

## **Proposed Rule Changes for the Department of Early Care and Learning (DECAL): Effective October 1, 2022**

### **Rules and Regulations for Child Care Learning Centers**

DECAL proposes to amend this rule chapter to remove wording referencing the acceptance of proof of criminal records check determinations in a paper format. DECAL processes and portability requirements are completed electronically, and documentation should be retained in an electronic format through DECAL KOALA accounts. The original intent of accepting paper copies was to allow providers who had been “grandfathered in” five years to obtain a new criminal background check. This five-year time span has lapsed, and all providers have now received electronic determinations.

#### **591-1-1-.02 Definitions**

In these rules, unless the context requires otherwise, the capitalized symbols, words and phrases set forth herein shall mean the following:

- (a) "Adult" means any competent individual eighteen (18) years of age or older.
- (b) "Adverse Action" means any Intermediate or Closure Action issued as a result of one or more rule violations.
- (c) "Child Care Learning Center" or "Center" means any place operated by an individual or any business entity recognized under Georgia law wherein are received for pay for group care, for fewer than 24 hours per day without transfer of legal custody, seven or more children under 18 years of age and which is required to be licensed. Child Care Learning Center also includes any day care center previously licensed by the Department of Human Resources and transferred pursuant to Code Section 20-1A-1 *et seq.*
- (d) "Child with Special Needs" means a child enrolled in a Center who, due to a physical problem, mental health disorder, behavioral disorder, or developmental disability, which is either permanent or temporary, requires some adaptation of the Center's standard program of care or activities to accommodate the child's special needs.
- (e) "Closure Action" means the most restrictive category of Enforcement Actions including emergency closure, long-term suspension and revocation.
- (f) "Comprehensive Records Check Determination" means a satisfactory or unsatisfactory determination by the Department, based upon a Federal Bureau of Investigation fingerprint check, a search of the National Crime Information Centers National Sex Offender Registry, compliance with relevant state and federal law, and a search of the following registries, repositories or databases in the state where the actual or potential employee or director resides and in each state where such individual resided during the preceding five years: criminal registry or repository; state sex offender registry or repository; and state based child abuse and neglect registry and database.
- (g) "Correctable Abuse Dereliction or Deficiency" means any conduct of a License or Permit Holder which violates any of these rules wherein the Department determines that the rule violation is not the result of any Non-Correctable Abuse, Dereliction or Deficiency.
- (h) "Crime" means
  1. Any felony pursuant to O.C.G.A. § 20-1A-30 and in accordance with 42 U.S.C. § 9858f(c)(1)(E);
  2. A violation of O.C.G.A. § 16-5-23, relating to simple battery, where the victim is a minor;

3. A violation of O.C.G.A. § 16-5-23.1, relating to battery, where the victim is a minor;
4. A violation of O.C.G.A. § 16-21-1, relating to contributing to the delinquency of a minor;
5. A violation of O.C.G.A. § 16-6-1 *et seq.* relating to sexual offenses;
6. A violation of O.C.G.A. § 16-5-29, relating to battery of an unborn child;
7. A violation of O.C.G.A. § 16-5-60, relating to reckless conduct causing harm when the victim is a minor;
8. A violation of O.C.G.A. § 16-5-70, relating to cruelty to children;
9. A violation of O.C.G.A. § 16-12-1.1, relating to child care facility operators being prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations;
10. A violation of O.C.G.A. §§ 16-12-100, 16-12-100.1, 16-12-100.2, 16-12-100.3, relating to obscenity and related offenses where the victim is a minor;
11. A violation of O.C.G.A. § 40-6-391, relating to endangering a child while driving under the influence of alcohol or drugs;
12. A violation of O.C.G.A. § 19-7-5, relating to a failing to report if mandated to do so by law;
13. Child pornography, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
14. Abuse of, endangerment of, or sexual assault against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
15. Any other violent misdemeanor against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
16. A violation of O.C.G.A. § 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or
17. Any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(i) "Criminal Record" means:

1. Conviction of a crime; or
2. Arrest, charge, and sentencing for a crime where:
  - i. A plea of nolo contendere was entered to the charge; or
  - ii. First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1 *et seq.*, relating to controlled substances, or any other offense committed in another

jurisdiction which, if it were committed in this state, would be a violation of O.C.G.A. § 16-13-1 *et seq.* if such violation or offense constituted only simple possession; or

- iii. Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1 *et seq.* relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. § 17-3-1 *et. seq.*

(j) "Department" means Bright from the Start: Georgia Department of Early Care and Learning.

(k) "Director" means the on-site manager of a Child Care Learning Center designated by the legal owner who has submitted a Records Check Application and has received a satisfactory Comprehensive Records Check Determination and who is responsible for the supervision, operation and maintenance of the Center and meets the minimum qualifications as determined by the Department.

(l) "Employee" means any person, other than a Director or Provisional Employee, who has submitted a Records Check Application and has received a satisfactory Comprehensive Records Check Determination and who:

1. Regardless of age, is compensated by a Center for the care of children; or
2. Regardless of age, cares for, supervises or has unsupervised access to children at the Center; or
- (3) Is 17 years of age or older and resides at the facility; or

(4) Regardless of age, performs duties for or services that benefit the Center, with or without compensation, which involve personal contact between that person and any child being cared for by the Center, including but not limited to volunteers that perform consistent services for the Center, where services are considered consistent when provided more than once in a ninety calendar day period; or

(5) Regardless of age, is a parent or legal guardian of a child in care who is deemed an employee by the Center or either resides at the Center and is age 17 or older, or is compensated in any fashion by the Center except through appropriate state or federal funds; or

(6) Regardless of age, is an independent contractor hired by the Center to offer supplemental educational or physical activities for children in care; or

- (7) Regardless of age, is a Student-in-Training.

(m) "Enforcement Action" means any action issued as a result of one or more rule violations ranging from technical assistance to a Closure Action.

(n) "Evening Care" means care provided to any child at a Center between the hours of 7:00 p.m. and 12:00 midnight.

(o) "Field Trip" means an excursion or program activity with a specific destination away from the Center. It does not include routine school or home pick-up and deliveries or transporting children to and from activities or events where the provider of the activities or the events assume responsibility for the children during the entirety of the event or activity, such as in dance classes or art lessons or regularly scheduled trips to the local public libraries.

(p) "Fingerprint" means an inked fingerprint card or an electronic image of a person's fingerprint.

- (q) "Fingerprint Records Check Determination" means a satisfactory or unsatisfactory determination made by the Department that is based upon national criminal history record information obtained by the use of Fingerprints.
- (r) "Group" means a specific number of children assigned to specific Staff throughout the day. More than one Group may occupy the same physical space.
- (s) "Infant" means any child who is under twelve (12) months of age or any child who is under eighteen (18) months of age and who is not yet walking.
- (t) "Intermediate Action" means a moderately restrictive category of Enforcement Actions including public reprimands, fines, per rule fines, per day fines, restrictions, emergency monitoring and short-term suspension.
- (u) "License" means the document issued by the Department to authorize the License Holder to whom it is issued to operate a Center in accordance with these rules. (In lieu of a License, a commission may be issued to a local church ministry, religious nonprofit school or nonprofit religious charitable organization. The requirements to obtain a commission under these rules shall be identical to those for a License.)
- (v) "License Holder" means the individual or business entity holding a License issued by the Department to operate a Center at a particular location and having responsibility for the operation and maintenance of the Center in accordance with these rules.
- (w) "Night-time Care" means care provided to children at the Center between the hours of 12:00 midnight and 6:00 a.m.
- (x) "Non-Correctable Abuse, Dereliction or Deficiency" means an abuse, dereliction or violation of these rules which demonstrates any of the following:
1. Flagrant and shocking intentional misconduct by the Center or Center Staff where those responsible for the operation of the Center knew or should have known of the likelihood of Staff to commit such acts;
  2. An intentional or reckless disregard for the physical health, mental health or safety of a child in care which may or may not result in physical injury to the child by the Center or the Center Staff where those responsible for the operation of the Center knew or should have known of the likelihood of Staff to disregard; or
  3. Some causal connection between the intentional violation of a rule and the death or major injury of a child in care.
- (y) "Parent" means a person related within the second degree of consanguinity by either blood or marriage, or a person with lawful custody, or a state-regulated foster parent, or a legal guardian of a child in care. For purposes of these rules, a Parent shall not be considered an Employee unless such Parent is deemed an Employee by the Center or either resides in the Center or is compensated in any way by the Center other than through appropriate state or federal funds.
- (z) "Permit" means the temporary document issued by the Department authorizing a Child Care Learning Center to operate without a License for a limited term and in accordance with these rules.
- (aa) "Permit Applicant" means an individual or any business entity recognized under Georgia law applying for a Permit from the Department as defined in these rules.
- (bb) "Permit Holder" means the individual or business entity issued a Permit by the Department to operate a Center at a particular location that is responsible for the operation and maintenance of the Center in accordance with these rules.

(cc) "Personnel" or "Staff" means all persons including the Director, Employees and Provisional Employees.

(dd) "Plan of Correction" means a written plan prepared by the authorized agent of the Center submitted to and approved by the Department which states the procedure(s), method(s) and time frame(s) that will be used to correct the area(s) of non-compliance with these rules.

(ee) "Prevention Action" means the least restrictive category of Enforcement Actions including technical assistance, citation, formal notice letter and office conference.

(ff) "Provisional Employee" means a person other than a Director or Employee, who has submitted a Records Check Application to become an Employee and has not received a Comprehensive Records Check Determination but who has received a satisfactory Fingerprint Records Check Determination and who must be supervised at all times by another Staff member who has a current and valid satisfactory Comprehensive Records Check Determination on file.

(gg) "Qualified" or "Qualifications" means that a person possesses, in addition to the other requirements set forth in these rules, certain minimum personal and health requirements necessary to administer or be employed in a Center. A person may be considered by the Department to be qualified with respect to the minimum personal and health criteria when he or she has a satisfactory Fingerprint Records Check Determination or a satisfactory Comprehensive Records Check Determination; is able to perform adequately the job duties of providing for the care and supervision of the children enrolled in the Center in accordance with these rules; has not made any material false statements relating to any licensure requirement to the Department, the Permit Holder or the License Holder; and has not been shown by credible evidence, e.g., a finding of fact made by a court, jury or department investigation or other reliable evidence, to have abused, neglected, or deprived a child or adult or to have subjected any person to serious injury as a result of intentional or grossly negligent misconduct.

(hh) "Qualifying Work Experience" means verifiable experience working directly with children.

(ii) "Records Check Application" means a document created by the Department to be completed and submitted to the Department by every actual and potential Director, Employee and Provisional Employee of the Center that indicates such information as the Department deems appropriate and which authorizes the Department to receive any sex offender registry, child abuse and neglect registry and criminal history record information pertaining to the individual from any local, state or national agency of appropriate jurisdiction and render a Fingerprint or Comprehensive Records Check Determination.

(jj) "Records Check Clearance Date" means the date upon which an individual's fingerprint report was generated.

(kk) "School-age Children" means children who are at least five (5) years old by the first of September of the current school year and who are eligible to attend public school.

(ll) "School-age Center" means a Child Care Learning Center, or part thereof with separate physical facilities and a separate License, which provides day-time care exclusively to School-age Children before and/or after the normal school day. Such programs may operate a full-day program solely for the School-age Children enrolled in the program during the regular school year during those periods when school is not in session.

(mm) "Student-in-Training" means a student currently enrolled in either a high school recognized by the Department of Education or an early education curriculum through an accredited school of higher education which requires or permits the student to observe and participate in the care of children at a Center during a limited period of time, i.e., one quarter, one trimester or one semester, provided that they are under the direct supervision of Center Personnel at all times.

(nn) "Valid Evidence" means ~~either paper or~~ electronic proof of a satisfactory Fingerprint Records Check Determination or a satisfactory Comprehensive Records Check Determination as follows:

1. Directors – a valid and current satisfactory Comprehensive Records Check Determination letter issued by the Department; provided that the letter for a newly hired Director must have a Records Check Clearance Date that is within the immediate preceding 12 months of the Director's date of hire, and the Director has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer.

2. Provisional Employees - a valid and current satisfactory Fingerprint Records Check Determination issued by the Department; provided that the letter for a newly hired Provisional Employee must have a Records Check Clearance Date that is within the immediate preceding 12 months of the Provisional Employee's date of hire, and the Provisional Employee has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer;

3. Employees - a valid and current satisfactory Comprehensive Records Check Determination letter issued by the Department; provided that the letter for a newly hired Employee must have a Records Check Clearance Date that is within the immediate preceding 12 months of the Employee's date of hire, and the Employee has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer;

(oo) "Violation Class" means the category on the compliance and enforcement chart that corresponds with the level of risk of harm or actual harm as a result of one or more rule violation.

(pp) "Violation History Level" means the category on the compliance and enforcement chart that corresponds with the prior history of continued rule violations.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq., [42 U.S.C. § 9857](#) et seq.

DECAL proposes to amend this rule chapter to require programs to notify parents in writing of viruses or illnesses that may not be on the most current communicable disease chart that is made available on the Department's website, but that may require reporting by the Department of Public Health. This would include situations of public health emergencies, like COVID-19 and would align with DECAL's required reporting policies already in place.

**591-1-1-.07 Children's Health**

(1) Exclusion of Sick Children. A child shall not be accepted nor allowed to remain at the Center if the child has the equivalent of a one hundred one (101) degrees Fahrenheit or higher oral temperature and another contagious symptom, such as but not limited to, a rash, diarrhea or a sore throat. When a child shows symptoms of illness during the day, the child shall be moved to a quiet area away from other children where the child shall be supervised and provided the necessary attention until such time as the child leaves the Center or is able to return to the child's group.

(2) Parental Notification. Parents must be notified of a child's illness or injury as follows:

Notification	When
Immediately notify Parent(s) and obtain specific instructions until child can be picked up or returned to group.	When professional medical attention is required, or When child experiences symptoms of moderate discomfort such as elevated temperature, vomiting or diarrhea.
Notify Parent(s) by the end of the day.	When professional medical attention is not required, or When child experiences symptoms of less than moderate discomfort, or When child experiences an adverse reaction to prescribed medication which does not constitute moderate discomfort.

(3) Communicable Diseases. The Department's current communicable disease chart of recommendations for exclusion of sick children from the Center and their readmission shall be followed. Parents of all children enrolled shall be notified in writing of the occurrence of any of the illnesses on the most current version of the communicable disease chart, as found on provided by the Department's website, or any cases or suspected cases of viruses or illnesses (COVID-19, etc.) identified during a public health emergency, within twenty-four (24) hours after the Center becomes aware of the illness or the next working day.

(4) Medical Emergencies. A Center shall have a written plan which outlines how emergency medical services will be obtained, including place(s) the child will be taken for emergency care. When a medical emergency arises involving a child, the Center Staff shall seek prompt emergency medical treatment and provide any certified or licensed emergency medical persons with immediate access to the child.

(5) Hazardous Items. Children shall not be permitted to wear around their necks or attach to their clothing pacifiers or other hazardous items.

Authority: O.C.G.A. § [20-1A-1](#) et seq.



DECAL proposes to amend this rule chapter to replace outdated terminology and align with correct terminology as defined by The American Psychiatric Association (APA) in The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM– 5).

### **591-1-1-.08 Children's Records**

- (1) A Center must maintain a file for each child while such child is in care at the Center and for a period of one (1) year after such child is no longer in care at the Center. In order for the file to be complete, the file shall contain the following: identifying information about the child to include: name, date of birth, sex, address, living arrangement if not with both Parents, name of school, if applicable; identifying information about the Parent(s) to include: names of both Parents, if applicable, home and work addresses, and home and work telephone numbers; name(s) and addresses of the person(s) to whom the child may be released. Such information shall contain the authorized person's address, telephone numbers, relationship to child and to Parent(s) and other identifying information; identifying information about the person(s) to contact in emergencies when the Parent cannot be reached to include name(s) and telephone number(s); identifying information about the child's primary source of health care to include physician's or clinic's name and telephone number; and a statement regarding known allergies or other physical problems, mental health disorders, ~~mental retardation~~ intellectual disabilities or developmental disabilities which would limit the child's participation in the Center's program and activities.
  - (a) The file shall contain a description of any special procedures to be followed in caring for the child, including any special services which the Center agrees to provide to a Child with Special Needs.
  - (b) The file shall contain parental authorizations, including, but not limited to, written authorization for the Center to obtain emergency medical care for the child when the Parent is not available.
  - (c) The file shall contain parental acknowledgment of their responsibility for keeping the Center advised of any significant changes in enrollment information concerning phone numbers, work locations, emergency contact, family physicians, etc.
  - (d) The file shall contain parental acknowledgment that when the Parent(s) or persons authorized by the Parent(s) pick up or drop off their child at the Center, they will not allow their child to enter or leave the Center without being escorted and that the Center will not permit the child to enter or exit the Center without an escort.
- (2) The file shall also contain evidence of age-appropriate immunizations or a signed affidavit against such immunizations. The items shall be maintained for each child enrolled in the Center on a form approved by the Department, and no child shall continue enrollment in the Center for more than thirty (30) days without such evidence.
- (3) The file shall also contain documentation of incidents requiring professional medical attention, other than simple first aid performed by Center Staff, to include: child's name, type of illness or injury, date of illness or injury, how injury or illness occurred, Staff present, method of notifying Parent(s) and services provided to the child.

- (4) Confidentiality. Information pertaining to the children enrolled at a Center is considered confidential and may not be released by Center Staff without first obtaining written permission signed by the Parent(s). However, relevant information relating to the children's family situations, medical status and behavioral characteristics on the children enrolled at the Center at any time shall be shared among Center Staff, with members of the Department or with other persons authorized by these rules or the law to receive such information, or with other persons in an emergency situation involving the child.
- (5) Attendance Records. A child's daily attendance records for the twelve (12) preceding months must be maintained but need not be filed in each child's record. These records shall be made available to the Department in printed or written form upon request.
- (6) Arrival and Departure Records. Records of a child's daily arrival and departure for the twelve (12) preceding months shall be maintained but need not be filed in each child's record. The Parent or person(s) authorized by the Parent to drop off and pick up the child will document, in written or electronic format, each time the Parent or authorized person drops off and picks up the child. The documentation shall include at least the following information: the date, the child's name, the arrival and departure times, and the signature or initials of the Parent or authorized person at the time of arrival and departure. These records shall be made available to the Department in printed or written form upon request.
- (7) The Center shall ensure that children are only released to authorized person(s), and Center Staff shall take necessary steps to determine that any such person(s) presenting to pick up a child in care is authorized by the Parent(s) of the child and that person matches the identifying information provided by the Parent.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq.

DECAL proposes to amend this rule chapter to remove wording referencing the acceptance of proof of criminal records check determinations in a paper format. DECAL processes and portability requirements are completed electronically, and documentation should be retained in an electronic format through DECAL KOALA accounts. The original intent of accepting paper copies was to allow providers who had been “grandfathered in” five years to obtain a new criminal background check. This five-year time span has lapsed, and all providers have now received electronic determinations.

## **591-1-1-.09 Criminal Records and Comprehensive Background Checks**

### **1. Satisfactory Fingerprint Records Check Determination or Satisfactory Comprehensive Records Check Determination Required**

- (a) A Center must ensure that every actual and potential Director, Employee and Provisional Employee of a Child Care Learning Center submit both a Records Check Application to the Department and Fingerprints to an authorized fingerprinting site.
- (b) A Center must ensure that every Director has a valid and current satisfactory Comprehensive Records Check Determination on file prior to being present at the Center while any child is present for care or before an individual age 17 or older resides in the Center. The Comprehensive Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, however, if the Director has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Comprehensive Records Check Determination is required.
- (c) A Center must ensure that every Employee has a valid and current satisfactory Comprehensive Records Check Determination on file prior to being present at the Center while any child is present for care or before an individual age 17 or older resides in the Center. The Comprehensive Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, however, if the Employee has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Comprehensive Records Check Determination is required.
- (d) The Center must ensure that every Provisional Employee has a valid and current satisfactory Fingerprint Records Check Determination on file prior to being present at the Center while any child is present for care or before an individual age 17 or older resides in the Center and must be supervised at all times by a Director or Employee with a valid and current satisfactory Comprehensive Records Check Determination. The Fingerprint Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, however, if the Provisional Employee has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Fingerprint Records Check Determination is required.
- (e) No actual or potential Director, Employee or Provisional Employee of a Child Care Learning Center with an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination may be present at a Center when any child is present for care or reside at a Center.
- (f) Valid Evidence of a satisfactory Fingerprint Records Check Determination must be maintained at the Child Care Learning Center for each Provisional Employee for the duration of employment or residency plus one year, and such ~~paper~~ or electronic evidence must be made immediately available to the Department upon request.
- (g) Valid Evidence of a satisfactory Comprehensive Records Check Determination must be maintained at the Child Care Learning Center for the Director and each Employee (including Students-in-Training, Volunteers, independent contractors and residents age 17 and older) for the duration of employment or residency plus one year, and such ~~paper~~ or electronic evidence must be made immediately available to the Department upon request.

(h) The Center must ensure that every Provisional Employee requests child abuse and neglect registry information and criminal history documents from any U.S. state, territory or tribal land other than Georgia in which they have resided in the preceding five years and submit such documents to the Department in a timely manner. Failure to request out-of-state information will result in the issuance of an unsatisfactory Comprehensive Records Check Determination.

(i) For a Provisional Employee to become a permanent Employee, the individual must have a satisfactory Comprehensive Records Check Determination.

(j) Portability for Directors, Employees and Provisional Employees, excluding Students-in-Training. Only the most recently issued determination letter is eligible for portability and must be ported electronically. A Center may accept a satisfactory Fingerprint Records Check Determination letter or a satisfactory Comprehensive Records Check Determination letter issued by the Department if the Records Check Clearance Date is within the preceding 12 months from the hire date, the individual has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, and the Center does not know or reasonably should not know that the individual's satisfactory status has changed.

(k) Portability for Students-in-Training. Only the most recently issued determination letter is eligible for portability and must be ported electronically. A Center may accept a satisfactory Fingerprint Records Check Determination or a satisfactory Comprehensive Records Check Determination letter issued by the Department for a Student-in-Training if the individual's Records Check Clearance Date is within the preceding 24 months from the hire date, the Center has verified and maintains evidence on file at the Center that the Student-in-Training is currently enrolled in a high school recognized by the Department of Education or an early education curriculum through an accredited school of higher education, the individual has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, and the Center does not know or reasonably should not know that the individual's satisfactory status has changed.

(l) Recheck Required. The Center must immediately require that every Director, Employee and Provisional Employee submit to the Comprehensive Records Check Determination process at the following times:

1. When the Center knows or reasonably should know that a Director, Employee or Provisional Employee has been arrested or charged for any covered Crime;
2. When there is a lapse of employment from the child care industry that lasted for 180 calendar days (6 months) or longer;
3. At least once every five years; and
4. When the Department so requests.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq., [42 U.S.C. § 9857](#) et seq.

DECAL proposes to amend this rule chapter to update terminology from “Department” of Family and Children Services to “Division” of Family and Children Services. In addition, DECAL proposes to amend this rule chapter to define types of records subject to review and availability to encompass all potential documentation sources and require that all records related to any required report be made available to the Department to assist in the determination of compliance with rule requirements.

### **591-1-1-.29 Required Reporting**

- (1) Child Abuse, Neglect or Deprivation. Within twenty-four (24) hours or the next work day, the Director or designated person-in-charge shall report or cause to be reported any suspected incidents of child abuse, neglect or deprivation to the local County ~~Department~~ Division of Family and Children Services in accordance with state law and to the Department, notifying that such a report was made.
- (2) Communicable Diseases. The Director or designated person-in-charge shall report or cause to be reported any cases or suspected cases of notifiable communicable diseases (COVID-19, Tuberculosis, Measles, etc.) or any viruses or illnesses identified during a public health emergency, immediately to the Department and to the local County Health Department as required by the rules of the Georgia Department of Public Health, Rule 511-2-1, Notification of Disease.
- (3) Required Reports. The Director or designated person-in-charge shall report or cause to be reported to the Department within twenty-four (24) hours or the next work day: any death of a child while in the care of the Center; any serious illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the Center; any situation when a child in care becomes missing, such as, but not limited to, a child who is left on a vehicle, a child who leaves the building, playground, or property, or a child who is left behind on any trip; any fire; any structural disaster; any emergency situation that requires temporarily relocating children; and any time the program’s operating status changes (i.e., open to closed or temporarily closed and temporarily closed to open).
  - (a) Availability of Records. The Center must make available all records related to any required report, to include but not be limited to, audio, video, photos, written documentation, social media posts, and other electronic information. The Department shall have the right to a photocopy or reproduction of any record maintained by or on behalf of the Center.
- (4) Criminal Record. Within twenty-four (24) hours or on the next work day that the Center knows or reasonably should know that there has been an arrest or change in the Comprehensive Records Check Determination of any Director or Employee or the Fingerprint Records Check Determination for any Provisional Employee, the Director or designated person-in-charge shall report or cause to be reported to the Department the incident and the name of any such Director, Employee or Provisional Employee.
- (5) Annual Reports. The Department may request an annual report from an administrator of a Center. If such a request is made, the administrator shall have up to thirty (30) days to submit the annual report to the Department.

**Authority:** O.C.G.A. § [20-1A-1](#) *et seq.*, [42 U.S.C. § 9857](#) *et seq.*

DECAL proposes to amend this rule chapter to establish guidelines for allowing access to all parts of the premises during inspections and investigations, due to instances of children being kept in unlicensed space to avoid non-compliance; to define types of records subject to review and availability to encompass all potential documentation sources; and to require that all records related to any inspection or investigation be made available to the Department to assist in the determination of compliance with rule requirements and in an effort to promote transparency and cooperative practices.

### **591-1-1-.37 Inspections and Investigations**

The Department is authorized and empowered to conduct on-site inspections and investigations of Centers.

- (a) Inspections and Investigations. The Department may conduct inspections and investigations in the following instances:
1. At regular intervals as the Department may determine or at the expiration of the current License or Permit;
  2. Upon receiving a report alleging child abuse, neglect or deprivation which occurred while the child was in the care of the Center Director, Provisional Employees or Employees;
  3. Upon receiving a complaint concerning the Center which could endanger the health, safety or welfare of the children in care;
  4. Upon receipt and review of a request for an amended License where the Department determines that an on-site inspection is advisable;
  5. Upon the Department or its duly authorized representative being made aware of any flagrant abuses, derelictions or deficiencies during the course of the inspection or at any other time. The Department shall immediately investigate such matters and may make an on-site inspection so as to take such actions as conditions may require;
  6. Subsequent to the receipt of a Plan of Correction, as determined necessary by the Department to monitor whether the Plan of Correction is being complied with by the Center Personnel.
- (b) Consent to Entry. An application for a License or Permit to operate a Center or issuance of a License or Permit by the Department constitutes consent by the applicant, the proposed holder of the License or Permit and the owner of the premises for the Department's representative, after displaying identification to any Center Staff, to enter the premises at any time during operating hours for the purpose of inspecting the facility, including both scheduled and unscheduled inspections and includes consent for meaningful access to all Staff, all parts of the premises, all children present and all records, to include but not be limited to, audio, video, photos, written documentation, social media posts, and other electronic information, required by these rules. The Department shall have the right to a photocopy or reproduction reproduce by any means of any record required by these rules to be maintained by or on behalf of the Center and as needed for any inspection or investigation.
- (c) Failure to Allow Access. Failure to allow access of the Department's representative to the Center, Center Staff, the children receiving care at the Center or the records, maintained by or on behalf of the Center, to include but not be limited to, audio, video, photos, written documentation, social media posts, and other electronic information required by these rules shall constitute good cause for the denial, restriction, revocation or suspension of a License, Permit or commission.
- (d) Failure to Cooperate. The proposed and current License Holder, Permit Holder or commission holder and Staff shall cooperate with any inspection or investigation by responding truthfully to any legitimate

departmental inquiry. Failure to cooperate with a Department inspection or investigation shall constitute good cause for the denial, restriction, revocation or suspension of a License, Permit or commission.

- (e) False or Misleading Statements. No License Holder, Permit Holder or commission holder shall make or condone any Staff making false or misleading statements to the Department in connection with any authorized investigation or inspection being conducted by the Department.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq

DECAL proposes to amend this rule chapter to align with the wording of the official Code of Georgia OCGA-20-1A-12 that establishes guidelines for the repercussions of the alteration or falsification of records maintained by an early care and education program.

### **591-1-1-38 Enforcement and Adverse Actions**

(1) **Enforcement and Adverse Actions.** Under Georgia law, the Department, after considering the seriousness of the violation(s), including but not limited to the circumstances, extent and gravity of the prohibited act(s), the severity of the rule violation, the duration of non-compliance, the License Holder's prior Licensure or history, the voluntary reporting of the violation(s) for which an Adverse Action is being imposed and the hazard(s) or potential hazard(s) to the health or safety of the public, may take any of the following actions when a Center, Permit Applicant or License Applicant violates any of the rules for Child Care Learning Centers:

- (a) Refuse to grant a License or Permit;
- (b) Administer a public reprimand;
- (c) Suspend any License or Permit;
- (d) Prohibit any License Applicant, License Holder, Permit Applicant or Permit Holder from allowing a person who previously was involved in the management or control of any program which has had its License or Permit revoked or denied within the past 12 months to be involved in the management or control of such program;
- (e) Revoke any License or Permit;
- (f) Impose a fine, not to exceed a total of \$25,000, of up to \$500 per day for each violation of the law, rule, regulation or formal order related to the initial or ongoing licensing requirement of any program. If any violation is a continuing one, each day of such violation will constitute a separate violation for the purpose of computing the applicable enforcement fine;
- (g) Impose a late fee of up to \$250 for failure of a program to pay the annual License fee within 30 days of the due date;
- (h) Limit or restrict any License or Permit, including but not limited to, restricting some or all services of or admissions, into a Center;
- (i) Seek an injunction against an early care and education program operating without a License or Permit or in willful violation of these rules;
- (j) Make application for an inspection warrant to a court of competent jurisdiction to gain entry into a Center that is believed to be subject to licensure;
- (k) Order the emergency placement of a monitor or monitors in a Center at the expense of the Center; and
- (l) Order the emergency closure of a Center.



(2) **Adverse Actions Subject to the Compliance and Enforcement Chart.** In the majority of cases when a rule violation is found, the Department will determine the appropriate action in accordance with the Compliance and Enforcement Chart below. A Center will receive points based on the frequency and severity of citations and will land in the corresponding box. Accordingly, Prevention, Intermediate or Closure Actions will be imposed as outlined in the Enforcement Categories, Levels and Action chart below. The Department will consider mitigating and aggravating factors to determine which action is appropriate and will have sole discretion in making this determination. The guidelines for determining the Violation History Level and Violation Class shall be posted on the Department website and updated as needed. Note that if a rule violation is not found, the chart will not be applied, and no citations will be issued.

**COMPLIANCE AND ENFORCEMENT CHART**

V I O L A T I O N  C L A S S	Incident results in or could result in:	VIOLATION HISTORY LEVEL			
		I 0 Points	II 1-3 Points	III 4-9 Points	IV 10 + Points
D  C  B  A	D Extreme Harm or Risk of Harm Imminent Danger	I3-C D			
	C High Harm or Risk of Harm	CI I1-I2 GS	CII I1-I3 S	CIII I2-C D	CIV I3-C D
	B Medium Harm or Risk of Harm	N/A	BII P2-P3 GS	BIII I1-I2 S	BIV I2-C D
	A Low Harm or Risk of Harm	AI P1-P2 GS	AII P1-P3 GS	AIII P2-P3 GS	AIV I1-I2 S

ENFORCEMENT CATEGORIES, LEVELS AND ACTIONS		
PREVENTION ACTION CATEGORY (P)	INTERMEDIATE ACTION CATEGORY (I) (Includes Citation and Prevention Actions)	CLOSURE ACTION CATEGORY (C) (Includes Citation and Prevention and/or Intermediate Actions)
<b>Prevention 1 (P1)</b>	<b>Intermediate 1 (I1)</b>	<b>Closure (C)</b>
Technical Assistance	Fine	Suspension of License (More than 1 week)
<b>Prevention 2 (P2)</b>	<b>Intermediate 2 (I2)</b>	Revocation of License
Citation	Per Rule Fine	Emergency Closure
<b>Prevention 3 (P3)</b>	Per Day Fine	
Formal Notice Letter	<b>Intermediate 3 (I3)</b>	
Office Conference	Public Reprimand	
	Fine and Restrictions	
	Restricted License	
	Restricted License & Per Rule/Per Day Fine	
	Emergency Monitor & Per Rule/Per Day Fine	
	Short-term Suspension (Less than 1 week)	

**(3) Adverse Actions Not Subject to the Compliance and Enforcement Chart.** In the event that any of the rule violations described below are identified, the Department will not apply the Compliance and Enforcement Chart, but will take Adverse Action as follows:

(a) The Department shall refuse to issue a License or shall otherwise restrict a License or Permit for any applicant who has had a License denied, suspended or revoked within one year of the date of the application.

(b) The Department shall refuse to issue a License or shall otherwise restrict a License for any applicant, alter ego or agent of the applicant who has transferred ownership or governing authority of a program when such transfer was made in order to avert payment of an enforcement fine, denial, revocation or suspension of such License.

(c) The Department shall refuse to issue a License upon a showing of non-compliance with rules and regulations, flagrant and continued operation of an unlicensed facility, or failure to pay the License fee.

(d) The Department shall refuse to issue a License or Permit if the applicant or the operation or management of a Center knowingly or intentionally makes or causes another to make any false statement of material information in connection with the application for a License or Permit, or in statements made, ~~records maintained,~~ or on documents submitted to the Department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program.

(e) The Department shall refuse to issue a License or Permit if the applicant or Center fails to provide the Department with information pertinent to an investigation, or the initial or continued licensing of a program within the time specified by the formal notice provided by the Department.

(f) The Department shall refuse to issue a License or Permit if a Center repeatedly fails or refuses to allow the Department access to the Center for the purpose of determining whether the Center is in compliance with these rules.

(g) The Department shall refuse to issue a License or Permit if a Center knows or should reasonably know that any actual or potential Director, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination and allows such individual to either reside at the Center or be present at the Center while any Child is present for care.

(h) The Department may revoke a License or Permit if a Center displays a multi-year pattern of failure to correct a Correctable Abuse, Dereliction or Deficiency in the operation or management of a Center within a reasonable time after having received notice from the Department.

(i) The Department shall revoke a License or Permit if a Non-correctable Abuse, Dereliction or Deficiency exists in the operation or management of the Center.

(j) The Department shall revoke a License if a Center fails to pay the annual License fee within a reasonable time after the Department provides formal notice of such fee.

(k) The Department shall revoke a License or Permit if a Center knows or should reasonably know that any actual or potential Director, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination and allows such individual to either reside at the Center or be present at the Center while any Child is present for care.

(l) The Department shall revoke a License or Permit if a Center knowingly or intentionally violates other provisions relating to Criminal Records or Comprehensive Background Checks.

(m) The Department shall revoke a License if a Center fails to pay an enforcement fine within the time specified by the formal notice provided by the Department.

(n) The Department shall revoke a License or Permit if the operation or management of a Center knowingly or intentionally makes or causes another to make any false statement of material information in connection with the application for a License or Permit, or in statements made, ~~records maintained~~, or on documents submitted to the Department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program.

(o) The Department shall revoke a License or Permit if a Center fails to provide the Department with information pertinent to an investigation, or the initial or continued licensing of a program within the time specified by the formal notice provided by the Department.

(p) The Department shall revoke a License or Permit if a Center repeatedly fails or refuses to allow the Department access to the Center for the purpose of determining whether the Center is in compliance with these rules.

#### **(4) Rights and Responsibilities of a License Holder or Permit Holder**

(a) A License Holder or Permit Holder has the right to submit a written statement within ten (10) days of the receipt of notice of the Departmental intent to impose an Adverse Action as to why the Department should not take the Adverse Action. If the licensee submits a written statement, it will be placed in the facility's state file.

(b) The imposition of any Enforcement Action by the Department shall not preclude the Department from taking any additional action authorized by law or regulation.

(c) Right to a Hearing. The Department's Enforcement Actions shall be preceded by a notice and opportunity for a hearing and shall constitute a contested case in accordance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*, except that only thirty (30) days' notice in writing from the Commissioner's designee shall be required prior to License or Permit revocation except that the hearing held relating to such action by the Department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(d) The notice of revocation, suspension or restriction of a License or Permit becomes effective thirty (30) days from the day of notice unless the License Holder or Permit Holder requests a hearing. A request for a hearing must be made in writing within ten (10) days of receipt of the notice of revocation, suspension or restriction.

(e) Payment of an enforcement fine must be made within thirty (30) days of receipt of the notice, unless otherwise specified in writing by the Department.

(f) The notice of the emergency closure of a Center becomes effective upon delivery of the order, unless otherwise provided in the order. A request for a hearing must be made in writing within 48 hours, excluding weekends and holidays, from the receipt of the emergency order.

(g) When the Department issues a revocation or emergency order that is based upon health and safety rule violations, the following actions shall be taken:

1. the Department shall both hand-deliver and send the formal notice to the Center by certified or registered mail;
2. the Center shall post the formal notice in an area that is visible to the Parents and others whose children attend the Center;
3. the Department shall provide a brief notice of revocation or emergency action to the Center; and

4. the Center shall distribute the brief notice to all Parents or persons authorized to pick up children from care for the Parents.

(h) When the Department issues a revocation or emergency order that is not based upon health and safety rule violations, the Department shall either hand-deliver or send the formal notice or both to the Center by certified or registered mail.

(i) The Department may post any notice of any Adverse Action on the Department's website.

(j) The Department may share any notice of any Adverse Action and any information pertaining thereto with any other agencies which may have an interest in the welfare of the children in care at the Center.

(k) When the Department has issued a notice of revocation or emergency order required to be posted in accordance with these rules, the Center shall ensure that the notice continues to be visible to the Parents and others throughout the pendency of the revocation or emergency action, including throughout any appeal period.

(l) When the Center transports children in care to and from the Center and Parents do not come to the Center on a regular basis, the Center shall send home copies of the brief notice of the revocation or emergency action with the children on the day that it is delivered by Department.

(m) When the Department has issued a notice of revocation or emergency order required to be posted in accordance with these rules, the Center shall post any inspection reports that are prepared by the Department during the pendency of any revocation or emergency action in an area that is readily visible to the Parents and others.

(n) A Center shall not permit the removal or obliteration of any notices of revocation, emergency action, resolution, or inspection survey report posted on the premises of the Center during the pendency of any revocation or emergency action.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq., [42 U.S.C. § 9857](#) et seq.

