

## **290-2-2-.05 Licenses, Commissions, and Exemptions.**

No person, partnership, association, corporation or entity shall operate a day care center in the State without having first obtained a license or commission to operate the center by demonstrating compliance with the necessary requirements set forth in these rules.\*\* \*

(a) **Licenses and Commissions.** The department may issue a temporary license or temporary commission, a restricted license or restricted commission, or a license or commission in accordance with these rules.\*\* \*

1. **Temporary License or Commission.** The department may in its discretion issue a temporary license or temporary commission if the health and safety of the children to be served by the center will not be endangered. A temporary license or commission will be valid for a specified period not to exceed one (1) year and may be issued in the following instances:\*\* \*

(i) when it is found that a day care center complies with all of the rules which have the "\*" designation but has not yet enrolled children; or\*\* \*

(ii) when the day care center is not in full compliance with these rules but has demonstrated satisfactory evidence that it is making progress toward meeting these rules and has submitted an acceptable plan of correction.\*\* \*

2. **Restricted License or Commission.** The department may in its discretion issue a restricted license or commission in lieu of a temporary or regular license or commission. The restricted license may be granted either in connection with the initial application process for a license or commission or as a result of a subsequent determination made by the department concerning compliance with these rules. The restriction shall appear on the face of the license or commission and shall restrict a center from providing care or

services which are beyond the capability of the licensee or commission holder to provide. The restriction may also limit the number and/or age of the children served by the center.\*\* \*

**3. License or Commission.** A license or commission will be issued, upon presentation of evidence satisfactory to the department, that the center is in compliance with applicable statutes and these rules. The license or commission is valid for one year unless voluntarily surrendered by the holder, reduced to a restricted or temporary license or commission or suspended or revoked by the department.\*\* \*

**(b) Qualifications Requirement.** In order to obtain or retain a license or commission, the administrator of the center and its employees must be qualified, as defined in these rules, to administer or work in a day care center. The department may presume that the administrator and center employees are qualified, subject to satisfactory determinations on the criminal records checks. However, the department may require additional reasonable verification of the qualifications of the administrator and center employees either at the time of application for a license or commission or at any time during the license or commission period whenever the department has reason to believe that an administrator or center employee is not qualified under these rules to administer or work in a day care center.\*\* \*

1. Reasonable verification which may be required by the department may include, but need not be limited to any or all of the following: statement(s) from an attending physician or other health care professionals attesting to the mental and/or physical health of the applicant and/or staff member; letters of reference from designated persons in the community where the applicant and/or staff member intends to work or is working;

certified copies of court orders and additional criminal records checks.\*\* \*

(c) **License or Commission is Non-transferable.** A license or commission to operate a day care center is not transferable in any way. Each license or commission shall be returned to the department immediately upon the expiration, suspension, revocation, restriction of the license or commission or termination of the operation.\*\* \*

(d) **Renewal of License or Commission.** A license or commission will be renewed upon the filing of a completed annual report and a determination by the department that the center presents satisfactory evidence of meeting the standards set forth in these rules.\*\*

~~(e) **Exemptions.** Anyone operating or desiring to provide a service believed to be exempt from licensure shall apply to the department for exemption by submitting a written description of services, fees, ages of children to be served, hours, days and months of operation and location, a copy of written policies, advertisements, parental agreement forms and other materials to support the criteria for exemption. The exemptions granted by the department are exemptions from licensure, and do not affect the authority of local, regional or state health department officials, the state fire marshall or local fire prevention officials to inspect facilities. These rules shall not apply to the following kinds of programs providing care to children:~~

~~1. Specialized day care centers that are qualified to furnish care and training to mentally handicapped individuals and have been granted a certificate of approval by the department as provided for in O.C.G.A. Sec. 37-6-6.~~

~~2. Programs for children five (5) years and older which operate solely for educational purposes with an established curriculum during the school term for the customary seven (7) hour school day.~~

- ~~3. A facility operated by a local school on school board property for children five (5) years and older before and after the customary seven (7) hour day during the regular school term.~~
- ~~4. Nursery schools, playschools, kindergartens or other educational programs for children two (2) years through six (6) years of age which operate for no more than four (4) consecutive hours per day.~~
- ~~5. Mother's Morning Out or similar programs which operate for no more than four (4) consecutive hours per day for no more than two (2) days per week or which limit attendance to no more than eight (8) hours per week per child.~~
- ~~6. Any short term baby sitting service provided by an establishment, e.g. church, health club, bowling lanes, etc., on its premises to children for the convenience of their parents who are participating in activities being provided by the establishment. No child shall be permitted to remain in the establishment's baby sitting facility for more than four (4) hours per day and eight (8) hours per week. This exemption does not apply to programs operated by an organization for its employees or registered students.~~
- ~~7. Drop in recreation programs where the children are free to come and go from the premises without being escorted by a parent or responsible person and short term educational programs or classes for children in which the supervision and care of the children are incidental to their participation in the activity or training in specific subject(s) such as music, dance, religion, etc. and the program provider is not assuming responsibility for the provision of daily child care outside the scheduled program.~~
- ~~8. Day camping programs for children five (5) years and older which have as the primary emphasis outdoor education and recreation and are operated between school terms for no~~

~~more than seven (7) hours per day or which are accredited by the American Camping Association or other national standard-setting agency or church camp accreditation programs which must provide standards equivalent to the American Camping Association standards.~~

~~9. Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department, or agency of state, county, or municipal government.~~

~~10. A center that is licensed by the department may request an exemption from licensure if the center's program is an integral part of an established religious congregation or religious school that conducts regularly scheduled classes, courses of study, or educational programs and is a member of or accredited by or certified by a state, regional, or national accrediting agency for religious educational instruction or a state, regional, or national accrediting agency for educational instruction as recognized and approved by the department if such accrediting entity uses standards that are substantially similar to those established by the department. The following requirements shall apply to centers seeking an exemption from licensure:~~

~~(i) A center seeking such exemption from licensure shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation inspection report, and any other pertinent documentation as requested by the department, such as non-profit tax exempt verification. The accrediting agency must conduct regularly scheduled visits to the center while such center remains accredited.~~

~~(ii) If such exemption is granted, the center shall submit annual documentation to the~~

~~department verifying its continued certification or accreditation, including a copy of its most recent certification or accreditation inspection report, and other pertinent documentation as may be requested by the department.~~

~~(iii) Such exemptions granted by the department are valid as long as the center remains certified or accredited. The program shall provide the department written notice within five (5) business days of the center's loss of certification or accreditation, including a copy of such notification from the certifying or accrediting entity. The department shall rescind the center's exemption granted here in upon notification of the loss of certification or accreditation.~~

~~(iv) Any center seeking such exemption shall comply with all applicable requirements for background checks for directors/employees as required in O.C.G.A. Section 20-1A-30 et seq., Chapter 290-2-2, Rules and Regulations for Day Care Centers, Chapter 591-1-1, Rules for Child Care Learning Centers, and department policies, as well as applicable local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements while such exemption is in effect. The department retains jurisdiction over centers granted such exemption to conduct unannounced periodic background check audits and to conduct complaint investigations regarding compliance with background check requirements, as well as compliance with local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements.~~

~~(v) The department may rescind such exemption for a center's failure to comply with the requirements for background checks for directors/employees pursuant to O.C.G.A. Section 20-1A-30 et seq., Chapter 290-2-2, Rules and Regulations for Day Care Centers,~~

~~Chapter 591-1-1, Rules for Child Care Learning Centers, and department policies.~~

~~(vi) The department may rescind such exemption for a center's failure to comply with local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements.~~

~~(vii) Any center applying for such exemption that is owned and/or under the legal control/direction of the certifying or accrediting entity shall not be approved by the department.~~

~~(viii) A center seeking such exemption shall adopt and comply with the minimum standards of its certifying or accrediting entity for the operation of the center's program. Such minimum standards adopted by the center shall be published and made available to parents of enrolled or prospective children upon request.~~

~~(ix) A center granted such exemption shall comply with the requirements of O.C.G.A. Section 49-5-5(t) regarding providing notice to parents of enrolled children if the center does not carry liability insurance.~~

~~(x) A center granted such exemption shall post in a conspicuous place in the facility a copy of the exemption granted by the department and shall notify the parent and guardian of each child under the care of the facility in writing that the center has been granted an exemption from licensure by the department. The copy of the exemption posted by the Center shall be at least 1/2 inch letters and shall contain the department's telephone number and website address in case any parent or prospective parent has any questions regarding the exemption.~~

**(e) Exemptions.** All programs providing group care for children shall obtain either a license for an early care and education program or an exemption from the department. Any person or entity

operating or planning to operate such a service believed to meet the criteria for exemption from licensure, as listed below, shall apply to the department for exemption by submitting the department's application for exemption.

1. The application for exemption shall be notarized and shall include:

(i) A valid and current e-mail address,

(ii) A written description of services, fees, ages of children to be served, months, days, and hours of operation and location,

(iii) Copies of written policies, advertisements, parental agreement forms, and other materials to support the criteria for exemption as determined by the department.

(iv) A sworn statement that the information provided to the department is accurate and truthful.

2. The exemptions granted by the department are exemptions from licensure, and do not affect the authority of local, regional or state health department officials, the state fire marshal, local fire prevention officials, local or regional building officials or zoning officials to inspect and approve facilities and locations. Programs operated in a residence are not eligible for exemption. Additionally, the exemption is only valid at the address listed on the application.

3. A program granted an exemption shall post in a prominent place near the front entrance of the facility both a copy of the exemption approval letter issued by the department and a notice provided by the department that will notify a parent or guardian that the program is not licensed and is not required to be licensed by the state. The notice shall be at least ½ inch letters and shall contain the department's telephone number and website address.

4. A program approved for exemption shall maintain attendance records for children. When a parent or guardian initially registers a child with an exempt program, the parent or guardian shall sign a form indicating the parent or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state. The program must maintain the attendance records and parental notification forms during the time the child is enrolled in the program and for one year after the child no longer attends the program. All records shall be made available to any authorized representative of the department upon request.

5. Any program granted an exemption from licensure that subsequently loses accreditation, closes and/or ceases operation shall notify the department in writing within five (5) business days of such a change. A program granted an exemption that has subsequent material changes in the operation of their program, such as, but not limited to, a change of physical location, a change in operating months, days, and/or hours, or a change in the ages served shall be required to submit a new application for exemption to the department.

6. Programs granted an exemption may be required to periodically update the department on the status of their exemption and operating information such as but not limited to submitting an annual report that would contain information related to the exemption approval.

7. The department may rescind an approval for exemption when one or more of the following is determined by the department:

(i) The program no longer meets the criteria for the exemption.

(ii) The program provided false information during the exemption request process or during an investigation.

(iii) The program failed to comply with local, regional, and state health department, fire marshal, fire prevention, and building/zoning guidelines/requirements.

(iv) The program failed to provide the department with a valid and current e-mail address or with other information requested by the department, such as but not limited to, the months, days, and hours of operation, ages of children served and operating address.

**(f) Exemption Categories.** The following types of programs shall be exempt from licensure:

1. Programs which are owned and operated by any department or agency of state, county, or municipal government. This includes, but is not limited to, the customary school day, as defined in Georgia law, and before and/or after school programs in public schools operated by the public school system and staffed with school system employees and recreation programs operated by city or county parks and recreation departments and staffed with city or county employees.

2. Private non-public educational programs with an established curriculum for children five (5) years and older that operate during the school term for the customary school day, as defined by Georgia law.

3. A private non-public school which provides education in any grades from kindergarten through 12<sup>th</sup> grade, meets the requirements under Georgia law for private schools (See O.C.G.A. Sec. 20-2-690), and is accredited by one or more of the entities listed in O.C.G.A. Sec. 20-3-519(6)(A) and which provides care before, after, or both before and after the customary school day, as defined in Georgia law, to its students as an auxiliary service to such students during the regular school year only. The accrediting entities listed in O.C.G.A. Sec. 20-3-519(6)(A) are:

(i) The Southern Association of Colleges and Schools;

(ii) The Georgia Accrediting Commission;

- (iii) The Georgia Association of Christian Schools;
- (iv) The Association of Christian Schools International;
- (v) The Georgia Private School Accreditation Council;
- (vi) The Southern Association of Independent Schools;
- (vii) The Accrediting Commission for Independent Study. (O.C.G.A Section 20-3-519(6.1)(A)).

4. Accredited private non-public educational programs with an established curriculum for four-year-old children for the customary school day, as defined in Georgia law, that are not part of a full day child care learning center and are an integral part of an accredited private non-public school that provides elementary or secondary instruction or both, providing the accreditation specifically covers these ages; any before and/or after school hours for four-year-old children who attend such a program as described above, provided the children do not leave the premises of the accredited private non-public school and the program is staffed with employees of that private non-public school.

5. Parent's Morning Out, Parent's Night Out, or similar programs which operate for no more than one session of up to four (4) consecutive hours per day and which limit attendance to no more than eight (8) hours a week per child.

6. Nursery schools, playschools, kindergartens or other educational programs for children two (2) years through six (6) years of age which operate for no more than four (4) consecutive hours per day.

7. Day camp programs for children five (5) years and older that are operated between school terms, whose primary purpose is to provide organized recreational, religious, or instructional activities. The day camp programs may operate during summer and other school breaks and shall operate for no more than twelve (12) hours per day.

8. Short-term educational or recreational activities or classes for children in which the supervision and care of the children are incidental to their participation in the activity or training in specific subjects, such as, but not limited to, music lessons, dance classes, swim lessons, etc. The provider is not assuming responsibility for supervision and care of the children outside of the classes or activities the children' participate in and shall not advertise or otherwise represent that child care services are offered.

9. Any short-term child care service provided by an establishment, such as, but not limited to, a religious facility, health club, or retail store, and such program or service meets all of the following:

(i) Operated on the premises of the establishment;

(ii) Operated for the convenience of the parents, guardians, or custodians and for the use of on-duty employees or students attending classes;

(iii) Parents, guardians, or custodians are participating in activities provided by the establishment on the premises of the establishment;

(iv) Parents, guardians, or custodians are readily available;

(v) Attendance of child in the short-term child care service is limited to no more than four (4) hours per day and no more than ten (10) hours per week, except in the instance of child care services offered at infrequent events such as, but not limited to, conferences and weddings.

10. Programs operated after the customary school day, as defined in Georgia law, for children five (5) years and older that are strictly instructional and skill-based in a single talent, ability, expertise, proficiency or subject or in closely related skills, proficiencies or subjects, including

but not limited to classes such as art, cheerleading, dance, drama, gymnastics, martial arts and music, and the programs comply with all of the following:

- (i) Programs provide direct instruction in the single skill or subject and/or closely related skills or subjects to every child each day the child is present;
- (ii) Programs do not provide services that are not directly related to the single skill or subject or to the closely related skills or subjects, such as but not limited to homework assistance. During the hours of operation, programs may provide services related to the instruction, such as transportation and giving children time to change into proper clothes/gear;
- (iii) Programs shall not advertise or otherwise represent that the program is a child care facility, an after school program, or that the program offers child care services;
- (iv) Programs shall not prepare meals and snacks, but may provide ready-to-eat snacks, such as pre-packaged snacks;
- (v) The majority of the program staff responsible for instruction shall possess specialized qualifications to instruct in that skill or subject, and the program shall submit documentation of such specialized qualifications of staff to the department at the time of application for exemption or as requested by the department;
- (vi) Programs shall inform parents or guardians about the physical risks a child may face while participating in the program;
- (vii) Such programs shall not be an integral part of a licensed child care learning center or day care center;
- (viii) Enrollment information shall clearly define the duration of the program.

11. Short term educational programs offered to school-aged children in which the supervision and care of the children are incidental to their participation in the short-term educational

program, and the provider is not assuming responsibility for the provision of daily child care outside the scheduled program. The majority of staff responsible for the direct delivery of education services to children possesses specialized qualifications that are directly related to the short term educational programs being offered, and the program shall submit documentation of such specialized qualifications to the department at the time of application for exemption or as requested by the department. The sole or primary purpose of such short term educational programs is:

- (i) To prepare children for advancement to the next educational level through a prescribed course of study or curriculum;
- (ii) To provide specialized tutoring services through a prescribed course of study or curriculum to assist children with the passage of mandatory educational proficiency examinations;
- (iii) To provide specialized tutoring services through a prescribed course of study or curriculum to assist children in specific academic areas, such as, but not limited to, foreign language, mathematics, science, etc.

12. Any program or facility providing care for school-aged children that is operated by, or in affiliation with a national membership non-profit organization that was created for the purpose of providing youth services and youth development, that charges a membership fee for children and may receive monthly, weekly, or daily fees for services. Such program or facility holds membership in good standing and is certified by its national association as complying with the association's purposes, procedures, minimum standards and mandatory requirements. Such

national membership organizations include, but are not limited to, the Boys and Girls Clubs of America.

13. Any program providing group care for children for no pay.

14. A center that is licensed by the department may request an exemption from licensure if the center's program is an integral part of an established religious congregation or religious school that conducts regularly scheduled classes, courses of study, or educational programs and is a member of or accredited by or certified by a state, regional, or national accrediting agency for religious educational instruction or a state, regional, or national accrediting agency for educational instruction as recognized and approved by the department if such accrediting entity uses standards that are substantially similar to those established by the department. The following requirements shall apply to centers seeking an exemption from licensure:

(i) A center seeking such exemption from licensure shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation inspection report, and any other pertinent documentation as requested by the department, such as non-profit tax-exempt verification. The accrediting agency must conduct regularly scheduled visits to the center while such center remains accredited.

(ii) If such exemption is granted, the center shall submit annual documentation to the department verifying its continued certification or accreditation, including a copy of its most recent certification or accreditation inspection report, and other pertinent documentation as may be requested by the department.

(iii) Such exemptions granted by the department are valid as long as the center remains certified or accredited. The program shall provide the department written notice within five (5) business

days of the center's loss of certification or accreditation, including a copy of such notification from the certifying or accrediting entity. The department shall rescind the center's exemption granted herein upon notification of the loss of certification or accreditation.

(iv) Any center seeking such exemption shall comply with all applicable requirements for background checks for directors/employees as required in O.C.G.A. Section 20-1A-30 et seq., Chapter 290-2-2, Rules and Regulations for Day Care Centers, Chapter 591-1-1, Rules for Child Care Learning Centers, and department policies, as well as applicable local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements while such exemption is in effect. The department retains jurisdiction over centers granted such exemption to conduct unannounced periodic background check audits and to conduct complaint investigations regarding compliance with background check requirements, as well as compliance with local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements.

(v) The department may rescind such exemption for a center's failure to comply with the requirements for background checks for directors/employees pursuant to O.C.G.A. Section 20-1A-30 et seq., Chapter 290-2-2, Rules and Regulations for Day Care Centers, Chapter 591-1-1, Rules for Child Care Learning Centers, and department policies.

(vi) The department may rescind such exemption for a center's failure to comply with local, regional, and state health department, state fire marshal, and local fire prevention guidelines/requirements.

(vii) Any center applying for such exemption that is owned and/or under the legal control/direction of the certifying or accrediting entity shall not be approved by the department.

(viii) A center seeking such exemption shall adopt and comply with the minimum standards of its certifying or accrediting entity for the operation of the center's program. Such minimum standards adopted by the center shall be published and made available to parents of enrolled or prospective children upon request.

(ix) A center granted such exemption shall comply with the requirements of O.C.G.A. Section 49-5-5(t) regarding providing notice to parents of enrolled children if the center does not carry liability insurance.

(x) A center granted such exemption shall post in a conspicuous place in the facility a copy of the exemption granted by the department and shall notify the parent and guardian of each child under the care of the facility in writing that the center has been granted an exemption from licensure by the department. The copy of the exemption posted by the Center shall be at least 1/2 inch letters and shall contain the department's telephone number and website address in case any parent or prospective parent has any questions regarding the exemption.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled "Health and Safety" adopted. F. Jan. 30, 1974; eff. Feb. 19, 1974. **Repealed:** New Rule entitled "Records" adopted. F. Oct. 1, 1974; eff. Oct. 21, 1974. **Repealed:** New Rule entitled "Staff Requirements" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Licenses, Commissions, and Exemptions" adopted. F. Jan. 18, 1991; eff. Mar. 1, 1991, as specified by the Agency. **Amended:** F. Aug. 25, 2008; eff. Sept. 14, 2008.