

This is an amendment to 8.9.4 NMAC, Section 7, 11, 17, 22, 23, 32, 40, 41, 43, 44, and 46 effective 09/09/2026

8.9.4.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

(1) **“Abuse”** means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(a) physical contact that harms or is likely to harm a child;

(b) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(c) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

(2) **“Activity area”** means space for children’s activities where related equipment and materials are accessible to the children.

(3) **“Adult”** means a person who has a chronological age of 18 years or older.

(4) **“Assessment of children’s progress”** means children’s progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child’s behavior or skills in given situations). Children’s progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

(5) **“Attended”** means the physical presence of a staff member or educator supervising and actively engaging children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See definition of “Supervision”, Paragraph (12) of Subsection S of 8.9.4.7 NMAC).

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

(1) **“Capacity”** means the maximum number of children a licensed child care facility can care for at any one time.

(2) **“Cease and desist letter”** means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

(3) **“Child”** means a person who is under the chronological age of 19 years.

(4) **“Child care center”** means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

(5) **“Child with a disability or special needs”** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(6) **“Class A deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

(7) **“Class B deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

(8) **“Class C deficiency”** means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

(9) **“Clean”** means to physically remove all dirt and contamination.

(10) **“Conditions of operation”** means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

(11) **“Core hours”** means the daily hours of operation of the child care facility.

(12) **“Corrective action plan”** means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

(13) **“Curriculum”** is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program’s mission statement, philosophy (which, in turn, is based on assumptions about young children’s development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

D. Terms beginning with the letter “D”:

(1) **“Deficiency”** means a violation of these regulations.

(2) **“Department”** means the New Mexico Early Childhood Education and Care Department (“ECECD”).

(3) **“Direct provider of care”** means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

(4) **“Director”** means the person in charge of the day-to-day operation and program of a child care center.

(5) **“Disinfect”** means to destroy or inactivate most germs, but not bacterial spores, on any inanimate object. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(6) **“Drop-in”** means a child who attends a child care facility on an occasional or unscheduled basis.

E. Terms beginning with the letter “E”:

(1) **“Educator”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

(2) **“Environment”** means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

(3) **“Exploitation”** of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child’s property for another person’s profit, advantage or benefit without legal entitlement to do so.

(4) **“Expulsion”** means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”:

(1) **“Facility”** means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

(2) **“Family child care home”** means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

(3) **“Family handbook”** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

(4) **“FOCUS”** is a voluntary tiered quality rating and improvement program that is open to all licensed child care programs.

G. Terms beginning with the letter “G”:

(1) **“Group child care home”** means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

(2) **“Group size”** is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

(3) **“Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter “H”:

(1) **“Home”** means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

(2) **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Subparagraphs (a) through (c) of this Paragraph.

I. Terms beginning with the letter “I”: “Infant” means a child age six weeks to 12 months.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”:

(1) **“License”** means a document issued by ECECD to a child care facility licensed and governed by these regulations and granting the legal right to operate.

(2) **“Licensee”** means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensing authority”** means the child care services bureau – regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.

M. Terms beginning with the letter “M”:

(1) **“Media”** means the use of televisions, video games, and non-educational online streaming such as video and social media.

(2) **“Mission statement”** describes what the program aspires to do and whom the program aspires to serve.

N. Terms beginning with the letter “N”:

(1) **“National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by ECECD. ECECD determines the program criteria and standards to evaluate and approve accrediting bodies. The following are the only national accrediting bodies that are approved by ECECD:

(a) the association of Christian schools international (ACSI);

(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

(e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(f) the national association of family child care (NAFCC); [øf]

(g) the national early childhood program accreditation (NECPA);

(h) association Montessori internationale (AMI); or

(i) American Montessori Society (AMS).

(2) **“Night care”** means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

(3) **“Neglect”** means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

(4) **“Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(5) **“Notifiable diseases”** means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter “O”:

(1) **“Orientation”** means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

(2) **“Out of school time program”** means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

P. Terms beginning with the letter “P”:

(1) **“Pacifier”** means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) **“Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

(3) **“Pesticide”** means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(4) **“Philosophy statement”** describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

(5) **“Policy”** is a written directive that guides decision-making. Policies form the basis for authoritative action.

(6) **“Premises”** means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

(7) **“Procedure”** is a series of steps to be followed, usually in a specific order, to implement policies.

(8) **“Professional development”** is an on-going plan for continued professional development for each educator, including the director.

(9) **“Professional Development Information System (PDIS)”** is a secure, centralized digital platform managed by the department and designed to collect, manage, and analyze data related to the education, training, certification, and ongoing professional development of individuals. It serves as the monitoring system to ensure compliance with professional development and training requirements and supports workforce development.

(10) **“Program administrator”** means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

(11) **“Punishment”** means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Ratio”** is the maximum number of children one educator can be responsible for.

(2) **“Requirements”** means the criteria and regulations developed by Early Childhood Education and Care Department in 8.9.4 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

(3) **“Restriction”** means to control enrollment, service type, capacity, activities, or hours of operation.

(4) **“Revocation”** means the act of making a license null and void through its cancellation.

S. Terms beginning with the letter “S”:

(1) **“Sanction”** means a measure imposed by the licensing authority for a violation(s) of these standards.

(2) **“Sanitize”** means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one-half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

(3) **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(4) **“School-age”** means a child in care who is ~~[age five years old to 18 years]~~ at least five years old by 12:01 a.m. on September 1 of the current school year and not older than 18 years old.

(5) **“Staff evaluation”** means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

(6) **“Staff member”** means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

(7) **“Substitute”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

(8) **“Suspension”** means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

(9) **“Site director”** means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

(10) **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

(11) **“Substantiated complaint”** means a complaint determined to be factual, based on an investigation of events.

(12) **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

(13) **“Survey”** means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

T. Terms beginning with the letter “T”: **“Toddler”** means a child age 12 months to 24 months.

U. Terms beginning with the letter “U”:

(1) **“U/L”** means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

(2) **“Unattended”** means an educator is not physically present with a child or children under care.

(3) **“Unsubstantiated complaint”** means a complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”:

(1) **“Variance”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

(2) **“Volunteer”** means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

W. Terms beginning with the letter “W”: “Waiver” means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.
[8.9.4.7 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.11 LICENSING:

A. TYPES OF LICENSES:

(1) INITIAL LICENSE: A license is issued to a child care facility that has met all requirements of these regulations and shall remain valid as long as the licensee maintains good standing in compliance with all applicable rules of the department, or if not in compliance with a rule, has been granted a waiver or variance of that rule by the department or has entered into a plan of correction during their annual inspection, and the child care facility certifies on its annual inspection survey its desire to renew the license for another year. A denial of an initial ~~[or renewal]~~ application may only occur pursuant to 8.9.4.12 NMAC.

(a) 1-star level is designated for programs not receiving child care subsidy. 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.9.4.11 NMAC.

(i) for centers: Paragraph (17) of Subsection G of 8.9.4.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.9.4.24 NMAC, and Subsection H of 8.9.4.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.9.4.32 NMAC, Paragraph (15) of Subsection F of 8.9.4.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.9.4.34 NMAC, and Subsection H of 8.9.4.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.9.4.41 NMAC, Paragraph (14) of Subsection F of 8.9.4.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.9.4.43 NMAC and Subsection C of 8.9.4.43 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.

(c) 2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

(d) 3-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS level 3 quality criteria at all times.

(e) 4-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS levels 3 and 4 quality criteria at all times.

(f) 5-star level is voluntary and requires meeting and maintaining licensing requirements ~~and maintaining at all times either~~ FOCUS levels 3, 4, and 5 quality criteria ~~[at all times and maintaining] or ECECD approved national accreditation status.~~

(2) TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to 120 days, during which time the child care facility shall correct all specified deficiencies.

(b) The licensing authority will not issue more than two consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application must be submitted within 30 days.

(3) AMENDED LICENSE: A child care facility shall submit a new ~~[notarized]~~ application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director’s appointment is valid for 90 days.

(b) ~~[A notarized]~~ An application must be submitted for a change of capacity. Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4) PROVISIONAL 2-STAR LICENSE: Newly licensed programs receiving child care subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5) MILITARY LICENSE:

(a) Centers on military installations and United States department of defense (DoD) certified homes serving only military families on or off the installation are governed and inspected by the ~~[United States department of defense (DoD) and]~~ DoD and must obtain national accreditations. Therefore, such centers ~~[do not require an]~~ and DoD certified homes are not subject to inspection by the New Mexico licensing authority.

(b) In order to participate in the child care assistance program, providers licensed by the DoD must submit the following:

(i) Licensing application
(ii) Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.9.6 NMAC, to include the individual's name, date of birth, and home address. For certified homes, the letter or memo must include the names of the licensee, household members over 18 years old, and all secondary educators;

(iii) DoD annual certification;

(iv) DoD approved accreditation, if applicable; and

(v) W-9 form and supporting documentation, if applicable.

(6) TRIBAL GOVERNMENT LICENSE:

(a) Centers and child care homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency or may maintain status as Tribal head start or early head start. Therefore, such centers and homes do not require an inspection by the New Mexico licensing authority.

(b) Centers and child care homes governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency, or who maintains status as Tribal head start or early head start, may choose to apply for a Tribal Government License from ECECD.

(i) A Tribal Government license may be issued for the purposes of receiving child care assistance subsidies through 8.9.3 NMAC.

(ii) Centers and licensed homes operating under a Tribal Government license must comply with their sponsoring Tribal Child Care and Development Lead Agency or Tribal head start and early head start requirements, and are not required to be inspected by the New Mexico licensing authority or comply with any other regulations under this part other than 8.9.4.11(A)(6) NMAC.

~~(iii) [Centers and licensed homes operating under a Tribal Government license must comply with their sponsoring Tribal Child Care and Development Lead Agency or Tribal head start and early head start rules and requirements.]~~

~~(iv)]~~ A Tribal Government license may be revoked if the New Mexico licensing authority is notified by the center or licensed home's Tribal Child Care and Development Lead agency of the center or home's non-compliance with their rules and requirements or is notified of a loss of Tribal head or early head start status.

(c) Providers wishing to receive a Tribal Government license must submit the following to obtain licensure from ECECD:

(i) Licensing application;
(ii) Proof of Tribal CCDF Lead Agency approval;
(iii) Annual submission of a letter or memorandum attesting that the Tribal CCDF's programs' director and all staff are in compliance with state, federal or Tribal background check clearances;
(iv) Annual submission of a list of the director and all staff employed by the provider, listing each individual staff member's name, date of birth, and home address; and
(v) W-9 form and supporting documentation, if applicable.

(d) As an alternative to a Tribal Government license, centers and homes operating on sovereign tribal lands may choose to apply for a state license. To receive a state license, the center or home must follow the full process outlined in 8.9.4 NMAC and agree to follow and be subject to all the rules and requirements of 8.9.4 NMAC.

B. POSTING OF LICENSE: A child care facility shall post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

C. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

D. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the date the following occurs:

- (1) on the day a child care facility closes;
- (2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) on the day a child care facility moves.

E. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their ECECD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.9.4.11 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.17 SURVEYS FOR CHILD CARE FACILITIES:

A. The licensing authority will conduct a survey at least twice a year in each child care facility using these regulations as criteria. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be specific on how and when the child care facility shall correct the deficiency or deficiencies.

D. The licensing authority may accept the corrective action plan as written or require modifications of the plan.

E. By applying for a new license [~~or a license renewal~~], the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. The licensee must grant immediate access upon the licensing authority's arrival. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes shall be present in the child care facility.

G. If a facility has video cameras on the premises that have recording capabilities, footage must be accessible to the licensing authority upon request.

[8.9.4.17 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

- (1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;
- (2) the current child care regulations;
- (3) dated weekly menus for meals and snacks;
- (4) the guidance policy; and
- (5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

C. POLICY AND PROCEDURES: All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

- (1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;
- (2) policies and procedures for admission and discharge of children;
- (3) policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (4) policies and procedures for the handling of medications;
- (5) policies and procedures for the handling of complaints received from parents or any other person;
- (6) policies and procedures for actions to be taken in case children are discovered unattended or missing from the center;
- (7) policies and procedures for the handling of children who are ill;
- (8) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans and
- (9) policies and procedures that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. FAMILY HANDBOOK: All facilities operating under these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following:

- (1) **GENERAL INFORMATION:**
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, license information, days and hours of operation, services offered);
 - (d) name of director and their contact information;
 - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 - (f) daily schedule;
 - (g) a statement supportive of family involvement that includes an open-door policy to the classroom;
 - (h) appropriate dress for children, including request for extra change of clothes;
 - (i) celebrating holidays, birthdays and parties; and
 - (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.
- (2) **POLICIES AND PROCEDURES:**
 - (a) enrollment procedures;
 - (b) disenrollment procedures;
 - (c) expulsion procedures;
 - (d) fee payment procedures, including penalties for tardiness;
 - (e) notification of absence;

- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;
- (n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and
- (o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

E. CHILDREN'S RECORDS: A center shall maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records shall be kept at the center for 12 months after the child's last day of attendance. Records shall contain at least:

- (1) **PERSONAL INFORMATION:**
 - (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
 - (b) names of parents or guardians, parents or guardians current places of employment, addresses, cellular and work telephone numbers;
 - (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;
 - (d) date the child first attended the center and the date of the child's last day at the center;
 - (e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;
 - (f) a record of any accidents, injuries or illnesses which require first aid or medical attention which must be reported to the parent or guardian;
 - (g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD and ECECD;
 - (h) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;
 - (i) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child.
 - (j) a record of the time the child arrived and left the center and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;
 - (k) an enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility; and
 - (l) a signed acknowledgment that the parent or guardian has read and understands the family handbook.

- (2) **EMERGENCY INFORMATION:**
 - (a) information on any allergies or medical conditions suffered by the child.
 - (b) the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.
 - (c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency.
 - (d) a document giving a center permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.
 - (e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

F. PERSONNEL RECORDS:

~~[(1) — A licensee shall keep and maintain a complete up-to-date file in ECECD's professional development information system (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. If the center chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Providers will have six months to comply from the date these regulations are promulgated. Records shall contain at a minimum the following:] A center shall keep and maintain an up-to-date personnel file with all information required by ECECD for each staff member, including substitutes and volunteers who work more than six hours in any week and have direct contact with children. Personnel files shall be updated as soon as practicable, but not longer than thirty days after any changes.~~

(1) The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

- ~~(a)~~ name; ~~[-address and telephone number;]~~
- ~~(b)~~ current position;
- ~~(c)~~ ~~current and past duties and responsibilities;~~
- ~~(d)~~ (c) dates of hire and termination;
- ~~(e)~~ (d) documentation of a background check and employment history verification; if background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;
- ~~(f)~~ (e) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;
- ~~(g)~~ (f) documentation of current first-aid and cardiopulmonary resuscitation training;
- ~~(h)~~ (g) documentation of all appropriate training by date, time, hours and area of competency;
- ~~(i)~~ ~~emergency contact number;~~
- ~~(j)~~ ~~universal precaution acknowledgment form;~~
- ~~(k)~~ ~~confidentiality form;~~
- ~~(l)~~ ~~results of performance evaluations (shall be maintained outside of PDIS);~~
- ~~(m)~~ ~~administrative actions or reprimands (shall be maintained outside of PDIS);~~
- ~~(n)~~ (h) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals; and
- ~~(o)~~ (i) signed acknowledgment that the staff have read and understand the personnel handbook.
- ~~(p)~~ ~~signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan; and]~~

(2) The following items, at minimum, shall be maintained by the provider outside of PDIS and shall be made available for review upon request:

- ~~(a)~~ current and past duties and responsibilities;
- ~~(b)~~ emergency contact number;
- ~~(c)~~ results of performance evaluations; and
- ~~(d)~~ administrative actions or reprimands.

~~[(2)]~~ (3) A center shall maintain dated weekly work schedules for the director, all staff, all educators, and all volunteers and keep the records on file for at least 12 months. The record shall include the time the workers arrived at and left work and include breaks and lunch.

G. PERSONNEL HANDBOOK: The center shall give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (4) code of conduct;

- (5) training requirements, career lattice, professional development opportunities;
 - (6) procedures and criteria for performance evaluations;
 - (7) policies on absence from work;
 - (8) grievance procedures;
 - (9) procedures for resignation or termination;
 - (10) copy of licensing regulations;
 - (11) policy on parent involvement;
 - (12) health policies related to both children and staff;
 - (13) policy on sexual harassment;
 - (14) child guidance policy;
 - (15) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);
 - (16) confidentiality statement; and
 - (17) a plan for retention of qualified staff.
- [8.9.4.22 NMAC - N, 11/01/2022; A, 11/04/2025, A, 9/09/2026]

8.9.4.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

- (1) An employer shall not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.9.6 NMAC to continue to work directly or unsupervised with children.
- (2) All educators shall demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.
- (3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (4) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio shall have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios shall not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.
- (5) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for an educator.
- (6) Substitutes and part-time educators counted in the staff/child ratios shall meet the same requirement as regular educators except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in a center but working 20 hours or fewer a week, shall complete half the required training hours. Such employees working more than 20 hours a week shall meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.9.4.23 NMAC for additional training requirements.
- (7) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of fifty percent of the center's daily core hours of operation. The licensing authority may require proof of the director's time on-site. See Paragraph (2) of Subsection F of 8.9.4.22 NMAC.
- (8) During any absence, the director shall assign a person to be in charge and will post a notice stating the assignment.
- (9) A program shall maintain staff/child ratios and group sizes at all times based on the age of the majority of children in the group. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation. All educators shall perform head counts at regular intervals throughout the day.
- (10) A center shall have a minimum of two staff members present at all times, with one being an educator. If the center has fewer than seven children, the second staff member may conduct other activities such as cooking, cleaning, or bookkeeping.
- (11) A center shall keep a list of people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.
- (12) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center shall have a director who is at least 21 years old and meets the requirements outlined in the table below.

Professional Preparation		Experience
Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management I</i> Or The National Administrator Credential (NAC)*	and Child Development/Early Childhood Education <i>Child Growth, Development and Learning</i> (one of the AA-level “common core courses”)**	
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management I, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>) The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: <i>Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs</i>) The Child Development Associate (CDA) certificate The Child Care Professional (CCP) certificate The New Mexico Early Childhood Program Administration Certificate Montessori Teacher Certification The New Mexico One-Year Vocational Certificate Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education		and Two-years experience in an early childhood growth and development setting
Or		
A bachelor’s degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or any bachelor’s degree with a transcript containing two or more Early Childhood courses.		and One year of experience in an early childhood growth and development setting

*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012.

**Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director shall develop and document an orientation and training plan for new staff members and volunteers and shall provide information on training opportunities. The director shall have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members shall participate in an orientation before working with children. Initial orientation shall include training on the following:

- (i)** scope of services, activities, and the program offered by the center;
- (ii)** emergency first aid procedures, recognition of childhood illness and indicators of child abuse;

- preparedness plans;
 - (iii) fire prevention measures, emergency evacuation plans and disaster
- handling of complaints;
 - (iv) review of licensing regulations;
 - (v) policies regarding guidance, child abuse and neglect reporting, and
- 8.9.4.22 NMAC;
 - (vi) review of written policies and procedures as defined in Subsection C of
 - (vii) center/parental agreement;
 - (viii) sanitation procedure;
 - (ix) written goals of the program;
 - (x) personnel handbook;
 - (xi) family handbook;
 - (xii) names and ages of children;
 - (xiii) names of parents;
 - (xiv) tour of the facility; and
 - (xv) introduction to other staff and parents.

(b) All new staff members working directly with children regardless of the number of hours employed per week shall complete the following training within three months of their date of hire. Training must be approved by ECECD to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators shall have three months to comply with the following training from the date these regulations are promulgated:

- (i) prevention and control of infectious diseases (including immunization);
- (ii) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (iii) administration of medication, consistent with standards for parental consent;
- (iv) prevention of and response to emergencies due to food or other allergic reactions;
- (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (vi) prevention of shaken baby syndrome and abusive head trauma;
- (vii) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;
- (viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (ix) precautions in transporting children (if applicable);
- (x) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;
- (xi) recognition and reporting of child abuse and neglect; and
- (xii) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department.

(c) New staff members working directly with children regardless of the number of hours employed per week shall complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

- (i) Learning Environment: How Classroom Arrangement Impacts Behavior
- (ii) Challenging Behavior: Reveal the Meaning
- (iii) Building Strong Relationships with Families
- (iv) Honoring All Families

(d) Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year

begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. The competency areas are:

- (i) child growth, development and learning;
 - (ii) health, safety, nutrition and infection control;
 - (iii) family and community collaboration;
 - (iv) developmentally appropriate content;
 - (v) learning environment and curriculum implementation;
 - (vi) assessment of children and programs; and
 - (vii) professionalism.
- (e) Training must be provided by individuals who are registered on the New Mexico trainer registry.
- (f) Training provided by center employees, directors, owners, and direct affiliates of the provider shall count for no more than half of the required 24 hours of training each year.
- (g) Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency.
- (h) Identical trainings shall not be repeated for the purpose of obtaining credit.
- (i) Directors may count hours in personnel and business training toward the training requirement.
- (j) Infant and toddler educators must have at least four hours of training in infant and toddler care annually and within three months of starting work. The four hours shall count toward the 24-hour requirement.
- (k) A center shall keep a training log on file for all staff with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate.
- (l) A college credit hour in a field relevant to the competency areas listed above shall be considered equivalent to a minimum of 15 clock hours. Basic level pre-requisites, such as math and English courses, leading to a degree in early childhood development shall be considered equivalent to a minimum of 15 clock hours per credit hour.
- (m) See Paragraph (6) of Subsection A of 8.9.4.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFF/CHILD RATIOS AND GROUP SIZES:

- (1) Ratios and group sizes shall be observed as outlined in the tables below:

Centers where children are grouped by age		
Age Group	Adult to child ratio	Maximum group size
Infants	1:6 or fraction of group thereof	12*
Toddlers	1:6 or fraction of group thereof	12*
two years	1:10 or fraction of group thereof	20
three years	1:12 or fraction of group thereof	24
four years	1:12 or fraction of group thereof	24
five years	1:15 or fraction of group thereof	30
six years and older	1:15 or fraction of group thereof	30

Centers Where Age Groups Are Combined		
Age Group	Adult to child ratio	Maximum group size
six weeks through 24 months	1:6 or fraction of group thereof	12*
two through four years	1:12 or fraction of group thereof	24
three through five years	1:14 or fraction of group thereof	28
six years and older	1:15 or fraction of group thereof	30
18 to 24 months with children ages 24 through 35 months	1:6 or fraction of group thereof	12*

*Providers whose group size exceeds the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated shall continue with their current group size as long as ratios are maintained at all times. Providers whose group size meets the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated must continue to meet the maximum group size. All new licensed providers and those requesting an infant or toddler capacity change after the date these regulations are promulgated must meet the maximum group size as indicated above.

<u>In accordance with AMI or AMS accreditation standards, providers applying for or maintaining AMI or AMS accreditation may combine age groups as follows:</u>		
<u>Age Group</u>	<u>Adult to Child Ratio</u>	<u>Maximum Group Size</u>
<u>2 months – 15 months</u>	<u>1:3</u>	<u>10</u>
<u>12 months – 3 years</u>	<u>1:6</u>	<u>12</u>
<u>2.5 – 6 years</u>	<u>1:15</u>	<u>30</u>
<u>6 years and older</u>	<u>1:15</u>	<u>30</u>

(2) The number of children who may be in a group and the number of caregivers is specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) the room is divided so that different activity/interest areas are well-defined (i.e. creative art, dramatic play, books, manipulatives, blocks, science, and math);

(b) each activity/interest area shall have a posted capacity, which may vary according to the activity and size of the space, and shall not exceed the group size requirement as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC;

(c) placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) a single educator is responsible for supervising up to the number of children allowed in the adult to child ratio age grouping specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC in one or more interest area as long as every child is in direct eyesight of the educator; and

(f) the total number of children in a larger room must not exceed the room capacity based on activity space. For example, if a three to five year old classroom has a capacity of 40, and the maximum group size is 28, the room must be divided by at least two well-defined spaces that include various activity/interest areas and be supervised by at least three educators, who are spread out so that every child is “attended.”

(3) Child care facilities not meeting the requirements as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by ECECD. The written procedures shall address the following:

(a) maintenance of adult to child ratio within the group size in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. to facilitate adult to child interaction and constructive activity among children;

(b) assignment of a group of children to an educator or team of educators; and

(c) demonstrate how the educators shall meet the needs of all children in the assigned classroom and account for all children at all times.

(4) A center shall schedule staff to minimize the number of primary educators a child has during the day and the week. A child shall have no more than three primary, consecutive educators in any day including educators in the early morning and late afternoon. Each child must have an educator who is aware of details of the child’s habits, interests, and any special concerns.

(5) The same educator who cares for the children under age two years shall supervise those children when they play with children over two years.

[8.9.4.23 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025; A, 9/09/2026]

8.9.4.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A. ADMINISTRATIVE RECORDS: A licensee shall post the child care home license in an area readily visible to parents and visitors. The licensee shall also keep on file:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;

- (2) the current child care regulations;
- (3) the guidance policy;
- (4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and
- (5) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

C. FAMILY HANDBOOK: All facilities using these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to licensing and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following:

- (1) **GENERAL INFORMATION:**
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, license information, days and hours of operation, services offered);
 - (d) name of licensee and how they may be reached;
 - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 - (f) daily schedule;
 - (g) a statement supportive of family involvement that includes an open-door policy to the family or group child care home;
 - (h) appropriate dress for children, including request for extra change of clothes;
 - (i) celebrating holidays, birthdays and parties; and
 - (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) **POLICIES AND PROCEDURES:** All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;

(n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

D. CHILDREN'S RECORDS: A home shall maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records shall contain at minimum:

(1) **PERSONAL INFORMATION:**

(a) name of the child, date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the home and the date of the child's last day at the home;

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;

(f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

(g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;

(h) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child;

(i) a record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

(j) an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home; and

(k) a signed acknowledgement that the parent or guardian has read and understands the family handbook.

(2) **EMERGENCY INFORMATION:**

(a) information on any allergies or medical conditions suffered by the child;

(b) the name and telephone number of two people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

(c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency;

(d) a document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian; and

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL RECORDS: ~~[A home shall keep the following records on file and make them available to the licensing authority.]~~ A licensed home shall maintain complete and up to date personnel records for the licensee and all second educators, including substitutes and volunteers working more than six hours per week. Records must be updated as soon as practicable, but no later than thirty days after any change.

(1) ~~[Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.]~~ The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

(a) documentation of background check and employment history verification for all staff members; if a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals;

(b) an annual signed statement that the individual would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(c) documentation of all completed training, including first-aid and CPR;

(d) a written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals (family child care homes who do not have employees are exempted from this requirement); and

(e) signed acknowledgment that the individual has read and understands the personnel handbook.

(2) [An annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC.]The following items, at minimum, shall be maintained by the home provider outside of PDIS and made available upon request:

(a) documentation of a background check and employment history verification for all adults living in the home. A background check must be conducted at least once every five years on all required individuals;

(b) records of arrival and departure times for second educators, including breaks and lunch;

(c) current and past duties and responsibilities for second educators;

(d) emergency contact information for second educators;

(e) results of performance evaluations for second educators;

(f) administrative actions or reprimands for second educators.

[(3) A record of the time the second educators arrived at and left work, to include breaks and lunch.

(4) A written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

(5) Licensed child care homes shall maintain the complete, up-to-date personnel records in ECECD's professional development information system, (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. If the home chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Records shall contain at a minimum the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;

(f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(g) documentation of current first-aid and cardiopulmonary resuscitation training;

(h) documentation of all appropriate training by date, time, hours and area of competency;

(i) emergency contact number;

(j) universal precaution acknowledgment form;

(k) confidentiality form;

(l) results of performance evaluations (shall be maintained outside of PDIS);

(m) administrative actions or reprimands (shall be maintained outside of PDIS);

~~(n) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the department's career lattice, and based on the individual's goals; and~~

~~(o) signed acknowledgment that the staff have read and understand the personnel handbook;~~

~~(p) signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan;]~~

F. PERSONNEL HANDBOOK: The educator shall give each non-resident employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

- (1) job description of second educator;
- (2) benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (3) code of conduct;
- (4) training requirements, professional development opportunities;
- (5) procedures and criteria for performance evaluations;
- (6) policies on absence from work;
- (7) procedures for resignation or termination;
- (8) copy of licensing regulations;
- (9) policy on parent involvement;
- (10) health policies related to both children and staff;
- (11) policy on sexual harassment;
- (12) child guidance policy;
- (13) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);
- (14) confidentiality statement;
- (15) plan for retention of qualified staff; and
- (16) employee cellular telephone usage policy that directs and defines safe and appropriate

use.

[8.9.4.32 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant shall complete an application form provided by the licensing authority. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45-day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A program shall submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The shall be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department's background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant shall use the approvals provided to the schools and community centers as long as the approvals are current according to the

applicable department's requirements. Acceptable documents shall be provided to the licensing authority before licensure. Otherwise, an applicant shall have:

- (a) current written zoning approval from the appropriate city, county or state authority;
- (b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;
- (c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and
- (d) current written approval from the New Mexico environment department or other environmental health authority for:
 - (i) a kitchen, if meals are prepared and served on site in the program;
 - (ii) private water supply, if applicable;
 - (iii) private waste or sewage disposal, if applicable; and,
 - (iv) a swimming pool, if applicable.

(5) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and shall include the following.

- (a) Main entry into the facility is level or has a ramp to allow for wheelchair access.
- (b) Building layout allows for access to the main activity area.
- (c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.
- (d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.
- (e) Ramps exceeding a six-inch rise are provided with handrails.
- (f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6) SCHEDULE: All applications for a new license shall include a description of the programs proposed activities and schedule.

(7) INITIAL SURVEY: The licensing authority will schedule a survey for a program when it receives a complete application with all supporting documents.

B. CAPACITY OF A PROGRAM:

- (1) The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.
- (2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site. Children shall not be cared for in unlicensed areas of the facility.
- (3) A program must meet the following space requirements:
 - (a) 35 square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, and storage areas, and excluding offsets and built-in fixtures.
 - (b) ~~[A program must have an outdoor activity space.]~~ 75 square feet of outdoor activity space for each child using the area at one time.
- (4) The capacity of each room shall be posted in an area of the room that is readily visible to parents, staff members and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost, missing, or unattended child;
- (b) a serious injury;
- (c) the abuse or neglect of a child;
- (d) fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a program or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A program shall notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.40 NMAC. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.4.40 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, guardians, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. POLICY AND PROCEDURES: All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

(1) actions to be taken in case of accidents or emergencies involving a child, parents, or staff members;

(2) policies and procedures for admission and discharge of children;

(3) policies and procedures for expulsion of children. Policies and procedures shall include how the facility will maintain a positive environment and will focus on preventing the expulsion of school-age children. The facility must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

(4) policies and procedures for the handling of medications;

(5) policies and procedures for the handling of complaints received from parents or any other person;

(6) policies and procedures for actions to be taken in case children are discovered unattended or missing from the facility;

(7) policies and procedures for the handling of children who are ill;

(8) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see

waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans:

(9) policies and procedures that promote the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(10) policies and procedures that ensure the safe, developmentally appropriate, and intentional delivery of educational and recreational activities. These policies must outline expectations for activity planning, staff responsibilities, supervision practices, safety protocols, and strategies to promote meaningful engagement.

D. FAMILY HANDBOOK: All facilities using these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The family handbook shall include the following.

(1) GENERAL INFORMATION:

- (a) mission statement;
- (b) philosophy statement;
- (c) program information (location, license information, days and hours of operation, services offered);
- (d) name of director and how they may be reached;
- (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
- (f) daily schedule;
- (g) a statement supportive of family involvement that includes an open door policy to the classroom;
- (h) appropriate dress for children, including request for extra change of clothes;
- (i) celebrating holidays, birthdays and parties; and
- (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES: ~~[All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:]~~

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures and safety policies;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;
- (n) education policy;
- (o) recreation policy;
- ~~(p)~~ (p) emergency procedures, safety policies, and disaster preparedness plan;
- ~~(q)~~ (q) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and
- ~~(r)~~ (r) employee cellular telephone usage policy that directs and defines safe and appropriate use.

~~[D.]~~ **E. CHILDREN'S RECORDS:** A program shall maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records shall be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records shall contain at least:

(1) PERSONAL INFORMATION:

- (a)** name of the child; date of birth, gender, home address, mailing address and telephone number;
- (b)** names of the parents or guardians, the parents or guardian's current places of employment, addresses, cellular and work telephone numbers;
- (c)** a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;
- (d)** date the child first attended the program and the date of the child's last day at the program;
- (e)** a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;
- (f)** written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;
- (g)** a record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and
- (h)** an enrollment agreement; this form shall be signed by a parent or guardian with an outline of the services and the costs; these forms shall be kept at a central location.

(2) EMERGENCY INFORMATION:

- (a)** information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;
- (b)** the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;
- (c)** a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;
- (d)** if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

~~[E.]~~ **F. PERSONNEL RECORDS:** A program shall keep and maintain an up-to-date personnel file with all information required by ECECD for each staff member, including substitutes and volunteers who work more than six hours in any week and have direct contact with children. Personnel files shall be updated as soon as practicable, but not longer than thirty days after any changes.

~~[(1)]~~ — A licensee shall keep a complete up-to-date file for each staff member, including substitutes and volunteers having direct contact with the children. A program shall keep the file for one year after the staff member's last day of employment. Unless otherwise indicated, a licensee shall keep the items listed below in a central location except the following items which shall be kept on site: background clearances, abuse and neglect statements, staff emergency numbers and first aid/CPR certificates. Records shall contain at least the following:

- ~~(a)~~ name, address and telephone number;
- ~~(b)~~ position;
- ~~(c)~~ current and past duties and responsibilities;
- ~~(d)~~ dates of hire and termination;
- ~~(e)~~ documentation of a background check and employment history verification. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals. A copy must be kept onsite;
- ~~(f)~~ an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC. A copy must be kept onsite;
- ~~(g)~~ documentation of first aid and cardiopulmonary resuscitation with a pediatric component. A copy must be kept onsite;

~~_____ (h) _____ documentation of all appropriate training by date, time, hours and area of competency;~~

~~_____ (i) _____ emergency contact number;~~

~~_____ (j) _____ universal precaution acknowledgment; and~~

~~_____ (k) _____ a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals.]~~

~~(2)~~ (1) A program shall maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

~~(3)~~ (2) ~~[Licensed child care centers shall maintain the complete, up-to-date personnel records in ECECD's professional development information system, (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. If the program chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Records shall contain at a minimum the following:]~~ The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

~~(a)~~ (a) name; ~~[, address and telephone number;]~~

~~(b)~~ (b) current position;

~~(c)~~ (c) current and past duties and responsibilities]

~~(d)~~ (d) dates of hire and termination;

~~(e)~~ (e) documentation of a background check and employment history verification; if background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;

~~(f)~~ (f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

~~(g)~~ (g) documentation of current first-aid and cardiopulmonary resuscitation training;

~~(h)~~ (h) documentation of all appropriate training by date, time, hours and area of competency;

~~(i)~~ (i) emergency contact number;

~~(j)~~ (j) universal precaution acknowledgment form;

~~(k)~~ (k) confidentiality form;

~~(l)~~ (l) results of performance evaluations (shall be maintained outside of PDIS);

~~(m)~~ (m) administrative actions or reprimands (shall be maintained outside of PDIS);]

~~(n)~~ (n) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the department's career lattice, and based on the individual's goals; and

~~(o)~~ (o) signed acknowledgment that the staff have read and understand the personnel handbook.

~~(p)~~ (p) signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan;]

(3) The following items, at minimum, shall be maintained by the provider outside of PDIS and shall be made available for review upon request:

(a) current and past duties and responsibilities

(b) emergency contact number;

(c) results of performance evaluations; and

(d) administrative actions or reprimands.

[F:] G. PERSONNEL HANDBOOK: The educator shall give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) code of conduct;

(5) training requirements

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

(12) health policies related to both children and staff;

(13) policy on sexual harassment;

(14) plan for retention of qualified staff; and

(15) employee cellular telephone usage policy that directs and defines safe and appropriate use.

(16) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(17) child guidance policy;

(18) confidentiality statement;

(19) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(20) policies and procedures for expulsion of children. Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five and older. The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement. [8.9.4.41 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:

(1) A program shall have written policies and procedures clearly outlining guidance practices. Facilities shall give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance shall be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A program shall not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children shall not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

(a) dramatic play;

(b) creative art;

(c) books;

- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.
- (2) Each center is clearly defined, using shelves and furniture.
- (3) Adults can visually supervise all centers at all times.
- (4) The capacity of each room shall be posted in an area of the room that is readily visible to parents, staff members, and visitors.
- (5) Learning areas have adequate space and quiet areas are arranged so that children's activities can be sustained without interruption.
- (6) Materials are properly cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.
- (7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.
- (8) The floor surface is suitable for activities that will occur in each learning area.
- (9) File and storage space is available for educators' materials.
- C. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:
 - (1) Educators remain calm in stressful situations.
 - (2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.
 - (3) Educators help children communicate their feelings by providing them with language to express themselves.
 - (4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.
- D. EQUIPMENT AND PROGRAM:
 - (1) A program shall provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved. Toys shall be disinfected at a minimum of once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.
 - (2) Each child at a program shall have a designated space for storage of clothing and personal belongings.
 - (3) A program shall store equipment and materials for children's use within easy reach of the children, including those with disabilities. A program shall store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.
 - (4) A program shall provide children with toys, educational materials that reinforce and complement the regular academic program, equipment, and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.
 - (5) A program shall post a daily activity schedule. A program shall follow a consistent pattern for routine activities such as meals, snacks and rest.
 - (6) Media viewing shall be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing to include all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.
 - (7) Children and family members shall be acknowledged upon arrival and departure.
 - (8) Equipment and program requirements apply during all hours of program operation.
 - (9) Programs should reflect local community strengths, cultural knowledge, and student interests.
 - (10) Programs should create meaningful opportunities for families to engage in student learning. Opportunities may include:

- (a) family learning nights;
- (b) student showcases;
- (c) cultural events;
- (d) parent workshops; and
- (e) community celebrations.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in out of school time programs shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; and

(b) if intended for residential use, shall be safe and securely anchored.

(2) A program shall place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety. When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.						
Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

(3) The use of a trampoline is prohibited during the hours of operation or by any children receiving care at the facility.

(4) Licensees shall protect children from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent/guardian), proper attire and by limiting the time of exposure to the elements. The program must also consider instruction by the child's parent or guardian. Drinking water shall be available as needed and maintained at a cool temperature while children are playing outside.

G. SWIMMING, WADING AND WATER:

(1) Each child shall have written permission from a parent or guardian before the child enters the pool.

(2) Children shall be constantly supervised while swimming, wading, or in or near, and the number of adults present must be proportional to the ages and abilities of the children and type of water hazard in use.

(3) If a program has a portable wading pool:

- (a) a program shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
- (b) a program shall empty a wading pool when it is not in use and remove it from areas accessible to children; and
- (c) a program shall not use a portable wading pool placed on concrete or asphalt.
- (4) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:
 - (a) the fixture shall be constructed, maintained and used in accordance with applicable state and local regulations;
 - (b) the fixture shall be constructed and protected so that, when not in use, it is inaccessible to children; and
- (5) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

- (1) A program shall ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.9.4.41 NMAC for requirements concerning field trip permission slips.
- (2) Children shall not go to a private residence unless accompanied by two adults. [8.9.4.43 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

- A.** All vehicles used for transportation of children shall have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.
- B.** A program shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program shall ensure children do not cross a street unsupervised after leaving the vehicle.
- C.** No one shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.
- D.** A program shall license all vehicles used for transporting children and shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.
 - (1) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.
 - (2) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.
- E.** Vehicles used for transporting children shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.
- F.** Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the program shall ensure the vehicle is heated.
- G.** Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.
- H.** At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR) with a pediatric component.
- I.** Providers shall conduct frequent head counts on all trips and when loading and unloading the vehicle.
- J.** At all times, drivers shall have a way to communicate to the facility the number of children being transported. Drivers shall maintain a log to include the name of children, and drop-off and pick up times of all children being transported. The log shall be kept for a minimum of 12 months for review.

[8.9.4.46 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]