on equipment.

Table D: Equipment and Materials for School Age Children

Type of Materials	Types of Supplies and Equipment
Music, Art, and Dramatic Play	Tape, CD or karaoke player/recorder; variety of music; assorted musical instruments such as hand bells, xylophones, drums, pianos/keyboards; art supplies such as clay, paints, paint brushes, markers, yarn, scissors, glue, colored pencils, variety of art paper, chalk, scraps of material, beads, common household items for art construction; weaving materials; models; mirrors; dress-up and role playing materials; masks; housekeeping and gardening equipment; play house, tent, grocery store, work shop; doctor kit; culturally diverse dolls; doll equipment; play scene sets with people figures and animal figures; puppets;
Blocks and Manipulative Play	Small interlocking blocks; log builder sets; wood blocks and accessories; geometric interlocking blocks; materials for detailed construction of models; jig-saw puzzles and 3-D puzzles.

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Language and Science	Story books; chapter books; tape recorders; cameras; computer programs; games and books that require problem solving; games based on words; matching games; beginning strategy games; globes; maps; aquariums; terrarium; gardening; magnets; magnifying glasses; collections such as rocks and shells; ant farms; child microscope.
Large Muscle Equipment	Music for movement; sports balls and equipment for beginning team play; target activities; complex climbing structures such as ladders and ropes; hula hoops; jump rope; outdoor running and tagging games.