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**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Argued November 12, 2021
Decided August 12, 2022

No. 21-7014

ALTAGRACIA SANCHEZ, ET AL.,
APPELLANTS

v.

OFFICE OF THE STATE SUPERINTENDENT OF
EDUCATION AND DISTRICT OF COLUMBIA,
APPELLEES

Appeal from the United States District Court for
the District of Columbia
(No. 1:18-cv-00975)

Renée Flaherty argued the cause for appellants.
With her on the briefs was *Robert J. McNamara*.

Adam J. Tuethken, Assistant Attorney General, Office of the Attorney General for the District of Columbia, argued the cause for appellees. On the brief were *Karl A. Racine*, Attorney General, *Loren L. AliKhan*, Solicitor General, *Caroline S. Van Zile*, Principal Deputy Solicitor General, *Carl J. Schifferle*, Deputy

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Solicitor General, and *Graham E. Phillips*, Assistant Attorney General.

Before: *SRINIVASAN*, *Chief Judge*, KATSAS, *Circuit Judge*, and *RANDOLPH*, *Senior Circuit Judge*.

Opinion for the Court filed by *Chief Judge SRINIVASAN*.

Concurring opinion filed by *Senior Circuit Judge RANDOLPH*.

SRINIVASAN, Chief Judge: The District of Columbia's Office of the State Superintendent of Education regulates childcare facilities, including by setting minimum qualifications for their workers. In 2016, OSSE issued a rule requiring many childcare workers to obtain an associate's degree or its equivalent in a field related to early-childhood education. Two childcare workers and a parent filed this lawsuit to challenge the new college requirements. They allege violations of their substantive due process and equal protection rights, as well as of the nondelegation doctrine.

The district court initially dismissed plaintiffs' claims as unripe and moot. In a prior appeal, we found the case justiciable and reversed. On remand, the district court again dismissed, this time on the merits. In rejecting plaintiffs' substantive due process and equal protection claims, the court concluded that the college requirements are rational, including in the distinctions they draw between different classes of daycare

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workers. And in rejecting plaintiffs’ nondelegation doctrine claim, the court held that the statute granting regulatory authority to OSSE bears an intelligible principle to guide the agency’s work. We agree with the district court and affirm its judgment.

I.

We explained the background of this case in our prior opinion. *Sanchez v. OSSE*, 959 F.3d 1121, 1123–24 (D.C. Cir. 2020). We expand on that discussion here as relevant to the present appeal. Because the district court resolved the case at the motion-to-dismiss stage, we accept as true the facts pleaded in plaintiffs’ complaint. *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000).

A.

The D.C. Council enacted the Child Development Facilities Regulation Act of 1998 to modernize the city’s licensing regime for childcare providers. *See* D.C. Law 12- 215, 46 D.C. Reg. 274 (Apr. 13, 1999) (codified as amended at D.C. Code § 7-2031 et seq.). The Facilities Act applies to “[c]hild development facil[ies],” which it defines as any “center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name.” D.C. Code § 7-2031(3). Rather than setting any specific standards in the statute, the D.C. Council directed the mayor to “promulgate all rules necessary” to establish “[m]inimum standards of operation of a child development facility concerning

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staff qualification, requirements and training,” among other subjects. *Id.* § 7-2036(a)(1)(A). The mayor has delegated that authority to OSSE. *See* Mayor’s Order 2009-130, 56 D.C. Reg. 6883 (Aug. 21, 2009).

In 2016, OSSE issued new childcare regulations intended to “ensure that care provided in a licensed Child Development Facility is not only safe, but also supports children’s healthy development and future academic achievement and success.” 63 D.C. Reg. 11,279, 11,279 (Sept. 9, 2016). Those regulations institute new minimum education requirements for certain classes of childcare workers. Broadly speaking, the regulations require many such workers to obtain an associate’s degree or its equivalent in a field related to early-childhood education.

The specific requirements vary depending on where a childcare provider works. First, the regulations cover “expanded child development home[s],” which are private residences where two or more caregivers are responsible for up to twelve children. D.C. Mun. Regs. tit. 5-A, § 199. Caregivers in those facilities must obtain at least an associate’s degree “with a major in early childhood education, early childhood development, child and family studies or a closely related field.” *Id.* § 170.2(a)(1). The regulations also apply to teachers in “child development centers,” which are childcare facilities serving more than twelve children outside the operator’s home. *Id.* § 199. Teachers in those centers may comply with the regulations in either of two ways. Like expanded-home daycare

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workers, they may obtain an associate's degree in an early-childhood field. *Id.* § 165.1(a). If they already have a college degree in another field, they may instead complete at least twenty-four credit hours in subjects related to early-childhood education. *Id.* § 165.1(b).

Facilities may seek two types of waivers from the new college requirements. First, OSSE may grant experience waivers to qualified teachers who had worked in the same position continuously for the ten years preceding the rulemaking (from 2006 to 2016). *Id.* § 165.4. Second, OSSE may grant hardship waivers if the "demonstrated immediate economic impact or hardship on the [f]acility or staff member is sufficiently great to make immediate compliance impractical despite diligent efforts," so long as the facility or staff member meets or exceeds "the intent of the regulation for which the waiver is requested" and the welfare of children is not jeopardized. *Id.* § 106.1. The decision whether to grant a waiver is committed to OSSE's discretion. *Id.* §§ 106.5, 165.4.

B.

Plaintiff Altagracia Sanchez immigrated to the United States from the Dominican Republic and provides daycare services in her home. Sanchez employs two assistant caregivers and is licensed to care for up to nine children. She has a law degree from a university in the Dominican Republic but has not attended college in this country. Under the regulations, she is classified as an "expanded home caregiver," so she

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must obtain an associate's degree in an early-childhood field. *Id.* § 170.2(a)(1).

Plaintiff Dale Sorcher is a teacher at a preschool. The preschool serves children ages zero to three and is licensed as a "child development center." Sorcher has three college degrees, but none of them is in an early-childhood field. To comply with the regulations, then, she must either obtain a degree in an early-childhood field or complete twenty-four credit hours in subjects related to early-childhood education. *Id.* § 165.1(a)–(b).

Sanchez and Sorcher, along with Jill Homan, a parent with two children in daycare, filed this lawsuit against OSSE to challenge the college requirements. They allege that the regulations infringe their substantive due process and equal protection rights and also violate the nondelegation doctrine. Sanchez and Sorcher argue that they can effectively care for children without going back to school, such that taking expensive college classes would serve no purpose. Enrolling in an associate's degree program would be especially difficult for Sanchez, given her limited English proficiency and the competing time demands of running her small business. Homan posits that the college requirements will increase the costs of daycare while forcing some of her children's favorite teachers either to provide worse care while going back to school part-time or to quit their jobs entirely because they lack the time and money required to earn an associate's degree.

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The district court initially dismissed plaintiffs' suit on threshold justiciability grounds, but we reversed and remanded for the court to consider the merits of plaintiffs' challenges. *Sanchez*, 959 F.3d at 1124–26. On remand, OSSE moved to dismiss plaintiffs' claims on the merits. The district court granted the motion in a thoroughly reasoned opinion. *Sanchez v. OSSE*, 513 F. Supp. 3d 101 (D.D.C. 2021).

The court held that plaintiffs had failed to state a viable claim on any of their three legal theories. As to plaintiffs' due process and equal protection claims, the court concluded that the regulations were subject to only rational-basis review and met that forgiving standard. *Id.* at 111–16. And as for plaintiffs' claim under the nondelegation doctrine, the court held that the Facilities Act satisfied the doctrine by adequately guiding OSSE's regulatory discretion. *Id.* at 108–11. Plaintiffs now bring this second appeal.

II.

We review the district court's dismissal of the complaint de novo. *W. Org. of Res. Councils v. Zinke*, 892 F.3d 1234, 1240 (D.C. Cir. 2018).

A.

We first consider plaintiffs' due process and equal protection claims. Before addressing whether OSSE had a rational basis for issuing the challenged regulations for purposes of both of those claims, we first resolve a dispute about the applicable legal standard.

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1.

The parties agree that plaintiffs' due process and equal protection claims are subject to rational-basis review. Plaintiffs first contend the college requirements "do[] absolutely *nothing*" to further any legitimate government interest, in violation of substantive due process. Sanchez Br. 40. Because the challenged requirements implicate no fundamental rights, they are reviewed only for a rational basis. *Heller v. Doe*, 509 U.S. 312, 319–20 (1993); *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 712 (D.C. Cir. 2007) (en banc). Plaintiffs further allege that the college requirements draw irrational distinctions between different classes of child-care workers, in violation of their rights to equal protection. Because the challenged classifications "neither proceed[] along suspect lines nor infringe[] fundamental constitutional rights," their equal protection claim is also subject to rational-basis review. *FCC v. Beach Commc'n, Inc.*, 508 U.S. 307, 313 (1993).

Although the parties agree that rational-basis review governs the resolution of the substantive due process and equal protection claims, they disagree about what that standard requires at the pleading stage. Plaintiffs identify a supposed tension between the procedural standard applicable to motions to dismiss and the substantive standard applicable to rational-basis challenges. But the ostensible tension, on examination, is illusory.

In evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must "tak[e]

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note of the elements a plaintiff must plead to state a claim.” *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). The court then determines whether the plaintiff has pleaded those elements with adequate factual support to “state a claim to relief that is plausible on its face.” *Id.* at 678 (citation omitted); see also *Blue v. District of Columbia*, 811 F.3d 14, 20 (D.C. Cir. 2015). A claim is facially plausible when the complaint contains “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. In assessing the sufficiency of the pleadings, the court must accept the plaintiff’s factual allegations as true and draw all reasonable inferences in the plaintiff’s favor. *LaRoque v. Holder*, 650 F.3d 777, 785 (D.C. Cir. 2011).

To succeed on a rational-basis challenge, a plaintiff must meet a demanding standard. Rational-basis review affords the policy choices of the political branches “a strong presumption of validity.” *Beach*, 508 U.S. at 314–15 (citing *Lyng v. Auto. Workers*, 485 U.S. 360, 370 (1988)). Judicial intervention under that standard “is generally unwarranted no matter how unwisely . . . a political branch has acted.” *Id.* at 314 (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979)). A social or economic policy that “neither proceeds along suspect lines nor infringes fundamental constitutional rights” must be upheld “if there is any reasonably conceivable state of facts that could provide a rational basis” for the legislative choice. *Id.* at 313. And because legislative bodies are under no constitutional obligation to explain their reasons for enacting a policy, “it is entirely irrelevant for constitutional

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purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” *Id.* at 315. A plaintiff bringing a constitutional challenge to a regulation on rationality grounds thus faces the unenviable task of refuting “every conceivable basis which might support it.” *Id.* (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)).

Plaintiffs contend that the rational-basis standard, in asking a court to consider whether any reasonably conceivable state of facts supports a challenged policy, is incompatible with the motion-to-dismiss standard, which requires a court to accept as true the state of facts presented in the complaint. There is no incompatibility between those standards. It is true, as plaintiffs observe, that the “rational basis standard . . . cannot defeat the plaintiff’s benefit of the broad Rule 12(b)(6) standard.” *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). But to survive a motion to dismiss, plaintiffs bringing rational-basis challenges still must plausibly plead facts supporting the elements of their claims, like plaintiffs must do in any case.

When rational-basis review applies, a plaintiff at the summary-judgment stage or at trial will ultimately “bear[] the burden of showing that the statute is not a rational means of advancing a legitimate government purpose.” *Hettinga v. United States*, 677 F.3d 471, 478–79 (D.C. Cir. 2012) (per curiam). At the motion-to-dismiss stage, then, the plaintiff must plausibly allege facts showing that no reasonably

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conceivable state of facts could provide a rational basis for the challenged policy. *Id.* at 479; *see Beach*, 508 U.S. at 313. Plaintiffs suggest that it would be all but impossible for a complaint to contain allegations that “negative every conceivable basis” for a challenged policy. *Beach*, 508 U.S. at 315 (citation omitted). In practice, however, pleading facts plausibly showing a challenged policy’s irrationality will adequately negate any rational explanation for the policy so as to survive a motion to dismiss, without the complaint’s needing to refute a laundry list of potential justifications. That is a tall task, but not an impossible one.

In sum, plaintiffs here were required to plausibly allege the elements of their claims, just like plaintiffs in any other case. In the context of rational-basis review, that means plausibly alleging that no conceivable set of facts could support the challenged policy. Having clarified the standard, we can now apply it to plaintiffs’ due process and equal protection claims.

2.

Plaintiffs first contend that the college requirements “do[] absolutely *nothing* to further” any legitimate government interest, in violation of substantive due process. *Sanchez* Br. 40. The district court held that OSSE could have rationally theorized that “more early childhood education for childcare providers will lead to better childcare.” *Sanchez*, 513 F. Supp. 3d at 112. On appeal, plaintiffs concede both that occupational licensing regimes can properly incorporate minimum education requirements and that OSSE has an interest in promoting the educational growth of

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young children. But they challenge the fit between OSSE's means and its ends. They argue that an associate's degree in early-childhood education has nothing to do with the job of caring for young children.

Plaintiffs' argument that degrees in early-childhood education are irrelevant to education in early childhood is a contradiction in terms, and their position is undermined by the factual allegations in their own complaint. The complaint surveys colleges in the Washington, D.C., area that offer associate's degrees in early-childhood education. According to plaintiffs, those programs require students to complete roughly sixty credit hours. As in virtually all college programs, those credit hours are split between courses within the early-childhood major and courses in other subjects. The local schools listed in the complaint require between fifteen and thirty-six credit hours of early-childhood courses within the major, with the remainder of the curriculum composed of required general-education courses and elective courses.

Plaintiffs contend that at least some of the elective courses offered at local colleges, such as classes on fencing or Shakespeare, would be irrelevant to the work of a daycare teacher. And they point out that early-childhood courses cover ages zero to eight, while the District's childcare regulations cover only ages zero to three. But under rational-basis review, OSSE could reasonably conclude that the coursework required to earn an associate's degree in early-childhood education would be, generally speaking, relevant to the work of childcare providers. It's possible that

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certain schools might have some idiosyncratic course requirements. Even so, OSSE could rationally issue the challenged regulations without needing to parse the curriculum of any particular school.

Caregivers, moreover, can comply by completing the required education at any accredited college in the United States, affording them plenty of flexibility to choose a program that matches their career goals. And within a given school, even if some elective courses might have limited relevance to aspiring childcare workers, nothing would prevent students from tailoring their course selections to their career interest in caring for younger children. A variety of courses outside the early-childhood major, from math and English to art and history, could be beneficial to someone tasked with the educational development of toddlers—as any adult who has been flummoxed by a two-year-old repeatedly asking “why” can attest.

Even if all associate’s degree programs contain at least some irrelevant content, OSSE still could have rationally concluded that requiring childcare workers to complete a predominantly relevant course of study will improve the quality of care young children receive. Under rational-basis review, OSSE had discretion to impose a requirement that is “not . . . in every respect logically consistent with its aims,” so long as it identified “an evil at hand for correction” and established “a rational way to correct it.” *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487–88 (1955). That standard is met here.

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Plaintiffs seek to undermine that conclusion by invoking a smattering of out-of-circuit decisions holding that professional licensing regimes fail rational-basis review if they impose onerous training requirements that are irrelevant to the work actually done in a given field. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (funeral-director licensing as applied to casket retailers); *Clayton v. Steinagel*, 885 F. Supp. 2d 1212 (D. Utah 2012) (cosmetology licensing as applied to African-style hair braiders); *Patel v. Tex. Dep’t of Licensing & Regul.*, 469 S.W.3d 69 (Tex. 2015) (esthetician licensing as applied to eyebrow threaders). But this case involves no such mismatch between the content of the required training and the duties performed by the covered workers. Even assuming it is irrational to force a hair braider who never dyes hair to sit through a week of training on how to safely use hair dye, *see Steinagel*, 885 F. Supp. 2d at 1214–15, an associate’s degree in early-childhood education is self-evidently (and rationally) connected to the work of caring for young children.

Under rational-basis review, the policy choices of the political branches are “not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *Beach*, 508 U.S. at 315. And here, at any rate, as plaintiffs acknowledge in their complaint, OSSE issued its regulations in part based on a report from the National Academies recommending a bachelor’s degree requirement for all educators of children ages zero to eight. *See* Transforming the Workforce for Children Birth Through Age 8: A Unifying Foundation, Inst. of

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Med. & Nat'l Rsch. Council (LaRue Allen & Bridget B. Kelly eds., 2015). The report sought to equalize the educational requirements for daycare workers and elementary school teachers, given that “the work of lead educators for young children of all ages is based on the same high level of sophisticated knowledge and competencies.” *Id.* at 7; *see also id.* at 513. In light of that expert guidance, OSSE could have rationally concluded that its college requirements would improve the quality of childcare provided in licensed facilities.

Although we are sensitive to the burdens that OSSE’s regulations impose on daycare workers, our role is not to assess the wisdom of the agency’s policy choices. A conceivably rational justification for the college requirements is readily apparent, and, in this context, that is all due process requires.

3.

Plaintiffs also contend that the college requirements are “riddled with arbitrary distinctions among child-care providers” in violation of their equal protection rights. Sanchez Br. 35. “Where rationality is the test, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 84 (2000) (alteration, quotation marks, and citation omitted). Defining the class of people subject to a regulatory requirement “inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line.” *Beach*, 508 U.S. at 315–16

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(quotation marks and citation omitted). And in drawing those lines, a regulation “may select one phase of one field and apply a remedy there, neglecting the others.” *Lee Optical*, 348 U.S. at 489. Equal protection “does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.” *Dandridge v. Williams*, 397 U.S. 471, 486–87 (1970). Rather, a regulation must only “be rationally based and free from invidious discrimination” to survive judicial review. *Id.* at 487.

Plaintiffs challenge three distinctions that the regulations draw between classes of childcare workers. All three are rational.

First, the regulations require childcare workers with no college education to complete an associate’s degree with an early-childhood major. But they permit teachers in child development centers who already have college degrees in other fields to instead take twenty-four credit hours of early- childhood classes. Plaintiffs point out that some associate’s degree programs in early-childhood education require fewer than twenty-four credit hours within that major. They thus argue that Sorcher, who has three college degrees, should not have to complete “*more* early-childhood coursework than another person with the same job who has no college education at all.” Sanchez Br. 36.

While some local colleges require fewer than twenty-four credit hours of early-childhood classes for an associate’s degree in that field, other colleges require more. For instance, according to plaintiffs’

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complaint, the University of the District of Columbia requires thirty-six credit hours of early-childhood classes for an associate's degree in infant and toddler education. And that is in addition to the general-education and elective courses needed to complete an associate's degree. OSSE could have rationally concluded that a degree in another field plus twenty-four credit hours of early childhood classes forms the rough equivalent of an associate's degree in early-childhood education, which requires sixty total credit hours, between fifteen and thirty-six of which are in early childhood courses. As the district court correctly observed, twenty-four was a "rational, while perhaps rough" estimate of the number of early-childhood credit hours required for a degree in that field. *Sanchez*, 513 F. Supp. 3d at 115.

In any event, plaintiffs misperceive the nature of the education requirements. Rather than treating similarly situated teachers differently, the regulations simply open two avenues for compliance, which are equally open to all teachers in child development centers. Teachers can either earn an associate's degree in early-childhood education or earn a degree in another field and then take twenty-four credit hours of early-childhood classes. The choice is entirely up to them. If Sorcher would find it less burdensome to obtain an associate's degree in early-childhood education than to take twenty-four credit hours of classes, she has the option to comply with the regulations by completing a full early-childhood degree.

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Second, the regulations apply to extended-home caregivers like Sanchez, but not to nannies, babysitters, or parents who lead neighborhood play groups. Plaintiffs argue that childcare providers do the same job “wherever they happen to work,” so OSSE cannot rationally subject caregivers in different settings to different requirements. Sanchez Br. 38.

As a threshold matter, it is the Facilities Act, rather than the OSSE regulations, that exempts babysitters and neighborhood play groups. D.C. Code § 7-2033. OSSE thus lacked statutory authority to regulate those less formal care arrangements. And plaintiffs’ complaint does not challenge the exemptions in the Facilities Act.

Regardless, rational justifications for the challenged exemptions are apparent. Nannies and babysitters typically work for a single family within the home, and OSSE could have rationally decided to respect parents’ autonomy to hire childcare providers without college degrees to work in their homes. The case for exempting parent-led play groups is even more evident: any attempt by OSSE to require parents to obtain associate’s degrees in early-childhood education before supervising their kids’ friends would raise significant questions. Plaintiffs make no effort in their complaint to explain why it is irrational to treat a professional caregiver in a daycare setting differently than a weekend babysitter or a parent supervising a play group.

Third, and lastly, the regulations apply to the preschool where Sorcher teaches, which is connected to a

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synagogue that offers after-school programming to elementary and high school students. But the regulations exempt daycares and preschools connected to full-time elementary and high schools. Once again, plaintiffs argue that those caregivers do the same work and cannot rationally be treated differently. And once again, plaintiffs do little in their complaint to explain why the differential treatment is irrational. A rational explanation for the regulatory distinction is plainly apparent. OSSE could have rationally concluded that daycares attached to full-time schools would be more likely to have qualified teachers. And full-time schools are subject to their own comprehensive regulatory scheme, which includes minimum qualifications for teachers. *See* D.C. Mun. Regs. tit. 5-A, § 1601. OSSE properly prioritized “one phase of one field and appl[ied] a remedy there.” *Lee Optical*, 348 U.S. at 489.

The distinctions that the regulations draw between classes of childcare workers are rational.

B.

Plaintiffs allege that the Facilities Act violates the nondelegation doctrine by granting OSSE unconstrained authority to set licensing standards for daycares. We hold that plaintiffs have failed to state a plausible nondelegation claim.

Before addressing whether the Facilities Act satisfies the nondelegation doctrine, we first consider whether the nondelegation doctrine even applies to

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the District's government. In their complaint, plaintiffs present their nondelegation claim under both the Constitution and the D.C. Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. Code § 1-201.01 et seq.).

OSSE argues that plaintiffs' nondelegation claim "has no footing in the Constitution." The constitutional nondelegation doctrine derives from the federal separation of powers. Article I vests "[a]ll legislative Powers" in Congress. U.S. Const. art. I, § 1. Because that authority is exclusive, the nondelegation doctrine "bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121 (2019) (plurality opinion). Here, OSSE points out that the D.C. Council, not Congress, enacted the Facilities Act. OSSE contends that the federal separation of powers imposes no limits on the authority of the D.C. Council to delegate power to OSSE.

Perhaps recognizing the force of the OSSE's argument in that regard, plaintiffs contend in the alternative that the nondelegation doctrine applies to the District through the Home Rule Act, a proposition OSSE does not appear to contest in this case. Congress wields plenary power over the nation's capital, including power to create a local government for the District. U.S. Const. art I, § 8, cl. 17; *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 109 (1953); *Metro. R.R. Co. v. District of Columbia*, 132 U.S. 1, 9 (1889). In designing that government, Congress presumably could vest legislative authority in

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any local body of its choosing. But through the Home Rule Act, Congress decided to give the District's government a tripartite structure modeled on that of the federal government, with legislative power vested in the D.C. Council, executive power in the mayor, and judicial power in the D.C. Superior Court and Court of Appeals. *See* D.C. Code §§ 1- 204.04(a); 1-204.22; 1-204.31(a).

The D.C. Court of Appeals has observed that the separation of powers within the District's government suggests that “the same general principles should govern the exercise of such power in the District Charter as are applicable to the three branches of government at the federal level.” *Wilson v. Kelly*, 615 A.2d 229, 231 (D.C. 1992). There is thus “good reason to think the nondelegation doctrine applies to the District’s government.” *Unum Life Ins. Co. of Am. v. District of Columbia*, 238 A.3d 222, 232 (D.C. 2020).

Ultimately, though, we need not decide whether the nondelegation doctrine applies to the District, either through the Constitution or the Home Rule Act. Instead, following the lead of the D.C. Court of Appeals, *id.*, we will assume without deciding that the doctrine applies. We may do so because we conclude that, even if the doctrine applies, it is satisfied here.

The nondelegation doctrine requires a legislature delegating authority to “lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001) (alteration, quotation marks, and citation omitted). The

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legislature must make clear the “general policy” to be pursued and “the boundaries of this delegated authority.” *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946).

The amount of guidance the legislature must provide “varies according to the scope of the power congressionally conferred.” *Whitman*, 531 U.S. at 475. For instance, Congress must give “substantial guidance” to the Environmental Protection Agency to channel its setting of “air standards that affect the entire national economy,” but “need not provide any direction” at all to that agency for defining the statutory term “country elevators.” *Id.*

In applying the nondelegation doctrine, the Supreme Court “has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress”—and, by analogy, the D.C. Council—“simply cannot do its job absent an ability to delegate power under broad general directives.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989). The governing standards for a permissible delegation are “not demanding,” and the Supreme Court has “over and over upheld even very broad delegations.” *Gundy*, 139 S. Ct. at 2129 (plurality opinion); *cf. id.* at 2131 (Alito, J., concurring in the judgment) (“If a majority of this Court were willing to reconsider the approach we have taken for the past 84 years, I would support that effort.”); *id.* at 2131–48 (Gorsuch, J., dissenting).

Under the current standard, the Facilities Act sets forth an intelligible principle to guide OSSE’s

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regulation of daycares. The Act directs OSSE to issue “[m]inimum standards of operation of a child development facility concerning staff qualification, requirements and training.” D.C. Code § 7- 2036(a)(1)(A). That provision directs OSSE’s regulatory authority to a particular subject matter (minimum staff qualifications and training) in a particular industry (child-care). Within that narrow sphere, the D.C. Council can delegate considerable discretion. *See Detroit Int’l Bridge Co. v. Gov’t of Can.*, 883 F.3d 895, 902–03 (D.C. Cir. 2018); *TOMAC v. Norton*, 433 F.3d 852, 867 (D.C. Cir. 2006).

The Facilities Act’s definitions section provides further direction. Under the statute, a “[c]hild development facility” is any “center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis.” D.C. Code § 7-2031(3). The implication of the Act, read as a whole, is that the minimum qualifications should relate to the care, supervision, and guidance of children. In short, the Facilities Act supplies the intelligible principle that OSSE must set minimum qualifications for daycare workers to ensure their fitness to take care of small children.

As OSSE points out, the United States Code contains many comparable delegations. For example, the Transportation Security Administration sets “minimum training requirements” and “minimum education levels” for “air carrier personnel.” 49 U.S.C. § 44935(a). The Secretary of the Treasury establishes “minimum education and experience requirements”

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for certain tax appraisers. 26 U.S.C. § 170(f)(11)(E)(ii)(I). And the Secretary of Health and Human Services sets “training, education, and experience requirements” for certain physician assistants and nurse practitioners. 42 U.S.C. § 1395x(aa)(5)(A). Delegations of authority to set minimum job qualifications are thus commonplace. We decline plaintiffs’ invitation to call into question such a ubiquitous type of delegation.

In the alternative, plaintiffs contend that, even if the Facilities Act includes an intelligible principle, any guidance the statute provides is merely “hortatory” because OSSE’s rulemaking was not subject to judicial review under the District’s version of the Administrative Procedure Act. Sanchez Br. 49–50. In plaintiffs’ view, an intelligible principle serves no purpose unless a court can police the agency’s compliance with the legislative command.

That argument is doubly flawed. First, it appears that OSSE’s rulemaking would have been reviewable in D.C. Superior Court. True enough, the D.C. Administrative Procedure Act provides for judicial review of agency actions only in “contested case[s],” a term the D.C. Court of Appeals has interpreted as covering only formal adjudications. D.C. Code § 2-510; *District of Columbia v. Sierra Club*, 670 A.2d 354, 359 (D.C. 1996). But despite that statutory lacuna, the District’s courts have permitted equitable actions challenging rulemakings. *See id.*; *see also Dupont Circle Citizen’s Ass’n v. D.C. Zoning Comm’n*, 343 A.2d 296, 309–10 & n.26 (D.C. 1975) (Gallagher, J., concurring).

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Second, even if the college requirement were unreviewable for compliance with the Facilities Act, that would be irrelevant to the analysis under our precedent. We have held that, even when judicial review is unavailable, the nondelegation doctrine is satisfied so long as a statute provides an intelligible principle to guide an agency's exercise of discretion. *Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23, 33 n.8 (D.C. Cir. 2008). The Facilities Act does so and thus complies with the nondelegation doctrine, assuming the doctrine applies to the District.

* * * * *

For the foregoing reasons, we affirm the judgment of the district court.

So ordered

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RANDOLPH, *Senior Circuit Judge*, concurring: Though not necessarily central to this case, the Supreme Court’s nondelegation jurisprudence appears to be in a state of flux. *See* Joseph Postell & Randolph J. May, *The Myth of the State Nondelegation Doctrines*, 74 ADMIN. L. REV. 263, 264–65 (2022). Of course, we are bound to apply the Supreme Court’s current precedent, since only the Supreme Court enjoys “the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Because the majority evaluates the nondelegation claims presented here under current doctrine, I join its analysis.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ALTAGRACIA	:
SANCHEZ, <i>et al.</i> ,	:
	:
Plaintiffs,	:
	Civil Action No.: 18-975
	:
	(RC)
v.	:
	:
	Re Document Nos.: 32,
OFFICE OF THE	:
STATE SUPERINTEN-	:
DENT OF EDUCA-	:
TION, <i>et al.</i> ,	:
	:
Defendants.	

MEMORANDUM OPINION

GRANTING DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

This case involves regulations promulgated by the D.C. Office of the State Superintendent of Education (“OSSE”) that impose minimum education requirements on certain childcare providers that operate in the District of Columbia. Plaintiffs, two childcare providers and one parent, argue that the regulations resulted from an unconstitutional delegation of power and that they violate the Due Process and Equal Protection Clauses of the U.S. Constitution. Defendants

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have moved to dismiss Plaintiffs' claims. This Court previously considered a motion to dismiss but ruled that Plaintiffs' failed to overcome several jurisdictional hurdles. Plaintiffs appealed and the D.C. Circuit reversed and remanded for consideration of the merits of Plaintiffs' allegations. *See Sanchez v. Off. of the State Superintendent of Educ.*, 959 F.3d 1121 (D.C. Cir. 2020). Defendants now argue that, accepting as true the factual allegations in the Amended Complaint, Plaintiffs have failed to state a plausible claim to relief. For the reasons set forth below, the Court agrees and, therefore, grants Defendants' motion to dismiss.

II. BACKGROUND**A. Statutory and Regulatory Framework**

The Child Development Facilities Regulation Act of 1998 ("Facilities Act"), D.C. Law 12-215, 46 D.C. Reg. 274 (1999) (codified as amended at D.C. Code § 7-2031 *et seq.*), requires certain childcare providers in the District of Columbia to obtain a license to operate, *see* D.C. Code § 7-2034(a). The Facilities Act delegates rulemaking power to the Mayor to promulgate "all rules necessary to implement the provisions of" the Facilities Act. *Id.* § 7-2036(a)(1). The delegation of authority requires that the Mayor set "[m]inimum standards of operation of a child development facility concerning staff qualification, requirements and training, facility size, staff- child ratios and group size, program design and equipment requirements, safety and health standards, care for children with

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special needs, nutrition standards, and record keeping requirements.” *Id.* § 7-2036(a)(1)(A). The Facilities Act defines “child development facility” as “a center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name.” *Id.* § 7-2031(3). The Facilities Act specifically exempts from its requirements babysitters, informal playgroups, parent-led play cooperatives, childcare furnished in places of worship during religious services, care provided by relatives, childcare provided by the federal government, and certain pre-kindergarten education programs. *Id.* § 7-2033. The Mayor has delegated the rulemaking power under the Facilities Act to OSSE. *See Mayor’s Order 2009-130*, 56 D.C. Reg. 6883 (July 16, 2009).

Pursuant to this authority, OSSE issued regulations that set minimum education requirements for childcare staff at child development facilities. *See generally* D.C. Mun. Regs. tit. 5-A1, §§ 100–99. Under the regulations, teachers at childcare development centers, located on premises other than a dwelling that serve more than twelve children, must obtain at least an associate’s degree from an accredited college “with a major in early childhood education, early childhood development, child and family studies, or a closely related field.” *Id.* § 165.1. Caregivers in an expanded child development home, which is a facility located in a private residence where two or more caregivers oversee up to twelve children, must obtain the same. *Id.* § 170.2. The requirements did not become immediately binding; when initially promulgated, the

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regulations generally provided a grace period of anywhere between three and six years. *See, e.g.*, 63 D.C. Reg. 14,786, 14,799 (original versions of D.C. Mun. Regs. tit. 5-A1, §§ 164.1(b), (c) and 170.2(a)(1)(2)).¹ The regulations also provided that OSSE could waive compliance with any of the education requirements if presented with clear and convincing evidence that (1) “[t]he demonstrated . . . economic impact or hardship on the Facility or staff member [was] sufficiently great to make immediate compliance impractical despite diligent efforts;” (2) “[t]he facility or staff member [was] meeting or exceeding the intent of the regulation for which the waiver [was] requested; and” (3) “[t]he health and welfare of staff and children [we]re not jeopardized.” D.C. Mun. Regs. tit. 5A-1, § 106.1. OSSE provided for another exemption for certain staff positions for individuals who had, as of December 2016, “continuously served” in the relevant staff position for ten or more years. *Id.* §§ 165.4, 170.2.

The regulations make three distinctions relevant to the current case. First, the regulations, like the Facilities Act, specifically exempt certain childcare providers, such as babysitters and nannies, from the degree requirements. *Id.* § 101.5. Second, the regulations specifically exempt private schools that provide “education services to children in grades pre-K-

¹ In June 2018, OSSE amended its regulations to allow more time to comply with the degree requirements. 65 D.C. Reg. 7034–7036 (June 29, 2018); *see also* D.C. Mun. Regs. tit. 5- A1 §§ 165.1(d), 170.2(a)(2). The deadline for compliance relevant to this case is now December 2023. *See* D.C. Mun. Regs. tit. 5-A1 §§ 165.1(d), 170.2(a)(2).

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through twelfth (12th) grade during [] a full school day.” *Id.* § 101.5(l). Under this exemption, private, parochial, or independent schools that have full-time elementary or secondary educational programs in addition to infant and toddler care on the same premises need not comply with the minimum degree requirements. *See id.* § 165.6. Third, teachers at childhood development centers who already possess a college degree in a major other than an early childhood field must obtain at least twenty-four credit hours of college coursework in an early childhood field. *Id.* § 165.1.

B. Factual and Procedural Background

Plaintiff Altagarcia Sanchez is subject to the new education requirements as an “expanded home caregiver.” *See generally id.* §§ 169–71. She runs a licensed daycare out of her house and currently cares for nine children. *See Am. Compl.* ¶ 164, ECF No. 31. Although she carries a doctoral degree in law from her home country, *id.* ¶ 157, she never attended college in the United States, *id.* ¶ 159. Plaintiffs allege that, given the demands of her work schedule, it would take Ms. Sanchez at least five years to complete the degree requirements as a part-time student, which they estimate would require around sixty credit hours. *See id.* ¶¶ 170–75. However, Plaintiffs allege that Ms. Sanchez cannot afford to attend college, even part-time. *Id.* ¶¶ 180–83. Ms. Sanchez received a waiver to the degree requirement in April 2019, but she fears that OSSE may revoke the waiver at some point in the future. *Id.* ¶¶ 190–91.

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Plaintiff Dale Sorcher is what the regulations refer to as a teacher at a child development center. *See* D.C. Mun. Regs. tit. 5A-1, § 165. Ms. Sorcher teaches children ages zero to three at a Jewish preschool attached to the synagogue she attends. Am. Compl. ¶¶ 193–95. Although Ms. Sorcher has two master’s degrees and a bachelor’s degree, she does not have the requisite education in early childhood education called for by the regulations. *Id.* ¶¶ 192, 211–12. The synagogue does have educational programs for elementary and secondary students but does not offer full-time educational programs. *Id.* ¶ 197. Plaintiffs allege that Ms. Sorcher is not eligible for a waiver of the degree requirement, *id.* ¶ 226, and that she does not have time to go back to college, *id.* ¶ 229. Furthermore, Plaintiffs maintain that Ms. Sorcher does not need more education in order to competently do her job. *Id.* ¶ 230.

Plaintiff Jill Homan is a parent whose young daughter attends a licensed daycare center subject to the regulations. *Id.* ¶¶ 234, 245–50. Ms. Homan is “afraid that the caregivers she trusts will not be able to comply with the college requirement and will lose their jobs.” *Id.* ¶ 247. She worries that daycare providers forced to attend college in addition to their work duties will be “exhausted, stressed, and overwhelmed” and “will provide worse care than those who do not have to worry about attending school.” *Id.* ¶ 250. She also believes that “day care will continue to become more expensive under the college requirement.” *Id.* ¶ 251.

Plaintiffs bring three counts against the District of Columbia and OSSE (together “Defendants”) related

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to the OSSE regulations. First, Plaintiffs argue that the Facilities Act’s delegation of authority to the Mayor to promulgate minimum educational standards violates the District of Columbia Self-Government and Governmental Reorganization Act (the “D.C. Home Rule Act”), D.C. Code §§ 1-201.01–1.207.71, and the U.S. Constitution’s nondelegation doctrine. *Id.* ¶¶ 263–75. Second, Plaintiffs claim that the OSSE regulations violate their Fifth Amendment Due Process rights because “[t]here is no rational basis for prohibiting someone from working in a day care because she does not have a college degree.” *Id.* ¶ 279. Finally, Plaintiffs argue that the OSSE regulations draw arbitrary and irrational distinctions between different types of day-care providers and facilities, which they maintain violates the Equal Protection Clause. *Id.* ¶¶ 281–88.

This Court previously considered a motion to dismiss Plaintiffs’ Compliant. *See Sanchez v. Off. of State Superintendent of Educ.*, No. 18-cv-975, 2019 WL 935330 (D.D.C. Feb. 26, 2019). The Court dismissed all of Plaintiffs’ claims on threshold, jurisdictional grounds. *See id.* at *5–6 (dismissing Ms. Homan’s claims for lack of standing); *id.* at 6–9 (dismissing other claims as moot and unripe). The Court thus declined to consider the merits of Plaintiffs’ challenges under the nondelegation doctrine, the Due Process Clause, and the Equal Protection Clause. Plaintiffs appealed. Finding that the doctrines of mootness and ripeness did not bar any of Plaintiffs’ claims, the D.C. Circuit determined that Plaintiffs’ purely legal challenges are presumptively reviewable. *See Sanchez*,

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959 F.3d at 1124–26. The court reversed and remanded for consideration of the merits of Plaintiffs’ claims, finding that the claims are justiciable. *See id.* at 1123.

After remand, Plaintiffs’ filed an Amended Complaint. *See Am. Compl.* Defendants’ motion to dismiss argues that, even accepting the factual allegations as true, Plaintiffs fail to state a plausible claim to relief with respect to each count in the Amended Complaint. *See* Defs.’ Mot. Dismiss (“Defs.’ Mot.”), ECF No. 33. In addition to the motion to dismiss, Plaintiffs filed a motion for discovery notwithstanding the pending motion to dismiss. *See* Pls.’ Mot. Notwithstanding Mot. Dismiss, ECF No. 32. Plaintiffs’ motion argues that the Court should permit limited discovery despite the pending motion to dismiss. *See id.* at 1–3. Both motions are ripe for decision.

III. LEGAL STANDARD

The Federal Rules of Civil Procedure require that a complaint contain “a short and plain statement of the claim” in order to give the defendant fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); see also *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam). A motion to dismiss under Rule 12(b)(6) does not test a plaintiff’s ultimate likelihood of success on the merits; rather, it tests whether a plaintiff has properly stated a claim. See *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaint’s factual allegations are to be taken as true, and the court is to construe them liberally in the plaintiff’s favor. See, e.g., *United States v. Philip*

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Morris, Inc., 116 F. Supp. 2d 131, 135 (D.D.C. 2000). Notwithstanding this liberal construal, the court deciding a Rule 12 motion must parse the complaint for “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This plausibility requirement means that a plaintiff’s factual allegations “must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555–56 (citations omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” are insufficient to withstand a motion to dismiss. *Iqbal*, 556 U.S. at 678. A court need not accept a plaintiff’s legal conclusions as true, *see id.*, nor must a court presume the veracity of legal conclusions that are couched as factual allegations, *see Twombly*, 550 U.S. at 555.

IV. ANALYSIS

As explained above, Plaintiffs bring three claims against Defendants. First, Plaintiffs argue that the rulemaking provision of the Facilities Act is an impermissible delegation of legislative power in violation of the D.C. Home Rule Act and the U.S. Constitution. Second, Plaintiffs argue that the OSSE regulations violate Plaintiffs’ substantive due process rights guaranteed by the Fifth Amendment. Third, Plaintiffs argue that the OSSE regulations violate the equal protection clause by making arbitrary and irrational

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distinctions. Defendants argue that Plaintiffs have failed to allege sufficient facts to withstand a motion to dismiss with respect to each claim.² The Court addresses each claim in turn.

A. Nondellegation Doctrine Claim

Article I of the Constitution states that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const. art I, § 1. “This text permits no delegation of those powers.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001). As such, “[i]n a nondelegation challenge, the test is whether Congress has set forth ‘an intelligible principle to which the person or body authorized to act is directed to conform.’” *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 866 (D.C. Cir. 2006) (quoting *Whitman*, 531 U.S. at 472 (alterations and internal quotations omitted)). To determine the boundaries of a delegation, courts look to the statutory language, the purpose of the statute, its factual background, and the statutory context. *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 30 (D.C. Cir. 2008) (citing *TOMAC*, 433 F.3d at 866 (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 104 (1946))). “[T]he degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.” *Whitman*, 531

² Defendants also argue that Ms. Homan lacks standing, *see* Defs.’ Mot. at 35–36, and that OSSE should be dismissed as a defendant, *see id.* at 36. Because the Court has determined that Plaintiffs have failed to state a claim, it will not address these arguments.

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U.S. at 475. Although broad delegations of power may require “substantial guidance,” relatively narrow delegations of power need not be accompanied by explicit direction or any direction at all. *Id.* (noting that Congress need not provide direction to EPA to define “country elevators” but must provide “substantial guidance on setting air standards that affect the entire national economy”). Though the D.C. Court of Appeals has not held that the nondelegation doctrine applies to the District’s government, both parties apparently agree that it applies by application of the Home Rule Act. See Defs.’ Mot. at 14–15; Pls.’ Opp’n at 14, ECF No. 34 ; *see also Unum Life Ins. Co. of Am. v. District of Columbia*, 238 A.3d 222, 232 (D.C. 2020) (assuming without deciding applicability of nondelegation doctrine and applying Supreme Court precedent to resolve issue). For purposes of the present motion to dismiss, the Court assumes the applicability of the nondelegation doctrine to delegations by the District Council to District agencies.

Defendants argue that the delegation of authority in the Facilities Act contains an intelligible principle “to establish minimum qualifications that are appropriate *given the nature of the job to which [childcare providers] apply.*” Defs.’ Mot. at 19. Defendants first note that “the standards for any permissible delegation ‘are not demanding,’ *id.* at 16 (quoting *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019) (plurality op.)), and that the Supreme Court has consistently upheld even broad delegations of authority, *see id.* Defendants argue that the Facilities Act instructs the

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Mayor³ “as to the limits of [her] authority (that [she] may set ‘minimum standards of operation’) as well as the targets (child development facilities) and content (staff qualification, requirements and training) of any regulations.” *Id.* at 17 (quoting D.C. Code § 7-2036(a)(1)). Defendants point to a variety of similar delegations of authority to set minimum education or training standards that contain virtually the same level of direction. *See id.* at 18 (discussing similar delegations to the Transportation Security Administration, the Department of Homeland Security, the Treasury Secretary, and the Secretary of the Interior). Finally, Defendants argue that Plaintiffs offer no legal support for their argument that some stricter scrutiny should be required because the D.C. Administrative Procedure Act (“DCAPA”), D.C. Code § 2-510, does not provide for judicial review of rulemakings. *See id.* at 19–22 (citing Am. Compl. ¶¶ 270–74, 95). Defendants claim that “whether (or to what extent) the delegee’s actions are subject to judicial review” does not change the nondelegation doctrine analysis. *Id.* at 19–20 (citing *Michigan Gambling Opposition*, 525 F.3d at 33 n.8). In any event, Defendants challenge Plaintiffs’ underlying premise and argue that rulemakings by D.C. agencies can, in fact, be reviewed by the D.C. Superior Court. *See id.* at 20 (citing *District of Columbia v. Sierra Club*, 670 A.2d 354, 359 (D.C. 1996)).

³ The District actually states that the Facilities Act “instructs OSSE,” *id.* at 17, but the statutory delegation of authority grants rulemaking authority to the Mayor, *see* D.C. Code § 7-2036(a)(1).

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In opposition, Plaintiffs claim that the delegation of authority in the Facilities Act does not contain an intelligible principle. Pls.’ Opp’n at 15–17. This is so, they claim, because the Facilities Act allows free range for the Mayor to “set any standard [she] likes” without regard to any limiting principles. *Id.* at 16. Plaintiffs claim that under the language of the Facilities Act, the Mayor could forbid college degrees, require a Ph.D., or demand compliance with physical tests. *See id.* Plaintiffs maintain that the Mayor’s authority to set minimum standards of operation at child development facilities under the Facilities Act equals the authority of the legislature itself. *Id.* With respect to the statutory delegations that authorize agencies to set minimum qualifications in other contexts, Plaintiffs say that the Court should treat those differently because they are subject to judicial review under the Administrative Procedure Act. *Id.* at 17–18. According to Plaintiffs, nothing could be done if the Mayor or OSSE required childcare providers to become, for example, certified public accountants because the DCAPA does not allow for judicial review of rulemakings. *Id.* The Court understands Plaintiffs to argue that because the DCAPA limits judicial review to “contested cases”—in other words, adjudications—the delegation of authority should be struck down even if the statute contains an intelligible principle. *See id.* (“Therefore, even if OSSE’s statute had ordered it to pursue an intelligible principle, there was no mechanism by which a court could determine that it was failing to actually do so or was acting arbitrarily, capriciously, or without substantial evidence.”); *id.* at 20 (“For nondelegation purposes, what matters

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is whether there is any authority ensuring that an agency’s exercise of its delegated legislative power is not arbitrary or capricious.” (footnote omitted)).

The Court agrees with Defendants; the delegation of power in D.C. Code § 7-2036 does not amount to an unconstitutional delegation of legislative power. The text of the statute and broader statutory context make clear an intelligible principle to guide the delegated authority. First, the text cabins the delegated power to “rules necessary to implement the provisions of *this subchapter*,” which is titled “Child Development Facilities Regulation.” D.C. Code § 7- 2036(a)(1) (emphasis added). Second, the text limits the Mayor’s authority to a specific population and subject. The Facilities Act states that the Mayor shall set “[m]inimum standards of operation of a child development facility concerning staff qualification, requirements and training.” *Id.* § 7-2036(a)(1)(A). The “minimum standards of operation” must relate to “child development facilit[ies]” and must speak to “staff qualification, requirements and training.” *Id.* Third, the statutory definition of “child development facility” further guides the Mayor in setting appropriate minimum standards of operation. A child development facility “means a center, home, or other structure that *provides care and other services, supervision, and guidance for children, infants, and toddlers* on a regular basis.” *Id.* § 7-2031(3) (emphasis added). Plainly, the minimum standards of operation set by the Mayor must be directed at care, supervision, and guidance for children, infants, and toddlers. The narrow scope of this delegation of power does not require further

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direction or guidance. *See Whitman*, 531 U.S. at 475. The Mayor’s delegated authority is “cabined by ‘intelligible principles’ delineating both the area in and the purpose for which” the minimum operating standards should apply. *TOMAC*, 433 F.3d at 867.

The Court rejects Plaintiffs’ contention that some other standard should apply because the DCAPA does not provide for judicial review of D.C. agency rule-making. Plaintiffs apparently contend that even with an intelligible principle to guide the delegation of power the delegation should be struck down because the DCAPA only allows for review of “contested cases.” *See Pls.’ Opp’n* at 18; *see also* D.C. Code § 2-510(a). But Plaintiffs cite no cases for the novel contention that delegations of power to D.C. agencies are *per se* unconstitutional or in violation of the D.C. Home Rule Act because of the gap in the DCAPA. Moreover, the Court agrees with Defendants that caselaw supports the contention that D.C. agency rulemakings are reviewable. *See District of Columbia v. Sierra Club*, 670 A.2d 354, 359 (D.C. 1996) (“The availability of review by this court of agency decisions in ‘contested cases’ . . . does not preclude judicial review of other matters, because any party aggrieved by an agency’s decision may initiate an appropriate equitable action in the Superior Court to seek redress.” (internal alterations and quotations omitted)); *D.C. Hosp. Ass’n v. Barry*, 586 A.2d 686, 690–94 (D.C. 1991) (upholding D.C. Superior Court decision that found D.C. regulations were not arbitrary and capricious); *Capitol Hill Restoration Soc’y, Inc. v. Moore*, 410 A.2d 184, 188 (D.C. 1979) (“[W]e are not

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foreclosing all review . . . in other noncontested matters . . . Any party aggrieved by an agency's decision may initiate an appropriate equitable action in the Superior Court to seek redress."); *Dupont Circle Citizen's Ass'n v. D.C. Zoning Comm'n*, 343 A.2d 296, 308 (D.C. 1975) (en banc) (J. Gallagher concurring) (stating that a party will "always have access to the trial court for review in an original proceeding" and can argue "that the agency action was arbitrary and capricious"). In any event, whether or not the Mayor's actions pursuant to the Facilities Act might be unreviewable does not control the nondelegation doctrine analysis. *See Michigan Gambling Opposition*, 525 F.3d at 33 n.8.⁴

Because the Facilities Act contains an intelligible principle to guide the Mayor's rulemaking authority, the Court finds that Plaintiffs have failed to state a

⁴ Plaintiffs argue that *Michigan Gambling Opposition* does not support the proposition that the nondelegation doctrine analysis is unaffected by reviewability. *See* Pls.' Opp'n at 21. The court in *Michigan Gambling Opposition* stated "[n]or are we concerned, for purposes of the non-delegation doctrine, that the Secretary's decision . . . might be unreviewable in a court of law . . . [the statute] intelligibly guides the Secretary's exercise of discretion, and that is all that the non-delegation doctrine requires." 525 F.3d at 33 n.8. The Court understands this to mean that whether an agency's actions are reviewable does not change the nondelegation doctrine analysis. But even assuming *arguendo* that Plaintiffs could potentially win this point, they fail to cite any precedent that suggests that the nondelegation doctrine analysis should change if agency action is not subject to judicial review. Nor do they cite any precedent explaining how the analysis should change.

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plausible claim to relief with respect to their nondelegation challenge.

B. Due Process Claim

The Fifth Amendment to the U.S. Constitution provides that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Plaintiffs claim that the degree requirement contained in OSSE’s regulations “does not further any valid public health or safety purpose, and therefore violates Plaintiffs’ right to due process of law on its face and as applied.” Am. Compl. ¶ 278. The government may infringe upon a fundamental liberty or property interest “only if the infringement is ‘narrowly tailored to serve a compelling state interest.’ *Am. Fed’n of Gov’t Emps., AFL-CIO v. United States*, 330 F.3d 513, 523 (D.C. Cir. 2003) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)). Where no fundamental liberty or property interest is at stake, “the Fifth Amendment requires only a rational basis.” *Id.* (citing *FCC v. Beach Commc’ns Inc.*, 508 U.S. 307, 313 (1993); *Waters v. Rumsfeld*, 320 F.3d 265, 268 (D.C. Cir. 2003)). Under rational basis review, to survive a motion to dismiss, a plaintiff must plead “facts that establish that there is not ‘any reasonable conceivable state of facts that could provide a rational basis for the classification.’” *Hettinga v. United States*, 677 F.3d 471, 479 (D.C. Cir. 2012) (quoting *Dumaguin v. Sec’y of Health and Hum. Servs.*, 28 F.3d 1218, 1222 (D.C. Cir. 1994)); *see also Am. Fed’n*, 330 F.3d at 523 (applying same standard for rational basis review to substantive due process and equal protection challenges).

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Defendants argue that Plaintiffs cannot overcome the deferential standard under a rational basis review. Defs.' Mot. at 23. Defendants state that the "rational relationship here is no more than that involved in requiring a science teacher to have science degree, an accountant to have an accounting degree, or a lawyer to have a law degree." *Id.* at 24. Defendants say that questioning whether the regulations will actually improve childcare, or whether some childcare workers will be unable to comply, or whether the data underlying OSSE's action actually supports the regulations does not change the deferential analysis. *See id.* at 24–29. In opposition, Plaintiffs point to a number of cases in other contexts where courts have struck down statutes after a rational basis review. *See* Pls.' Opp'n at 29–30. Plaintiffs say that here, the degree requirements in the regulations do "absolutely *nothing* to further" the legitimate government interest of promoting optimal childcare outcomes. *Id.* at 30 (emphasis in original). Plaintiffs argue that they should be entitled to develop a record to show that the degree requirements are unrelated to OSSE's purpose. *Id.* at 31. Defendants argue in reply that whether there is a rational basis for the regulations is a legal conclusion and that Plaintiffs cannot allege facts that survive a motion to dismiss in this case because "one could at least rationally speculate that requiring more advanced education would yield improved child care." Defs.' Reply at 16–17, ECF No. 37.

The Court finds that Plaintiffs have failed to state a plausible claim to relief under the Due Process Clause. The Court agrees with Defendants that

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“OSSE’s regulations are plainly ‘rational on [their] face.’” *Id.* at 17 (quoting *Hettinga*, 677 F.3d at 479). The regulations require individuals who will be caring for children, infants, and toddlers to take classes or obtain a degree in “early childhood education, early childhood development, child and family studies, or a closely related field.” D.C. Mun. Regs. tit. 5A-1, § 165.1. A conceivable rational basis for the regulations is readily apparent: more early childhood education for childcare providers will lead to better childcare. Given this plausible reason for the government action, the “inquiry is at an end.” *Beach Commc’ns*, 508 U.S. at 314 (quoting *United States R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980)). Even if Plaintiffs have data showing that the degree requirements at issue will not make for better childcare, “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* at 315.⁵ It is rational to determine that the degree requirements in OSSE’s regulations could improve early childhood care in the District of Columbia. Plaintiffs have failed to “plead facts that establish that there is not ‘any reasonable conceivable state of facts that could provide a rational basis for the classification.’” *Hettinga*, 677 F.3d at 479 (quoting *Dumaguin*, 28 F.3d at 1222). Accordingly,

⁵ For this reason, the parties’ discussion of a 2015 report by the National Academies of Sciences is irrelevant. See Defs.’ Mot. at 26–29; Pls.’ Opp’n at 32–33. Whether the report supports or does not support the regulations does not change the “strong presumption of validity” afforded to laws under rational basis review. *Beach Commc’ns*, 508 U.S. at 314.

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Plaintiffs fail to state a plausible claim under the Due Process Clause.

C. Equal Protection Claim

The Fourteenth Amendment to the U.S. Constitution provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. Plaintiffs’ equal protection claim alleges that OSSE’s rules draw arbitrary distinctions with respect to the degree requirement. *See* Am. Compl. ¶¶ 283–88. Such distinctions are subject to rational basis review. *See Gebresalassie v. District of Columbia*, 170 F. Supp. 3d 52, 60 (D.D.C. 2016). “A statutory classification that ‘neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’” *Hettinga*, 677 F.3d at 478 (quoting *Beach Commc’ns*, 508 U.S. at 313). Like rational basis review of due process claims, at the motion to dismiss stage, an equal protection challenge to a statute that does not involve a classification along suspect lines or fundamental rights—like the challenge here—requires overcoming a “strong presumption of validity,” *Tate v. District of Columbia*, 627 F.3d 904, 910 (D.C. Cir. 2010), by “plead[ing] facts that establish that there is not ‘any reasonable conceivable state of facts that could provide a rational basis for the classification.’” *Hettinga*, 677 F.3d at 479 (quoting *Dumaguin*, 28 F.3d at 1222). Again, like with a due process challenge, “a legislative choice is not subject to courtroom fact-finding and may be based on

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rational speculation unsupported by evidence or empirical data.” *Beach Commc’ns*, 508 U.S. at 315.

Plaintiffs challenge three distinctions made in the OSSE regulations on equal protection grounds. *See* Am. Compl. ¶¶ 283–286. First, Plaintiffs argue that the regulations draw “an arbitrary and irrational distinction between day-care providers . . . and other kinds of child-care providers, such as nannies” *Id.* ¶ 283. Second, Plaintiffs argue that the regulations draw “an arbitrary and irrational distinction between private, parochial, and independent schools with full-time elementary or secondary education programs with day cares attached . . . and private, parochial, and independent schools with attached day cares . . . that serve elementary and secondary-school age children in other capacities.” *Id.* ¶ 284. Third, Plaintiffs argue that the regulations draw “an arbitrary and irrational distinction between day-care center teachers who already have a college degree and those who do not.” *Id.* ¶ 286. Day-care center teachers who already have a college degree “must obtain *at least* 24 semester credit hours in an early- childhood field” whereas those “who do *not* have a degree must obtain an associate’s degree with a *major* in an early-childhood field, which may require *less than* 24 semester credit hours.” *Id.* Plaintiffs argue that none of these distinctions rationally relate to a legitimate government purpose. *See* Pls.’ Opp’n at 24–28.

The District argues that the three distinctions Plaintiffs point to all survive rational basis scrutiny. Defs.’ Mot. at 30–35. The District suggests that distinguishing between day-care teachers and other

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child care workers—such as babysitters, nannies, and parent-supervised play groups—makes sense because the other child care workers, who are exempt from the degree requirement, do not usually care for three or more unrelated children. *Id.* at 31. Furthermore, the District argues that these other child care workers are not performing the same type of work as a teacher at a child development center, so the distinction is rational. Defs.’ Reply at 10. Treating schools with full-time elementary and secondary programs differently than schools that only offer part time programs also makes sense, the District says, because OSSE could have reasonably concluded that day cares attached to full-time elementary or secondary schools are already more likely to have staff with relevant college degrees. Defs.’ Mot. at 33. Finally, the District argues that treating child development center teachers who already have college degrees differently than teachers who do not have a degree also has a plausible rational basis. *Id.* at 34–35. The regulations require teachers who already have college degrees in a non-early-childhood field to earn twenty-four credit hours in early childhood studies. *See id.* The District contends that the twenty-four-credit hour requirement is an appropriate approximation even though there may be some degree programs that require more or fewer credits. *Id.* at 34–35 (citing *Beach Commc’ns*, 508 U.S. at 316 n.7 (“The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.” (quoting *Metropolis Theatre Co. v. Chicago*, 288 U.S. 61, 69–70 (1913))).

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The Court finds that Plaintiffs have failed to plead sufficient facts to state a plausible equal protection claim with respect to each distinction. The Court agrees with Defendants that each distinction survives a rational basis review. First, distinguishing between child development facility employees and other child-care givers, like nannies and babysitters, makes sense. The Court agrees with Defendants that these other caregivers have a different set of demands on their time, usually care for smaller numbers of children, and are generally individually selected by parents. *See* Defs.’ Reply at 10–11. It is completely rational to exempt more informal childcare from the degree and licensure requirements precisely because they are more informal. It would also be rational for OSSE to conclude that the other types of caregivers perform work that is different in kind from the caregivers covered by the regulations. Plaintiffs fail to address this conceivably rational basis for the distinction. Instead, Plaintiffs dismiss the potential differences between different types of caregivers and argue that “child-care providers are performing the same work, wherever they happen to work.” Pls.’ Opp’n at 26. This is no answer, though, to the plausible basis for the distinction offered by Defendants.

Second, treating day cares attached to full-time elementary or secondary schools differently from day cares attached to institutions that do not offer full-time educational services also has a conceivably rational basis. As Defendants note, “OSSE could reasonably think that day cares operated by and co-located with full-time elementary or secondary schools are

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already more likely than other institutions to have staff with relevant college degrees, and that there is thus less need to impose a degree requirement on them.” Defs.’ Mot. at 33. Plaintiffs do not address this potential basis for the distinction. Instead, Plaintiffs argue that this distinction makes the regulations “so underinclusive as to be irrational.” Pls.’ Opp’n at 26.⁶ The Court disagrees. The explanation offered by Defendants represents a potential rational basis for the distinction. OSSE could reasonably decide to target specific childcare institutions that potentially have more underqualified staff. Plaintiffs must do more than merely assert that the distinction is irrational. At this stage, Plaintiffs must show facts that establish there is no conceivable rational basis for the proffered distinction. Although Plaintiffs obviously disagree with this distinction in the regulations, they have failed to overcome the deferential rational basis review.

⁶ Plaintiffs cite *Williams v. Vermont* to suggest that this distinction is similar to a statute that granted car-tax credits to state residents depending on their residency at the time the car was purchased. *See id.* (citing *Williams v. Vermont*, 472 U.S. 14, 23 (1985)). The Court found “no relevant difference between motor vehicle registrants who purchased their cars out-of-state while they were Vermont residents and those who only came to Vermont after buying a car elsewhere.” *Williams*, 472 U.S. at 27. Here, there is a conceivably plausible difference between the two categories offered by Defendants such that disparate treatment makes sense. Day care facilities without attached full-time elementary or secondary schools may be more likely to have underqualified caregivers. OSSE could rationally aim to address that potential deficiency.

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Third, the distinction between teachers who already have a college degree and those who do not also has a plausible rational basis. Plaintiffs suggest that because it may be possible for a teacher without a college degree to obtain the requisite associate's degree with fewer than twenty-four credit hours in early-childhood education classes, it is irrational to require twenty-four credit hours for those who already possess a college degree in some other subject. Pls.' Opp'n at 24–25. The Court agrees with Defendants, who argue that OSSE had to set the bar somewhere and selecting twenty-four credit hours “as an approximation of a major’s worth of study easily passes constitutional muster.” Defs.’ Mot. at 35; *see also Beach Commc’ns*, 508 U.S. at 316 n.7 (“The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.” (quoting *Metropolis Theatre*, 288 U.S. at 69–70)). Choosing to set the bar at twenty-four credit hours represents a rational, while perhaps rough, estimate for the appropriate amount of early childhood education for teachers in child development facilities. Plaintiffs complain that the regulations will allow some teachers to comply with the degree requirements while taking fewer early childhood education classes than others who already have college degrees. Pls.’ Opp’n at 25. But this argument fails to account for the fact that teachers without a college degree will be required to take far more courses to obtain their associate’s degree, *see Am. Compl. ¶ 175* (estimating sixty credit hours for Ms. Sanchez), than teachers who already have college degrees. OSSE could have rationally added the additional classes

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required for an associate’s degree to its calculus for determining the appropriate amount of education. But even crediting Plaintiffs’ argument, OSSE did not have to review all possible associate’s degree programs to ensure logical coherence because it “had to draw the line somewhere” and “must be allowed leeway to approach a perceived problem incrementally.” *Beach Commc’ns*, 508 U.S. at 316.

At bottom, Plaintiffs failed to overcome the “strong presumption of validity” that rational basis review demands.⁷ *Beach Commc’ns*, 508 U.S. at 314. As the Supreme Court has stated:

Defining the class of persons subject to a regulatory requirement—much like classifying governmental beneficiaries—“inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.”

⁷ Plaintiffs cite a number of cases from other jurisdictions to support their claim that equal protection challenges to occupational-licensing requirements can survive a motion to dismiss. *See* Pls.’ Opp’n at 23. Plaintiffs do not argue, and the Court does not find, that these cases bear any factual resemblance to this case. The Court agrees that it is not impossible for an equal protection challenge to survive rational basis review. Plaintiffs’ challenge, however, does not. *See Hettinga*, 677 F.3d at 478–80 (affirming district court’s dismissal based on application of rational basis review).

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Id. at 315–16 (quoting *Fritz*, 449 U.S. at 179 (internal quotation marks and citation omitted)); *see also Hettinga*, 677 F.3d at 479 (“Although the classification might indeed be unfair to [plaintiffs], mere disparity of treatment is not sufficient to state an equal protection violation.”). Plaintiffs have failed to plead sufficient facts to “establish that there is not ‘any reasonable conceivable state of facts that could provide a rational basis for the classification.’” *Hettinga*, 677 F.3d at 479 (quoting *Dumaguin*, 28 F.3d at 1222).⁸ As such, Plaintiffs have failed to state a plausible equal protection claim.

V. CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss (ECF No. 33) is **GRANTED**. Plaintiffs’ motion for discovery notwithstanding the motion to dismiss (ECF No. 32) is **DENIED AS MOOT**. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: January 13, 2021

RUDOLPH CONTRERAS
United States District Judge

⁸ The Court’s deferential rational basis review passes no judgment on the wisdom of the challenged regulation’s degree requirement, makes no assessment of whether there are actual benefits to be derived therefrom, and offers no evaluation of the real burdens it imposes on workers that may lose their jobs or on parents who are likely to pay more for childcare as a result.

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**CODE OF THE DISTRICT OF COLUMBIA
SUBCHAPTER II.
CHILD DEVELOPMENT
FACILITIES REGULATION**

**DC ST § 7-2031
Definitions**

For the purposes of this subchapter, the term:

- (1) “Care giver” means an individual whose duties include direct care, supervision, and guidance of infants or children in a child development facility.
- (2) “Child” or “children” means an individual or individuals from 2 years to 15 years of age.
- (3) “Child development facility” means a center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. “Child development facility” does not include a public or private elementary or secondary school engaged in legally required educational and related functions or a pre-kindergarten education program licensed pursuant to the Pre-k Act of 2008.
- (3A) (A) “Drinking water source” means a source of water from which a person can reasonably be expected to consume or cook with the water originating from the source.

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(B) “Drinking water source” shall not include a source of water for which a child development facility posts a conspicuous sign pursuant to §7-2051(b)(3).

(3B) “Formal parent-led play cooperative” means:

(A) A group of parents, step-parents, or legal guardians of participating children, including a group that has organized as a nonprofit organization, who have agreed to supervise the participating children during group meetings; and:

(B) The group:

(i) Meets at predetermined times for fewer than 4 hours per day;

(ii) Meets at locations other than a home of one of the parents, step-parents, or legal guardians in the group;

(iii) Does not require payment by parents, step-parents, or legal guardians, other than to cover the costs of administering the group, including rent, insurance, equipment, and activities;

(iv) Requires, as a prerequisite to joining the group, that a parent, step-parent, or legal guardian of each participating child in the group volunteer a minimum number of hours to supervise the participating children during meetings, regardless of whether the group

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requires parents, step-parents, or legal guardians of every child to be present at every meeting;

(v) Notifies, upon registration with the group, the parents, step-parents, and legal guardians of each participating child in the group that the group is not a child development facility licensed pursuant to this subchapter;

(vi) Does not employ any individual to supervise participating children on behalf of parents other than to facilitate activities while parents, step-parents, or legal guardians supervise the participating children; and

(vii) Has written policies and procedures for the prevention of the spread of infectious diseases, response to and prevention of food allergies, emergency preparedness, and handling of health information.

(4) "Infant" means an individual younger than 12 months of age.

(4A) "Informal parent-supervised neighborhood play groups" means:

(A) A group of parents, step-parents, or legal guardians of participating children who gather together to allow children to play together; and

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(B) The group does not meet the definition of a formal parent-led play cooperative as defined in paragraph (3B) of this section.

(5) "Licensee" means a child development facility that is licensed pursuant to this subchapter.

(6) "Person" means any individual, firm, partnership, company, corporation, trustee, or association.

(6A) "Pre-k Act of 2008" means Chapter 2A of Title 38 [§ 38-271.01 et seq.].

(7) "Related person" means any legal guardian or any of the following relationships established by marriage, adoption, or blood to the 5th degree:

- (A) Parent or step-parent;
- (B) Grandparent;
- (C) Brother, sister, step-sister, or step-brother;
- (D) Uncle or aunt; or
- (E) Niece or nephew.

(7A) "Remediation steps" means, at a minimum, actions to:

(A) Decrease the elevated lead concentration in a drinking water source to 5 parts per billion or less; or

(B) Preclude people from consuming or cooking with water from a drinking water source.

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(8) "Toddler" means an individual older than 12 months but less than 24 months of age.

DC ST § 7-2032
Applicability and scope

(a) This subchapter shall apply to every child development facility and care giver in the District of Columbia.

(b) Unless exempted by this subchapter or the laws of other jurisdictions, the provisions and requirements in this subchapter shall also apply to all child development facilities operated by the District government outside the District of Columbia.

DC ST § 7-2033
Exemptions

The provisions of this subchapter shall not apply to the following:

(1) Occasional babysitting in a babysitter's home for the children of one family;

(2) Informal parent-supervised neighborhood play groups;

(2A) Formal parent-led play cooperatives;

(3) Care furnished in places of worship during religious services;

(4) Care given by an individual who is related to the child, infant, or toddler;

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- (5) Child development facilities operated by the federal government on federal government property; however, a private child care provider utilizing space in or on federal government property is not exempt unless federal law specifically exempts the facility from the District's regulatory authority; or
- (6) Pre-kindergarten education programs licensed pursuant to Chapter 2A of Title 38.

DC ST § 7-2033.01
Transfers of personnel, property, and funds
from Department of Health to Office of the
State Superintendent of Education;
continuation.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Health that support the functions related to the licensure of child-care programs in the Early Care and Education Administration and the Early Intervention Program shall be transferred to the Office of the State Superintendent of Education, established by § 38-2601, within 60 days of July 18, 2008.

(b) All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements of the Department of Health, the Department of Human Services, the Board of Education, or the District of Columbia Public Schools relating to the functions transferred to the Office of the State Superintendent of Education pursuant to subsection (a) of this section shall

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remain in effect according to their terms until lawfully amended, repealed, or modified.

DC ST § 7-2034
License required

(a) Except as otherwise provided in this subchapter, no person shall, either directly or indirectly, operate a child development facility in the District without first having obtained a license to do so.

(b) An applicant for a license to operate a child development facility shall establish to the satisfaction of the Mayor, that the facility meets all requirements set forth in this subchapter and rules adopted pursuant to this subchapter.

(c) An applicant for a license shall:

(1) Submit an application to the Mayor on a form required and provided by the Mayor;

(2) Submit supporting documentation required by the Mayor; and

(3) Pay the applicable fee established by the Mayor, except that no license fee shall be required of any child development facility operated by the District government.

(d) The license shall be valid for a period of time to be determined by the Mayor and only for the premises and persons named as applicants in the application. Any change in ownership of a licensee owned by a

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person or in the legal or beneficial ownership of a percentage of stock established by rule of a corporate licensee shall require relicensure.

(e) The Mayor may authorize the issuance of provisional and restricted licenses under specific circumstances and **criteria to be established by rule**.

DC ST § 7-2035
Licenses issued pursuant
to prior law

Except as otherwise provided by this subchapter, any child development facility licensed pursuant to the Child Development Facilities Regulation, enacted December 14, 1974 (Reg. 74-34; 29 DCMR § 300 et seq.) (“Child Development Facilities Regulation”), as amended, shall be considered licensed pursuant to this subchapter and shall be subject to renewal requirements established pursuant to this subchapter.

DC ST § 7-2036
Powers and duties of the Mayor

(a) (1) The Mayor shall promulgate all rules necessary to implement the provisions of this subchapter, including the following:

(A) Minimum standards of operation of a child development facility concerning staff qualification, requirements and training, facility size, staff-child ratios and group size, program design and equipment requirements, safety and health standards, care for children with special needs,

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nutrition standards, and record keeping requirements;

(B) Administrative procedures for hearings consistent with the requirements of § 2-509, unless otherwise provided in this subchapter;

(C) Allowance for a child development facility to operate on a 24-hour basis so long as no child, infant, or toddler will be under the care of the child development facility for more than 18 consecutive hours in a 24-hour period, or appropriate hours as provided by rule; and

(D) The establishment of a fee schedule to recover the costs of regulating child development facilities pursuant to this subchapter.

(2) The rules required to be promulgated pursuant to this section shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

(b) The Mayor may conduct investigations and inspections needed to ensure compliance with this subchapter. In this regard, the Mayor may administer oaths, examine witnesses, and issue subpoenas to compel attendance and testimony of witnesses and the production of books, records, and other documents needed to enforce this subchapter. In case of contumacy or refusal to obey a subpoena, the Superior Court of the

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District of Columbia, at the request of the Mayor, shall issue an order requiring the contumacious person to appear and testify or produce books, papers, or other evidence bearing on the hearing. Failure to obey the court's order shall be punishable as contempt of court.

(c) The Mayor shall maintain and make available to the public information concerning:

- (1) The application, licensure, and renewal requirements and procedures; and
- (2) An official register of currently licensed child development facilities.

DC ST § 7-2036.01
Child Development Facilities Fund

(a) There is established as a special fund the Child Development Facilities Fund ("Fund"), which shall be administered by the Office of the State Superintendent of Education in accordance with subsection (c) of this section.

(b) Revenue from all payments, fees, and fines collected pursuant to this subchapter shall be deposited in the Fund.

(c) Money in the Fund shall be used for the following purposes:

- (1) To fund activities regulating child development facilities, including the enforcement and

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monitoring activities concerning the licensure of child development facilities, pursuant to this subchapter; and

(2) Appropriate overhead and administrative expenses related to the Fund.

(d)(1) The money deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

DC ST § 7-2037
Variances

An applicant operating a child development facility prior to July 1, 1975, may be granted a variance from the physical or structural requirements of any rule adopted pursuant to this subchapter upon a determination by the Mayor that full compliance would result in exceptional and undue hardship. Any variance shall be granted in accordance with procedures established by rule.

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DC ST § 7-2038
License renewal

(a) A license shall be renewed in accordance with rules established pursuant to this subchapter, unless there is a pending disciplinary action by the Mayor.

(b) An application for renewal of a license shall be submitted to the Mayor no later than 90 days before expiration of the license on a form provided by the Mayor with the appropriate renewal fee. An application for renewal fewer than 90 days after expiration, shall be renewed in accordance with renewal requirements established by rule, including the payment of the renewal fee and any late penalty.

(c) A child development facility holding a valid license at the time of application for renewal shall continue to operate as licensed until the Mayor acts on the renewal application.

DC ST § 7-2039
Denial of a license

The Mayor may, subject to the right to a hearing, deny an initial or renewal license to an applicant who fails to establish that the applicant meets the requirements for licensure established by this subchapter and rules issued pursuant to this subchapter.

*Appendix C***DC ST § 7-2040**
Revocation, suspension, denial
of license

The Mayor may, subject to the right to a hearing, refuse to issue, revoke, suspend, or deny renewal of a license to operate a child development facility to a person who is found to have:

- (1) Failed to comply with the provisions of this subchapter and any rules or regulations promulgated pursuant to this subchapter;
- (2) Failed to comply with other federal and District laws applicable to child development facilities;
- (3) Committed, aided, abetted, or permitted to be committed any act of dishonesty, fraud, gross negligence, abuse, assault, battery, or other illegal acts related to the operation of the facility; or
- (4) Been convicted of a crime involving moral turpitude.

DC ST § 7-2041
Summary suspension

- (a) If, after an investigation, the Mayor determines that a licensee has failed to comply with the provisions of this subchapter or any rules promulgated pursuant to this subchapter in such a manner as to present an imminent danger to the health, safety, and welfare of children, infants, toddlers, or

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the general public, the Mayor may summarily suspend or restrict the license prior to a hearing.

(b) The Mayor must provide the licensee with written notice of the summary suspension initiated pursuant to subsection (a) of this section, the reason for the suspension, and the right to request a hearing.

(c) The licensee shall have 5 days after service of the notice of the summary suspension in which to request a hearing to challenge the summary suspension. A hearing shall be held within 5 business days of a timely request and the Mayor shall issue a decision within 5 business days after closing the record.

DC ST § 7-2042
Cease and desist orders

(a) If, after investigation, the Mayor determines that a person has violated any provision of this subchapter or any rule issued pursuant to this subchapter, and the violation presents an imminent danger to the public, the Mayor may issue a written order directing the person to cease and desist from the violation.

(b) Within 5 days of service of the cease and desist order, the person shall request an expedited hearing on the violation. If no request for a hearing is made within the 5-day period, the cease and desist order shall be final. Within 5 business days of a timely request for an expedited hearing, the Mayor shall conduct a hearing.

*Appendix C***DC ST § 7-2043**
Right of entry and inspection

To ensure compliance with the provisions of this subchapter and rules adopted pursuant to this subchapter, the Mayor, or any duly authorized designee, shall be permitted at reasonable times to conduct an inspection of any child development facility licensed pursuant to this subchapter or for which a license application has been filed.

DC ST § 7-2044
Hearings

(a) Exception as provided in § 7-2041, before the Mayor denies an application, suspends, revokes, or restricts a license, or imposes a civil fine, the Mayor shall give the person notice of the contemplated action and an opportunity for a hearing. The Mayor shall send all notices by certified mail. Notice of a scheduled hearing shall be sent by certified mail at least 20 days before the hearing date except when an expedited hearing has been requested. The Mayor may request all parties to participate in a settlement conference prior to a hearing and may enter into a negotiated settlement agreement or consent decree in lieu of a hearing.

(b) The Mayor may delegate the authority to conduct a hearing and issue a final decision to an administrative law judge or an attorney examiner in accordance with rules issued pursuant to this subchapter.

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DC ST § 7-2045
Judicial review

A person aggrieved by a final decision of the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to § 2-510.

DC ST § 7-2046
Criminal and civil penalties

- (a) Any person who violates any provision of this subchapter shall, upon conviction, be subject to imprisonment not to exceed 6 months or a fine not to exceed \$300, or both. Each unlawful act shall constitute a separate violation of this subchapter.
- (b) Any person who has been previously convicted pursuant to this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year or a fine not to exceed \$5,000, or both.

(c) Civil fines and penalties may be imposed as alternative sanctions for any violations of the provisions of this subchapter or rules issued under the authority of this subchapter pursuant to Chapter 18 of Title 2 (“Civil Infractions Act”). The adjudication of any infraction issued pursuant to the Civil Infractions Act shall be pursuant to of the Civil Infractions Act.

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**DC ST § 7-2047
Prosecutions**

(a) Prosecutions of violations of this subchapter shall be brought by the Corporation Counsel in the name of the District of Columbia.

(b) In prosecutions initiated pursuant to this subchapter, a child development facility claiming an exemption from a licensing requirement of this subchapter shall have the burden of proving entitlement to the exemption.

**DC ST § 7-2048
Injunctions**

(a) The Corporation Counsel may bring an action in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any violation of this subchapter.

(b) Remedies established by this section shall be in addition to criminal sanctions, civil sanctions, or disciplinary action initiated by the Mayor.

(c) In any proceeding brought pursuant to this section, it shall not be necessary to prove that any person has been injured by the violation alleged.

**DC ST § 7-2049
Repeal of existing regulations**

The Child Development Facilities Regulation shall remain in effect until superseded by rules issued by the

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Mayor. Upon the effective date of rules promulgated pursuant to this subchapter, the Child Development Facilities Regulation shall be deemed repealed.

DC ST § 7-2050
Pending actions and proceedings;
existing orders

- (a) No judicial or administrative proceeding commenced by or against any child development facility, or officer or employee of a child development facility in his or her official capacity, shall abate by reason of the taking effect of this subchapter; but the action or proceeding shall be continued with substitution as to parties and officers or agencies as are appropriate.
- (b) All decisions issued pursuant to the Child Development Facilities Regulation shall continue in effect until modified, rescinded, or superseded by rules or regulation issued pursuant to this subchapter.

DC ST § 7-2051
Prevention of lead in drinking
water in child development
facilities

- (a) Within 120 days of September 23, 2017, the Department of Energy and Environment ("DOEE") shall provide a list of approved contractors to all child development facilities, from which child development facilities shall select a contractor to assist in meeting the requirements of subsection (b) of this section.

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(b) By September 31, 2019, each licensed child development facility shall:

(1) Locate all drinking water sources at the child development facility;

(2) Install a filter that reduces lead in drinking water on each drinking water source in the child development facility and maintain the filters, at a minimum, in a manner consistent with the manufacturer's recommendations. Filters or all of the filter's component parts shall be certified for lead reduction to the National Sanitation Foundation ("NSF")/American National Standards Institute ("ANSI") Standard 53 for Health Effects or NSF/ANSI Standard 61 for Health Effects;

(3) Post a conspicuous sign near each water source at the child development facility that is not a drinking water source, which includes an image that clearly communicates that the water source should not be used for cooking, when applicable, or consumed;

(4) Test all drinking water sources at the child development facility for lead annually;

(5) If a test conducted pursuant to paragraph (4) of this subsection shows a lead concentration over 5 parts per billion:

(A) Shut off the drinking water source as soon as possible but no later than 24 hours after receiving the test result and keep the

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drinking water source shut off until a subsequent test shows that the lead concentration level is not over 5 parts per billion;

(B) Determine, in writing, which remediation steps should be implemented to address the elevated lead concentration level;

(C) Send the test result and remediation steps to parents or guardians of children at the child development facility through email or written communication within 5 business days of receiving the test result; and

(D) Notify parents and guardians of children at the child development facility within 5 business days of the completion of the remediation steps required by subparagraph (B) of this paragraph.

(c)(1) Any contractor selected pursuant to subsection (a) of this section shall, at times and in a manner to be determined by the Mayor, provide the child development facility that selected the contractor with written proof that the contractor's service complied with the requirements of this section.

(2) A child development facility shall, at times and in a manner to be determined by the Mayor, provide proof of compliance with this section to DOEE.

(d) After a child development facility provides proof of compliance to DOEE pursuant to subsection

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(c)(2) of this section and DOEE determines that the child development facility has complied with all the requirements of this section, DOEE shall:

(1) Compensate the contractor selected pursuant to subsection (a) of this section, pursuant to rules issued pursuant to subsection (i) of this section; and

(2) Notify the Office of the State Superintendent of Education ("OSSE") that the child development facility has complied with the requirements of this section.

(e)(1) If a contractor provides a false or misleading proof of compliance under subsection (c)(1) of this section, the Mayor shall, for a 5-year period:

(A) Remove the contractor from all DOEE-approved contractor lists;

(B) Prohibit the contractor from participating in the activities described in this section; and

(C) Prohibit the contractor from conducting business with the District government.

(2) The penalty provided in this subsection shall be in addition to any other penalty provided by law.

(3) A person aggrieved by an action of the Mayor taken pursuant to this subsection may

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appeal the action of the Mayor to the Office of Administrative Hearings pursuant to § 2-1831.03(b-14).

(f)(1) The Mayor may, at any reasonable time and with reasonable notice, and upon the presentation of appropriate credentials to, and with the consent of, the owner, operator, or person in charge:

(A) Enter a child development facility to determine compliance with this section; and

(B) Inspect and copy any record, report, or other document or information related to compliance with this section.

(2) If the Mayor is denied access to enter a child development facility or to inspect and copy records pursuant to paragraph (1) of this subsection, the Mayor may apply to the Superior Court of the District of Columbia for a search warrant.

(g) OSSE, in consultation with DOEE, shall provide to the Mayor, the Council, and the Healthy Schools and Youth Commission, no later than June 30 of each year, a report on child development facility compliance with this section.

(h) Nothing in this subsection is intended to, or does, create a private right of action against any person or entity based upon compliance or noncompliance with its provisions. No person or entity may assert any claim or right as a beneficiary or protected class under this subsection in any civil, criminal, or

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administrative action against the District of Columbia.

(i) Within 120 days after September 23, 2017, the Mayor, in consultation with OSSE, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section, including rules by which DOEE shall compensate contractors for services provided under subsection (b) of this section.

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**DISTRICT OF COLUMBIA
MUNICIPAL REGULATIONS
CHILD DEVELOPMENT
FACILITIES; LICENSING**

**5-A DCMR § 100
AUTHORITY AND PURPOSE**

100.1 In accordance with Section 7 of the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2036 (2012 Repl. & 2015 Supp.)) (“Facilities Act”), the Office of the State Superintendent of Education (“OSSE”) shall administer and enforce this chapter.

100.2 The purposes of this chapter include the following:

- (a) Protecting and promoting the health, safety, welfare and positive development of children who receive services in licensed Child Development Facilities;
- (b) Defining the general procedures and requirements to obtain and maintain a license to operate a Child Development Facility; and
- (c) Setting forth the minimum standards applicable to the District's licensed Child Development Facilities.

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5-A DCMR § 101
APPLICABILITY

101.1 A Child Development Facility that is licensed (“Licensee”), required to be licensed, or applying for a license shall comply with the requirements of this chapter, and with all applicable federal and District of Columbia laws and regulations.

101.2 Unless specifically exempted, the provisions of this chapter shall apply to a Child Development Facility that is licensed, required to be licensed, or applying for a license under the Facilities Act and this chapter, and their respective staff.

101.3 The phrase “Child Development Facility” (“Facility”), as defined in this chapter, includes any person or persons, or entity or organization, whether organized formally or informally, unless specifically exempted:

- (a) That provides care, education, and other services, supervision, and guidance for more than two (2) infants, toddlers, and children that are not related, on a regular basis;
- (b) Includes the administration, program, and premises of a Child Development Facility, other parts of the building housing the Facility, and adjoining grounds over which the administrator has direct control; and
- (c) Includes:
 - (1) A Child Development Center (“Center”);

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- (2) A Child Development Home;
- (3) An Expanded Child Development Home (“Expanded Home”); and
- (4) An Out-of-School-Time (OST) Program.

101.4 Except as provided in Subsection 101.5, no person shall either directly or indirectly operate a Facility, for any purpose, until a license has been issued to that person stating that the use complies with the provisions of this chapter and all applicable federal and local laws and regulations.

101.5 The following child development services shall be exempt from obtaining a license to operate a Facility:

- (a) Occasional babysitting in a babysitter's home or a child's home for the children of one (1) family;
- (b) Care provided in a child's home by a caregiver paid for by a child's family;
- (c) Care provided for more than one (1) child in a Nanny-Share, as defined in this chapter;
- (d) Informal or occasional parent-supervised play groups;
- (e) Adult gyms or clubs that provide temporary babysitting as a benefit in order for members to utilize services;
- (f) Adult education programs that provide child care services while parent(s) are on the same

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campus as the child attending a class or education program for a temporary period of time;

- (g) Child-centered businesses that solely provide sessions, classes or activities including, but not limited to, tutoring, music, dance, sport, or art, while parent(s) or guardian(s) remain on the business' premises;
- (h) Care provided in places of worship during religious services;
- (i) Care provided by a related person, as defined in this chapter;
- (j) Facilities operated by the Federal Government on Federal Government property, except that a private entity utilizing space in or on Federal government property is not exempt unless Federal law specifically exempts the Facility from the District of Columbia's regulatory authority;
- (k) District of Columbia public school or public charter school providing education services to children in grades pre-K-3 through twelfth (12th) grade during a full school day;
- (l) A private school providing education services to children in grades pre-K-through twelfth (12th) grade during the a full school day; and
- (m) A community based organization providing only pre-K education services to pre-K age children pursuant to the Pre-k Act and funded by OSSE;

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- (n) Facilities that provide only before school care, only after school care, or only summer camp to school age children; and
- (o) Facilities otherwise exempted by law.

101.6 A Facility that has entered into a Child Care Subsidy Provider Agreement with the District of Columbia shall comply with the terms of such Provider Agreement in addition to the provisions of this chapter.

**5-A DCMR § 102
GENERAL LICENSE REQUIREMENTS**

102.1 Except as otherwise provided in this chapter, no person shall either directly or indirectly operate a Child Development Facility without first obtaining a license issued by OSSE, or its successor agency.

102.2 A license shall be issued only to a Facility for which an application is made.

102.3 A license shall be for the address of the Facility's actual site.

102.4 OSSE shall issue a license after receipt of a complete application, if OSSE determines that the application establishes, to OSSE's satisfaction, that the Facility will be operated in compliance with the provisions of this chapter and all applicable federal and local laws and regulations.

102.5 If a conflict exists between a general requirement and a specific requirement of this chapter applicable to

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a particular classification or size of Facility, the specific requirement shall apply.

102.6 OSSE shall issue the following types of licenses:

- (a) **Initial License.** An initial license may be issued by OSSE to an applicant who is not currently licensed;
- (b) **Renewal License.** A renewal license may be issued by OSSE to a current Licensee demonstrating substantial compliance with this chapter that applies for renewal before the expiration of the current license; or
- (c) **Restricted License.** A restricted license may be issued by OSSE as an alternative to suspending or revoking an existing license when a Facility has one or more deficiencies.

102.7 The initial license and each renewal license may be valid for a three (3) year period beginning on the date of issuance.

102.8 Each Facility licensed pursuant to this chapter that accepts public funding shall participate in OSSE's Quality Rating and Improvement System or any successor tiered-quality rating system.

102.9 Each Facility licensed pursuant to this chapter that does not accept public funding may participate in OSSE's Quality Rating and Improvement System, or any successor tiered-quality rating system.

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102.10 Each license shall state:

- (a) The name of the License;
- (b) The name of the parent entity (if any) of the License or person(s) with ownership interests in the Facility;
- (c) The classification of the Facility as Center, Home or Expanded Home;
- (d) The address of the Facility
- (e) The maximum allowable number of children who may be cared at the Facility, including the maximum capacity for each age category of children served at the Facility;
- (f) The limitations, if any, on services authorized; and
- (g) The expiration date of the license.

102.11 A Licensee shall display the original license issued pursuant to these regulations, at all times in a conspicuous place readily visible and accessible to the public at the premise(s) named on the license.

102.12 A Licensee shall comply with the provisions stated on its license unless otherwise authorized under this chapter.

102.13 A separate license shall be required for each building functioning as a Facility, even if on the same premise(s).

102.14 A license shall remain the property of OSSE.

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102.15 A license is not transferable, assignable, or subject to sale.

102.16 A license shall be void, and a License shall surrender the license to OSSE immediately upon the occurrence of any of the following:

- (a) A License closes the Facility permanently;
- (b) The license is revoked;
- (c) The license is suspended;
- (d) The license expires and the application for a renewal license is denied; or
- (e) The license expires and the Facility has not applied for a renewal license.

5-A DCMR § 103
APPLICATION FOR INITIAL LICENSE

103.1 An applicant for an initial license to operate a Facility under this chapter shall initiate the application in the name of the person or persons or legal entity or entities with ownership interests and who are responsible for operation of the Facility.

103.2 Prior to submitting an application for an initial license to operate a Facility under this chapter, the applicant shall complete a Child Development Facility licensing orientation facilitated by or on behalf of OSSE. If an applicant submits an application prior to completing the required orientation, OSSE may suspend processing the application until this requirement is met.

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103.3 An applicant for an initial license to operate a Facility under this chapter shall submit a complete application to OSSE.

103.4 OSSE shall consider that an application is complete when the applicable fees, imposed pursuant to Section 108 (Fees) of these regulations, all required documentation listed on the application form issued by OSSE, and all information requested on the application form, are provided.

103.5 In addition to the required documentation listed on the application form issued by OSSE, each applicant shall obtain, and provide OSSE with the original version of the following:

- (a) A Certificate of Occupancy, Home Occupation Permit, or other succeeding form of equivalent proof that the premise(s) comply with all applicable Federal and District of Columbia building, fire-safety, construction, and zoning laws, regulations and codes and that the premise(s) are fit and suitable for the operation of a Child Development Facility, issued by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”);
- (b) A fire safety inspection certification or other equivalent proof that the premise(s) comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes, issued by the District of Columbia Department of Fire and Emergency Medical Services (“FEMS”) not more than ninety (90) days old;

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- (c) A certification or clearance report issued by a D.C. Department of Energy and Environment (“DOEE”) certified lead- based paint inspector, risk assessor, or dust sampling technician confirming that the Facility does not contain any lead-based paint hazards, issued no more than thirty (30) days prior to the date of application;
- (c-1) Proof of compliance with section 21a of the Facilities Act;
- (d) [RESERVED];
- (e) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Office of Tax and Revenue within thirty (30) days of the date the application is submitted;
- (f) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:
 - (1) Commercial General Liability;
 - (2) Umbrella “Follow Form” Liability;
 - (3) Sexual Abuse & Molestation Liability; and
 - (4) Vehicle liability covering every vehicle that will be used to provide transportation services to children at the Facility; and

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(g) A current, valid, and notarized building use agreement that identifies a contingency location that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:

- (1) Contact information for the owner of the building;
- (2) The purpose of the use;
- (3) General guideline and requirements;
- (4) Proof of appropriate insurance coverage;
- (5) Proof of valid certificate of occupancy;
- (6) Proof of updated safety inspections that are required specific for a Child Development Facility;
- (7) User responsibilities;
- (8) User restrictions; and
- (9) Facility usage fee, if any.

103.6 An application for an initial license shall include a signed declaration by the applicant, or by a person authorized to submit the application on the applicant's behalf if the applicant is not an individual, that the contents of the application and the information provided with it are true, accurate, and complete.

103.7 Upon receipt of a complete application for an initial license, and prior to the issuance of the license, OSSE shall review the application and conduct an on-

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site inspection to determine whether the Facility is in compliance with the requirements in this chapter.

103.8 If, in the course of the on-site inspection for an initial license, OSSE determines that a Facility is out of compliance with any requirement of this chapter, or that the application is deficient in any way, OSSE may issue a Statement of Deficiency(ies).

103.9 After receipt of notification from the applicant that every stated deficiency has been corrected, OSSE shall conduct a follow-up application review and inspection or inspections as needed to determine whether the Facility is in compliance with this chapter.

103.10 OSSE may deny the application for an initial license if:

- (a) An applicant fails to provide a complete application within ninety (90) days of the initial submission;
- (b) An applicant demonstrates inability to abate the identified deficiencies under this chapter within the required timeframe specified by OSSE, which shall not to exceed ninety (90) days;
- (c) An applicant demonstrates inability to comply with this chapter within the required timeframe specified by OSSE, which shall not to exceed one hundred and eighty (180) days;
- (d) An applicant or, if the applicant is a business entity, any owner, officer, or employee of the applicant, who the applicant plans to assign to work at the

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Facility is registered, or is required to be registered, on a State child protection registry or repository; or

(e) The provisions of this chapter are not met.

5-A DCMR § 104
APPLICATION FOR RENEWAL LICENSE

104.1 The application for a renewal license shall be submitted no later than ninety (90) days before the expiration date of the existing license.

104.2 The existing license shall remain in effect until OSSE makes a final determination with regard to the application for a renewal license, if a Licensee submits a timely and complete renewal license application, provided that the Licensee complies with the terms, conditions, and restrictions applicable to the license.

104.3 An applicant for a renewal license to operate a Child Development Facility under this chapter shall submit a complete application to OSSE

104.4 OSSE shall consider an application complete when the appropriate fees, pursuant to Section 108 (Fees) and all required documentation listed on the application form issued by OSSE, the documentation required by these regulations, and a fully complete application form is submitted.

104.5 In addition to the required documentation listed on the application form issued by OSSE, each applicant shall obtain:

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- (a) A fire safety inspection certification or other equivalent proof from FEMS that the premise(s) comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes, issued by FEMS;
- (a-1) Proof of compliance with section 21a of the Facilities Act;
- (b) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Department of Tax and Revenue within thirty (30) days of the date the application is submitted;
- (c) A Certificate of Immunization Compliance that the applicant reached the immunization compliance target issued by the District of Columbia Department of Health;
- (d) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:
 - (1) Commercial General Liability;
 - (2) Umbrella “Follow Form” Liability;
 - (3) Sexual Abuse & Molestation Liability; and
 - (4) Vehicle liability covering every vehicle that will be used to provide transportation services to children at the Facility; and

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(e) A current, valid, and notarized building use agreement that identifies a contingency location that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:

- (1) Contact information for the owner of the building;
- (2) The purpose of the use;
- (3) General guideline and requirements;
- (4) Proof of appropriate insurance coverage;
- (5) Proof of valid certificate of occupancy;
- (6) Proof of updated health and safety inspections specific to a Facility;
- (7) User responsibilities;
- (8) User restrictions; and
- (9) Facility usage fee, if any.

104.6 An application for a renewal license shall include a signed declaration by the applicant, or by a person authorized to submit the application on the applicant's behalf if the applicant is not an individual, that the contents of the application and the information provided with it are true, accurate, and complete.

104.7 If a Licensee submits an incomplete or late application, the Licensee may pay the appropriate penalty fee to extend the current license until the application for the renewal license is approved or denied by OSSE, but for not longer than one hundred and eighty (180) days. If

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the application for a renewal license is still incomplete after one hundred and eighty (180) days, the current license will be deemed to have expired and the renewal application shall be deemed denied, effective on the first day after the expiration of this one hundred and eighty day (180) period.

104.8 If the Licensee submits an incomplete or late application, OSSE may, in its discretion, waive the penalty fee if the Licensee demonstrates to OSSE's satisfaction, in writing:

- (a) Evidence of good faith effort to submit a complete application for a renewal license on time; and
- (b) Evidence of delay or hardship for reasons not within the Facility's control.

104.9 Upon receipt of a complete application for a renewal license, and prior to the issuance of the renewal license, OSSE may conduct an on-site inspection to determine whether the Facility is in compliance with this chapter.

104.10 If, in the course of the on-site inspection for a renewal license, or review of an application for license renewal, OSSE determines that an existing Licensee is out of compliance with any requirement of this chapter, OSSE may issue a Statement of Deficiencies.

104.11 After receipt of notification from the existing Licensee that every stated deficiency has been corrected, OSSE shall conduct a follow-up inspection or inspections and, where appropriate, review of the application or other materials, to determine whether the Facility is in

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compliance with applicable laws and the regulations of this chapter. Nothing in this procedure shall extend the deadline by which a license be renewed in order to avoid being deemed denied.

104.12 OSSE may deny the application for a renewal license if:

- (a) An applicant fails to abate the identified deficiencies within the required timeframe specified by OSSE;
- (b) An applicant fails to comply with this chapter within the required timeframe specified by OSSE; or
- (c) The provisions of this chapter are not met.

104.13 If a renewal license is denied, the Licensee shall not care for any children and shall cease all operations upon the expiration of the current license.

**5-A DCMR § 105
APPLICATION FOR AN
AMENDED LICENSE**

105.1 A Licensee may submit an application to amend an issued license.

105.2 An application for an amended license shall be in the form approved by OSSE and include:

- (a) Justification for the amendment;
- (b) Description of the impact of the amendment on the services offered;

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- (c) Applicable licensure fee required in Section 108 (Fees); and
- (d) Any other information OSSE may reasonably require.

105.3 An application for an amended license shall be subject to the same review and requirements as an application for an initial or renewal license, including an on-site inspection if OSSE determines it would be necessary or useful.

**5-A DCMR § 106
WAIVER**

106.1. OSSE, may waive compliance with one or more provisions in this chapter, if OSSE determines, upon clear and convincing evidence the following:

- (a) The demonstrated immediate economic impact or hardship on the Facility or staff member is sufficiently great to make immediate compliance impractical despite diligent efforts;
- (b) The Facility or staff member is meeting or exceeding the intent of the regulation for which the waiver is requested; and
- (c) The health and welfare of staff and children are not jeopardized as alternative means have been put in place that ensure the health, safety, and welfare of children and staff.

106.2 A Child Development Facility licensed (“Licensee”), required to be licensed, or applying for a license

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may apply for a waiver by submitting a written request to OSSE that shall include the following:

- (a) Name, address of the Facility, and its assigned license number;
- (b) Citation of the rule for which a waiver is being sought;
- (c) The waiver sought
- (d) Proof of immediate economic impact or hardship on the Facility or staff member;
- (e) Proof that the intent of the specific regulation shall be achieved in a manner other than that prescribed by the regulation and that the health, safety, and welfare of children in care will be preserved;
- (f) All other relevant information regarding the alleged hardship; and
- (g) Any other evidence OSSE may reasonably require.

106.3 OSSE shall respond to the request for a waiver, in writing, within thirty (30) days of receipt of the request.

106.4 Any waiver granted shall be posted at the Facility in the vicinity of the posted license and available on request.

106.5 Any waiver is issued at the discretion of OSSE and may be revoked by OSSE at any time, either upon violation of any condition attached to it, or upon the

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determination of OSSE that continuance of the waiver is no longer in the best interest of children in its care.

106.6 Noncompliance with the terms of the waiver shall void the waiver, require the site to comply with the regulation that had been waived, and may be the basis of additional enforcement action.

**5-A DCMR § 107
RESTRICTED LICENSE**

107.1 As an alternative to suspending or revoking an existing license when a Child Development Facility (“Facility”) has one (1) or more deficiencies, OSSE may issue a restricted license for no more than one (1) year, based upon the anticipated completion of corrective actions required pursuant to a Statement of Deficiencies.

107.2 OSSE may issue a restricted license for no more than thirty (30) days if a Facility needs to relocate to its identified contingency location due to a temporary closure, so long as the Facility has a current and valid building use agreement with the contingency location.

107.3 A Facility operating under a restricted license shall not enroll additional children.

107.4 A Licensee may only operate within the individualized parameters of the restricted license, as determined by OSSE, based on the Facility specific deficiencies.

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107.5 A restricted license will not be issued for deficiencies that jeopardize the health, safety, or welfare of children, staff, or the general public.

107.6 If all of the noted deficiencies are successfully addressed during the restricted license period, OSSE will reinstate the full license that had been in effect to the Licensee.

107.7 Failure to successfully complete the corrective action(s), the basis of which resulted in the restricted license, will result in automatic termination of the restricted license or suspension or revocation of the Facility's license, or both.

**5-A DCMR § 108
FEES**

108.1 Fees for a license to operate a Child Development Facility ("Facility") shall vary based on the type of Facility and the capacity of the Facility, as determined by OSSE.

108.2 Each applicant for a license to operate a Facility shall pay an application and pre-licensure inspection fee in the amount of seventy-five dollars (\$75.00).

108.3 Each applicant for an initial license to operate a Facility for a three (3) year duration shall pay the applicable fee:

*Appendix D***Initial License Fees**

	Applicable Fee
Child Development Home or <u>Expanded Home</u>	\$225.00
Child Development Center, <u>1 - 50 Children</u>	\$600.00
Child Development Center, <u>51 - 100 Children</u>	\$900.00
Child Development Center, <u>101 - 175 Children</u>	\$1,200.00
Child Development Center, Over 175 Children	\$1,500.00

108.4 Each applicant for a renewal license to operate a Facility for a three (3) year duration shall pay the applicable fee:

Renewal License Fees

	Applicable Fee
Child Development Home or <u>Expanded Home</u>	\$225.00
Child Development Center, <u>1 - 50 Children</u>	\$600.00
Child Development Center, <u>51 - 100 Children</u>	\$900.00
Child Development Center, <u>101 - 175 Children</u>	\$1,200.00
Child Development Center, Over 175 Children	\$1,500.00

108.5 A penalty fee may be imposed for a late or incomplete renewal license application, pursuant to this

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chapter, to extend a Facility's current license accordingly:

Penalty Fee for Renewal License	
	Applicable Fee
90 day Extension	\$100.00
180 day Extension	\$200.00

108.6 The following fees are also applicable to a license to operate a Facility:

Other Fees	Applicable Fee
Fee to Replace an Issued License	\$100.00
Fee to Amend an Issued License	\$100.00

108.7 OSSE may make reasonable adjustments to license fees, by rulemaking. A new fee schedule shall be published by OSSE at least thirty (30) days before any new fee is implemented.

108.8 The fees described in this section do not include the cost of any inspections to be conducted by an entity or agency other than OSSE, including but not limited to, a fire or lead based paint hazard inspection.

108.9 Fee payment is non-transferable and non-refundable.

5-A DCMR § 109
CHANGES REQUIRING A NEW LICENSE

109.1 A Child Development Facility licensed by OSSE shall submit an application for an initial license if:

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- (a) A change in ownership, as defined in this chapter, is proposed. When a change in ownership of a Facility will occur, a Licensee shall apply for a new initial license at least ninety (90) days before new ownership takes effect; and
- (b) A change in location is proposed. When a Facility permanently changes location, it is considered a new operation. A Licensee shall apply for a new initial license and a new license shall be obtained, prior to opening at the new location. A temporary closure, pursuant to Subsection 107.2, is not considered a change in location.

5-A DCMR § 110
NOTICE REQUIREMENTS FOR
CHANGES IN OPERATION

110.1 Licensee shall notify OSSE in writing no less than thirty (30) calendar days before the implementation of any of the following planned changes in operation:

- (a) Renovation or alteration of the premises that exceeds the scope of minor modification pursuant to Title 11 DCMR, and that requires the Facility to submit an application for modification to DCRA. Upon receiving a new Certificate of Occupancy but prior to serving any additional children, a Licensee shall apply for an amended license;
- (b) Change in telephone number of the Facility or a disruption of telephone service at the Facility;

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(c) A significant change in circumstances, including but not limited to:

- (1) Operation of the program;
- (2) Hours of operation;
- (3) Services provided;
- (4) Increase in capacity;
- (5) Program space usage; or
- (6) Closure of the Facility.

(d) In the case of a Child Development Home or Expanded Home, a change in the Caregiver's first or last name;

(e) In the case of a Child Development Home or Expanded Home, any new additional person(s) who intend to reside in the household and who were not listed on the application for licensure, including the new member's criminal history; or

(f) In the case of a Child Development Center, a change in the Center Director, including the new Center Director's credentials.

110.2 If a Facility undergoes any of the listed changes in operation without the change being planned in advance, the Licensee shall notify OSSE, in writing, within twenty-four (24) hours of the change occurring.

110.3 Upon notification of the change(s), OSSE may inspect the Facility to evaluate the impact of the change(s) on the provision of child development services.

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110.4 Based upon the nature of the change(s) in operation, OSSE may require that an initial or renewal application, along with the appropriate fees, be submitted.

110.5 Upon notification of the change(s), OSSE may issue an amended license, consistent with the approved change(s) and subject to the provisions of this chapter.

5-A DCMR § 111
MONITORING AND INSPECTIONS

111.1 OSSE, and any other duly authorized official of OSSE or another agency of the District of Columbia having jurisdiction over or responsibilities for a Child Development Facility (“Facility”), after presenting official credentials or identification or authority issued by the District of Columbia, shall have the right, either with or without prior notice, to enter upon and into the premises of any Facility licensed, required to be licensed or that has applied for licensure, to facilitate verification of information submitted by a Facility and to determine compliance with the Facilities Act or other applicable Federal and District of Columbia laws and regulations.

111.2 An authorized entrant shall conduct an inspection in a manner that minimizes disruption to a Facility.

111.3 The right of entry and inspection shall also extend to any premise that OSSE reasonably believes is being operated or maintained as a Facility without a

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valid license provided that entry or inspection shall be made with the permission of the individual in charge of the premises or with a warrant obtained from the D.C. Superior Court, pursuant to D.C. Official Code § 11-941, or an appropriate court of competent jurisdiction, authorizing the entry or inspection for the purpose of determining compliance with this chapter.

111.4 OSSE is authorized to issue a subpoena to inspect and investigate a Facility in order to determine compliance with the provisions of this chapter, that may be enforced in accordance with the terms of D.C. Official Code § 7-2036(b).

111.5 OSSE, and other authorized District of Columbia officials, shall have access to all records of the Facility, including but not limited to:

- (a) Child, staff, and administrative records;
- (b) Financial, tax, and inspection records;
- (c) Surveillance footage from a Facility's recording devices;
- (d) Policies and procedures; and
- (e) Any other information or documentation necessary to determine the Facility's compliance with applicable Federal and District of Columbia laws and regulations.

111.6 Each Licensee shall receive, at minimum, one (1) annual announced and one (1) annual unannounced inspection to:

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- (a) Facilitate verification of information submitted by the Licensee;
- (b) Determine compliance with the Facilities Act, or other applicable Federal and District of Columbia laws and regulations; and
- (c) Verify compliance with waiver terms, if applicable.

111.7 Annual required documents shall be updated and available for review during annual inspections.

111.8 Upon its own initiative, or upon receipt of information alleging violation(s) of any law or regulation under its jurisdiction, OSSE may conduct announced or unannounced on-site investigations or desk audits.

111.9 OSSE shall maintain and make available to the public by electronic means, a list of all of the Facilities licensed that includes the following information for each licensed Facility:

- (a) Dates of monitoring and inspection;
- (b) Results of monitoring and inspection reports;
- (c) Any corrective action taken;
- (d) Substantiated complaints about failure to comply with the provisions of this chapter or such amendment, and all applicable federal and local laws and regulations; and

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(e) The number of deaths, serious injuries, and instances of substantiated child abuse that occurred in each Facility.

**5-A DCMR § 112
ENFORCEMENT ACTIONS**

112.1 A Child Development Facility licensed, required to be licensed, or applying for a license may be subject to any of the following enforcement actions by OSSE, or any other authorized government entity, when that agency or entity has jurisdiction, for violations of Federal or District of Columbia laws or regulations:

- (a) Denial of application for initial license;
- (b) Denial of application for renewal license;
- (c) Issuance of a restricted license;
- (d) Suspension of a license;
- (e) Revocation of a license;
- (f) Cease and desist order;
- (g) Civil fines;
- (h) Summary suspension;
- (i) Criminal prosecution; or
- (j) Injunction.

112.2 Other than where OSSE proposes to issue a Notice of Summary Suspension or a Cease and Desist order, OSSE shall provide written notification of the

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proposed enforcement action to the Licensee or applicant prior to initiating any of the enforcement actions in Subsection 112.1.

112.3 Advance written notice is not required prior to summary suspension or issuance of a cease and desist order.

112.4 Unless otherwise specified in this chapter, Notice required by this section shall be served by certified mail upon the Licensee or applicant at the current physical address of the Facility as shown in OSSE's records.

112.5 Notice served by certified mail is deemed served on the date stamped upon the return receipt, indicating delivery of the Notice to the applicant or Licensee.

112.6 Unless otherwise specified in this chapter, written notification of a proposed enforcement action shall include the following:

- (a) The intent and nature of the proposed enforcement action, specifying the basis for the intended action;
- (b) Notice of the effective date of the proposed action;
- (c) Notice of the description of, and citation for, each violation alleged;
- (d) In the case of a license suspension, notice of the time period of the proposed suspension;

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- (e) Signature of authorized OSSE official;
- (f) Notice that an applicant or Licensee may request a hearing on the proposed enforcement action by submitting a written request to the Office of Administrative Hearings within ten (10) business days after receipt of the Notice, or, if a different time period is prescribed by law, within the applicable time period (which shall be identified in the Notice);
- (g) Notice that the proposed action shall become final without a hearing on the eleventh (11th) business day after service of written notification of the proposed enforcement action if the applicant or Facility fails to request a hearing within the time and in the manner specified.
- (h) Notice that the Licensee will be required to surrender its current license to OSSE upon final action to convert the license to restricted status, or to suspend, or revoke the license.

5-A DCMR § 113
REVOCATION, DENIAL AND SUSPENSION

113.1 An application for a license to operate a Facility may be denied by OSSE or a license to operate a Facility issued pursuant to this chapter may be denied for renewal, suspended for a period determined by OSSE, or revoked by OSSE if the applicant or Licensee, or an employee or volunteer of either, has:

- (a) Failed to comply with any provision of the Facilities Act or this chapter;

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- (b) Failed to comply with any federal or District of Columbia laws or regulations applicable to Facilities;
- (c) Fraudulently or deceptively obtained or attempted to obtain an initial license or renewal license or committed any other action described in D.C. Official Code § 7-2040(3);
- (d) Provided false or misleading information on any form or report required by OSSE;
- (e) Failed to allow authorized officials entry to conduct an inspection or investigation, or to otherwise determine whether the applicant or Licensee is in compliance with this chapter or any relevant federal or District of Columbia laws or regulations;
- (f) Employed any method of discipline prohibited by this chapter;
- (g) Been determined by a duly authorized District of Columbia government official to pose a danger to children or youth, pursuant to CYSHA;
- (h) Pled guilty or *nolo contendere* with respect to, or received probation before judgment with respect to, or been convicted of, one of the following crimes as defined in the District of Columbia Official Code or a comparable crime in another state or federal law:
 - (1) Murder;
 - (2) Child abuse;
 - (3) Rape or sexual abuse;

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- (4) A sexual offense involving a minor or non-consenting adult;
- (5) Child pornography;
- (6) Kidnapping or abduction of a child;
- (7) Subject to Subsection 133.10, illegal possession, use, sale, or distribution of controlled substances;
- (8) Illegal possession or use of weapons;
- (9) A felony involving behavior or acts that gravely violate moral sentiments or accepted moral standards of this community and are of a morally culpable quality;
- (10) A crime of violence as defined in District of Columbia Official Code § 23-1331(4);
- (i) Failed to report suspected child abuse or neglect, as required by District of Columbia Official Code § 4-1321.02;
- (j) Been denied a license to operate a Facility or had a license to operate a Facility denied, suspended, or revoked in another jurisdiction within the previous three (3) years for a cause which would be grounds for denial, suspension, or revocation under this section;
- (k) If the Facility at issue is a Child Development Home, a determination that any person living in the home that operates as a licensed Facility has pled guilty or *nolo contendere* with respect to, or received probation before judgment with respect

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to, or been convicted of, any of the offenses identified in Subsection 113.1(h);

- (l) A determination that an applicant or Licensee, or any employee or volunteer who is reasonably expected to come into contact with one (1) or more children, has admitted to or has been found to have abused or neglected a child in the District of Columbia or in any other jurisdiction;
- (m) Any bankruptcy of the Facility or the parent entity of the Facility; or
- (n) Voluntarily closure by a Facility while enforcement action is pending without OSSE approval.

113.2 A Licensee may not reapply for a license for a period of three (3) years if the license to operate a Child Development Facility is revoked.

113.3 If the license of a Facility is suspended or revoked for a building structural issue or construction, the owner, Center Director or Caregiver may reapply for a license after all building structural issues are abated or construction is completed, provided that the application shall include such evidence as is reasonably required by OSSE to determine that all building structural or construction issues have been resolved.

**5-A DCMR § 114
SUMMARY SUSPENSION,**

114.1 OSSE may issue a Notice of Summary Suspension to summarily and immediately suspend the license of a Facility, for a period of not more than forty-

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five (45) calendar days, unless otherwise provided for in this section, upon finding that circumstances present an imminent danger to the health, safety, or welfare of children, adults, or the general public.

114.2 OSSE may stop placement of children eligible for subsidized care in the Facility once a Notice of Summary Suspension has been issued.

114.3 An imminent threat to the health, safety, or welfare of children, adults, or the general public may include, but is not limited to, an imminent threat of:

- (a) Poor air quality;
- (b) Evidence of rodents and insects in the Facility;
- (c) Inadequate staffing;
- (d) Issues pertaining to improper sanitation and hygiene;
- (e) Substantiated claims of child abuse;
- (f) Unsafe handling and preparation of food; or
- (g) Any other situation that constitutes a violation of this chapter or the Facilities Act that poses an imminent danger to the health, safety, or welfare of children, adults, or the general public.

114.4 A summary suspension of a license shall be effective upon the delivery to the Facility of a written Notice of Summary Suspension, unless otherwise specified by OSSE in the Notice.

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114.5 The Notice of Summary Suspension shall:

- (a) Be hand-delivered to the Licensee, at the current physical address of the Facility as shown in OSSE's records; and
- (b) Provide that the Licensee may, within five (5) days after receipt of the Notice, request a hearing. If no request for a hearing is made, the Notice shall become the final administrative decision of the agency.

114.6 Once a Notice of Summary Suspension has been delivered to a Facility, the Licensee shall immediately:

- (a) Surrender the Facility's current license to OSSE;
- (b) Cease the provision of all child development services;
- (c) Provide parents and guardians with written notification of the Notice of Summary Suspension. Written notification of the Notice of Summary Suspension shall state the reason provided by OSSE for the Notice of Summary Suspension, and inform parents and guardians of the need to make alternative child care arrangements; and
- (d) Provide OSSE with a copy of the written notification provided to parents and guardians.

114.7 Except as provided in Subsections 114.10 through 114.12, during the summary suspension period, OSSE shall either reinstate the current license

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or initiate proceedings for the revocation of the license.

114.8 A license that has been summarily suspended may be reinstated before the end of the suspension period if OSSE determines that the Facility has:

- (a) Provided parents and guardians with proper and complete information regarding the Notice of Summary Suspension;
- (b) Completely abated the perceived or actual threat to the health, safety, or welfare of children, adults, or the general public or established that there was, in fact, no such threat; and
- (c) Demonstrated substantial compliance with the Facilities Act and with this chapter.

114.9 Requests for review of an OSSE's Notice of Summary Suspension shall be filed with the Office of Administrative Hearings not later than five (5) days after the date the written notification of the Notice of Summary Suspension is issued. If a request for review is not received within a timely manner, the summary suspension shall become the final administrative decision of the agency.

114.10 Upon a timely request for an expedited hearing pursuant to this section, the Office of Administrative Hearings (OAH) shall conduct the hearing within five (5) business days after the request, and the Office of Administrative Hearings shall issue a decision within five (5) business days after the hearing record is closed.

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114.11 The Administrative Law Judge's final decision shall be in writing and is the final administrative decision.

114.12 If OAH upholds the basis for summary suspension, and the deficiency is not reinstated pursuant to Subsection 114.8, the Facility may, before the end of the initial suspension period, ask OSSE to extend the suspension period for an additional forty-five (45) days.

114.13 The burden to demonstrate good cause for extending a summary suspension shall be that of the Facility, and shall include written evidence from the Facility showing significant progress has been made toward achieving compliance with the law(s) or regulation(s) cited, a plan for achieving such compliance within the additional time sought and information establishing why it is substantially likely that the Facility will, in fact, achieve such compliance, and that only through the provision of such additional time will the Facility be able to demonstrate such compliance.

114.14 If OSSE determines, in its sole discretion, that there is a substantial likelihood that if the Facility is granted an additional forty-five (45) days in which to correct all violations cited in the Notice of Suspension, and will be able to operate in accordance with this chapter and the Facilities Act, OSSE may, in its sole discretion, extend the summary suspension for up to an additional forty-five (45) days. Under no circumstance shall a summary suspension period last more than a total of ninety (90) calendar days.

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**5-A DCMR § 115
CEASE AND DESIST**

115.1 If OSSE reasonably believes that a Licensee, parent entity, or any person has violated the Facilities Act or any provision of this chapter, and that the violation presents an imminent threat to the health, safety, or welfare of children, adults, or the general public, OSSE may issue a written cease and desist order directing the Facility, parent entity, or person to cease and desist from the violating action(s).

115.2 The cease and desist order shall be effective upon the delivery of the cease and desist order. The cease and desist order shall be hand-delivered to the Licensee, or to an adult employee or family member of the Licensee, at the current physical address of the Facility as shown in OSSE's records.

115.3 The cease and desist order shall:

- (a) Be hand-delivered to the Licensee or to an adult employee or family member of the Licensee, at the current physical address of the Facility as shown in OSSE's records; and
- (b) Provide that the Licensee may request an expedited hearing within five (5) days after receipt of the Cease and Desist Order. If no request for a hearing is made, the Order shall be final.

115.4 Once a Facility has received a cease and desist order, the Licensee shall immediately:

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- (a) Surrender the Facility's current license to OSSE;
- (b) Cease the provision of all child development services;
- (c) Provide parents and guardians with written notification of the Cease and Desist Order. Written notification of the Cease and Desist Order shall state the reason provided by OSSE for the Cease and Desist Order, and inform parents and guardians of the need to make alternative child care arrangements; and
- (d) Provide OSSE with a copy of the written notification provided to parents and guardians.

115.5 Upon a timely request for an expedited hearing pursuant to this section, the OAH shall conduct the hearing within five (5) business days after the request, and the Office of Administrative Hearings shall issue a decision within five (5) days after the hearing record is closed.

5-A DCMR § 116
CIVIL FINES, CRIMINAL PROSECUTION
AND INJUNCTIONS

116.1 Civil fines and penalties may be imposed for any violation of the Facilities Act or of this chapter, pursuant to the District of Columbia Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*). Adjudication of all charged infractions shall be conducted pursuant

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to Titles I through III of the Civil Infractions Act, except that where a requirement under this chapter conflicts with a requirement under the Civil Infractions, the provision in this chapter shall apply.

116.2 Any violation of the Act may result in criminal prosecution, whereupon the violator shall, upon conviction, be subject to imprisonment not to exceed six (6) months, or a fine not to exceed three hundred dollars (\$300.00), or both. Each unlawful act shall constitute a separate violation of this chapter.

116.3 Any person who has been previously convicted of an offense in violation of the Act shall, upon a subsequent conviction for the same offense, be subject to imprisonment not to exceed one (1) year, a fine not to exceed five thousand dollars (\$5,000.00), or both.

116.4 Prosecutions shall be brought by the Attorney General for the District of Columbia or the United States Attorney for the District of Columbia in the Superior Court of the District of Columbia.

116.5 In any prosecution conducted for violation of the Act, a Child Development Facility claiming an exemption from a licensing requirement shall have the burden of proving entitlement to the exemption.

116.6 The Attorney General may bring a civil action in the Superior Court of the District of Columbia to enjoin any violation of the Facilities Act or of this chapter.

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5-A DCMR § 117
ADMINISTRATIVE HEARINGS

117.1 The Office of Administrative Hearings (“OAH”), pursuant to the OAH Act, will hear and decide licensing appeals where it is alleged by a Licensee or an applicant for a license that there is an error in any order, requirement, decision, determination, or refusal made by OSSE in the administration or enforcement of the Facilities Act and this chapter.

117.2 Hearings conducted by OAH will comply with this chapter, the OAH Act, the Facilities Act and applicable rules and procedures established by the OAH Rules of Practice and Procedure set out at 1 DCMR Chapters 28 (Office of Administrative Hearings: Rules of Practice and Procedure) and 29 (Office of Administrative Hearings: Rules for DCPS, Rental Housing, Public Benefits, and Unemployment Insurance Cases).

117.3 Parties may participate in settlement negotiations prior to a hearing, and may enter into a negotiated settlement agreement in lieu of participating in a hearing.

117.4 Each hearing shall be conducted in accordance with the requirements of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509), unless otherwise provided in this chapter, the OAH Act, or in the OAH Rules of Practice and Procedure set out at 1 DCMR Chapters 28 and 29.

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117.5 Any person(s) aggrieved by a final decision of OAH may appeal the decision to the District of Columbia Court of Appeals pursuant to Section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

5-A DCMR § 118
REQUIREMENTS FOR ALL LICENSED CHILD
DEVELOPMENT FACILITIES

118.1 A licensed Child Development Facility (“Licensee”) shall operate in accordance with the license capacity, age range limitations, hours of operation and other specific service requirements or restrictions designated on its license.

118.2 Except as provided in Subsection 118.3, a Licensee shall comply with the requirements set forth in Sections 118 to 161, regardless of the Licensee's classification as a Center, Child Development Home, Expanded Home, or out-of-school-time program.

118.3 If a conflict exists between a general requirement set forth in Sections 118 to 161, and a specific requirement of this chapter applicable to a particular classification or size of Child Development Facility, the specific requirement shall apply.

118.4 A Licensee shall exclude any employee with a communicable disease from the workplace, to the same extent and in the same manner as school employees are excluded and readmitted pursuant to 5-E DCMR §§ 1023.1, 1023.5, and 1023.9.

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118.5 A Licensee shall protect the safety, health, and welfare of all children within their care.

**5-A DCMR § 119
CAPACITY**

119.1 License capacity is the maximum number of children the Licensee is licensed to care for at any given time, as determined by OSSE.

119.2 OSSE shall determine limitations on the license capacity based on the following criteria:

- (a) Occupancy capacity established by DCRA or by FEMS;
- (b) Program space requirements, as provided in this chapter;
- (c) Lavatory requirements, as provided in this chapter; and
- (d) Adult-to-child ratios and maximum group size requirements, as established in this chapter.

119.3 Any Facility requesting a change to its license capacity under a current license shall submit an application to amend an issued license to OSSE, with the payment of the appropriate fee, in accordance with Section 108 (Fees).

**5-A DCMR § 120
SUPERVISION**

120.1 Children shall be supervised while at the Facility by responsible staff and volunteers who can see

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and hear the children supervised at all times including but not limited to when they are napping or sleeping, on the playground, on field trips, on vehicular and non-vehicular excursions, and during all water activities and water play activities.

120.2 A Licensee shall have a written staffing plan to ensure the required supervision of all enrolled children at all times.

120.3 A Licensee shall have a written staffing policy to ensure proper supervision of all enrolled children at all times, which shall include a mobile device use policy.

120.4 Children shall not be left alone in any room, outdoors, or in vehicles, even momentarily, without staff present.

120.5 A staff member shall be assigned to supervise specific children whose names and whereabouts the staff member shall know and with whom the staff member shall be physically present. Staff shall be able to state how many children are in their care at all times.

120.6 Individuals who do not serve a purpose related to the care of children shall not be present at the Facility for longer than a brief period of time while children are being cared for. Individuals who hinder supervision of children shall not be present at the Facility at any time when children are being cared for.

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120.7 Performance of staff duties that are not directly related to the supervision of children, including cooking, housekeeping, or administrative functions shall not interfere with the supervision of children.

5-A DCMR § 121
ADULT-TO-CHILD RATIOS AND
GROUP SIZE

121.1 Adult-to-child ratios and group sizes are established to ensure the health and safety of all children.

121.2 Minimum adult-to-child ratios shall be met at all times, including non-peak hours, during nap or rest periods, and in vehicles during transport.

121.3 A licensed Child Development Facility (“Licensee”) shall maintain the adult-to-child ratios and group sizes as specified herein:

(a) For Child Development Centers serving infants, toddlers, and/or preschoolers:

Age of Children	Adult-to-Child Ratio	Maximum Size of Group
0-24 months	1:4	8
24-30 months	1:4	12
30 months-48 months	1:8	16
48 months-60 months	1:10	20

(b) For Child Development Centers providing out-of-school-time care to school age children:

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Age of Children	Adult-to-Child Ratio	Maximum Size of Group
Under 6 years	1:12	24
6 years and older	1:15	30

(c) For Child Development Homes and Expanded Homes serving infants, toddlers, and/or preschoolers, and providing out-of-school-time care to school age children:

Age of Children	Adult-to-Child Ratio	Maximum Number of Children Enrolled
1 child under 2 years of age and 1 to 11 children over 2 years of age	1:6	12
3 children under 2 years of age and 1 to 6 children over 2 years of age	1:3 (but at least 2 Caregivers)	9
4 children under 2 years of age and 1 to 8 children over 2 years of age	1:3 (but at least 2 Caregivers)	12
5 children under 2 years of age and 1 to 4	3 Caregivers	9

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children over 2 years of age		
6 children under 2 years of age and 1 to 3 children over 2 years of age	3 Caregivers	9

121.4 A child who is non-ambulatory will be treated the same as a child under two (2) years of age for purposes of the adult-to-child ratio requirements.

121.5 [RESERVED].

121.6 When children of different ages are combined in one group, the adult-to-child ratio for the youngest child shall apply, except as provided for in Subsections 121.10 and 121.13 to 121.15.

121.7 Except as otherwise provided for in this section, volunteers shall not be used to meet adult-to-child ratio requirements. Only employees responsible for directly providing care of, or supervision or guidance to, children shall be counted in the adult-to-child ratios.

121.8 Child Development Centers shall have at least two (2) staff members supervising each group at all times. At Child Development Centers serving infants, toddlers, and or preschoolers (or any combination of these), there shall be two Teachers or a Teacher and an Assistant Teacher or aide for each group at all times, except as further specified in this section.

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121.9 During non-peak hours or during nap or rest periods, adult-to-child ratios shall be maintained, however another adult staff member or adult volunteer may substitute for one (1) of the staff members specified, provided that at least one (1) Teacher or Assistant Teacher supervises the group.

121.10 While children with varying ages anywhere from ages thirty (30) months and older are grouped together for napping, one (1) staff person shall be present within sight and sound of the children at all times. A second staff person or volunteer on duty shall also be present on the same floor of the Facility and immediately available to assist in event of an emergency.

121.11 In part-day programs that operate no more than four (4) hours per day, the Licensee may substitute an adult volunteer for an Assistant Teacher or aide.

121.12 If the required adult-to-child ratio is met but the situation or circumstance requires additional staff in order to ensure that all children are within the sight and hearing of staff members, then the Licensee shall provide additional staff to ensure adequate supervision of all children.

121.13 A licensed Montessori Child Development Facility that is duly accredited by the American Montessori Society (“AMS”) or the Association Montessori International (“AMI”), or other OSSE approved non-traditional programs, may exceed the adult-to-child ratio or group size requirement for centers by no more than

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fifty percent (50%) of the ratios established by this chapter.

121.14 When children of varying ages anywhere from ages two (2) years or older are grouped together in conformance with the implementation of a Montessori curriculum, as measured on January 1 of the current school year, the average age of all of the children in the age group of two (2) through five (5) years shall be used to determine the group maximum size and appropriate adult-to-child ratio.

121.15 A Licensee may be granted an exemption to the adult-to-child ratio requirements, if the Facility submits a written request to OSSE in accordance with Section 106 (Waiver) and OSSE, in its sole discretion, concludes that granting the exemption will not jeopardize the health, safety, or welfare of the children being cared for. This request shall also include the following information:

- (a) A detailed description of the program model, including its history and supporting evidence that demonstrates the effectiveness of the model;
- (b) A detailed explanation as to why an exception to the adult-to-child ratio is integral to the delivery of the program model;
- (c) An explanation and supporting evidence that the program's proposed adult-to-child ratio will not jeopardize the health, safety, welfare of children; and

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(d) Any other information that OSSE may reasonably require.

5-A DCMR § 122
HEALTH AND SAFETY STANDARDS FOR A
FACILITY'S PREMISES: GENERAL
REQUIREMENTS

122.1 A Licensee shall ensure that every building or part thereof that is used as a Facility, is constructed, used, furnished, maintained, and equipped in compliance with all applicable requirements established by District and federal laws and regulations with written certification of compliance from the appropriate regulatory bodies governing zoning, building construction and safety, sanitation, and fire safety.

122.2 A Licensee shall, at all times, maintain adequate indoor space for the daily program measured on the inside wall-to-wall dimensions, as follows:

- (a) A minimum of forty-five square feet (45 ft²) of program space per infant;
- (b) A minimum of thirty-five square feet (35 ft²) of unencumbered program space per toddler and child; or
- (c) A minimum of forty-five square feet (45 ft²) of encumbered program space per child.

122.3 A Licensee shall ensure that exits are:

- (a) Clearly identified;
- (b) Free of all obstructions; and

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(c) Arranged or marked so the path to exit the building is visible and clear.

122.4 A Licensee shall not operate any other business that may either impact the health and safety of the children and staff or interfere with the overall operation of the Facility on the same premises that is licensed by OSSE as a Facility.

122.5 A new or revised Certificate of Occupancy or Home Occupation permit shall be required:

(a) At the time of any major modification or alteration of any existing premises or structure used by the Facility, but prior to the continued use of the modified or altered portions of the premises or structure for child development purposes;

(b) Prior to the use of any portion of the premises or structure that was not previously inspected and approved for use by DCRA as a Child Development Facility;

(c) Prior to submitting an application to increase the number of children under thirty (30) months of age to be enrolled at the Child Development Facility; and

(d) Prior to submitting an application for a change in licensure capacity of the Child Development Facility.

122.6 A Licensee shall undergo a fire safety inspection and shall, annually, obtain certification from FEMS that the premises conform to all applicable fire safety and related codes.

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122.7 A Licensee shall, at its own expense, undergo an additional fire safety inspection under the following circumstances:

- (a) At the time of any major modification or alteration of any existing premises or structure used by the Facility, but prior to the continued use of the modified or altered portions of the premises or structure for child development purposes;
- (b) Prior to the use of any portion of the premises or structure that was not previously inspected and certified as conforming to the applicable fire and safety related codes for use as a Child Development Facility;
- (c) Prior to submitting an application to increase the number of children under thirty (30) months of age to be enrolled at the Child Development Facility; and
- (d) Prior to submitting an application for a change in licensure capacity of the Child Development Facility.

122.8 A Licensee shall ensure that a Facility is:

- (a) Free of any lead-based paint hazards; and
- (b) In compliance with Section 21a of the Facilities Act with respect to all drinking water sources.

122.9 [RESERVED]

122.10 A licensed Facility shall be accessible for children and adults with disabilities, in accordance with

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Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Accessibility includes access to buildings, toilets, sinks, drinking fountains, outdoor play areas, meal and snack areas, and all classroom and therapy areas.

122.11 All program space that children use shall be heated, cooled, and ventilated to maintain the required temperatures, and air exchange to avoid accumulation of odors and fumes.

122.12 A Licensee shall ensure that:

- (a) All access points to stairs are restricted by gates;
- (b) All doors or windows are protected with guards that prevent exit by a child; and
- (c) All blinds have child protective coverings ensuring cords are not accessible to children.

122.13 A Licensee shall ensure that the Facility is free of moisture, mold, and mildew, including but not limited to, moisture resulting from water leakage or seepage.

122.14 A Licensee shall ensure that waste receptacles have a hands-free opening mechanism, are kept clean, lined with plastic bags, in good repair, and emptied at least daily.

122.15 A Licensee shall ventilate program space by mechanical ventilation, such as fans, air conditioning, or at least one (1) operable window. The following

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criteria shall apply to mechanical ventilation units and windows:

- (a) A freestanding fan shall be placed in a stable location, have a stable base, be equipped with a protective guard, and be inaccessible to children;
- (b) Windows, including windows in doors, when utilized for ventilation purposes, shall be securely screened to prevent the entry of insects;
- (c) Windows accessible to children under five (5) years of age that are above ground level of the building shall be adjusted to limit the opening to less than six (6) inches or be protected with guards that do not block natural lighting; and
- (d) A Facility with glass doors shall place decals at the eye level of the children in its care.

122.16 A Licensee shall not use space heaters unless it has received express approval, in writing, from an official of FEMS. If provide written approval, space heaters shall:

- (a) Be attended while in use and be off when unattended;
- (b) Be inaccessible to children at all times;
- (c) Have protective covering to keep hands and objects away from the electric heating element.
- (d) Be placed on the floor only and at least three (3) feet from curtains, papers, furniture, and any flammable object;

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- (e) Be properly vented, as required for proper functioning;
- (f) Not be used with an extension cord; and
- (g) Be used in accordance with the manufacturer's instructions.

122.17 A Licensee shall ensure that fireplaces and fireplace inserts are inaccessible to children at all times.

122.18 A Licensee shall maintain hot and cold running water under pressure. Hot running water shall be maintained at one hundred degrees Fahrenheit (100°F).

122.19 A Licensee shall ensure that the Facility's premises remain clear of insects, rodents, and other pests and excrement of insects, rodents, and other pests.

122.20 A Licensee shall maintain preventative measures to control insects, rodents, and other pests to comport with best practices and to prevent and eliminate harborage, breeding, and infestation at the Facility's premises. If a harboring, breeding, or infestation of insects, rodents, or other pest occurs on the premises of the Facility, the Licensee shall immediately report the infestation to OSSE as an unusual incident and take immediate steps to have the insects, rodents, or other pests eliminated from the Facility.

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122.21 A Licensee shall maintain at the Facility a log documenting the use of extermination services, which shall be provided only by a licensed pest control professional. Children shall not be present while pesticides are being applied or within twenty-four (24) hours of application.

122.22 A Licensee shall install and maintain working carbon monoxide detectors if there is any gas service in the building. Carbon monoxide detectors shall be tested every six (6) months with a written log of testing records maintained at the Child Development Facility.

122.23 A Licensee shall install and maintain an appropriate number of working smoke detectors located in locations consistent with District code requirements and shall ensure they are in working order at all times. Smoke detectors shall be tested quarterly with a written log of testing records maintained at the Child Development Facility.

122.24 A Licensee shall perform fire drills, at least monthly, with a written log of the fire drills maintained at the Child Development Facility.

122.25 A Licensee shall maintain adequate storage space for play and teaching equipment, supplies, records, and children's possessions and clothing.

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5-A DCMR § 123
HEALTH AND SAFETY STANDARDS FOR A
FACILITY'S PREMISES: LAVATORY SPACE
AND EQUIPMENT

123.1 A Licensee caring for preschoolers shall provide at least one (1) flush toilet and one (1) sink for every ten (10) children, based on the license capacity of the Facility.

123.2 A Center shall provide bathroom facilities for use by adults separate from those used by children.

123.3 A Licensee shall provide a block or step for a child's use for each toilet and sink at a Facility that is too high to be used by one (1) or more enrolled children without assistance.

123.4 A Licensee shall provide toilet training chairs or seats (or both), at the discretion of the Facility, for use by any child or children who require them. Training chairs shall be emptied promptly and sanitized after each use. Training chairs shall be made of non-porous, synthetic products. Training chairs shall remain in the bathroom facilities.

123.5 A Licensee shall provide toilet paper, soap and single-use paper towels at each bathroom in a manner accessible for independent use by children.

123.6 A Licensee caring for infants, toddlers, or preschoolers shall provide at least one (1) changing table for every ten (10) children that are not independently

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using toilet facilities, based on the license capacity of the Facility.

123.7 A Licensee shall ensure that changing tables meet the following requirements:

- (a) Have impervious, nonabsorbent, smooth surfaces that do not trap soil and are easily disinfected;
- (b) Be sturdy and stable to prevent tipping over;
- (c) Be at a convenient height for use by Facility staff; and
- (d) Be equipped with railings or barriers.

123.8 A Licensee shall sanitize changing tables after each use.

5-A DCMR § 124
HEALTH AND SAFETY STANDARDS FOR A
FACILITY'S PREMISES: INDOOR
ENVIRONMENT

124.1 A Licensee shall ensure that interior space designated for the use of children is available to children when the center is in operation and is arranged to allow each child adequate space for free movement and active play.

124.2 A Licensee shall ensure that the temperature within each room of program space shall be maintained at between sixty-eight degrees Fahrenheit (68°F) and seventy-five degrees Fahrenheit (75°F) from October through March, and between sixty-eight

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degrees Fahrenheit (68°F) and eighty-two degrees Fahrenheit (82°F) from April through September.

124.3 Protrusions such as pipes, wood ends, or long bolts that may catch a child's clothing are prohibited.

124.4 Carpeting in the facility shall be nonflammable, nontoxic, and maintained by the Licensee in clean condition and good repair.

124.5 A Licensee shall maintain floors that are free from bare concrete, dampness, splinters, and sliding rugs.

124.6 A Licensee shall ensure that all floors, walls, and ceilings are in good repair and easy to clean when soiled. Only smooth, nonporous surfaces shall be permitted in areas that are likely to be contaminated by body fluids including, without limitation, lavatories and toilets, and areas used for food preparation or consumption or diaper changing.

124.7 A Licensee shall ensure that shoes are removed or covered prior to entering play areas used by infants.

124.8 A Licensee shall install finger-pinch protection devices on doors, cupboards, cabinets, and gates that are accessible to children, except on doors, cupboards, cabinets, and gates that are fully closed and locked.

124.9 A Licensee shall ensure that strings and cords long enough to encircle a child's neck are not accessible to children.

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124.10 A Licensee shall ensure that electrical outlets that are not in use and are accessible to children are fitted with appropriate child-proof protective outlet covers that meet the Underwriters Laboratories, Inc. standard for Safety of Receptacle Closures (UL 2255).

124.11 A Licensee shall install Ground Fault Circuit Interrupters in areas accessible to children where electrical products may come into contact with water.

5-A DCMR § 125
HEALTH AND SAFETY STANDARDS FOR A
FACILITY'S PREMISES: OUTDOOR
ENVIRONMENT

125.1 A Licensee shall maintain outdoor play space free of standing water, litter, broken glass, wooden splinters, weeds, high grass, and conditions that are, or might be, hazardous to the health, safety, or welfare of children enrolled.

125.2 A Licensee shall ensure that each outdoor play area in use by one (1) or more children enrolled at a Facility shall be visible to and within hearing distance of Facility staff at all times.

125.3 A Licensee shall ensure that outdoor play space is supervised by adult staff in sufficient quantity and with appropriate placement to ensure that all children are within sight and hearing of at least one staff member at all times.

125.4 A Licensee shall ensure that staff, while supervising a group of children in the outdoor play space,

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are able to summon another adult staff member if the need arises, without leaving the children unsupervised at any time.

125.5 A Licensee shall ensure that all outdoor play areas and equipment conform to the standards established by the U.S. Consumer Product Safety Commission and by the American Society for Testing and Materials.

125.6 A Licensee utilizing an outdoor play space at the Facility premises shall enclose the outdoor play space with a fence or natural barrier that shall be at least four (4) feet high, with a space no larger than three and one-half (3-1/2) inches between its bottom edge and the ground, and designed to prevent climbing.

125.7 A Licensee shall provide at least two (2) exits from each outdoor play space. At least one of these exits shall be remote from the Facility building(s).

125.8 A Licensee shall ensure that all outdoor gates have positive self-latching closure mechanisms that are at least four (4) feet off the ground or constructed in a manner so that they cannot be opened by a pre-school-age child.

125.9 A Licensee shall ensure that the design, construction, and installation of all outdoor play equipment are consistent with the guidelines published by the U.S. Consumer Product Safety Commission's current Public Playground Safety Handbook.

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125.10 The Center Director, Caregiver, or designated Facility staff shall conduct a daily inspection of each outdoor play space. The daily inspection shall be documented and maintained in a Facility log. All identified problems shall be corrected as soon as possible and children prohibited from using equipment that does not meet safety standards. The inspection shall include, at a minimum, an inspection of the space itself, removal of all trash, debris, broken glass, and other foreign or hazardous materials, and an inspection of each piece of equipment for:

- (a) Visible cracking, bending, warping, rusting, or breaking;
- (b) Deformation of open hooks, shackles, rings, links, and the like;
- (c) Worn swing hangers and chains;
- (d) Missing, damaged, or loose swing seats;
- (e) Broken supports or anchors;
- (f) Exposed, cracked, or loose cement support footings;
- (g) Exposed tubing ends that require plugs or cap covers;
- (h) Accessible sharp edges or points;
- (i) Protruding bolt ends that require caps or covers;
- (j) Loose bolts, nuts, or screws that require tightening;

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- (k) Splintered, cracked, or otherwise deteriorating wood;
- (l) Moving parts in need of lubrication;
- (m) Worn bearings or other worn mechanical parts;
- (n) Broken or missing rails, steps, rungs, or seats;
- (o) Worn or scattered surfacing materials;
- (p) Exposed hard surfaces, especially under swings and slides;
- (q) Chipped or peeling paint;
- (r) Pinch or crush points; and
- (s) Exposed mechanisms, junctures, and moving components.

125.11 If any hazard listed in this section is noted or observed by the Licensee or OSSE, the Licensee shall immediately correct the hazardous condition or remove the piece of equipment from use until the hazard is corrected.

125.12 A Licensee serving infants, toddlers, preschool children, or school-age children shall separate the outdoor play spaces used by infants, toddlers, and preschool children from the play spaces used by school-age children. The separation shall be done in a way that does not limit the activities of either age group.

125.13 A Licensee shall ensure that all surface areas beneath, and in the fall zones of, climbing equipment,

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slides, swings, and similar equipment are covered in resilient material that diminishes the impact of falls.

125.14 A Licensee shall ensure that all outdoor equipment is securely anchored and installed properly to prevent tipping or collapsing.

125.15 A Licensee shall ensure that all outdoor play equipment is free of pinch, crush or shear points on all surfaces that are or may be accessible to children.

125.16 A Licensee shall provide only swing seats constructed of durable, lightweight, relatively pliable material.

125.17 A Licensee shall not allow children to use trampolines.

125.18 A Licensee shall maintain all outdoor sandboxes and play areas containing sand in a safe and sanitary condition, including being completely covered when not in use and free of debris.

125.19 A Licensee shall ensure that no lawn mowers, hedge clippers, shears or other similar items are used or stored unlocked in any outdoor play space when children are present.

125.20 If a Licensee chooses to utilize a rooftop play space, the Licensee shall enclose the rooftop play space with a sturdy fence at least six (6) feet high and designed to prevent climbing.

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125.21 A Licensee shall provide a fire escape, which leads from the rooftop play space, if applicable, to an open space at the ground level of the Facility premises, and for which the Facility has received written approval from DCRA or FEMS.

125.22 Before a Licensee may utilize a rooftop play space, the Licensee shall obtain written approval from the DCRA or FEMS that the additional load presented by the children, staff, and play equipment on the roof is within the load capacity of the building structure.

125.23 Before a Licensee may utilize a rooftop play space, the Licensee shall obtain written approval from DCRA that the fence is safe, and shall submit this written approval to OSSE.

125.24 A Licensee may not use rooftop play space unless:

- (a) DCRA or FEMS conducts an annual safety inspection of the fence around the play space and provides written approval stating that the fence is safe for its intended purposes;
- (b) DCRA or FEMS conducts an annual safety inspection of the play space and provides written approval of the use safety of the play space; and
- (c) A copy of the most current of the written approvals described in paragraphs (a) and (b) next to the Facility's license, in a conspicuous location at the Facility premises.

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5-A DCMR § 126
HEALTH AND SAFETY STANDARDS FOR A
FACILITY'S PREMISES: EQUIPMENT,
MATERIALS, AND FURNISHINGS

126.1 A Licensee shall provide a variety and sufficient quantities of materials, equipment, and supplies for indoor and outdoor activities, consistent with the numbers, ages, and needs of the infants, toddlers, preschool, or school-age enrolled children.

126.2 Materials, equipment, and supplies accessible to children shall be age appropriate, safe, in good repair, clean, and non-toxic, and shall be accessible to and appropriate for children with special needs, if the Facility provides care to such children.

126.3 All playthings, equipment, supplies, furnishings, and other materials provided by a Licensee for use by children shall meet the standards of the Consumer Product Safety Commission and the American Society for Testing and Materials, and shall:

- (a) Be sturdy enough that they will not splinter;
- (b) Not have sharp points or rough edges;
- (c) Have lead-free, non-toxic paint or finishes;
- (d) Be washable, regularly washed, and maintained in good repair; and
- (e) Comply with Federal standards regarding small toys and objects for use by children.

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126.4 Notwithstanding any requirement or prohibition in Subsection 126.3, children under three (3) years of age but no younger than thirty (30) months may be enrolled in a Montessori preschool classroom containing materials, equipment, and supplies that are consistent with the full implementation of the Montessori curriculum, as long as children have been evaluated and found to be developmentally ready for the curriculum by the program director, the lead teachers, and the parent(s) or guardian(s).

126.5 A Licensee shall prohibit the use of the following at all times:

- (a) Infant walkers;
- (b) Crib gyms;
- (c) Collapsible cribs;
- (d) Playpens; and
- (e) Projectile toys.

126.6 In addition to the requirements contained within this chapter, all playthings, equipment, supplies, furnishings, and other materials provided by a Licensee for use by children under the age of three (3) years shall:

- (a) Be large enough that they cannot be swallowed; and
- (b) Not have small parts that may loosen and fall off, such as buttons on stuffed animals.

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126.7 A Licensee shall ensure that there are sufficient quantities of materials and equipment to keep all children engaged, even if in different activities, at all times, and to:

- (a) Avoid excessive competition among the children and long waits for use of the materials and equipment; and
- (b) Provide for a variety of experiences and appeal to the individual interests of the children

126.8 A Licensee shall ensure that materials provided to children are culturally sensitive, culturally relevant, and designed to promote:

- (a) Social and emotional development;
- (b) Cognitive development;
- (c) Language development and communication skills;
- (d) Independence;
- (e) Creative expression; and
- (f) Fine and gross motor skills.

126.9 A Licensee shall remove and repair, or discard all furniture, equipment, and materials that are not usable because they are broken or hazardous.

126.10 Light bulbs shall be shatter proof or appropriately shielded to prevent product contamination and injuries due to breakage.

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126.11 A Licensee may provide helmets for use while riding wheeled equipment so long as the helmets meet the requirements in Subsection 126.22. If a Facility provides helmets for shared use of children while riding wheeled equipment, the Licensee shall wipe down each helmet with wet wash cloth after each use.

126.12 A Licensee shall have available a sufficient number of strollers or carriages with appropriate restraints for infants and non-ambulatory enrolled children.

126.13 A Licensee shall ensure that highchairs, if used:

- (a) Have a wide and securely locking base, a crotch bar/guard, and a safety strap that is fastened with every use; and
- (b) Are used only during meal times and shall not be used to restrain children at any other time.

126.14 A Licensee shall provide each enrolled child in a full-day program with an individual crib, cot, or bed, as developmentally appropriate, and ensure that:

- (a) Children do not share bedding, such as sheets and blankets;
- (b) No child sleeps on a bare, uncovered surface;
- (c) Cribs, cots, beds, and appropriate beddings, such as sheets or blankets, are kept clean and sanitary at all times;

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- (d) Crib and cot areas are sufficiently separate from play space to prevent access to sleeping areas by children at play; and
- (e) Each child is allowed to safely and comfortably crawl, toddle, sit, or walk and to play according to his or her stage of development, in a designated play space apart from sleeping quarters, during each day.

126.15 A Licensee shall ensure that each crib or cot:

- (a) Meets safety standards established by the U.S. Consumer Product Safety Commission;
- (b) When in use, is placed at least two (2) feet apart from any other cot, at least two (2) feet from any windows, and two (2) feet from any radiators. The two (2) feet of separation required by this provision shall be measured on all sides of each crib or cot; and
- (c) Is labeled with the name of the child to whom it is assigned.

126.16 A Licensee shall also comply with the following additional requirements for cribs:

- (a) Each crib shall have a firm, fitted mattress of proper size for a crib, covered with a fitted sheet, provided by the Facility;
- (b) Infant monitors shall not be placed in cribs;

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- (c) Crib gyms, crib toys, mobiles, mirrors, and other toys shall not be placed in, attached to, or hung over an infant's crib;
- (d) Cribs shall only be used for sleep purposes; and
- (e) Cribs shall not be used for time-out or disciplinary purposes.

126.17 A Licensee shall also comply with the following additional requirements for cots:

- (a) Cots shall be used only for children over twelve (12) months of age who can walk;
- (b) Cots shall have coverings that are easy to clean and nonabsorbent; and
- (c) Seasonally appropriate beddings, such as sheets or blankets, sufficient to maintain adequate warmth, shall be available and provided to children as applicable and as needed.

126.18 A Licensee shall ensure that all play equipment is:

- (a) Properly constructed and installed to ensure its safe use by all enrolled children, at an appropriate height for the children who are expected to use the equipment, and in manner that ensures that the equipment will not entrap children;
- (b) Free of pinch, crush, or sharp points on or underneath such equipment that are or may be accessible to children;

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126.19 A Licensee shall ensure that any toy is promptly removed from the play area, sanitized with an appropriate germicide, and air dried before it is returned to the play area after the toy is:

- (a) Put in someone's mouth or licked, or otherwise is exposed to saliva; or
- (b) Soiled with blood, stool, urine, or vomit.

126.20 Tricycles and other riding toys provided by a Licensee shall be steerable, appropriate to the ages and sizes of the enrolled children, and shall not contain spokes.

126.21 A Licensee shall maintain tricycles and other riding toys in good condition, free of sharp edges or protrusions that may injure children. When not in use, they shall be stored in a place where they will not present physical obstacles to the children and staff. The Facility staff shall inspect riding toys and wheeled equipment prior to use by a child for loose or missing hardware, parts, protrusions, or other hazards that may lead to injury.

126.22 A Licensee shall ensure that all children one (1) year of age and over wear helmets that are properly fitted and approved by the U.S. Consumer Product Safety Commission while riding, wheeled equipment such as tricycles, bicycles, scooters, roller skates, rollerblades, or skateboards, regardless of whether the equipment is being ridden indoors or outdoors.

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**5-A DCMR § 127
PARENT COMMUNICATION**

127.1 A Licensee shall establish and maintain respectful and professional communication with the parent(s) or guardian(s) of children enrolled.

127.2 A Licensee shall provide parent(s) and guardian(s) with access to their child(ren) at all times while at the Facility.

127.3 A Licensee shall establish and implement written policies and procedures which shall be kept current and made available to the parent(s) and guardian(s) and used to govern the operations of the Facility.

127.4 The policies and procedures shall be consistent with all applicable Federal and local laws and regulations and shall include, but are not limited to, the following:

- (a) A description of services to be provided, specifying the ages of children to be served, days and times of operation, and days and times that the Facility is closed;
- (b) A description of enrollment and admission requirements specifying the parent(s)' or guardian(s)' responsibilities for supplying needed information to the Facility and escorting the child to and from the Facility;
- (c) A fee and payment schedule specifying the standard fees, fees related to absences and

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vacations and other charges and fees such as transportation and late fees;

- (d) A description of the Facility's transportation and field trip services;
- (e) A description of the Facility's procedures for administering medication, both prescription and non-prescription, and notifying parent(s) and guardian(s) of noticeable adverse reactions to medications;
- (f) A description of the Facility's procedure for notifying parent(s) and guardian(s) when their child is ill or injured, and the Facility's policy regarding the exclusion of sick children;
- (g) A description of the Facility's procedure for notifying parent(s) and guardian(s) when a child, employee, or volunteer at the Facility has a communicable disease;
- (h) A description of the Facility's procedure for handling medical emergencies;
- (i) A description of meals and snacks served, and guidelines or requirements for food brought by a child to the Facility;
- (j) A statement that parent(s) and guardian(s) have access to all Facility areas used by their child (and a description of any conditions placed on that access);
- (k) Child abuse reporting law requirements;

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- (l) The Facility's procedures for identifying and preventing shaken baby syndrome and abusive head trauma in infants, if applicable;
- (m) A description of behavior management practices used at the Facility;
- (n) Nondiscrimination statement;
- (o) If licensed for the care of an infant or toddler, the Facility's:
 - (1) Diapering procedures;
 - (2) Toilet training procedures; and
 - (3) Feeding procedures;
- (p) A description of the safe sleep practices followed by the Center that includes the following information:
 - (1) When setting an infant down to sleep, the infant will be placed on his or her back;
 - (2) No covers or other soft items are allowed in cribs;
 - (3) A description of what constitutes appropriate sleep clothing for infants to be provided by parent or guardian;
 - (4) A statement that individual crib, cot or mat and bedding is provided, and the changing and cleaning practices for these items;

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- (5) A statement that infants who fall asleep in other equipment, on the floor or elsewhere will be moved to a crib to sleep; and
- (6) A statement that no swaddling or positioning devices will be used at the Facility.

127.5 A Licensee shall maintain written documentation that the Facility has provided the parent(s) with a copy of the Facility's current policies and procedures.

5-A DCMR § 128
REPORTING UNUSUAL INCIDENTS

128.1 A Licensee shall immediately notify OSSE of any unusual incident that may adversely affect the health, safety, or welfare of any enrolled child or children by submitting a completed OSSE Unusual Incident Report form to OSSE's Child Care Complaint email address.

128.2 A Licensee shall also provide a copy of the completed Unusual Incident Report form provided to OSSE to the parent(s) or guardian(s) of each child affected by the unusual incident.

128.3 Unusual incidents may include, but are not limited to, the following:

- (a) Death of a person occurring at the Facility;
- (b) Injury to, or illness of, any child that occurs during the hours the child is enrolled in care and

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that requires hospitalization or emergency medical treatment;

(c) Damage to the Facility or to any Facility vehicle or equipment that interferes with the capability of the Facility to protect the health, safety and welfare of the children and adults at the Facility;

(d) Outbreak of or a single occurrence of a communicable disease at the Facility that is required to be reported to the District of Columbia Department of Health in accordance with Title 22 of the District of Columbia Municipal Regulations;

(e) Unauthorized departure of an enrolled child or any circumstances under which a child is deemed unaccounted for or missing;

(f) Any traffic accident involving a vehicle rented, owned, maintained, or the use of which was contracted for by the Facility and in which children are being transported at the time of the accident;

(g) Any adverse or negative action the Facility takes against an employee, volunteer, or household member related to any substantiated crime against a child; or

(h) Any other incident at the Facility that involves a response by emergency service personnel, such as police, fire, ambulance, or poison control.

128.4 In the case of a traffic accident or an incident involving perceived or actual criminal activity, the Licensee shall also file a report with the appropriate law enforcement authorities.

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128.5 Any Facility staff member who knows or has reasonable cause to suspect that an enrolled child is, has been, or is in immediate danger of being an abused or neglected child shall, as required by the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code §§ 4-1321.01 *et seq.*), make or cause to be made an immediate oral report to:

- (a) The Child Protective Services Division of the Child and Family Services Agency (CFSA), via the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline (202-671-SAFE); and
- (b) The Metropolitan Police Department.

128.6 A staff member making an oral report under this section shall also make a written report if:

- (a) A written report is requested by the Child and Family Services Agency or the Metropolitan Police Department;
- (b) The case is one of abuse involving drug-related activity; or
- (c) As otherwise required by law.

128.7 In the oral and written reports required by this section, the staff member shall include:

- (a) The name, age, sex, and household address of the child who is the subject of the report;

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- (b) A statement that the child who is the subject of the report is enrolled at the Facility;
- (c) The name, address, and telephone number of the Facility;
- (d) To the extent known, the name, age, and sex of each sibling or other child living in the same household as the child who is the subject of the report;
- (e) To the extent known, the name, age, and sex of each parent, guardian, or other caretaker of the child;
- (f) The information that led the staff member to suspect that the child who is the subject of the report is being, or is at risk of being, abused or neglected, the nature and extent of the perceived or actual abuse or neglect, and any previous abuse or neglect known to the reporting staff member;
- (g) Any other information that may be helpful in establishing whether the child who is the subject of the report is being, or is at risk of being, abused or neglected, the cause of the suspected abuse or neglect, and the identity of the person(s) responsible for it;
- (h) The name, title, or occupation, and contact information of the staff member making the report;
- (i) Any actions taken by the staff member or the Facility concerning the child in response to the situation; and
- (j) Any other information required by law.

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**5-A DCMR § 129
RECORDKEEPING REQUIREMENTS:
FACILITY OPERATIONS**

129.1 A Licensee shall maintain at the Child Development Facility premises at all times and shall, upon request, provide and make immediately available for review by OSSE or any person legally authorized to review the Licensee's documents, the report(s) of each inspection of the Facility by OSSE occurring within the preceding three (3) year period, including any Statement(s) of Deficiencies, subject to the confidentiality limitations contained in this chapter.

129.2 A Licensee shall maintain at the Facility premises at all time and shall provide to OSSE upon request, the current original version of each of the following:

- (a) A Certificate of Occupancy, Home Occupation Permit, or other equivalent proof from DCRA that the premises comply with all applicable Federal and District of Columbia building, fire-safety, construction, and zoning laws, regulations and codes and that the premises are suitable for the operation of a Child Development Facility;
- (b) A fire safety inspection certification or other equivalent proof from FEMS that the premises comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes;
- (c) A certification or clearance report issued by a DOEE-certified lead-based paint inspector, risk assessor, or dust sampling technician no more

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than thirty (30) days before the date of the Facility's application to be licensed, confirming that the Facility does not contain any lead-based paint hazards;

(c-1) Proof of compliance with Section 21a of the Facilities Act;

(d) [RESERVED];

(e) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Department of Tax and Revenue within thirty (30) days of the date the application is submitted;

(f) An immunization certification from the District of Columbia Department of Health;

(g) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:

(1) Commercial General Liability;

(2) Umbrella "Follow Form" Liability;

(3) Sexual Abuse & Molestation Liability; and

(4) Vehicle liability covering every vehicle that will be used by the Facility to provide transportation services to children at the Facility; and

(h) A current, valid, and notarized building use agreement that identifies a contingency location

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that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:

- (1) Contact information for the owner of the building;
- (2) The purpose of the use;
- (3) General guideline and requirements;
- (4) Proof of appropriate insurance coverage;
- (5) Proof of valid certificate of occupancy;
- (6) Proof of updated health and safety inspections specific to a Facility;
- (7) User responsibilities;
- (8) User restrictions; and
- (9) Facility usage fee, if any.

129.3 Records of investigations, inspections, civil infraction citations, unusual incidents reported in accordance with this chapter, inspection of playground equipment, maintenance of carbon monoxide detectors, and all fire prevention mechanisms and emergency evacuation drills shall be immediately accessible and available for inspection by government officials, shall be provided upon request, and shall be made available to the public for inspection subject to the confidentiality limitations contained in this chapter. A Licensee shall maintain these records for at least three (3) years prior to the current year.

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129.4 A Licensee shall maintain at the Facility premises, and provide to OSSE upon request, current liability insurance information and documentation for the Facility and, if the Facility provides transportation services, information and documentation of vehicle safety and insurance, including liability insurance.

129.5 A Licensee shall maintain records documenting any adverse or negative action the Facility takes against an employee, volunteer, or household member related to any substantiated crimes against a child. The adverse action shall be reported as an unusual incident in accordance with this chapter and related documentation shall be provided to OSSE upon request.

129.6 A Licensee shall maintain a maintenance log and retain copies of service and repair records, in a single location at the Facility, for all motor vehicles that are owned or leased or otherwise used for purposes of transporting enrolled children. A Licensee shall maintain each record for at least twelve (12) months after the date of the inspection or repair and provide the record to OSSE upon request.

129.7 A Licensee shall provide reports and documents to OSSE upon request and maintain and display, in one central area within the Facility, items (a)-(b) below, and have items (d)-(l) below available for inspection by OSSE:

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- (a) Copy of the Facility's license;
- (b) Certificate of Occupancy or Home Occupancy Permit;
- (c) Evacuation plan;
- (d) Fire inspection reports;
- (e) Plumbing, gas, and electrical inspection reports;
- (f) Evacuation and shelter-in-place drill records;
- (g) Any accreditation correspondence, including any adverse action taken against the Facility, and/or quality rating score, if applicable;
- (h) Any documentation that any deficiencies have been abated;
- (i) Results of lead tests;
- (j) If there has been a determination within the previous 12 months that the Facility has mold, a certificate of air quality;
- (k) Playground inspection report, equipment inspection/maintenance records and reports; and
- (l) Reports of the inspection and maintenance of fire extinguishers, smoke detectors, carbon monoxide detectors, or other fire prevention mechanisms regarding their compliance with all applicable federal and local laws and regulations regarding fire safety.

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5-A DCMR § 130
RECORDKEEPING REQUIREMENTS:
CHILDREN

130.1 A Licensee shall maintain a record for each enrolled child, in the form provided by or approved by OSSE, in one central location at the Facility, and shall retain the record for three (3) years following the termination of that child's enrollment. The record shall be maintained in a confidential manner in compliance with Federal and District of Columbia laws and regulations, but should be immediately available to the child's caregivers and/or teachers, the child's parents or guardians, and OSSE upon request.

130.2 A Licensee shall maintain and provide to OSSE upon request, the following information for each currently enrolled child:

- (a) Full name;
- (b) Gender;
- (c) Date of birth;
- (d) Date of admission;
- (e) Home address and telephone number;
- (f) Full names of parent(s) or guardian(s);
- (g) Business address(es) and contact information, such as email address(es) and telephone number(s) of parent(s) or guardian(s);
- (h) Designation of individuals authorized to receive the child at the end of each session;

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- (i) Name and telephone number of individual to be contacted in emergencies when the parents or guardians are not available;
- (j) Emergency Medical Treatment Authorization form, as approved by OSSE, for emergency medical care, to be used only when the parent(s) or guardian(s) cannot be reached;
- (k) Language(s) spoken in the home;
- (l) Race and ethnicity;
- (m) Health information and records, as required by this chapter;
- (n) Written authorization(s) for the administration of medication as required pursuant to this chapter, if applicable;
- (o) For children in out-of-school-time care:
 - (1) The name of the school the child attends;
 - (2) The name and number of a contact person from that school; and
 - (3) If the child arrives at and leaves the Facility alone, the days and times at which the child should arrive and leave the Facility and the mode(s) of transportation that the child uses to travel to and from the Facility.
- (p) A record of educational and developmental progress; and
- (q) Admission agreement signed by the parent or guardian at enrollment.

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130.3 If a child is no longer enrolled, the Licensee shall include the date and reasons for the child's withdrawal, if available, in the child's record. The child's complete record shall be retained by a Licensee for three (3) years following the termination of the child's enrollment.

130.4 A Licensee shall maintain and provide to OSSE upon request, for each enrolled child, the initial and annual health record documentation and information, including:

- (a) Full name, gender, date of birth, and home address of the child;
- (b) Parent(s) or guardian(s) name(s), an emergency phone number for the parent(s) or guardian(s), the name and number of an emergency contact if the parent(s) or guardian(s) are unavailable;
- (c) Health insurance coverage and primary care provider;
- (d) Dates of most recent physical and oral health examinations;
- (e) Child's height and weight at the time of the most recent physical health examination;
- (f) Each licensed health care practitioner's clinical findings, health concerns, referrals, treatments, and recommendations;
- (g) Child's significant health history, including allergies, health conditions, communicable illnesses, and restrictions;

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- (h) Specific immunizations received by month, day, and year;
- (i) Results of tuberculosis exposure risk assessment and Tuberculin Skin Test (TST) if indicated, in accordance with American Association of Pediatrics Guidelines for all children over six (6) months of age;
- (j) Results of lead exposure testing, if applicable;
- (k) Identification of long-term medications and special health care requirements or accommodations;
- (l) Name, address, phone number, and signature of the licensed examining health care practitioner;
- (m) Description of developmental delays, impairment(s), behavioral problems or other disabilities to be considered in the child care setting;
- (n) Specific diet restrictions, if applicable; and
- (o) Special family considerations.

130.5 If a child is to be taken on regularly scheduled outings, a Licensee shall maintain on file a written, signed, and dated statement from each child's parent(s) or guardian(s) authorizing the Facility to take the child on regularly scheduled outings, such as walks or trips to a neighborhood playground, outside the Facility. The authorization shall include the child's name, and shall specify the mode of transportation, the anticipated frequency, and the destination of each regular trip. This authorization shall not include field trips or outings that do not occur on a

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regular schedule. This written permission shall be considered valid for all regularly scheduled outings, as noted on the statement, until withdrawn by the child's parent(s) or guardian(s).

130.6 If the child is to be taken on a field trip that is not classified as a regularly scheduled outing, a Licensee shall obtain a written authorization from the child's parent or guardian for the outing, which shall include the information required in Subsection 130.5, in addition to the estimated time of departure and arrival.

130.7 A Licensee shall maintain and provide to OSSE upon request, for each enrolled child, a record of any suspensions or expulsions.

130.8 A Licensee shall maintain and upon request provide to OSSE current records and information related to enrolled children including:

- (a) A roster of enrolled children by age group;
- (b) Daily sign-in and sign out attendance records by names of children, including first name, last name, and middle initial of each child;
- (c) Daily schedule of activities; and
- (d) Daily menu plan for feeding children, which identifies foods actually served if the facility provides any meals or snacks to children.

130.9 A Licensee shall conform to applicable Federal and District of Columbia laws and regulations protecting a child's confidential information, shall keep

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all confidential records in a secured location with limited access, and shall not disclose information concerning an individual child or the child's parent(s) or guardian(s) to persons other than the Facility staff or government officials acting in the course of their duties, unless the parent(s) or guardian(s) grant written permission for the disclosure, or unless disclosure is necessary in an emergency situation.

130.10 A Licensee shall inform the parent(s) or guardian(s) of all enrolled children, in writing, of the Facility's policy regarding disclosure of information.

5-A DCMR § 131
RECORDKEEPING REQUIREMENTS: STAFF

131.1 A Licensee shall maintain in the form provided by or approved by OSSE, at the Facility premises, and provide to OSSE upon request, the following information for each employee:

- (a) The full name, gender, date of birth, home address, home phone number, cell phone number, and current photograph;
- (b) Position title and job description;
- (c) Documentation and results of criminal and background history checks conducted in accordance with this chapter and with all other applicable Federal and District of Columbia laws and regulations;
- (d) The most recent resume provided by the employee, copies of letters of reference, and copies of

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required degrees, credentials, or official transcripts demonstrating such attainment;

- (e) Verification that the employee completed an orientation reviewing the Facility's policies and procedures and the employee's duties and responsibilities;
- (f) An ongoing record of professional development and earned continuing education units;
- (g) Evidence of completion or certification of all health and safety training requirements set forth in Section 139 (Staff Member Requirements: Professional Development); and
- (h) Date of appointment to, or withdrawal from, any position at the Facility.

131.2 If an employee withdraws or is terminated by the Licensee, the Licensee shall include the date and reasons for the employee's withdrawal or termination in the employee's record. The Licensee shall retain employee's complete record shall be retained for three (3) years following the departure of the employee.

131.3 [RESERVED]

131.4 A Licensee shall maintain in the form provided by or approved by OSSE, at the Facility premises, and provide to OSSE upon request, the following information for each volunteer whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility:

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- (a) The full name, gender, date of birth, home address, home phone number, cell phone number, and current photograph;
- (b) Position title and job description or responsibilities; and
- (c) Documentation and results of criminal and background history checks conducted in accordance with this chapter, and with all other applicable Federal and District of Columbia laws and regulations.

131.5 A Licensee shall maintain in the form provided by or approved by OSSE, and provide to OSSE upon request, a record for each staff member, including paid employees and volunteers whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility, which shall include the following:

- (a) Documentation of a pre-employment physical examination by a licensed health care practitioner, conducted not more than twelve (12) months prior to the start of employment or volunteer work;
- (b) Documentation of an annual physical examination by a licensed health care practitioner;
- (c) Written and signed documentation from the examining licensed health care practitioner, at the time of his or her examination, that the staff member or volunteer was free from tuberculosis and apparent communicable diseases as defined in 22-B DCMR § 201.

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- (d) Written and signed documentation from the examining licensed health care practitioner that the staff member or volunteer, if noted to have an identified medical problem, is capable of fulfilling the essential functions of caring for children in a licensed Child Development Facility;
- (e) Current health insurance information; and
- (f) The names and phone numbers of the staff member's primary licensed health care practitioner and of an emergency contact person.

5-A DCMR § 132
SUITABILITY FOR EMPLOYMENT

132.1 A Licensee shall maintain a qualified workforce comprised of individuals who are committed to promoting and ensuring the health, safety, and welfare of the children in their care.

132.2 The suitability of a current or prospective staff member of a Licensee shall be assessed through completion of:

- (a) Criminal background check that includes:
 - (1) A Federal Bureau of Investigation finger-print check using Next Generation Identification;
 - (2) A search of the National Crime Information Center's National Sex Offender Registry; and
 - (3) A search of the following registries, repositories, or databases in the State (which, for the

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purpose of this section, includes the District of Columbia) where the child care staff member resides and each State where such staff member resided during the preceding five years:

- (A) State criminal registry or repository, with the use of fingerprints being required in the State where the staff member resides, and optional in other States;
- (B) State sex offender registry or repository; and
- (C) State-based child abuse and neglect registry and database;

(b) A drug and alcohol testing program consistent with this chapter and Section 2032(a) of CYSHA (D.C. Law 15-353; D.C. Official Code § 1-620.32(a)); and

(c) Traffic records check through the District of Columbia Department of Motor Vehicles, if a current or prospective staff member will also be required to drive a motor vehicle to transport children in the course of performing his or her duties.

132.3 Compliance with other District and federal rules specifically applicable to employees of a child development facility.

132.4 An applicant for employment or a volunteer position with any covered child or youth services provider who intentionally provides false or misleading information that is material to the application in the course of applying for the position, or who

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intentionally provides false or misleading information that is material to his or her continued employment or service, shall be subject to prosecution pursuant to the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

5-A DCMR § 133
SUITABILITY FOR EMPLOYMENT:
CRIMINAL BACKGROUND CHECKS

133.1 Each Licensee shall comply with the requirements set forth in this Sections 133 and 135 related to criminal background checks for any individual:

- (a) Who is employed by a Facility for compensation, including a contract employee or self-employed individual; or
- (b) Whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility.

133.2 For the purposes of this section, any individual residing in a Child Development Home or Expanded Home who is eighteen (18) years of age or older is considered to be a staff member.

133.3 A Licensee shall submit a request for criminal background checks of current and prospective staff members to OSSE:

- (a) Prior to the date an individual becomes a staff member of the provider; and

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(b) Not less than once during each three (3) year period for any currently employed staff member.

133.4 OSSE shall make a good faith effort to provide notification of the results of the criminal background reports to the Facility and the current or prospective staff member within forty-five (45) days of the date the Facility submitted the request the criminal background check.

133.5 Once a Licensee has submitted a request for a prospective staff member's criminal background check, a prospective staff member may begin to work for the Facility if the prospective staff member is supervised at all times by an individual who, within the three (3) year period before the date of the Facility's request, received a qualifying background check result.

133.6 A Licensee is not required to submit a request for criminal background check of a staff member if:

(a) The staff member received a background check that meets the requirements in Subsection 132.3(a):

(1) Within three (3) years of the first day of employment at the current Facility; and

(2) While employed by or seeking employment at another Facility (for the purposes of this Subsection, the "first Facility") within the District;

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- (b) OSSE provided the first Facility a qualifying background check result, consistent with this chapter, for the staff member; and
- (c) The staff member is employed by a Facility within the District, or has been separated from employment from the first Facility for a period of not more than one hundred and eighty (180) consecutive days before the date on which the staff member begins working at the current Facility.

133.7 Unless otherwise provided by law, prospective or current staff members shall provide a Facility and OSSE with all information necessary to enable the Facility and OSSE to promptly obtain the results of the criminal background checks including:

- (a) A complete set of qualified, legible fingerprints in a format approved by the Federal Bureau of Investigations;
- (b) Any additional identification that is required, including but not limited to the name, social security number, birth date, and gender of the applicant, employee, or volunteer; and
- (c) A signed affirmation stating whether or not the staff member has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the

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following felony offenses or their equivalent in another state or territory:

- (1) Murder, as described in Section 1111 of Title 18, United States Code;
- (2) Child abuse or neglect;
- (3) A crime against children, including child pornography;
- (4) Spousal or domestic abuse;
- (5) A crime involving rape or sexual assault;
- (6) Kidnapping;
- (7) Arson;
- (8) Physical assault or battery; or
- (9) A drug-related offense committed during the preceding five (5) years; or
- (10) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

133.8 OSSE shall review the results of the criminal background and child protection register checks to determine the suitability of the individual.

133.9 A prospective or current staff member shall be ineligible for employment with a Facility, if such individual:

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- (a) Refuses to consent to the criminal background check described in Subsection 132.2(a);
- (b) Knowingly makes a materially false statement in connection with such criminal background check;
- (c) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry;
- (d) Is registered, or is required to be registered, on a State child protection registry or repository; or
- (e) Has been convicted of any of the following felonies:
 - (1) Murder, as described in Section 1111 of Title 18, United States Code;
 - (2) Child abuse or neglect;
 - (3) A crime against children, including child pornography;
 - (4) Spousal abuse;
 - (5) A crime involving rape or sexual assault;
 - (6) Kidnapping;
 - (7) Arson;
 - (8) Physical assault or battery; or
 - (9) Subject to Subsection 133.10, a drug-related offense committed during the preceding five (5) years; or

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(f) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

133.10 A prospective or current staff member may be ineligible for employment with a Facility, if OSSE determines that such individual poses a present danger to children or youth or if an individual's prior conviction for crimes impact the fitness of the individual to provide care for and have responsibility for the safety and welfare of children. In making this determination, the following factors shall be considered:

- (a) The specific duties and responsibilities of the applicant;
- (b) The impact or likelihood of an impact, if any, that the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;
- (c) The length of time that has elapsed since the occurrence of the criminal offense;
- (d) The age of the person at the time of the criminal offense;
- (e) The frequency and seriousness of any criminal offense(s);
- (f) Any information produced by the applicant, or produced on his or her behalf, regarding his or her

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rehabilitation and good conduct since the occurrence of the criminal offense; and

(g) Any applicable public policy encouraging employment of ex-offenders provided that:

(1) A Licensee shall not employ or permit to serve as a volunteer an applicant who has been convicted of, has pleaded *nolo contendere* to, is on probation before judgment, or placed on a case on the stet docket because of, or has been found not guilty by reason of insanity, for any sexual offenses including but not limited to those involving a minor, child abuse, or child neglect; and

(2) If an application for employment or volunteering is denied because there is evidence that the applicant presents a danger to children or youth, the Licensee shall inform the applicant in writing.

5-A DCMR § 134
SUITABILITY FOR EMPLOYMENT:
TRAFFIC RECORDS CHECK

134.1 A current or prospective staff member who will also be required to drive a motor vehicle to transport children in the course of performing his or her duties shall provide a Facility with all of the information that will allow the Facility to obtain the results of the traffic record check.

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134.2 A Licensee shall submit a request for a traffic records check to OSSE, in the form and manner provided by OSSE.

5-A DCMR § 135
SUITABILITY FOR EMPLOYMENT:
RESULTS AND APPEALS

135.1 All records of criminal background checks and child protection register checks shall be confidential and are for the exclusive use of determining suitability for employment or volunteer opportunities under this chapter. This information shall be maintained by the Facility in a secured location with limited access, and the information shall not be released or otherwise disclosed to any person except when:

- (a) Required as one component of an application for employment or volunteer position with any covered child or youth services provider under this chapter;
- (b) Requested by OSSE, or its designee, during an official inspection or investigation;
- (c) Ordered by a court or administrative adjudicatory body by subpoena or otherwise;
- (d) Authorized by the written consent of the person being investigated; or
- (e) Utilized for a corrective, adverse, or administrative action in a personnel proceeding.

135.2 Any individual who discloses confidential records in violation of Section 208 of CYSHA, D.C.

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Official Code § 4-1501.08, is subject to criminal penalties including a fine of no more than one thousand dollars (\$1,000), imprisonment for not more than one hundred and eighty (180) days, or both.

135.3 OSSE shall provide the results of the criminal background check to the Facility, in a written statement that indicates whether the current or prospective staff member is eligible or ineligible for employment, without revealing any disqualifying information regarding the individuals.

135.4 OSSE shall provide a written Notice of Ineligibility for Employment with the results of the criminal background check to the current or prospective staff member, if OSSE has determined the current or prospective staff member is ineligible for employment with a Facility due to the background check.

135.5 The Notice of Ineligibility for Employment shall:

- (a) Include information related to each disqualifying crime; and
- (b) Provide that the staff member may request a hearing challenging the accuracy or completeness of the information in the reports within thirty (30) days after receipt of the Notice. If no request for a hearing is made, the Notice of Ineligibility for Employment shall be final.

135.6 A current or prospective staff member may file a request for review of an OSSE's Notice of Ineligibility for Employment with Commission on Human

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Rights not later than thirty (30) days after the date the written notification of the Notice of Ineligibility for Employment is issued. If a request for review is not received within a timely manner, and no corrective actions are confirmed to have been taken, the Notice of Ineligibility for Employment shall become the final administrative decision of the agency.

5-A DCMR § 136
SUITABILITY FOR EMPLOYMENT:
REQUIRED DRUG AND ALCOHOL
TESTING PROGRAM

136.1 A staff member shall only consume prescription medication while providing direct care to children in the Facility according to the directions provided and in the manner prescribed by the licensed health care practitioner. However, a staff member shall not consume prescription medication while providing direct care to children in the Facility, if the prescription medication may impair the staff member's ability to perform his or her duties or impact the health and safety of the children in the staff member's care.

136.2 A Licensee shall conform to the requirements, set forth in this chapter pursuant to Sections 2031 *et seq.* of CYSHA (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 *et seq.*), related to the required drug and alcohol testing program for any staff member:

- (a) Who is employed by a Facility for compensation, including a contract employee or self-employed individual;

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- (b) Who has direct contact with children;
- (c) Who is entrusted with the direct care and custody of children; and
- (d) Whose performance of duties in the normal course of employment may affect the health, welfare, or safety of children.

136.3 A Licensee shall establish mandatory drug and alcohol testing policies and procedures that provide the following:

- (a) All testing programs shall conduct tests:
 - (1) Prior to employment;
 - (2) Upon an employee's reasonable suspicion referral;
 - (3) Post-accident, as soon as reasonably possible after the accident; and
 - (4) [RESERVED].
- (b) A Licensee shall notify all staff members who meet the requirements in Subsection 136.2 at least thirty (30) days in advance of implementing the Program;
- (c) The drug and alcohol testing policy shall inform staff members who meet the requirements in Subsection 136.2 of all of the following:
 - (a) Which staff members will be tested;
 - (b) Circumstances under which an employee will be tested;

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- (c) The methodology to be used for testing; and
- (d) The consequences of a positive test result.
- (d) [RESERVED].;
- (e) Any employee testing positive shall be considered ineligible to work with children until they have successfully completed a drug and/or alcohol treatment program and the Facility has provided evidence that the employee has completed all requirements related to the program and return to duty testing;
- (f) All testing programs shall test for the following drugs:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates – opium and codeine derivatives;
 - (4) Amphetamines and methamphetamines;
 - (5) Phencyclidine – PCP;
 - (6) Synthetic drugs; and
 - (7) Alcohol.
- (g) Although alcohol is a legal substance, the consumption of alcohol is prohibited in the performance of safety-sensitive functions under the following circumstances:
 - (1) Concentration: Performing safety-sensitive functions while having an alcohol

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concentration of 0.04 or greater, as indicated by an alcohol breath test;

(2) On-duty Use: The consumption of any beverage, mixture, or preparation (including any medication) containing alcohol. This includes the possession of medicines containing alcohol, prescription drugs, or over-the counter drugs, unless the packaging seal is unbroken or directly prescribed to owner; and

(3) Pre-Duty Use: Consuming alcohol within four (4) hours prior to performing safety-sensitive functions.

(h) Any unauthorized use of controlled-substances by safety-sensitive employees is prohibited;

(i) All safety-sensitive employees are required to report any medical use of controlled substances. A controlled substance includes any prescribed drug that will impair or present a risk; and

(j) No safety-sensitive employee shall refuse to submit to a required drug or alcohol test. An employee who refuses to submit to a drug or alcohol test shall not be allowed to perform any safety-sensitive functions and shall be subject to immediate termination of employment.

136.4 A staff member shall sign an acknowledgement that he or she received the written policy as specified in Subsection 136.3 of this section. A legal guardian's signature is needed if the appointee or employee is less than eighteen (18) years of age.

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136.5 A Licensee shall contract with a professional testing vendor or vendors to conduct drug and alcohol testing pursuant to this chapter and District of Columbia laws and regulations. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing.

136.6 The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.

136.7 The vendor(s) selected to conduct the testing shall conduct the alcohol and drug testing at a location designated by the program administrator for such purposes.

136.8 In general, testing for drugs shall be conducted by urine sample from the individual being tested.

136.9 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."

136.10 In the case of drug testing, the vendor(s) shall split each sample and ensure that the laboratory performs enzyme-multiplied-immunoassay technique (EMIT) test on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor(s) using the gas chromatography/mass spectrometry (GCMS) methodology.

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136.11 A Licensee shall notify, in writing, any appointee or employee found to have a confirmed positive drug test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing methodology.

136.12 All drug and alcohol testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral or a post-accident and incident test, the Licensee, or a designee of the Licensee, shall escort the employee to the designated test site for specimen collection as needed.

136.13 In the event that an individual requires medical care following an accident or incident, medical care shall not be delayed for the purpose of testing. In such cases, drug and alcohol testing may be conducted by a blood test.

136.14 A blood, breath, or urine test conducted in accordance with this section shall be deemed positive if the test yields a result that the appointee's or employee's alcohol content was either .04 grams or more per 210 liters of breath, .04 grams or more per 100 milliliters of blood, or .05 grams or more per 100 milliliters of urine.

136.15 A pre-employment, reasonable suspicion or post-accident or incident drug or alcohol test shall be conducted as set forth in Subsections 136.5 to 136.14.

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136.16 Pre-employment drug and alcohol testing shall be conducted after a conditional offer of employment is made, but before the appointee's effective date of appointment.

136.17 A reasonable suspicion referral may be based on direct observation of drug use or possession, physical symptoms of being under the influence of drugs, symptoms suggesting alcohol intoxication, a pattern of erratic behavior, or any other reliable indicators. There may be reasonable suspicion under the following conditions:

- (a) The employee is witnessed using a drug or alcohol while on duty;
- (b) The employee displays physical symptoms consistent with drug or alcohol usage;
- (c) The employee engages in erratic or atypical behavior of a type that is consistent with drug or alcohol usage; or
- (d) There are other articulable circumstances which would lead a reasonable person to believe that the employee is under the influence of a drug or alcohol.

136.18 A staff member shall be subject to post-accident or incident testing when they are involved in accidents or incidents under the following conditions:

- (a) The staff member is involved in an on-the-job accident or incident that result in injury or loss of human life;

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- (b) The employee is involved in an accident in which one (1) or more motor vehicle(s) (either District government or private) incurs disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;
- (c) Anyone receives bodily injury requiring immediate medical attention away from the scene;
- (d) The staff member, while operating a vehicle or other equipment while performing any function while on duty or assisting in the operation or functions of the Facility where he or she works, receives a citation under District of Columbia or another law for a moving traffic violation arising from the incident;
- (e) There are reasonable grounds to believe the employee has been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .04 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof;
- (f) The actions of the employee cannot reasonably be discounted as a contributing factor, using the best information available at the time of the decision; or
- (g) The employee is involved in an on-the-job accident or incident that seriously damages machinery, equipment, or other property.

136.19 [RESERVED].

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136.20 [RESERVED].

136.21 Caregivers and staff members of a licensed Child Development Home or Expanded Home shall participate in a drug and alcohol testing program established and administered by OSSE. Any Caregiver of a Child Development Home or Primary Caregiver of an Expanded Home who tests positive shall be immediately required to terminate the operation of his or her Facility and surrender his or her license.

136.22 [RESERVED].

5-A DCMR § 137
STAFF MEMBER REQUIREMENTS:
GENERAL PROVISIONS

137.1 A Licensee's staff members shall complete a physical examination by a licensed health care practitioner at least annually, and obtain written and signed documentation from the examining practitioner that at the time of the examination, the staff member at the time of the examination, the staff member was free of tuberculosis and other communicable diseases, and is physically capable of caring for children.

137.2 Except where the requirements in Subsection 137.3 are satisfied, each staff member shall be physically capable of caring for children, which includes but not limited to a staff member being able to:

- (a) Lift at least forty pounds (40lbs);

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- (b) Perform all activities with children for extended periods of time;
- (c) Be outdoors for regular, prolonged activities.

137.3 If a staff member is unable to conform to the requirements in Subsection 137.2, the Licensee shall ensure that a sufficient number of staff members, who are able to conform to the requirements in Subsection 137.2, are present on the Facility premises in order to ensure adequate care and supervision of enrolled children.

137.4 [Expired]

137.5 A Licensee shall maintain, and update at least annually, a record of COVID-19 immunization for each of its staff members, which shall consist of a written certification of COVID-19 immunization or a written determination, with supporting documentation, that the Licensee granted the staff member an exemption from COVID-19 immunization based on one of the following reasons:

- (a) the staff member objected, in good faith and in writing pursuant to procedures established by OSSE, that the vaccination would violate his or her sincerely held religious beliefs; or
- (b) the staff member's private physician, or his or her representative, or the Department of Health has provided written certification that COVID-19 vaccination is medically inadvisable for the staff member.

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5-A DCMR § 138
STAFF MEMBER REQUIREMENTS:
AIDES AND VOLUNTEERS

138.1 Each aide or volunteer at a licensed Facility shall work under the direct supervision of a Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director at all times.

138.2 The duties of each aide or volunteer at a licensed Facility shall include the following:

- (a) Assist the Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director as directed;
- (b) Provide supervision and appropriate care to the children in his or her assigned class or group, under the direct supervision of a Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director; and
- (c) Participate in on-going in-service training and continuing education requirements, as required.

138.3 A Licensee shall ensure that no aide or volunteer has sole responsibility for a group or classroom, or for the Facility, at any time.

138.4 Aides and volunteers who meet the standard in Subsection 133.1 are subject to the criminal background and child protection register checks as required in Subsection 132.2(a) and Section 133. A

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volunteer may use the same criminal background check for a period of two (2) years. Licensee shall maintain, and provide to OSSE upon request, documentation of criminal background and child protection register checks of aides and volunteers.

138.5 Aides and volunteers under the age of eighteen (18) who have been charged with, convicted, or adjudicated of a criminal offense, which would prohibit the employment of a person over the age of eighteen (18), shall not serve at a Facility.

138.6 A Licensee shall ensure that aides and volunteers under the age of eighteen (18) provide a statement from the Family Court Division of the D.C. Superior Court, or a court of competent jurisdiction, that the aide or volunteer does not have a juvenile record. If the aide or volunteer has a juvenile record, the aide or volunteer may choose to reveal the nature of the offense in order to document that the offense is not an offense which would prohibit the employment of a person over the age of eighteen (18).

138.7 No more than two (2) volunteers may serve within a classroom or with a group at one time unless otherwise required in order to satisfy a child's IFSP or IEP, and provided that for the purpose of this subsection, a parent or guardian serving within his or her child's classroom or with his or her group shall not be counted as a volunteer.

138.8 A Licensee shall require all volunteers who are not provided unsupervised access to children who are cared for or supervised at a Facility and chaperones

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sign an attestation that the volunteer or chaperone is not on the Child Protection Register, that the volunteer or chaperone will submit to a criminal background check if requested, and that volunteer or chaperone will not remove children in their charge from the sight and hearing of a Facility staff member at all times.

138.9 Aides, volunteers, and chaperones are prohibited from administering any form of discipline, as defined in this chapter.

5-A DCMR § 139
STAFF MEMBER REQUIREMENTS:
PROFESSIONAL DEVELOPMENT

139.1 Each paid employee of a Licensee serving infants, toddlers, and/or preschoolers whose duties or responsibilities include the care of enrolled children shall participate in ongoing professional development, which shall include:

- (a) Registration with and participation in OSSE's professional development information system;
- (b) Pre-service and orientation training in health and safety standards, as detailed in this section;
- (c) Annual training to maintain and update the employee's knowledge of health and safety standards; and
- (d) Annual professional development that:

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- (1) Incorporates the knowledge and application of the District's early learning and developmental guidelines;
- (2) Promotes the social, emotional, physical, and cognitive development of children; and
- (3) Improves the knowledge and skills of directors, teachers, and caregivers in working with children and their families.

139.2 Within thirty (30) calendar days of date of hire, each staff member shall receive pre-service training in the health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include:

- (a) Child abuse and neglect, prevention, detection and reporting;
- (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
- (c) Prevention of sudden infant death syndrome and use of safe sleep practices, as applicable;
- (d) Prevention of shaken baby syndrome and abusive head trauma, as applicable; and
- (e) First aid and CPR.

139.3 Within ninety (90) calendar days of date of hire, each staff member shall receive orientation training in the additional health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include:

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- (a) Developmentally appropriate programming for infants, toddlers, preschool, and/or school-age children, as applicable;
- (b) Prevention and control of infectious diseases, including immunization;
- (c) Administration of medication, consistent with standards for parental or guardian consent;
- (d) Prevention of and response to emergencies due to food and allergic reactions;
- (e) 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; and
- (f) Poison prevention, including the handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

139.4 The following critical health and safety training must be completed before staff members are allowed to care for children unsupervised:

- (a) Prevention of sudden infant death syndrome and use of safe sleep practices, as applicable;
- (b) Prevention of shaken baby syndrome and abusive head trauma, as applicable;
- (c) First aid and CPR;
- (d) Poison prevention, including the handling and storage of hazardous materials and the appropriate disposal of bio contaminants; and

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(e) Prevention and control of infectious diseases, including immunization.

139.5 All staff members responsible for transporting children shall receive additional orientation training in the following areas prior to assuming their transportation duties:

- (a) Transportation regulations, including the modeling of how to properly conduct a vehicle passenger check and demonstration by staff to director on how to conduct a vehicle passenger check;
- (b) Proper use of child safety restraints required by District law;
- (c) Proper loading, unloading, and monitoring of children;
- (d) Location of first aid supplies; and
- (e) Emergency procedures for the vehicle, including actions to be taken in the event of accidents or breakdowns.

139.6 Each paid employee of a Facility serving infants, toddlers, and/or preschoolers whose duties or responsibilities include the care of enrolled children shall participate in annual professional development, including annual training that maintains and updates the health and safety standards, as follows:

- (a) Child Development Center staff shall participate in at least twenty-one (21) hours of professional development annually;

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- (b) Child Development Home Caregivers and staff shall participate in at least twelve (12) hours of professional development annually; and
- (c) Expanded Home Caregivers and staff shall participate in at least fifteen (15) hours of professional development annually.

139.7 Annual training that maintains and updates the health and safety standards shall include:

- (a) Child abuse and neglect, prevention, detection and reporting;
- (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
- (c) Prevention of sudden infant death syndrome and use of safe sleep practices;
- (d) Prevention of shaken baby syndrome and abusive head trauma;
- (e) First aid and CPR;
- (f) Prevention and control of infectious diseases, including immunization;
- (g) Administration of medication, consistent with standards for parental or guardian consent;
- (h) Prevention of and response to emergencies due to food and allergic reactions;
- (i) Building and physical premises safety, including identification of and protection from hazards

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that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(j) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants; and

(k) Identifying, approaching and referring students showing signs of psychological distress to appropriate support services pursuant to Section 115b of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.17).

139.8 Annual professional development, beyond the health and safety standards, may include:

(a) Developmentally appropriate programming for infants, toddlers, preschool, and/or school-age children, as applicable;

(b) Developmentally appropriate methods of positive behavior intervention and support;

(c) Inclusion of children with special needs, including the Americans with Disabilities Act and the Individuals with Disabilities Education Act; and

(d) Communication and collaboration with parents, guardians, and families;

(e) Community health and social services resources for children and families;

(f) Planning developmentally appropriate programs and activities for children and families;

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- (g) Enhancing self-regulation and self-esteem in children;
- (h) Montessori curriculum, pedagogy, classroom management and other topics specific to the Montessori program, if applicable;
- (i) Basic or advanced business practices; and
- (j) Any other area as determined by OSSE.

139.9 Each staff member may receive the required pre-service training, orientation training, and professional development in a variety of settings, including but not limited to seminars, in person or online courses, workshops, conferences, or association meetings:

- (a) Conducted by an OSSE approved trainer or training organization through OSSE's Trainer Approval Program, or any similar program established by OSSE; or
- (b) Conducted by institution accredited by the U.S. Department of Education or the Council for Higher Education Accreditation.

139.10 Licensee shall maintain, and make available for inspection by OSSE upon request, adequate documentation of each staff member's completion of the required pre-service training, orientation training, and professional development. Acceptable documentation shall include one (1) or more of the following:

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- (a) A transcript from an institution accredited by the U.S. Department of Education or the Council for Higher Education Accreditation;
- (b) Certification of participation from a training source approved by OSSE;
- (c) Written documentation verifying completion of training in First Aid for children, Cardiopulmonary Resuscitation (CPR) for children, or common childhood illnesses, from acceptable sponsoring entities, including the American Red Cross, the American Heart Association, the National Safety Council, and other similarly recognized organizations; or
- (d) A signed and dated statement from the trainer, on a form approved by OSSE, verifying the staff member's participation in a training program conducted by a trainer licensed, certified, or otherwise approved by OSSE.

139.11 A private, parochial, or independent school is exempt from complying with the requirements of Sections 139.1(d), 139.5, and 139.8, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and

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(d) Does not offer subsidized child care.

139.12 [RESERVED].

**5-A DCMR § 140
GENERAL DAILY PROGRAM ACTIVITIES
AND CURRICULUM**

140.1 [RESERVED].

140.2 A Licensee shall establish a written planned program of activities that includes time each day for both indoor and outdoor play, suitable to the ages and stages of development of enrolled children at the Facility. The daily program shall be designed to:

- (a) Motivate and stimulate each child's cognitive, physical, social, emotional, creative, and language development;
- (b) Contain sufficient continuity and flexibility to meet the needs of each child, as well as the needs of the group;
- (c) Provide a balance of active and quiet learning through play;
- (d) Provide both structured and unstructured times, and both Teacher or Caregiver directed and child-initiated experiences; and
- (e) Provide periods of rest appropriate to the age and developmental need of each child, including specific designated times for rest each day.

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140.3 A Licensee shall develop a written activity plan for each group of children that implements the scheduled program of activities.

140.4 A copy of the written activity plan for each age group shall be furnished by the Facility to OSSE upon request.

140.5 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

**5-A DCMR § 141
POSITIVE BEHAVIOR SUPPORT**

141.1 A Licensee shall inform staff, volunteers, parents, and children of the Facility's behavioral expectations for children.

141.2 A Licensee shall use positive methods of child guidance that meet the individual needs of each child and encourage self-control, self-direction, self-esteem and cooperation.

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141.3 A Licensee shall apply rules, expectations and limits consistently for all children and in a manner consistent with a child's developmental ability.

141.4 Positive behavior support or discipline shall not include any of the following methods of discipline and the use of any of them by the Licensee, and the staff members, is prohibited:

- (a) Physical harm, including but not limited to, punching, pinching, shaking, shoving, pushing, spanking, striking, kicking, biting, yanking, strangling, kneeing, poking, or plucking;
- (b) Fear, shaming, intimidation, or humiliation;
- (c) Derogatory remarks or profane language;
- (d) Confinement in a locked room or an enclosed area where a child cannot be seen or supervised by Facility staff;
- (e) Force feeding against a child's will;
- (f) Withholding of food, water, rest, toilet use, outdoor activities, or outdoor play; or
- (g) Physical or chemical restraints.

141.5 Separation from other children or planned program activities when used as behavior management or discipline shall be brief in duration and shall be appropriate to the child's age and developmental level and to the circumstances necessitating the discipline. A separated child shall remain in the same room as a supervising staff member.

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141.6 Authority to manage behavior or discipline shall never be delegated to another child.

5-A DCMR § 142
HEALTH, SAFETY AND WELFARE:
GENERAL REQUIREMENTS

142.1 A Licensee shall comply with requirements set forth in this chapter, as appropriate to the age of children served by the Facility and the Facility setting.

142.2 A Licensee shall conform, to the extent practicable, to the National Health and Safety Performance Standards to ensure the safety and welfare of children and the cleanliness and sanitary conditions of the Facility.

142.3 A Licensee shall ensure that all tobacco products that may be present at the Facility remain out of the reach of enrolled children at all times.

142.4 A Licensee shall ensure that no person, including staff, residents, and visitors to the Facility, smokes or uses tobacco products at the Facility when enrolled children are present.

142.5 When children are in the care of the Facility, either on the premises or off-site, no staff member, resident, or visitor shall be under the influence of, or consume, alcoholic beverages, illegal drugs, or legal drugs that cause impairment.

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142.6 A Licensee shall ensure that no illegal substances or drugs, including marijuana, are on the Facility's premises.

142.7 A Licensee shall ensure that no firearms or other weapons are on the Facility's premises, with the exception of those licensed and appropriately in the possession and control of armed security guards authorized to protect the Facility premises.

142.8 A Licensee shall ensure that all appliances, sharp utensils, and other dangerous devices are kept inaccessible to children at all times.

5-A DCMR § 143
HEALTH, SAFETY AND WELFARE:
SUPPORTING HEALTHY CHILD DEVELOPMENT,

143.1 A licensed Child Development Facility ("Licensee") serving children in a full-day program shall ensure that each child, including infants, toddlers, and preschoolers, has a minimum of two (2) hours of active playtime each day, including a minimum of forty-five (45) minutes of outdoor activity, weather permitting. During outdoor play, children shall be dressed appropriately for weather and temperature.

143.2 A Licensee shall provide one (1) hour of structured active play and guided physical activity, and one (1) hour of child-initiated unstructured physical activity. A Licensee shall schedule children attending less than a full-day program to participate in a proportionate amount of such physical activities. In

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inclement weather, a Licensee shall encourage and support active play in a safe indoor play area.

143.3 Children shall not be engaged in sedentary activities or activities requiring them to sit passively for more than sixty (60) minutes continuously, except during scheduled rest or nap time.

143.4 Restrictive infant equipment such as swings, stationary activity centers, infant seats, and molded seats, if used, shall only be used for a maximum of thirty (30) minutes, twice a day. A Licensee shall ensure that safety straps are used and that infants are supervised when placed in equipment.

143.5 A Licensee shall prohibit children less than two (2) years of age from viewing television, videos, or other visual recordings, unless a supervising staff member directly interacts with the children during this viewing time.

143.6 A Licensee shall limit viewing of television, videos, or other visual recordings to no more than sixty (60) minutes total per day for children ages two (2) and older. The only materials that may be viewed shall consist solely of developmentally appropriate educational programming or programs that actively engage child movement. A Licensee shall limit to a proportionate amount of any such viewing for children ages two (2) and older attending less than a full-day program.

143.7 Notwithstanding Section 160 (Requirements for a Child Development Facility Operating During

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Non-Traditional Hours), a Licensee shall ensure that children enrolled are provided periods of rest, not to exceed three (3) hours per day. The duration and scheduling of activities shall be appropriate in order to prevent fatigue and to meet the physical needs of the enrolled children at the Facility, taking into account the ages and developmental levels of the children. Each child in a full-day program shall have specific times designated for rest each day.

143.8 A Licensee shall ensure that each child has a supply of clean, dry clothing following outdoor play, if needed, and that staff promptly remove all soiled clothing from a child and replace it with clean, dry clothing.

143.9 A Licensee shall monitor each enrolled child's development, share observations with the parent(s) or guardian(s), and provide resource information, as needed, for developmental screenings and early intervention services.

**5-A DCMR § 144
HEALTH, SAFETY AND WELFARE:
HAND HYGIENE**

144.1 A Licensee shall establish and implement a written policy regarding hand washing that addresses the following areas:

- (a) Under what circumstances hand washing and hand sanitizing are required for staff, volunteers, and children;

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(b) Specific hand washing and hand sanitizing procedures; and

(c) Ongoing monitoring by the Center Director or Caregiver to ensure that proper hand washing procedures are followed by staff, volunteers, and children.

144.2 A Licensee shall post in all food preparation, diapering, toileting areas, and other designated hand washing areas the circumstances when children and staff shall perform hand hygiene.

144.3 A Licensee shall ensure that all staff and volunteers wash their hands in, at least, the following circumstances:

(a) Upon arrival for the day, after breaks or when moving from one group to another;

(b) Before and after:

(1) Preparing food or beverages;

(2) Eating, drinking or handling food;

(3) Handling clean utensils or equipment;

(4) Diapering;

(5) Assisting or training a child in feeding or toileting; or

(6) Providing any medication or applying any medical ointment or cream.

(c) After:

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- (1) Personal use of the toilet;
- (2) Handling or contact with body secretions, such as blood, urine, stool, mucus, saliva, or drainage from wounds;
- (3) Removing disposable gloves;
- (4) Caring for a sick child;
- (5) Handling animals or cleaning up animal excrement; or
- (6) Cleaning or handling garbage.

144.4 A Licensee shall ensure that all children wash their hands in, at least, the following circumstances:

- (a) Upon arrival for the day, after breaks or when moving from one group to another;
- (b) Before and after eating, drinking, or handling food;
- (c) After:
 - (1) Personal use of the toilet;
 - (2) Outdoor activities; or
 - (3) Handling animals.

144.5 A Licensee shall ensure that designated hand washing areas are equipped with sinks with running water, soap, single-use paper towels or an air hand dryer, and are restricted from use for washing utensils and bottles.

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5-A DCMR § 145
HEALTH, SAFETY AND WELFARE:
DIAPERING

145.1 A Licensee shall maintain diaper-changing areas within close proximity of a properly maintained source of potable, running hot and cold water and soap, and that is not in or near the Facility's kitchen or eating areas.

145.2 A Licensee shall store soiled diapers and training pants in designated and labeled containers separate from all other waste, including soiled clothes and linens. A Licensee shall provide a washable, plastic lined, tightly covered receptacle that can be operated by a hands-free opening mechanism, within arm reach of each diaper changing table, for the disposal of soiled diapers or training pants.

145.3 A Licensee shall provide an area for the storage of clean diapers and training pants that is clean and designated exclusively for that exclusive use, with the exception that the clean diaper and training pants storage area and the storage area for enrolled children's clean clothes may be combined.

145.4 A Licensee shall only use cloth diapers for a child if the child's parent(s) or guardian(s) provides the Facility with a written statement accompanied by supporting written documentation from a licensed health care practitioner, explaining that cloth diapers are required by a special medical circumstance of that child. This statement shall remain in the child's record at the Facility.

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145.5 Staff members of a licensed Facility shall ensure that each child's diaper or training pant is checked for wetness and feces at least hourly and whenever the child indicates discomfort or exhibits behavior which suggests a wet or soiled diaper. A Licensee shall ensure that upon learning that diapers and training pants are wet or soiled, that they are changed.

145.6 A Licensee shall provide one (1) or more diaper-changing areas that have surfaces made of non-porous material.

145.7 A Licensee shall ensure that infants and toddlers are diapered only at designated diaper changing areas.

145.8 A Licensee shall ensure that children are never left unattended at a diaper changing area.

145.9 A Licensee shall ensure that, for each diaper changing area, the diaper changing surface is cleaned and sanitized with a bleach solution or other appropriate germicide after each diaper change.

145.10 A Licensee shall ensure that the bleach solution or other germicide used for cleaning and sanitizing the diaper changing surface is kept in a secure area, inaccessible to children at all times.

145.11 A Licensee shall store or dispose of soiled diapers, training pants, and clothing and diapering materials as follows:

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- (a) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be sent home with a child shall be rinsed at the Facility at a location where food preparation does not occur, or shall be placed directly into a plastic container that is sealed tightly, and shall be stored away from the rest of the child's belongings and out of reach of all children, until sent home with the child at the end of the day;
- (b) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be laundered by the Licensee shall be placed in a non-porous covered container containing an appropriate germicidal solution until laundered;
- (c) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be either laundered by the Facility, or sent home with a child for laundering, may be held at the Facility for laundering no longer than one (1) day;
- (d) A Licensee shall place soiled disposable diapers and training pants in a plastic-lined, covered container that shall be emptied, cleaned, and sanitized with an appropriate germicidal agent at least once daily;
- (e) A Licensee shall use only disposable diapering materials, including wipes and changing pads, except as provided for in this chapter, and a Licensee shall discard each such disposable item after one (1) use in the container designated for the discard of soiled disposable diapers; and

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(f) All staff shall wear disposable gloves when changing diapers and training pants or when assisting children to remove soiled clothing. A new pair of gloves shall be used and discarded for each successive child.

5-A DCMR § 146
HEALTH, SAFETY AND WELFARE:
SAFE SLEEPING AND RESTING PRACTICES

146.1 A Licensee that provides care for one (1) or more infants shall comply with the latest recommendations of the American Academy of Pediatrics (“AAP”) with regard to safe sleep practices and reducing the risk of Sudden Infant Death Syndrome including any recommendation made by the AAP after the effective date of these regulations. If the AAP’s latest recommendations differ from the requirements of this section, the Licensee shall comply with the latest recommendations from the AAP.

146.2 A Licensee that provides care for one (1) or more infants shall comply with the following requirements with regard to infant sleep and play position:

- (a) Unless otherwise ordered by a physician or other qualified health care practitioner, each infant shall be placed on his or her back for sleeping;
- (b) Each infant shall be placed on his or her stomach for some part of the day that he or she is awake and under staff supervision;

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- (c) A positioning device shall not be used to restrict the movement of an infant unless such device is ordered by a physician or other qualified health care practitioner;
- (d) Soft materials or objects, such as pillows, quilts, comforters, sheepskins, blankets, and stuffed toys, shall not be permitted in an infant's sleep environment;
- (e) Bumper pads shall not be used in an infant's crib;
- (f) An infant shall not be put to sleep on a sofa, soft mattress, waterbed, chair, cushion, or other soft surface; and
- (g) An infant shall be removed from his or her crib for all feedings, and shall not be fed by means of a propped bottle.

146.3 If there is a medical reason a child cannot sleep on his/her back, then the Licensee shall obtain a signed statement from the child's health practitioner stating a different sleep position is required. This statement shall remain in the child's record at the Facility.

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5-A DCMR § 147
HEALTH, SAFETY AND WELFARE:
PREVENTION OF CHILD ABUSE
AND NEGLECT

147.1 A Licensed Child Development Facility (“Licensee”), including any staff, substitutes, volunteers, individual residing on the premises of the Facility, or any other individual connected with the Facility shall not subject a child to abuse, neglect, mental injury, or injurious treatment.

147.2 A Licensee shall:

- (a) Provide training to all staff upon initial hire and annually thereafter regarding the Facility's policies and procedures relating to child abuse, neglect, and risk to a child's health, safety or welfare, including to whom and how to report suspected abuse, neglect, or risk to a child's health, safety, or welfare;
- (b) Require staff to immediately report, and to co-operate with officials investigating, alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health, safety, or welfare;
- (c) If any staff member is identified as responsible for alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health, safety, or welfare, the Licensee shall immediately place that staff member on administrative leave or reassign the staff member to duties involving no contact with children until the investigation

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conducted by authorized District of Columbia government officials is complete and that investigation establishes that the staff member is not responsible for the alleged child abuse or neglect; and

(d) Create an encouraging and supportive environment where staff may report incidents involving alleged or actual child abuse, or neglect or alleged or actual risk to an enrolled child's health, safety, or welfare, without threat of retaliation, including termination of employment.

5-A DCMR § 148
HEALTH, SAFETY AND WELFARE:
EMERGENCY PREPAREDNESS AND RE-
SPONSE PLANNING

148.1 A Licensee shall conduct practice emergency evacuation and disaster drills, in accordance with requirements set forth by FEMS. The drills shall include all groups of children and all staff, and shall be conducted at least twice a year, at varying times during the program day. A Licensee shall document the date, time, and duration of each such evacuation drill, the number of children and staff participating, and the weather conditions.

148.2 A Licensee shall maintain a complete log of all documented practice evacuation drills for at least five (5) years.

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148.3 A Licensee shall develop and implement specific procedures for the safe and prompt evacuation of infants, toddlers, and non-ambulatory children.

148.4 A Licensee shall develop and maintain an emergency and disaster plan with established procedures for the following:

- (a) Evacuations and clearly marked evacuation routes;
- (b) Relocating staff and children to a safe evacuation site during an emergency;
- (c) Sheltering in place if evacuation is not possible;
- (d) Lock-down procedures in the event of an emergency
- (e) Notifying parents and guardians about an emergency;
- (f) Notifying parents and guardians when an emergency has ended and the process for reuniting parents and guardians with their children;
- (g) Addressing the needs of children during an emergency;
- (h) Contacting local emergency authorities;
- (i) Listing essential local emergency contacts; and
- (j) Posting the Emergency and Disaster plan in a conspicuous place at the Facility's premises.

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148.5 A Licensee shall review and update the emergency and disaster plan annually.

148.6 A Licensee shall provide training to all staff annually on the emergency and disaster plan.

148.7 A Licensee shall inform and update parents and guardians of enrolled children at least annually about the Facility's emergency and disaster plan.

148.8 A Licensee shall provide at least one working, non-pay, stationary telephone accessible to staff at each Facility building.

148.9 A Licensee shall register with AlertDC, or any successor notification system, administered by the Homeland Security and Emergency Management Agency, for immediate notification of emergency alerts and notifications.

148.10 A Licensee shall maintain a three (3) day supply of water, staple food, and supplies for each enrolled child and staff member.

148.11 When non-ambulatory children are enrolled in a Facility at street level, a Licensee shall be equipped with a ratio of one (1) evacuation crib for every four (4) non-ambulatory children to be used during emergency evacuations.

148.12 When non-ambulatory children are enrolled in a Facility that has approval to operate above or below street level, a Licensee shall be equipped with a ratio of one (1) evacuation crib for every two (2) non-

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ambulatory children to be used during emergency evacuations.

5-A DCMR § 149
HEALTH, SAFETY AND WELFARE:
HAZARDOUS MATERIALS AND
BIOCONTAMINANTS

149.1 A Licensee shall ensure that all cleaning and sanitizing supplies, toxic substances, paint, poisons, aerosol containers, and other items bearing warning labels are safely stored and are kept in a secure area, inaccessible to the children at all times.

149.2 A Licensee shall ensure that the telephone number for the local Poison Control Center is posted in a location where it is readily available in an emergency situation.

149.3 A Licensee shall use only non-toxic arts and crafts materials.

5-A DCMR § 150
HEALTH, SAFETY AND WELFARE:
FIRST AID AND CPR

150.1 A Licensee shall ensure that all staff members shall possess current and valid certification appropriate to the age of children served by the Facility in first aid and CPR.

150.2 A Licensee shall have at all times at least two (2) staff members at the premises and readily available to administer first aid and CPR for children,

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unless a caregiver in a child development home is serving no more than six (6) children with only two children being under the age of two.

150.3 A Licensee shall maintain at the Facility premises a quantity of first aid supplies sufficient to meet the Facility's reasonably expected needs, based on the size of the Facility, the ages and developmental abilities of the enrolled children, and the Facility's program of activities. A Licensee shall maintain these supplies in a designated location that is readily available to staff and inaccessible to children.

150.4 For every twenty-five (25) children, a Licensee shall maintain a first aid kit that includes, but is not limited to the following supplies:

- (a) A current edition of the first aid text published by the American Academy of Pediatrics, the American Red Cross, or an equivalent community first aid guide;
- (b) Telephone number(s) of the local Poison Control Center;
- (c) One (1) roll of one-half inch ($\frac{1}{2}$ in.) non-allergenic adhesive tape;
- (d) One (1) roll of two-inch (2 in.) gauze roller bandage;
- (e) Ten (10) individually wrapped sterile gauze squares in assorted sizes;
- (f) Twenty-five (25) adhesive compresses, such as Band-Aids, in assorted sizes;

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- (g) Three (3) clean cotton towels or sheeting pieces, approximately twenty-four by thirty-six inches (24 in. x 36 in.) each;
- (h) One (1) pair of scissors;
- (i) Safety pins in assorted sizes;
- (j) One (1) working flashlight;
- (k) One (1) non-mercury, non-glass thermometer;
- (l) One (1) measuring tablespoon or dosing spoon;
- (m) One (1) pair of tweezers;
- (n) One-third cup (1/3 c.) of powdered milk for dental first aid (for mixing to make a liquid solution);
- (o) Rubbing alcohol and alcohol swabs;
- (p) Cotton balls;
- (q) One (1) ice pack or gel pack;
- (r) Liquid sanitizer;
- (s) Sanitary soap;
- (t) Disposable, nonabsorbent latex free or non-powdered latex free gloves;
- (u) All items needed for disposal of blood-borne pathogens;
- (v) Eye patch or dressing;
- (w) Pen or pencil and notepad;
- (x) Wipes;

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(y) Whistle; and

(z) One-way valves for infants (if served), young children, and adults.

150.5 A Licensee shall inspect and take inventory of its first aid supplies at least weekly, and replenish them as needed. Replenishment shall include:

(a) Removing and replacing sterile supplies if the package has been opened or damaged, or if the expiration date on the package has been reached; and

(b) Replacing all supplies as they are used, expired, or become damaged.

150.6 A Licensee shall maintain one (1) transportable first aid kit, in addition to the complete first aid kit, which shall include:

(a) A current edition of the first aid text published by the American Academy of Pediatrics, the American Red Cross, or an equivalent community first aid guide;

(b) Telephone number(s) of the local Poison Control Center;

(c) One (1) roll of one-half inch ($\frac{1}{2}$ in.) non-allergenic adhesive tape;

(d) One (1) roll of two-inch (2 in.) gauze roller bandage;

(e) Ten (10) individually wrapped sterile gauze squares in assorted sizes;

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- (f) Twenty-five (25) adhesive compresses, such as Band-Aids, in assorted sizes;
- (g) One (1) pair of scissors;
- (h) Safety pins in assorted sizes;
- (i) One (1) working flashlight;
- (j) One (1) pair of tweezers;
- (k) Rubbing alcohol and alcohol swabs;
- (l) Cotton balls;
- (m) One (1) ice pack or gel pack;
- (n) Liquid sanitizer;
- (o) Disposable, nonabsorbent latex free or non-powdered latex free gloves;
- (p) Pen or pencil and notepad;
- (q) Wipes;
- (r) Whistle; and
- (s) One-way valves for infants (if served), young children, and adults.

150.7 A Licensee shall ensure that the transportable first aid kit also include:

- (a) List of children in attendance, organized by the staff member they are assigned to, and each child's emergency contact information;
- (b) Special care plans for children who have them;

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- (c) Emergency medications or supplies as specified in the special care plans;
- (d) List of phone numbers for the Poison Center, nearby hospitals or other emergency care clinics, and other community resource agencies; and
- (e) Written transportation policy and contingency plans.

150.8 A Licensee shall ensure that a transportable first aid kit is taken along by Facility staff on each outing, and when children under the care and supervision of the Facility are being transported.

5-A DCMR § 151
HEALTH, SAFETY AND WELFARE:
INCLUSION, EXCLUSION, AND DISMISSAL
OF CHILDREN AND STAFF DUE TO ILLNESS

151.1 A Licensee shall take the following actions under the following circumstances:

- (a) A child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2, upon arrival, shall not attend the Facility that day;
- (b) If, during the time a child is at the Facility, the Facility staff observes one (1) or more symptoms of an illness identified in Subsection 151.2, the Licensee shall notify the child's parent(s) or guardian(s) immediately. A Licensee shall require that the parent(s) or guardian(s) remove the child from the Facility within two (2) hours after the notification was provided;

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- (c) A Licensee shall isolate a child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2. The child shall remain within sight and hearing of a staff member; and
- (d) A Licensee shall ensure that a child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2 does not share any personal hygiene, grooming items, or food.

151.2 A Licensee shall exclude a child from a Facility while exhibiting symptoms of illness including, but not limited to, the following:

- (a) Diarrhea (loose, watery, or bloody stools);
- (b) Vomiting two (2) or more times in a twenty-four (24) hour period;
- (c) Body rash with any fever;
- (d) Sore throat with any fever or swollen glands;
- (e) Abnormal discoloration of the skin;
- (f) Any fever accompanied by a rash, vomiting, diarrhea, earache, irritability, or confusion;
- (g) Any other symptom indicative of a reportable communicable disease, as such is defined in 22-B DCMR Chapter 2, or in any superseding document.

151.3 A Licensee shall observe each child for the presence of the following symptoms of illness, that may indicate a medical problem, which may require exclusion from the Facility, isolation from other

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children, and consultation with the child's parent(s), guardian(s), or licensed health care practitioner(s):

- (a) Fever;
- (b) Lethargy or inability to walk;
- (c) Respiratory problems, including increased respiratory rate, retractions in the chest, excessive nasal flaring, audible persistent wheezing, persistent coughing, either productive or nonproductive, severe coughing causing redness or blueness in the face, or difficulty in breathing;
- (d) Abdominal and urinary system problems, including intestinal parasites, dark urine, white spots in the stool, increased urgency or frequency of urination, or no urination for an entire day;
- (e) Cardiac problems, including choking, change in color of the skin, chest pain, or persistent sweating;
- (f) Ear problems, including discharge from the ear and/or ear pain;
- (g) Throat and mouth problems, including sores on the lips or in the mouth, white patches in the mouth, throat pain, or a dental problem that needs immediate attention; and
- (h) Injuries, including persistent bleeding, oozing wounds, apparent fracture, complaint of persistent bone pain or stiffness, or difficulty with the movement of any extremity.

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151.4 A child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2, and who has been treated for the symptom(s) by a licensed health care practitioner, may be readmitted to the Facility only with written permission, and written instructions for continuing care if needed, from a licensed health care practitioner.

151.5 If a child exhibits mild symptoms of illness and/or discomfort, the Center Director, or his/her designee, or the Caregiver, in consultation with the child's parent(s) or guardian(s), shall decide whether the child should be immediately discharged from the Facility or discharged at the end of the day. This decision shall consider the following:

- (a) Whether the illness prevents the child from participating comfortably in activities;
- (b) Whether the illness results in a need for care that is greater than the staff can provide without compromising the health and safety of other children; and
- (c) Whether the illness poses a risk of spread of harmful diseases to others.

151.6 Staff members who exhibit one (1) or more symptoms of an illness identified in Subsection 151.2, and who have been treated for the symptom(s) by a licensed health care practitioner, may return to work with written permission from a licensed health care practitioner.

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151.7 Staff members who, after having experienced conditions that affect the ability to perform required duties, have been treated for said condition(s) by a licensed health care practitioner, may return to work with written permission from a licensed health care practitioner.

151.8 Staff members who after serious or prolonged illness, have been treated for said illness by a licensed health care practitioner, may return to work with written permission from that licensed health care practitioner.

5-A DCMR § 152
HEALTH, SAFETY AND WELFARE:
REQUIRED HEALTH EXAMINATIONS
& IMMUNIZATIONS

152.1 A Licensee shall ensure that each child attending a Facility shall, prior to the child's first day of services and at least annually thereafter, submit to the Facility and to OSSE upon request, appropriate, complete documentation of a comprehensive physical health examination, which shall include evidence of age-appropriate health examinations or screenings and up-to-date immunizations, and, for each child three (3) years of age or older, evidence of an oral health examination. Each examination shall have been performed by a licensed health care practitioner within one (1) year prior to the date of submission of the complete documentation.

152.2 A Licensee shall provide a sixty (60) day grace period from the first day of service to submit

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documentation required in Subsection 152.1 for a child experiencing homelessness or a child who is a ward of the District in foster care.

152.3 Pursuant to D.C. Official Code §§ 38-501 et seq. and 22-B DCMR §§ 130.1 et seq., each child shall be immunized according to the requirements set forth in 22-B DCMR §§ 131-137 before entering the Facility, unless the child is part of a group exempted from this requirement in Subsection 152.10.

152.4 In addition to the information otherwise required under this section, each parent or guardian of a child under six (6) years of age attending a Facility shall submit, and the Licensee shall maintain and provide to OSSE upon request, documentation with respect to blood tests for lead poisoning as follows:

(a) Documentation, preferably in the form of a Certificate of Testing for Lead Poisoning, that the child was tested between the ages of six (6) months and fourteen (14) months, and again between the ages of twenty-two (22) months and twenty-six (26) months; or

(b) If the child was not tested before the age of twenty-six months (26), the child was or will be screened two (2) times before the age of six (6) years. Lead test results will be valid for two (2) months from date of testing and the results will not exclude a child from school-related programs or activities.

152.5 Blood tests for lead poisoning shall be conducted, and results shall be disseminated and

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maintained, in accordance with the Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190; D.C. Official Code §§ 7-871.01 et seq.).

152.6 Licensee shall maintain documentation at the Facility at all times evidencing that enrolled children have received all required immunizations, health and oral examinations, or evidence that a child is exempted from a requirement, pursuant to Subsection 152.10.

152.7 An enrolled child's compliance with requirement to have annual health and oral examinations shall include a thirty (30) day grace period from the child's birthday or date of required annual examination for parents to meet all required health and oral examinations.

152.8 An enrolled child's' compliance with the requirement to be immunized, shall include a ten (10) day grace period from the child's birthday or date of required annual immunization for all required immunizations.

152.9 An enrolled child's compliance with the requirement to be immunized and have health and oral examinations shall include a sixty (60) day grace period from the first day of service for a child experiencing homelessness or a ward of the District in foster care.

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152.10 The following groups are exempted from receiving the immunizations required in Subsection 152.3:

- (a) Children whose parents object on religious grounds; and
- (b) Children whose medical condition requires that immunizations not be given or for whom immunization is determined to be not medically advisable.

152.11 If immunizations have not been administered because of a medical condition, the child's parent(s) or guardian(s) shall provide documentation from the child's licensed health care provider stating that because of a medical condition the child should not receive a particular immunization.

152.12 If immunizations have not been administered because of the child's parent(s) or guardian(s)' religious beliefs, the parent(s) or guardian(s) shall provide documentation stating that they have a good faith religious objection to immunizing their child to the Licensee.

152.13 If unimmunized children are exposed to a vaccine-preventable disease at the Facility, the Licensee shall contact the Department of Health to determine the action they should take (if any) related to the unimmunized children.

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5-A DCMR § 153
HEALTH, SAFETY AND WELFARE:
MEDICATION ADMINISTRATION
AND STORAGE

153.1 A Licensee shall not administer medication or treatment to a child in care, with the exception of emergency first aid, whether prescription or non-prescription, unless:

- (a) Parental permission to administer the medication or treatment is documented on a completed, signed, and dated medication authorization form that is received by the Licensee before the medication or treatment is administered;
- (b) A licensed health care practitioner has approved the administration of the medication and the medication dosage; and
- (c) The individual administering the medication has completed an approved medication training program or the individual is a registered nurse, licensed practical nurse, or medication technician certified by the District of Columbia Board of Nursing to administer medication to children in care.

153.2 A Licensee shall not administer prescription medication to a child unless at least one (1) dose of the medication has been given to the child at home at a previous date or time.

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153.3 If medication is by prescription, it shall include a label from the pharmacy or a licensed health care practitioner with the following:

- (a) The child's name;
- (b) The date of the prescription;
- (c) The name of the medication;
- (d) The medication dosage;
- (e) The administration schedule;
- (f) The method of administration;
- (g) If applicable, special instructions, such as "take with food";
- (h) The duration of the prescription;
- (i) An expiration date that states when the medication is no longer useable; and
- (j) The name and telephone number of the child's licensed health care practitioner.

153.4 Medication shall be administered according to the instructions on the label of the medication container or a licensed health care practitioner's written instructions, whichever is most recently dated.

153.5 A Licensee shall maintain a medication log, on a form approved by OSSE. Each time medication is administered to a child, a staff person shall enter the date, time of day, medication, medication dosage, method of administration, and the name of the person administering the medication in the medication log.

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153.6 For each child for whom medication is administered at the Facility, a Licensee shall obtain a daily written statement from the parent or guardian, indicating when the last dose was administered prior to the child's arrival to the Facility. A Licensee shall add the information from the written statement to the medication log described in Subsection 153.5.

153.7 A Licensee shall maintain all records pertaining to the administration of each medication to each child for a period of at least three (3) years after the administration of said medication. The record shall include the written medical prescription or order from the licensed health care practitioner, the written instructions and authorization of the parent(s) or guardian(s), and the completed medication log. A Licensee shall make these records available for review by OSSE upon request.

153.8 After receiving written consent from a child's parent(s) or guardian(s), a Licensee may apply non-prescription topical ointments, including petroleum jelly, diaper rash products, sunscreen, or insect repellent supplied by the child's parent(s) or guardian(s) without prior approval of a licensed health care practitioner.

153.9 Application of a diaper rash product, sunscreen, or insect repellent supplied by a child's parent shall be noted in the child's record.

153.10 Each medication, whether prescription or non-prescription, shall be:

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- (a) Labeled with the child's name, the dosage, and the expiration date;
- (b) Stored in its original container as directed by the manufacturer, the dispensing pharmacy, or the prescribing physician; and
- (c) Discarded according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency, or returned to the child's parent upon expiration or discontinuation of use for proper disposal.

153.11 A Licensee shall ensure that, unless otherwise indicated by a written medical prescription or order, each medication requiring refrigeration is maintained at a temperature between thirty-six degrees Fahrenheit (36°F) and forty-six degrees Fahrenheit (46°F). All refrigerated medications are to be kept in a separate storage container within the Facility's refrigerator to prevent potential cross-contamination with foods and beverages.

153.12 Before a child may self-administer medication while in care, a Licensee shall:

- (a) Have a written order from the child's physician and the written request of the child's parent for the child's self-administration of medication; and
- (b) In consultation with the child's parent, establish a written procedure for self-administration of medication by the child based on the physician's written order.

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153.13 If the child fails to follow the written procedure required by Subsection 153.12, a staff member shall administer any remaining medication dosage, document the administration of medication, and notify the child's parent of such administration.

5-A DCMR § 154
HEALTH, SAFETY AND WELFARE:
PREVENTION OF AND RESPONSE TO
FOOD ALLERGIES

154.1 A Licensee shall have a written care plan for each child with a food allergy prepared for the Facility by the child's parent(s), guardian(s), or licensed health care practitioner, which shall include:

- (a) Instructions regarding the food to which the child is allergic and steps that need to be taken to avoid that food; and
- (b) A detailed treatment plan to be implemented in the event of an allergic reaction, including the names, doses, and methods of administration of any medications that the child should receive in the event of a reaction. The plan should include specific symptoms that would indicate the need to administer one or more medications.

154.2 Based on a child's care plan, the Licensee shall ensure that the staff members are trained to:

- (a) Prevent exposure to the specific food to which the child is allergic;

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- (b) Recognize the symptoms of an allergic reaction; and
- (c) Treat allergic reactions.

154.3 The written care plan, a mobile phone, and the proper medications for appropriate treatment if the child develops an acute allergic reaction shall be carried on field trips.

154.4 A Licensee shall immediately notify the parent(s) or guardian(s) of any suspected allergic reactions of an enrolled child, as well as the ingestion of or contact with the problem food even if a reaction did not occur.

154.5 A Licensee shall prominently post food allergy notifications near the Facility's entrance and in each classroom of an enrolled child with food allergies. This notification shall not include the child's name or any other identifying information.

5-A DCMR § 155
HEALTH, SAFETY AND WELFARE:
FOOD SERVICE

155.1 A Licensee that stores, prepares, handles, and serves food shall comply with, or ensure that any entity providing food complies with, the requirements consistent with the District of Columbia Food Code, Title 25-A DCMR, and shall obtain and maintain all certifications or licenses required under the applicable laws and regulations of the District of Columbia

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155.2 A Licensee shall ensure that planned daily menus, and the foods that are actually served by the Facility, are varied, suitable to the ages and developmental levels of the children, and consistent with the meal pattern requirements and nutrition standards specified by the Child and Adult Care Food Program.

155.3 A Licensee shall plan and publicly post menus for all foods served, including snacks, and shall modify the menus as necessary to reflect foods actually served. A Licensee shall maintain the menus at the Facility's premises for at least three (3) years.

155.4 A Licensee shall have at least one (1) staff member present at all times when meals are being prepared or served who is certified as a Food Protection Manager in accordance with the District of Columbia Food Code, 25-A DCMR. The staff member shall have a valid and current certification.

155.5 A Licensee shall ensure that staff responsibilities concerning food preparation and service do not reduce the adult-to-child ratios for staff actively supervising children below the levels specified in this chapter or interfere with the implementation of the Facility's program of activities.

155.6 A Licensee shall ensure that no person is involved in food preparation or service, or otherwise works in the food preparation or service area, if that person shows signs or symptoms of illness, including vomiting, diarrhea, or uncovered infectious skin sores, or if that person is actually or probably infected

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with any bacterium or virus that can be carried in food.

155.7 A Licensee shall request and obtain, if applicable, from a child's parent(s) or guardian(s) all relevant information regarding dietary restrictions and food allergies for that child upon the child's admission to the Facility, and the Licensee shall record this information in the child's file.

155.8 A Licensee shall request at least annually and if applicable obtain from a child's parent(s) or guardian(s) updated information regarding the child's dietary restrictions and food allergies.

155.9 A Licensee shall ensure that all staff responsible for food preparation and distribution are immediately informed, orally and in writing, of any dietary restrictions, food allergies, or other special dietary requirements of enrolled children at the Facility.

155.10 A Licensee shall serve a special therapeutic diet to a child only upon written approval from the child's parent(s) or guardian(s), accompanied by written instructions from the child's licensed health care practitioner.

155.11 A Licensee shall provide and ensure that each child uses, at each meal or snack, clean and sanitary individual eating and drinking utensils. Reusable utensils shall be washed and sanitized after each use.

155.12 A Licensee that serves food provided by the parent(s) or guardian(s) shall:

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- (a) Establish and implement written policies and procedures to be followed if the food provided does not meet the requirements in this section; and
- (b) Ensure that food provided by the parent(s) or guardian(s) shall not be co-mingled with food prepared at the Facility and may be stored in a separate refrigerator.

155.13 A Licensee shall ensure that powdered milk or reconstituted evaporated milk is not served as a substitute for fluid milk for drinking. A Licensee may use powdered milk or reconstituted evaporated milk for cooking.

155.14 A Licensee shall make drinking water continuously available to all children and serve drinking water on demand.

155.15 A Licensee shall ensure that appropriately timed meals and snacks, consistent with the Child and Adult Care Food Program, that meet the nutritional requirements of the child are served according to the following schedule, based on the number of hours a child is present at the Facility. If the child is present for:

- (a) Two (2) to four (4) hours, child receives one (1) snack or one meal;
- (b) Four (4) to six (6) hours, child receives one (1) meal and one (1) snack or two meals;
- (c) Seven (7) to eleven (11) hours, child receives two (2) meals and one (1) snack or two (2) snacks

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and one (1) meal, depending on the time of arrival of the child; and

(d) Twelve (12) hours or more, child receives three (3) meals and two (2) snacks.

5-A DCMR § 156
HEALTH, SAFETY AND WELFARE:
INFANT FEEDING

156.1 This section shall only apply to a licensed Facility that provides care services to infants.

156.2 A Licensee shall comply with the following requirements concerning infant formula and feeding:

- (a) Each feeding bottle for an infant or toddler shall be labeled with the name of the child to whom it belongs;
- (b) Each bottle of milk or formula shall be labeled with the date of preparation, and refrigerated at thirty-five to forty degrees Fahrenheit (35°F - 40°F);
- (c) Each open container of ready-to-feed or concentrated formula shall be used for only one (1) child, and shall be labeled with that child's first and last name and the date on which the container is opened;
- (d) All infant formula given to a child shall be prepared according to written instructions obtained from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner;

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- (e) All bottles and formula preparation equipment shall be washed with hot water and detergent in sinks which are not designated for hand washing only;
- (f) Bottles, bottle caps, nipples, and other equipment used for bottle feeding shall not be reused without first being cleaned and sanitized by washing in a dishwasher or by washing, rinsing, and boiling them for one (1) minute;
- (g) Each bottle of reconstituted concentrated or powdered formula shall be refrigerated immediately after its preparation, or immediately upon its arrival at the Facility if it is prepared and brought to the Facility by the child's parent(s) or guardian(s), and may be held for feeding for no longer than twenty-four (24) hours;
- (h) Each bottle of commercially prepared ready-to-feed formula shall be refrigerated promptly after it is opened;
- (i) After each feeding, discard any unused:
 - (1) Formula within one hour of feeding; and
 - (2) Breast milk, if less than one ounce, otherwise return remaining breast milk to the mother;
- (j) Each bottle or container of breast milk provided for a child by the parent(s) or guardian(s) of that child shall be labeled with the child's first and last name and the date of receipt, and refrigerated immediately upon its arrival at the Facility;

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- (k) Fluid breast milk may be held for a feeding for no more than twenty-four (24) hours, and frozen breast milk may be held in a frozen state for no more than two (2) months;
- (l) Bottles shall be warmed under running, warm tap water or by placing them in a container of water that is no warmer than one hundred and twenty degrees Fahrenheit (120°F). Bottles shall not be left in a pot of water to warm for more than five (5) minutes;
- (m) Microwaving of breast milk is prohibited. If the Facility plans to use this method of heating formula or other liquids and foods, the Licensee shall notify a child's parent(s) or guardian(s) in writing;
- (n) All warmed bottles shall be shaken and temperature tested before feeding to a child. Warmed solid foods shall be stirred and temperature tested before feeding to a child. Liquid and food shall be room temperature;
- (o) A Licensee shall provide, or require the parent(s) or guardian(s) of each infant to provide, a sufficient supply of commercially prepared formula so that the child will be adequately fed in the event of emergency;
- (p) Each child who is too young or otherwise developmentally unable to use a feeding chair or other appropriate seating apparatus shall be held while being fed;
- (q) Each child who is too young, too small, or otherwise developmentally unable to hold his or her

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bottle while feeding shall be held while being fed; and

(r) A Licensee shall provide a comfortable and secluded location where mothers may breast-feed their children on-site.

156.3 A Licensee shall comply with the following requirements concerning infant solid food:

(a) All solid food provided to an infant shall be served according to written instructions, which specify the amount(s) and type(s) of food and feeding times that are requested and obtained by the Facility from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner;

(b) Each container of infant food that is provided to the Facility by the parent(s) or guardian(s) of a child for feeding to that child shall be labeled with the child's first and last name and the date of receipt;

(c) Each container of infant food shall be refrigerated immediately upon its arrival at the Facility, with the exception of unopened containers of commercially prepared bottled or canned food that may be stored at room temperature until opened; and

(d) The uneaten portion of any container of infant food shall be immediately and appropriately refrigerated shall not be comingled with any other food prepared at the Facility, and shall not be held

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for further consumption for longer than twenty-four (24) hours;.

156.4 Unless the Facility has received written notice from the child's licensed health care practitioner or medical authority, a Licensee shall follow the Child and Adult Care Food Program infant meal patterns.

5-A DCMR § 157
REQUIREMENTS FOR A CHILD
DEVELOPMENT FACILITY DURING
SWIMMING AND WATER PLAY

157.1 A Licensee shall maintain constant and active supervision when any child is in or around water.

157.2 Before an enrolled child may be permitted to swim or otherwise participate in any activity taking place in water one (1) or more feet in depth, the Licensee shall obtain written permission from the child's parent(s) or guardian(s). The written permission shall be signed, dated, and include the following:

- (a) The child's name;
- (b) A statement indicating whether the child is a swimmer or a non-swimmer; and
- (c) A statement indicating that the parent(s) or guardian(s) grants permission for the child to participate in water activities.

157.3 A Licensee shall ensure the inaccessibility of pools, including swimming pools, fixed-in-place wading pools, hot tubs, spas, fish ponds, or similar bodies of water by using a pool cover or by surrounding the

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pool with a fence. If a Facility premises contains a swimming pool or other body of water without a cover, the Licensee must enclose the pool or body of water behind a secure fence that is at least four feet (4 ft.) in height. A Licensee shall ensure that the pool or body of water is inaccessible to children at all times, unless qualified adults are present and supervising the children.

157.4 Exit and entrance points to pools or bodies of water shall have self-closing, positive latching gates with locking devices a minimum of fifty-five (55) inches from the ground.

157.5 If a Facility chooses to utilize one (1) or more wading pools, the Licensee shall ensure that such pools are cleaned, emptied, and drained daily, and stored in a location that is inaccessible to the enrolled children unless qualified adults are present and supervising the children.

157.6 A Licensee shall ensure that any swimming site utilized by the Facility that is at a location other than at the Facility's premises is a public site, approved of and regulated by the appropriate local authorities.

157.7 A Licensee shall ensure that children are swimming or playing in water, including baby pools, wading pools, and full-depth pools are supervised by at least one (1) adult, who is currently certified as a Lifeguard or Water Safety Instructor by the American Red Cross or by an equivalent water safety instruction and testing program, for every six (6) children.

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157.8 A Licensee shall ensure when children are swimming or playing in water, including baby pools, wading pools, and full-depth pools, the Licensee shall maintain the following adult-to-child ratios, in addition to complying with the water safety requirements as provided in this chapter:

AGE OF CHILDREN	ADULT-TO-CHILD RATIO
0 - 36 months	1:1
3 - 4 years	1:4
5 - 6 years	1:6
7 -10 years	1:6
11 years and older	1:6

157.9 A Licensee shall ensure that when communal water tables are used:

- (a) At least one (1) adult for every six (6) children shall be certified in pediatric First Aid and CPR and in attendance. Adult-to-child ratios as set forth in Section 121 shall be maintained;
- (b) Water tables are filled with fresh water immediately before a designated group of children begin a water play activity at the table;
- (c) The basin and toys are washed and sanitized daily;
- (d) Only children without cuts, scratches, and sores on their hands are permitted to use the communal water play table;

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- (e) Children wash their hands before and after use of the communal water play table;
- (f) No child is permitted to drink water from the water play table;
- (g) Floor and surface areas under and around the water play table are dried during and after play; and
- (h) Bottles, cups, and glasses are not used during water play.

5-A DCMR § 158
REQUIREMENTS FOR A CHILD
DEVELOPMENT FACILITY TRANSPORTING
CHILDREN

158.1 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall comply with all applicable federal and District of Columbia laws and regulations governing the maintenance and operation of motor vehicles and the transportation of children.

158.2 A Licensee that enters into contracts with other entities for the provision of transportation services shall obtain a signed attestation from the entity that the transportation service complies with the requirements of this section and with all other applicable laws and regulations pertaining to the provision of transportation services.

158.3 A Licensee shall establish and implement policies and procedures intended to ensure the safe

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transportation of children, including background checks, and policies and procedures for the training and monitoring of any person responsible for the transportation of enrolled children.

158.4 A Licensee transportation policies and procedures shall address alternative transportation means to be employed if the Facility's primary vehicle breaks down or is otherwise unavailable for use.

158.5 Before any child may be transported while under the care of a Facility, the Licensee shall obtain signed permission from the child's parent(s) or guardian(s).

158.6 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall label the exterior of each such vehicle, with the Facility's licensed name and phone number.

158.7 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall maintain proof of current motor vehicle insurance coverage for each such vehicle, both at the Facility premises and inside the vehicle.

158.8 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall ensure that only licensed drivers who are covered by the Facility's insurance policy operate any such vehicle when transporting enrolled children.

158.9 A Licensee shall immediately notify OSSE of any traffic accident involving children being

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transported while under the care of the Facility. A Licensee shall also submit a written report to OSSE in accordance with Section 128 (Reporting Unusual Incidents), on a form approved by OSSE, within twenty-four (24) hours of the accident, and shall include a copy of the police report regarding the accident, if available.

158.10 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall ensure that each such vehicle is maintained in a clean and mechanically safe condition, as verified by a current inspection sticker from the District of Columbia Department of Motor Vehicles or the equivalent agency in another state and by the Facility's own maintenance records.

158.11 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall maintain an inspection log and service and repair records for each such vehicle on file for at least twelve (12) months from the date of each inspection, service visit, or repair. A person or parent entity that operates multiple licensed Facilities may maintain all such records at a single administrative office, provided that the records are made available to OSSE upon request.

158.12 A Licensee shall ensure that no staff member who has been convicted in any jurisdiction of Driving While Intoxicated (DWI), Driving under the Influence of Alcohol or Drugs (DUI), or an equivalent offense within the previous three (3) years, transports any enrolled children by motor vehicle, to or from the

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Facility. A Licensee shall also prohibit any other person, including a parent, guardian, or volunteer, who has been convicted of a DWI, DUI, or an equivalent offense within the previous three (3) years, from transporting any children (other than their own) who are enrolled at the Facility, by motor vehicle, to or from the Facility, and shall advise all parents, guardians, and volunteers of this policy in writing.

158.13 If the primary driver identified by a Facility becomes unavailable, the Licensee shall identify and utilize a substitute driver who meets the requirements of this section.

158.14 A Licensee shall ensure that no driver engages in distracting activities including, but not limited to, smoking, drinking, eating, listening to music, texting, talking on the phone, and using of any other portable devices, while transporting enrolled children.

158.15 A Licensee shall ensure that each child transported in a motor vehicle while under the care of the Facility is properly restrained in an approved child safety restraint system or a seat belt, as required by applicable District of Columbia laws and regulations.

158.16 A Licensee shall ensure that no child, staff member, or volunteer stands or sits on the floor of a vehicle while the vehicle is in motion, and that no child is held on another person's lap while the vehicle is in motion.

158.17 A Licensee shall ensure that all vehicle doors remain locked at all times, except when staff,

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volunteers, the driver, or children are boarding or departing the vehicle.

158.18 A Licensee shall ensure that no child is left unattended in a vehicle at any time, regardless of conditions.

158.19 A Licensee shall maintain a safe vehicle loading and unloading area for children on or adjacent to the Facility's premises.

158.20 A Licensee shall ensure that identification is securely attached to each child participating on a field trip and that the identification contains the Facility's licensed name, address, telephone number, and, if applicable, any emergency contact telephone number.

158.21 A Licensee shall ensure that the following items are present in each vehicle when transporting children on field trips or other routine trips:

- (a) A transportable first aid kit;
- (b) A working and regularly serviced fire extinguisher;
- (c) A supply of drinking water sufficient for the duration of the trip for all children in the vehicle;
- (d) A minimum of two (2) large clean towels or blankets;
- (e) Emergency contact information and telephone numbers for each parent(s) or guardian(s) of each child in the vehicle;

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- (f) A copy of the signed Emergency Medical Treatment Authorization form, as required by Subsection 130.2(j) of this chapter, for each child in the vehicle;
- (g) A cellular phone or a two-way radio;
- (h) A working flashlight; and
- (i) If children are being transported in a bus, van, or other large vehicle, a footstool or equivalent aid sufficient to enable all children to safely board and disembark from the vehicle.

158.22 A Licensee shall ensure that at least one staff member trained and currently certified in First Aid and CPR for children is present in each vehicle when children are being transported.

158.23 When a child with special needs is being transported in a wheelchair while under the care of a Facility, the Licensee shall comply with the following additional safety requirements:

- (a) The vehicle shall be equipped with a working wheelchair lift;
- (b) The child's wheelchair shall be secured in the motor vehicle, using a minimum of four (4) anchorages attached to the floor of the vehicle, and four (4) securing devices, such as straps or webbing that have buckles and fasteners, which attach the wheelchair to the anchorages;

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- (c) The child shall be secured in the wheelchair by means of a wheelchair restraint that contains a combination of pelvic and upper body belts; and
- (d) The child's wheelchair shall be placed in a position in the vehicle that neither prevents access to the child nor passage to the front and rear of the motor vehicle.

158.24 A Licensee providing transportation services shall ensure that children who receive such services are taught, in a manner appropriate to the children's developmental level:

- (a) Safe riding practices;
- (b) Safety procedures in crossing the street; and
- (c) Recognition of the danger zones around the vehicle.

158.25 Any driver who transports children for a Licensee shall keep instructions for the quickest route to the nearest emergency medical Facility from all points on the planned route in the vehicle.

5-A DCMR § 159
REQUIREMENTS FOR A CHILD
DEVELOPMENT FACILITY CARING FOR
CHILDREN WITH SPECIAL NEEDS

159.1 A Licensee shall make reasonable efforts to determine if any child under its care is a child with a disability, as defined by the Individuals with Disabilities Education Act, (Pub.L 101-476; 20 U.S.C. §§ 1400 et seq.), with an Individualized Family Service

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Plan (IFSP), and be aware of any obligations that the Licensee may have pursuant to the IFSP.

159.2 If a Licensee is provided with a copy of the IFSP as a member of the IFSP team or if the child's parent has provided the IFSP or provided written consent to release the IFSP to the Licensee, the Licensee shall maintain a copy of the child's current IFSP on file at all times during the student's enrollment at the facility.

159.3 A Licensee shall provide a child's IFSP service coordinator or service provider access to the Facility in order to provide services pursuant to the child's IFSP.

159.4 If the child's IFSP is implemented while in the care of the Licensee, the Licensee shall work with the child's IFSP service coordinator or service provider to develop a plan for incorporating the IFSP goals and strategies into the child's daily routine at the Facility.

159.5 When disclosing any information concerning a child with an IFSP plan to any person, including a licensed health care practitioner, who is not employed by the Facility, the Licensee shall comply with privacy and disclosure requirements under Federal and local IDEA laws and regulations, including, but not limited to, any requirement to obtain written consent from the child's parent or guardian before making any disclosure.

159.6 A Licensee shall make reasonable efforts to determine if any child under its care is a child with any

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disability and be aware of the Licensee's obligations to provide any accommodations required by law.

159.7 A Licensee shall provide each child with a disability with:

- (a) Developmentally appropriate toys and materials;
- (b) Developmentally appropriate play equipment which meets the requirements of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.;
- (c) Appropriate assistance and attention from staff members and volunteers; and
- (d) Reasonable accommodations to enable the child to participate in all services and activities provided by the Facility to children without a disability, including field trips.

5-A DCMR § 160
REQUIREMENTS FOR A CHILD
DEVELOPMENT FACILITY OPERATING
DURING NON-TRADITIONAL HOURS

160.1 Facilities that offer care during non-traditional hours or twenty-four (24) hour care shall comply with all applicable requirements contained in this chapter, in addition to the specific requirements listed in this section.

160.2 A Licensee shall ensure that each activity is appropriate both for the time of the day or night and for the age of each enrolled child.

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160.3 A Licensee shall obtain written consent from a child's parent(s) or guardian(s) before Facility staff bathe or shower that child, with the exception that in emergency situations or where necessary to protect a child's hygiene, such as after regurgitation or bed-wetting, Facility staff may take appropriate measures to clean an affected child.

160.4 A Licensee shall meet the following requirements for rest and sleep:

- (a) If a child is in the care of the Facility after 6:00 p.m., on the first day of the child's enrollment, the Licensee shall establish a bedtime routine, in consultation with that child's parent(s) or guardian(s) and taking into account the age and developmental needs of the child and the time of the child's scheduled pick-up from the Facility. A Licensee shall document the routine in that child's record;
- (b) A Licensee shall provide each enrolled child with an individual crib, cot, or bed that is appropriate for the child's age and size. If the child will be sleeping for more than four (4) hours and is age and size appropriate, a bed, rather than a cot, shall be provided;
- (c) A Licensee shall ensure that bedding, such as sheets or blankets, are changed routinely and before the crib, cot, or bed is used by a different child;
- (d) A Licensee shall provide, or shall ensure that each enrolled child's parent(s) or guardian(s) provide, appropriate clothing for the child to wear while sleeping;

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- (e) A Licensee shall ensure that all cribs, cots, and beds are maintained in a clean and sanitary condition;
- (f) If a Facility provides one or more bunk beds for the use of enrolled children, the Licensee shall ensure that no child under seven (7) years of age is placed on a top bunk;
- (g) A Licensee shall ensure that all beds, cots, cribs and mattresses have firm surfaces and meet the U.S. Consumer Product Safety Commission's standards;
- (h) A Licensee shall ensure that all beds, cots, and cribs, when in use, are placed at least two (2) feet apart, and that each is at least two (2) feet away from any radiator or window;
- (i) A Licensee shall ensure that no bed, cot or crib blocks or impedes access to any exit;
- (j) A Licensee shall ensure that no other person shares a crib, cot, or bed with an enrolled child;
- (k) A Licensee shall ensure that no enrolled child five (5) years of age or older shares a sleeping room with an adult;
- (l) A Licensee shall ensure that staff monitor sleeping children at least once every three (3) hours and maintain a written log of this monitoring; and
- (m) A Licensee shall provide night-lights near the exit of each room used for sleeping, along each hallway adjacent to a room used for sleeping,

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and near each bathroom to be used by enrolled children during the overnight hours.

160.5 A Licensee that provides non-traditional hours or twenty-four (24) hour care to school-age children shall comply with the following additional requirements:

- (a) A Licensee shall establish a homework routine for each school-age child, in consultation with the parent(s) or guardian(s) of that child, on the first day of enrollment, and shall document the routine in that child's record;
- (b) A Licensee shall ensure that each school-age child is afforded quiet time and is provided with a quiet area for doing homework, as needed;
- (c) Facility staff or volunteers shall provide assistance with homework, when needed; and
- (d) If an enrolled child is to leave for school directly from the Facility, the Licensee shall, on or before the first day of enrollment, enter into a written agreement with that child's parent(s) or guardian(s) that specifies the means by which the child shall get to school and the person(s) responsible for accompanying the child to school. A Licensee shall maintain a copy of this countersigned agreement in the child's record.

160.6 A Licensee shall comply with all applicable requirements concerning nutrition that are contained

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within this chapter, in addition to the following special requirements:

- (a) A Licensee shall provide breakfast to each child who has been in care overnight at the Facility and is leaving for school directly from the Facility, unless the Facility and the child's parent(s) or guardian(s) enter into a written agreement specifying that the child will eat breakfast prior to arrival or while at school; and
- (b) A Licensee shall provide or serve dinner and a snack to each child scheduled to remain in care overnight, unless the Facility and the child's parent(s) or guardian(s) enter into a written agreement specifying that the child will eat dinner before arriving at the Facility.

160.7 A Licensee providing non-traditional hours or twenty-four (24) hour care shall comply at all times with the adult-to-child ratio and staff qualifications requirements provided for in this chapter.

160.8 A Licensee shall ensure that staff members are available at all times to attend to the needs of the children, and that at least one (1) adult staff member per every ten (10) children is awake and within sight and sound of the children at all times.

160.9 A Licensee shall establish and implement emergency contingency plans to address both medical and non-medical emergencies at all hours of the day or night during which care may be provided, including during natural and man-made emergencies that

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require evacuation from the Facility, temporary displacement from the Facility, or confinement to the Facility.

5-A DCMR § 161
REQUIREMENTS FOR A CHILD
DEVELOPMENT FACILITY WITH
PETS AND ANIMALS

161.1 If a Facility permits pets or animals at the Facility's premises, it shall comply with the following requirements:

- (a) A Licensee shall adhere to all local laws, regulations, and ordinances governing the keeping and maintenance of pets or animals;
- (b) A Licensee shall maintain at the Facility premises proof of current compliance with all applicable registration and vaccination requirements for each pet or animal kept or maintained at the Facility;
- (c) A Licensee shall advise the parent(s) or guardian(s) of prospective and enrolled children in writing of the presence of pets or animals;
- (d) A Licensee shall ensure that all pets or animals permitted at the premises are in good health, show no evidence of carrying disease, are friendly toward children, and do not present a threat to the health, safety and welfare of children;
- (e) A Licensee shall maintain all pets or animals in a visibly clean manner;

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- (f) A Licensee shall isolate any pet or animal showing evidence of disease, such as diarrhea, skin infection, severe loss of appetite, weight loss, lethargy, or any unusual behavior or symptoms. A Licensee shall ensure that any pet or animal suspected of being ill is promptly excluded from the presence of enrolled children and examined by a licensed veterinarian;
- (g) A Licensee shall prohibit the presence of any pet or animal whose species is a common carrier of rabies, without specific proof that the pet or animal has been vaccinated against that disease;
- (h) All pet reptiles shall be kept inaccessible to children at all times;
- (i) A Licensee shall ensure that no pet or animal, except a service animal accompanying the person for whom the animal provides assistance, litter box, or pet or animal pen or cage is permitted in any area where food is stored, prepared, or served; and
- (j) If an animal bites a child and the child's skin is broken, the Licensee shall immediately notify the child's parent(s) or guardian(s) and OSSE, and shall report it as an unusual incident pursuant to this chapter.

161.2 Licensee shall ensure that all contact between pets, animals, and children is supervised by a staff member who is in close enough proximity to remove the child immediately, if necessary.

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161.3 Licensee shall ensure that pet and animal food supplies are kept out of reach of children.

161.4 Licensee shall ensure that pet and animal litter boxes are not located in areas accessible to children.

5-A DCMR § 162
CHILD DEVELOPMENT CENTER:
ADDITIONAL REQUIREMENTS

162.1 All licensed child development centers shall meet the requirements in Sections 118 through 166.

162.2 A licensed Child Development Center shall be managed by a Center Director. The Center Director may be assisted by Teachers, Assistant Teachers, Aides, Group Leaders, or Assistant Group Leaders, as further specified in this chapter. In all Centers, the Center Director and staff may be assisted by volunteers.

162.3 Each employee or volunteer at the Child Development Center shall be mentally, physically, and emotionally capable of complying with the requirements of this chapter and performing the essential duties and activities related to child care and early childhood education.

162.4 Child Development Centers shall not permit a person with a reportable communicable disease that can be transmitted through ordinary contact with children and staff members to be on duty in program space, or in common indoor or outdoor spaces utilized by the children, or to have contact with a child at the

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Center, without prior written approval from a licensed health care practitioner.

5-A DCMR § 163
CHILD DEVELOPMENT CENTER:
INDOOR AND OUTDOOR PROGRAM SPACE

163.1 For the purposes of this section, "Program Space" is defined as space within the Child Development Center, that does not include the following:

- (a) Food preparation areas;
- (b) Kitchens;
- (c) Bathrooms;
- (d) Toilets;
- (e) Offices;
- (f) Staff rooms;
- (g) Corridors;
- (h) Hallways;
- (i) Stairways;
- (j) Closets;
- (k) Lockers;
- (l) Laundry rooms;
- (m) Furnace rooms;
- (n) File cabinets;
- (o) Storage spaces; and

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(p) Non-movable furniture that is not designed for the use of enrolled children.

163.2 Child Development Centers shall provide adequate indoor program space for the daily program of the Center. OSSE shall determine the licensed capacity of each Center serving infants, toddlers, and/or preschoolers in accordance with Subsection 122.2.

163.3 Children under the age of two (2) years, or non-ambulatory children, may only occupy Center space that:

- (a) Is on street level;
- (b) Has two (2) means of egress; and
- (c) If the means of egress involve steps, has ramps in place to enable staff to put children in evacuation cribs or flat strollers to roll them out in the event of an emergency, unless the lack of a ramp at any means of egress has been approved by FEMS.

163.4 Child Development Centers shall ensure that adequate room is provided for all program activities, and shall:

- (a) Arrange the space to permit the easy accommodation of the entire range of activities offered by the program;
- (b) Arrange the space so that various activities may occur simultaneously without disruption of one by another; and

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(c) Ensure that there is adequate and convenient storage space for equipment, materials, and the personal possessions of enrolled children and Facility staff.

163.5 If a Child Development Center is located in a building that also houses other entities or persons, the portion of the building to which the children from the Center have access shall be for the exclusive use of children and staff of the Center during the Center's normal hours of operation, with the exception of entryways, hallways, and other common areas in the building normally available for use by the public. If unrelated business is conducted in child care areas when the Child Development Center is not in operation, activities associated with such business should not leave any residue in the air or on the surfaces or leave behind materials or equipment that can be harmful to children.

163.6 Child Development Centers serving infants, toddlers, or preschoolers shall provide suitable age-appropriate outdoor play space. This play space shall be at:

- (a) An enclosed area, including a yard or playground, on the Facility's premises;
- (b) A nearby park or playground; or
- (c) A rooftop play space that meets the requirements of this chapter.

163.7 Child Development Centers shall provide, or have access to, a minimum of sixty square feet (60 ft²)

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of outdoor play space per child, based on the maximum number of children scheduled to play outdoors at any one time.

5-A DCMR § 164
CHILD DEVELOPMENT CENTER:
DIRECTOR QUALIFICATIONS AND
RESPONSIBILITIES

164.1 A Director of a Child Development Center shall either:

- (a) Have earned, a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with at least fifteen (15) semester credit hours, or its recognized equivalent, in early childhood development, early childhood education, elementary education, or early special education and at least one (1) year supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (b) Have earned an associate's degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education or early childhood development, and has at least three (3) years supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;

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and provided that he or she earns a bachelor's or more advanced degree as described in Subsection 164.1(a) within six (6) years of the effective date of this chapter; or

- (c) Have earned at least forty-eight (48) credit hours from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with at least fifteen (15) semester credit hours, or its recognized equivalent, in early childhood education or early childhood development, and have at least four (4) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; and be employed as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these regulations, provided that the Center Director achieves compliance with (a) or (b) within no more than six (6) years following the effective date of these regulations; or
- (d) For a Montessori School Director, earned a Montessori certificate issued by a program accredited by the Montessori Accreditation Commission for Teacher Education, National Center for Montessori Education, American Montessori Society, or the Association Montessori International, and have at least three (3) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction.

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164.2 For the purpose of Subsection 164.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

164.3 Any person who is employed as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these regulations, and who has continuously served as a Center Director for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements in Subsection 164.1, in accordance with the waiver process in Section 106 (Waiver). OSSE may deny a waiver when a Facility for which the Center Director was responsible received one or more summary suspensions or failed to abate or resolve the deficiencies, or for any other reason consistent with Section 106.

164.4 A private, parochial, or independent school is exempt from complying with the requirements of this Subsection 164.1, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;

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- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

164.5 For the purposes of this chapter, an early childhood development or early childhood education program shall include the following subject areas:

- (a) Growth and development of infants, toddlers, or preschoolers;
- (b) Care and education of children with special needs;
- (c) Health and physical education of infants, toddlers, or preschoolers;
- (d) Therapy through play;
- (e) Language development or early childhood literacy;
- (f) Children's literature;
- (g) Arts education;
- (h) Child, adolescent, educational, or abnormal psychology;
- (i) Nutrition for children;
- (j) Family development;
- (k) Methods of teaching;
- (l) Classroom management;
- (m) Child behavior management;

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- (n) Curriculum programs and activities for infants, toddlers, and/or preschoolers;
- (o) Educational evaluation and measurement;
- (p) Early Childhood Development or Youth Development administration;
- (q) Culturally responsive care and education; and
- (r) Any other area as determined by OSSE.

164.6 Prior to, or within one (1) year of employment as a Center Director, and annually thereafter, a Center Director shall successfully complete, a total of no less than twelve (12) hours of professional development, from a source approved by OSSE, in the following core knowledge areas with regard to program management, operations, and evaluation:

- (a) Approaches and techniques to plan, organize, and use available resources;
- (b) Effective strategies for working productively with staff and community resource individuals and agencies;
- (c) Techniques to conduct program analysis and evaluation and to implement program improvements;
- (d) Interpersonal development and communication skills, including team building, collaboration, and conflict management principals and skills; and

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(e) Fiscal planning and business management practices.

164.7 Interim or acting Center Directors shall meet the requirements in this section.

164.8 Center Directors shall attend, upon the request of OSSE, periodic regulatory compliance review sessions presented by or under the auspices of OSSE.

164.9 Center Directors shall be responsible for the supervision, program planning, and administration of the Child Development Center and its staff, consistent with the Center's written operational policies and procedures, and shall assume the following responsibilities:

(a) Ensure compliance with the requirements of this chapter, and with all applicable Federal and District of Columbia laws and regulations;

(b) Select and supervise qualified staff and volunteers in accordance with the District of Columbia Career Guide for Early Childhood and Out-of School-Time Professionals;

(c) Implement pre-service, orientation and annual health and safety training for each staff member and volunteer, as required;

(d) Monitor when staff members complete pre-service, orientation, and annual training, verify their completion, and record staff members' training in a document that is available during inspections;

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- (e) Ensure that adult-to-child ratios are maintained in compliance with this chapter at all times;
- (f) Ensure that parents and guardians continuously have an opportunity to be involved in the program and in the activities of the Center;
- (g) Report unusual incidents as defined by and in accordance with this chapter;
- (h) Ensure that all staff members maintain a current CPR and First Aid certification;
- (i) Participate in on-going in-service training and continuing education requirements, as required;
- (j) Report evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with this chapter;
- (k) Supervise curriculum implementation at the Center; and
- (l) Ensure that staff members have access to on-going professional development through registration in the District of Columbia's Early Learning Professional Development Information System.

164.10 A Center Director shall be physically present at the Facility at all times during the Center's peak hours of operation when the majority of children are present, and maintain on the premises a record of days and actual hours of work at the Facility, except that a Center Director may be absent from the Facility if he or she has designated an authorized representative of the Child Development Facility, who shall be physically present at the Facility when the

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Center Director is absent. This authorized representative must meet all the qualification requirements of a Center Director and who assumes full responsibility for the Facility's management and operations in the absence of the Center Director.

164.11 Center Directors shall ensure that the written contingency plans for their Facility is applicable for all hours of the day, days of the week, and weeks of the year. If a written contingency plan designates a school or any other Facility as an emergency location, and the school or other Facility is not available for all days and times during which the Child Development Center operates, the written contingency plan shall identify a secondary emergency location and include a building use agreement for the secondary emergency location.

**5-A DCMR § 165
CHILD DEVELOPMENT CENTER:
TEACHER QUALIFICATIONS
AND RESPONSIBILITIES**

165.1 A Teacher in a Child Development Center shall be at least eighteen (18) years of age and shall either:

- (a) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education, early childhood development, child and family studies, or a closely related field;

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- (b) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in a field other than early childhood education, early childhood development, or child and family studies, earned at least twenty-four (24) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation in early childhood education, early childhood development, child and family studies, or a closely related field, and have at least one (1) year of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (c) Have earned at least forty-eight (48) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, of which fifteen (15) semester hours, or its recognized equivalent, shall be in early childhood education, early childhood development, or child and family studies, and has at least at least two (2) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; provided that he or she earns an associate's degree as described in (a) or (b) by **December 2, 2023**;

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(d) Have earned a high school diploma or its equivalent and a current Child Development Associate (CDA) credential, which specifies that the individual is qualified for the assigned age classification; provided that he or she earns an associate's degree in compliance with (a) or (b) by **December 2, 2023**; or

(e) For a Montessori school teacher, have earned an associate's degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, and a Montessori certificate issued by the National Center for Montessori Education, American Montessori Society, or the Association Montessori International, or a program accredited by the Montessori Accreditation Commission for Teacher Education.

165.2 For the purpose of Subsection 165.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

165.3 For the purposes of this section, early childhood development and early childhood education shall include the courses listed in Subsection 164.5.

165.4 Any person who is employed as a qualified Teacher in a licensed Child Development Center in the District of Columbia on the effective date of these

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regulations, and who has continuously served as a Teacher for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements in Subsection 164.1, in accordance with the waiver process in Section 106 (Waiver). OSSE may deny a waiver for any reason consistent with Section 106.

165.5 The duties of a Teacher in a Child Development Center shall include, but not be limited to, the following:

- (a) Assisting the Center Director in ensuring compliance with this chapter;
- (b) Providing or overseeing the provision, adequate supervision, and appropriate care of all of the children in his or her class or group at all times;
- (c) Planning and initiating appropriate daily activities, which promotes positive development and learning, based on the strengths, interests, and needs of all of the children in his or her class or group;
- (d) Assisting the Center Director in implementing the Facility's policies and procedures;
- (e) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children;
- (f) Participating in on-going in-service training and continuing education requirements, as required;

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- (g) Supervising subordinate staff;
- (h) Assuming responsibility for the program of the Facility in the absence of the Center Director, if designated to do so as provided for in Subsection 164.9; and
- (i) Performing other appropriate duties as requested by the Center Director.

165.6 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

5-A DCMR § 166
CHILD DEVELOPMENT CENTER:
ASSISTANT TEACHER QUALIFICATIONS
AND RESPONSIBILITIES

166.1 An Assistant Teacher in a Child Development Center shall be at least eighteen (18) years of age and shall either:

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- (a) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation;
- (b) Have earned a high school diploma or its equivalent, and have a current CDA credential, which specifies that the individual is qualified to serve as an Assistant Teacher for the age classification with whom he or she will work;
- (c) Have earned a high school diploma or its equivalent, and certification of training and competence in the field of early childhood education or early childhood development from a duly authorized vocational high school; provided that he or she earns a CDA credential by **December 2, 2023**;
- (d) Have earned a high school diploma or its equivalent and have at least one (1) year of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; provided that he or she earns a CDA credential by **December 2, 2023**; or
- (e) For a Montessori school Assistant Teacher, have earned a minimum of twenty (20) hours of Montessori specific training, completed an orientation program specific to the school, and works under the supervision of a Montessori credentialed lead teacher.

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166.2 For the purpose of Subsection 166.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

166.3 The duties of an Assistant Teacher in a Child Development Center shall include, but not be limited to, the following:

- (a) Providing supervision and appropriate care to the children in his or her class or group, under the direct supervision of a Teacher or the Center Director;
- (b) Assisting the Teacher in planning and initiating appropriate daily activities, which promote positive development and learning based on the strengths, interests, and needs of all of the children in his or her class or group;
- (c) Assisting the Teacher in communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children; and
- (d) Participating in on-going in-service training and continuing education requirements, as required.

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166.4 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

5-A DCMR § 167
CHILD DEVELOPMENT HOME:
ADDITIONAL REQUIREMENTS

167.1 A licensed Child Development Home shall provide a child development program for up to a total of six (6) children.

167.2 For the purposes of Sections 167 through 171, the term "Licensee" specifically refers to the Caregiver of a licensed Child Development Home.

167.3 A Licensee shall live on the premises and work at the Facility located in the home.

167.4 A Licensee shall be responsible for compliance with all District of Columbia laws and regulations applicable to a Child Development Facility, including all

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sections in this chapter, except those specifically applicable only to Child Development Centers.

167.5 A Child Development Home may be licensed to provide care for up to six (6) children. The total number of six (6) children in the care of a Child Development Home shall not include those of the caregiver who are six (6) years or older; provided, that the total number of children of the caregiver between the ages of six (6) and fifteen (15) years shall not exceed three (3), and of those three (3) children, no more than two (2) shall be age ten (10) years or younger. The restrictions on the number of children that may be cared for in a child development home shall also include care given to a child by a caregiver related to the child. For the purpose of this paragraph, the term "related" means any of the following relationships by marriage, blood, or adoption: Grandparent, parent, brother, sister, step-sister, step-brother, uncle, or aunt.

167.6 A Licensee who stores, prepares, handles and serves food shall be responsible for following the requirements consistent with the District of Columbia Municipal Regulations, including obtaining all requisite certifications or licenses as required under the applicable laws and regulations of the District of Columbia.

167.7 Notwithstanding Subsection 142.7, a Licensee shall ensure that licensed firearm, shotguns, rifles or other licensed weapons and ammunition are inaccessible to children served in a Child Development Home or Expanded Home, unloaded, secured with an appropriate trigger locking device, and stored a safe

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storage depository which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon or ammunition contained therein. Ammunition shall also be stored in a safe storage depository.

167.8 A Licensee shall ensure that parent(s) or guardian(s) of children served in a Child Development Home or Expanded Home with licensed firearm, shot-guns, rifles or other licensed weapons and ammunition are provided notice that a licensed firearm, shot-guns, rifles or other licensed weapons and ammunition are on the premises of the Child Development Home or Expanded Home.

167.9 A licensed Child Development Home or Expanded Home shall not provide foster care, for either children or adults, on the same premises, without the prior written approval from OSSE. This written approval shall be maintained at the Facility at all times that the caregiver provides foster care.

167.10 A licensed Child Development Home shall obtain, maintain, and provide to OSSE upon request, documentation establishing that each person living at the home that houses the Facility has, within the preceding twelve (12) months, been examined by a licensed health care professional and certified by that professional to be free of communicable diseases.

167.11 Child Development Homes and Expanded Homes shall obtain approval from OSSE for the use

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of all program space, and may only offer child care in approved space.

167.12 The Caregiver(s) of a Child Development Home or Expanded Home shall arrange the play space and the furniture in the approved program space within the Child Development Home or Expanded Home to allow adequate room for active and quiet play and for individual and group activities.

167.13 Program space does not include:

- (a) Food preparation areas within the kitchen;
- (b) Bathrooms;
- (c) Hallways;
- (d) Stairways;
- (e) Closets;
- (f) Laundry rooms or areas;
- (g) Furnace rooms; and
- (h) Storage spaces.

167.14 Child Development Homes and Expanded Homes shall provide a sufficient amount, as determined by OSSE, of developmentally appropriate toys, games, equipment, books, and other materials to meet the needs of enrolled children at the Facility.

167.15 Child Development Homes and Expanded Homes serving infants, toddlers, or preschoolers shall

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provide suitable age-appropriate outdoor place space. This play space shall be at:

- (a) An enclosed yard on the Facility premises;
- (b) A nearby park or playground; or
- (c) A rooftop play space that meets the requirements of this chapter.

167.16 Child Development Homes and Expanded Homes shall provide a minimum of sixty square feet (60 ft²) of outdoor play space per child, based on the maximum number of children scheduled to play outdoors at any one time.

5-A DCMR § 168
CHILD DEVELOPMENT HOME:
CARE GIVER QUALIFICATIONS
AND RESPONSIBILITIES

168.1 A Child Development Home Caregiver shall be at least eighteen (18) years of age and shall:

- (a) Have earned a high school diploma or its equivalent; and shall earn a Child Development Associate (CDA) credential by **December 2, 2023**;
- (b) Attend at least four (4) child development-related training courses, approved by the District of Columbia Government, per year, for a total of at least twelve (12) hours of professional development annually; and
- (c) Successfully complete all health and safety training requirements set forth in this chapter.

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168.2 The duties of a Child Development Home Caregiver shall include, but shall not be limited to, the following:

- (a) Orienting each member of the Caregiver's household to the laws, regulations, and standards governing Child Development Homes;
- (b) Operating the Child Development Home in compliance with all applicable laws and regulations, including compliance with background check requirements for Caregivers and any adult living in the household;
- (c) Ensuring that enrolled children are supervised and within sight and sound at all times;
- (d) Ensure that any other duties or activities performed on behalf of the household do not interfere with the supervision and care given to the enrolled children;
- (e) Ensuring that each person residing at the home has a physical examination by a licensed health care practitioner at least annually and that each is certified by the examining practitioner to be free of tuberculosis and other diseases in communicable form;
- (f) Supervising and accompanying all visitors who are present at the Home or on the grounds during the Child Development Home's hours of operation;
- (g) Reporting to OSSE and to the parent(s) or guardian(s) of each affected child any unusual

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incident or accident that occurs in the Child Development Home, in accordance with this chapter;

- (h) Ensuring that an adequate number of qualified registered back-up personnel, are engaged by the Child Development Home and are available to be present at the Child Development Home when needed, at all times during the Child Development Home's hours of operation, in accordance with this chapter; and that all the qualifications and training of back-up personnel be documented, and that this documentation, along with records related to back-up personnel, be kept current and maintained consistent with the standards set forth in this section, as required for all Child Development Home Caregivers;
- (i) Developing and implementing written contingency plans, including written instructions for all Child Development Home personnel and for all responsible household members, for use in case of medical and non-medical emergencies;
- (j) Being responsible for the overall supervision and administration of the program of care provided to the enrolled children; and
- (k) Ensuring that staff members have access to ongoing professional development through registration in the District of Columbia's Early Learning Professional Development Information System.

168.3 Child Development Home Caregivers shall be physically present at the Facility during the Facility's hours of operation and maintain, on the premises, a

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record of days and actual hours at work at the Facility.

168.4 When the Child Development Home Caregiver is not physically present at the Facility due to Caregiver's attendance at a professional development event or performance of other Caregiver related responsibilities, the Child Development Home Caregiver shall designate a qualified back-up Caregiver, who meets the requirements and qualifications of a Caregiver as set forth in Section 168.1(a) and (c) and criminal background checks as set forth in Subsection 132.2 and Section 133, to assume full responsibility for the Facility's operations in the absence of the Child Development Home Caregiver.

168.5 Child Development Home Caregivers shall ensure that qualified back-up personnel are available during all hours of the Facility's hours of operation and that the engagement of back-up personnel does not create a violation of this chapter. If a Child Development Home Caregiver utilizes another licensed Child Development Home Caregiver as a back-up, the back-up site shall not be responsible for more children than indicated on his or her license.

168.6 Child Development Home Caregivers shall ensure that the written contingency plan is applicable for all hours of the day, days of the week, and weeks of the year for which the Child Development Home is normally operating. If the written contingency plan utilizes a location that is not available for all days or hours for which the Child Development Home is normally operating, the written contingency plan shall

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identify a secondary emergency location that is available.

**5-A DCMR § 169
EXPANDED CHILD DEVELOPMENT
HOME: ADDITIONAL REQUIREMENTS**

169.1 An Expanded Home may be licensed to provide care for up to twelve (12) children, consistent with the laws and regulations of the District of Columbia. An Expanded Home shall comply with the Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code §§ 4-401 et seq.).

169.2 An Expanded Home may provide care for more than two (2) children who are non-ambulatory or under two (2) years of age, provided that the number of such children does not exceed the following:

- (a) Four (4) children, if there are two (2) or more Caregivers present; or
- (b) Six (6) children, if there are three (3) or more Caregivers present.

169.3 Expanded Homes shall comply with all of the requirements of this chapter pertaining to Child Development Facilities and Child Development Homes, with the following additional requirements:

- (a) Each Expanded Home shall have at least two (2) Caregivers, in compliance with adult-to-child care ratios; and

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(b) Each Expanded Home shall provide a minimum of thirty-five square feet (35 ft²) of unencumbered program space per child.

5-A DCMR § 170
EXPANDED CHILD DEVELOPMENT HOME:
CAREGIVER QUALIFICATIONS
AND RESPONSIBILITIES

170.1 Expanded Home Caregivers shall comply with the requirements for Caregivers in Child Development Homes contained in this chapter, except as specifically provided herein.

170.2 An Expanded Home Caregiver shall be at least eighteen (18) years of age and shall:

(a) Have earned at least one of the following:

(1) An associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education, early childhood development, child and family studies or a closely related field; or

(2) A high school diploma or its equivalent, and a current Child Development Associate (CDA) credential; provided that he or she earns an associate's or more advanced degree as described in Subsection 170.2(a)(1) by **December 2, 2023.**

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(b) Have successfully completed one of the following:

- (1) At least one (1) year of operating as the Caregiver in a licensed District of Columbia Child Development Home or its equivalent in another jurisdiction; or
- (2) At least one (1) year of supervised occupational experience in a licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director or Teacher.

(c) Any person who is employed as a qualified Expanded Home Caregiver in a licensed Expanded Child Development Home in the District of Columbia as of December 2, 2016, and who has continuously served as a Home Caregiver for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements in Sub-section 170.2(a) or (b), in accordance with the waiver process in Section 106 (Waiver). OSSE may deny a waiver for any reason consistent with Section 106.

170.3 A primary Caregiver shall reside in the dwelling where the licensed Expanded Home is located.

5-A DCMR § 171
EXPANDED CHILD DEVELOPMENT HOME:
ASSOCIATE CAREGIVER QUALIFICATIONS
AND RESPONSIBILITIES

171.1 An Associate Caregiver in an Expanded Home shall be at least eighteen (18) years of age and shall:

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- (a) Have earned a high school diploma or its equivalent, and a current CDA credential, except that an Associate Caregiver currently working in a licensed expanded home on the effective date of these regulations shall obtain the CDA credential by **December 2, 2023**; and
- (b) Have successfully completed at least one of the following:
 - (1) At least one (1) year of operating as the Caregiver in a District of Columbia licensed Child Development Home, or its equivalent in another jurisdiction; or
 - (2) At least one year of supervised occupational experience in a District of Columbia licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director, Teacher, or Assistant Teacher.

171.2 An Associate Caregiver need not reside in the dwelling where the licensed Expanded Home is located.

5-A DCMR § 172
OUT-OF-SCHOOL-TIME PROGRAM:
ADDITIONAL REQUIREMENTS

172.1 In the case of a Facility providing out-of-school-time care only, which is located in a District of Columbia government building exempt from Certificate of Occupancy requirements, the requirements of this chapter may be met by providing, in lieu of the Certificate of Occupancy, a Building Use Agreement executed by the Facility and the District of Columbia

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government agency with responsibility for that building, including a certification from the government agency that it assumes responsibility for the maintenance and safety of the premises in which the Facility is located.

172.2 The space used by an out-of-school-time program must comply with the requirements in Section 163 (Child Development Center: Indoor and Outdoor Program Space) which sets forth indoor and outdoor program space requirements for child development centers. A licensed out-of-school-time program is exempt from the specific indoor space requirements set forth in Section 122.1 and need only maintain a minimum of twenty-five (25) square feet of program space per child five (5) years old or older.

172.3 Child Development Facilities providing out-of-school-time care to school-age children shall provide at least one (1) flush toilet and one (1) sink for every twenty (20) children, based on the licensing capacity of the Facility.

172.4 Except as provided in Subsection 172.5, if a Facility provides out-of-school-time care to school-age children, the Licensee shall develop a program of supervised activities that is designed for school-age children that includes for each child:

- (a) Free choice of play with appropriate toys;
- (b) Opportunities to further develop and strengthen more proficiencies including running, jumping, and climbing;

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- (c) Opportunities for concentration, alone or in a group;
- (d) Time to read or do homework;
- (e) Opportunities for creative activities; and
- (f) Opportunities for developing supportive relationships with staff, volunteers, and peers.

172.5 If a Licensee provides out-of-school-time care, the Licensee need not comply with the requirements of Subsection 172.4, provided that the Licensee satisfies the specific program requirements in Section 140 (General Daily Program Activities and Curriculum).

172.6 In out-of-school time programs, each group containing one (1) or more children eleven (11) years of age or younger shall be supervised by, at a minimum, a Group Leader and an Assistant Group Leader. A group containing children all of whom are twelve (12) years of age or older may be occasionally supervised by a volunteer, in addition to the Group Leader, provided that the volunteer is at least two (2) years older than the oldest child in the group.

172.7 A Licensee that provides out-of-school-time care to school-age children may permit a child seven (7) years or older to administer his or her own medication or treatment, under the direct supervision of a staff member, upon receipt of written authorization for the child's self-administration from the child's parent(s) or guardian(s).

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172.8 A Licensee that provides out-of-school-time care to school-age children may permit a school-age child with asthma to carry his or her own inhaler and to self-administer medication from it as needed, and may permit a child with a chronic illness or disability to self-test for the appropriate medical indicator(s) and to self-administer medication as needed, upon receipt of written authorization from the child's licensed health care practitioner and written consent from the child's parent(s) or guardian(s). In each such case, the Licensee shall ensure that all staff members are informed of the fact that the child is permitted to self-test or to self-administer his or her medication.

**5-A DCMR § 173
OUT-OF-SCHOOL TIME PROGRAM:
CENTER DIRECTOR QUALIFICATIONS
AND RESPONSIBILITIES**

173.1 A licensed Child Development Center that provides out-of-school-time care, either exclusively or in connection with infant, toddler, or preschool care, shall have a Center Director.

173.2 A Center Director for a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, or preschoolers shall meet the qualification requirements for a Center Director in accordance with Section 164 (Child Development Center: Director Qualifications and Responsibilities).

173.3 A Center Director for a Child Development Center that only provides out-of-school-time care

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shall be at least eighteen (18) years of age and shall either:

- (a) Have earned a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education, child and positive youth development, or early special education;
- (b) Have earned a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years in a duly authorized school or camp, a licensed Child Development Center, or the equivalent; or
- (c) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education or child and positive youth development, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years in a duly authorized school or camp, a licensed Child Development Center, or the equivalent.

173.4 For the purposes of Subsection 173.3, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per

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week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

173.5 A Center Director of an out-of-school-time program shall be responsible for the supervision, program planning, and administration of the Child Development Center and its staff, consistent with its written operational policies and philosophy, and shall assume the following responsibilities:

- (a) Ensuring compliance with the requirements of this chapter, and with all applicable Federal and District of Columbia laws;
- (b) Selecting and supervising qualified staff and volunteers in accordance with the District of Columbia Career Guide for Early Childhood and Out-of-School-Time Professionals;
- (c) Implementing an initial orientation and annual training for each staff member and volunteer, as required;
- (d) Ensuring that adult-to-child ratios are maintained in compliance with this chapter at all times;
- (e) Ensuring that parents or guardians continuously have an opportunity to be involved in the program and in the activities of the Center;
- (f) Reporting unusual incidents as defined by and in accordance with this chapter;

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- (g) Ensuring that all staff members maintain current First Aid and Cardiopulmonary Resuscitation certification for children are present at the Facility premises at all times;
- (h) Participating in on-going in-service training and continuing education requirements, as required;
- (i) Reporting evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with this chapter;
- (j) Supervising curriculum implementation at the Center; and
- (k) Ensuring that staff members have access to on-going professional development through registration in the District of Columbia's Early Learning Professional Development Information System.

**5-A DCMR § 174
OUT-OF-SCHOOL TIME PROGRAM:
GROUP LEADER QUALIFICATIONS
AND RESPONSIBILITIES**

174.1 At a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, and/or preschoolers, a qualified Teacher shall be deemed to meet the qualification requirements for a Group Leader.

174.2 A Group Leader, whose sole responsibility is to supervise an out-of-school-time program group, shall be at least eighteen (18) years of age and shall either:

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- (a) Have earned, an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education or child and youth development;
- (b) Have earned at least forty-eight (48) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, of which at least nine (9) semester credit hours, or its recognized equivalent, shall be in child and youth development, and have at least six (6) months of supervised occupational experience working with school age children under the age of fifteen (15) years at a duly authorized school or camp, a licensed Child Development Center, or the equivalent;
- (c) Have earned a high school diploma or its equivalent, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years at a duly authorized school or camp, a licensed Child Development Center, or the equivalent.

174.3 In order to qualify for the purpose of Subsection 174.2, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

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174.4 The duties and responsibilities of a Group Leader shall include, but not be limited to, the following:

- (a) Supervising, assisting, and guiding the children in his or her assigned group;
- (b) Assisting the Center Director in appropriately planning the program of care and education;
- (c) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their child(ren); and
- (d) Supervising subordinate staff.

**5-A DCMR § 175
OUT-OF-SCHOOL-TIME PROGRAM:
ASSISTANT GROUP LEADER QUALIFICATIONS
AND RESPONSIBILITIES**

175.1 In a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, or preschoolers, a qualified Assistant Teacher shall be deemed to meet the qualification requirements for an Assistant Group Leader.

175.2 An Assistant Group Leader in a Child Development Center that provides out-of-school-time care only shall be at least eighteen (18) years of age and have earned at least a high school diploma or its equivalent, and have at least six (6) months of supervised occupational experience working with school-age children of under the age of fifteen (15) years at a

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duly authorized school or camp, licensed Child Development Center, or an equivalent entity.

175.3 For the purposes of this section, a period of supervised occupational experience shall include an average of no less than twenty (20) hours per week. Six (6) months occupational experience is equal to five hundred (500) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

175.4 Each Assistant Group Leader shall work under the direct supervision of a Group Leader.

175.5 The duties and responsibilities of an Assistant Group Leader shall be to aid the Group Leader in guiding the activities of the children.

**5-A DCMR § 176
OUT-OF-SCHOOL TIME PROGRAM:
PROFESSIONAL DEVELOPMENT
REQUIREMENTS FOR STAFF**

176.1 Each paid employee at a Child Development Facility serving infants, toddlers, or preschoolers whose duties or responsibilities include the care of enrolled children shall receive pre-service training in the health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include

- (a) Child abuse and neglect, prevention, detection and reporting;

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- (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
- (c) Prevention of sudden infant death syndrome and use of safe sleep practices;
- (d) Prevention of shaken baby syndrome and abusive head trauma;
- (e) First aid and CPR, as applicable;
- (f) Prevention and control of infectious diseases, including immunization;
- (g) Administration of medication, consistent with standards for parental or guardian consent;
- (h) Prevention of and response to emergencies due to food and allergic reactions;
- (i) 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; and
- (j) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

176.2 Each paid employee at a licensed Child Development Facility providing out-of-school-time care whose duties or responsibilities include solely the care of school-aged children shall participate in at least ten (10) hours of professional development annually, including annual training that maintains and updates the employee's knowledge of health and safety standards.

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176.3 Acceptable subject for professional development of employees who work with school age children may include the topics specified in Subsection 139.7, plus the following additional areas as appropriate for the age range of the children served by the Facility:

- (a) Recreation;
- (b) Science and technology;
- (c) Music, visual, and performing arts;
- (d) Youth development; and
- (e) Guidance.

5-A DCMR § 199
DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

Abuse – The physical or mental injury of a child by a parent, guardian, or custodian, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed. Abuse includes sexual abuse of a child, whether or not physical injuries are sustained.

Adult – A person who is eighteen (18) years of age or older.

Adult-to-child ratio – The maximum number of children permitted per staff member.

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Americans with Disabilities Act or "ADA" – approved July 26, 1990, as amended (Pub.L. 101-336; 104 Stat. 327; 42 U.S.C. §§ 12101 *et seq.*).

Associate caregiver – An individual who provides care in an Expanded Child Development Home and who is subordinate to the Primary Caregiver.

Building use agreement – An agreement between the Child Development Facility licensed or required to be licensed and the owner of a building to use the building to operate a Child Development Facility if the primary location of operation ceases to be available.

CDA – Child Development Associate credential, a credential obtained under the award system of the Council for Professional Recognition.

CPR – Cardiopulmonary resuscitation.

Care by a related person – Care of a child by that child's parent, step-parent, grandparent, brother, sister, step-brother, step-sister, uncle, or aunt, said relationship having been established by blood, marriage, or adoption, or by that child's legal guardian.

Caregiver – An individual who is in charge of, and responsible for the direct care, supervision, and guidance of children in a Child Development Home or Expanded Child Development Home.

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Center director – A Child Development Center staff member who has primary responsibility for the daily operations and management of the Center, which may serve children from birth to kindergarten entry and children in school-age child care.

Change in ownership – Any change that results in an individual or owner (including a corporation or unincorporated business entity) acquiring the ability to substantially affect the actions of the Facility. An individual or corporation has the ability to substantially affect the Facility's actions when he, she, or it (1) personally holds, or holds in partnership with one or more family members, at least a twenty-five percent (25%) ownership interest in the Facility; or (2) personally represents (with voting trust, power of attorney, or proxy authority), or represents in partnership with one or more family members, any individual or group holding at least a twenty-five percent (25%) ownership interest in the Facility.

Child or children – An individual or individuals from birth to fifteen (15) years of age, except when “infant/s” and/or “toddler/s” are specified within the same provision, in which case “child” or “children” means an individual or individuals from thirty-six (36) months old to fifteen (15) years of age.

Child experiencing homelessness – A child who is homeless as defined in Section 725 of Subtitle Vii-B of the McKinney-Vento Act (42 U.S.C. § 11434a).

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Child development center or Center – A Child Development Facility located in premises other than a dwelling occupied by the operator of the Facility that serves more than twelve (12) children. This definition encompasses facilities generally known as child care centers, preschools, nursery schools, before-and-after school programs, and similar programs and facilities.

Child development facility or Facility – A center, home, expanded home, or other structure that provides care and other services, supervision and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. Child Development Facility does not include a public or private elementary or secondary school engaged in legally required educational and related functions or a pre-kindergarten education program licensed pursuant to the Pre-k Act.

Child development home – A private residence which provides a child development program for children. Child Development Home also includes those Facilities classified as “Expanded Child Development Homes”.

Communicable diseases – A disease identified as a communicable disease, including without limitation any illness due to an infectious agent or its toxic product, which is transmitted directly or indirectly to a well person from an infected person, animal, or ectoparasite; or any illness due to an infectious agent or its toxic product which is transmitted through the agency of an intermediate

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host, vector, or by exposure within the immediate environment. Communicable disease also shall mean any disease occurring as an outbreak of illness or toxic conditions, regardless of etiology in an institution or other identifiable group of people.

CYSHA – Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 *et seq.* (2012 Repl. & 2016 Supp.)).

Developmentally appropriate – Individualized, responsive care that aligns with a child's age, needs, cultural context, and personality.

DOEE – District of Columbia Department of Energy and Environment.

Elementary/secondary educational program – A course of instruction and study from and including pre-Kindergarten through the end of high school, any portion thereof, or its equivalent.

Encumbered Instructional and/or Play Space – Space that is restricted by permanent fixtures, architectural structures, equipment, bedding, or furniture that are unrelated to the program.

Expanded child development home – A Child Development Home in which child care is provided by two (2) or more Caregivers for up to twelve (12) children.

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Facilities Act – The Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code §§ 7-2031 *et seq.*).

Facility – A Child Development Facility.

Fever – A temperature of one hundred degrees Fahrenheit (100° F) or higher if taken under the arm, one hundred and one degrees Fahrenheit (101 °F) if taken orally, or one hundred and two degrees Fahrenheit (102 °F) if taken rectally. For children under the age of four (4) months, a fever is a temperature of one hundred and one degrees Fahrenheit (101°F) or higher taken by any method.

Full School Day – The entirety of the instructional hours regularly provided on a single school day.

Guardian – A person, other than the child's parent, who has been granted legal authority over and responsibility for a child.

Group size – The number of children occupying an individual classroom or well-defined space within a larger room

IEP – Individualized Education Program.

IFSP – Individualized Family Service Plan.

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Infant – An individual birth to twelve (12) months of age.

Licensed health care practitioner – A Physician, a Nurse-Practitioner (also known as an Advanced Practice Registered Nurse), or a Physician's Assistant licensed to practice health care by the D.C. Board of Medicine or Board of Nursing, or by a comparable body in another state.

Licensee – A Child Development Facility licensed pursuant to this chapter, or the operator of such a Facility, including the Center Director or Caregiver of a Home or Expanded home.

Nanny share – An arrangement in which two or more families are splitting the services of a nanny under these circumstances: The nanny may work part-time for one family caring for the child(ren) in their own home then work part-time for the other family caring for that family's child(ren) in their home.

Neglect – The failure to provide care, services and supervision necessary to avoid physical harm or mental anguish.

Non-ambulatory child – A child who is: (1) unable to leave a building under emergency conditions without assistance; (2) unable to walk forward or backward without assistance; (3) unable to go up or down steps without assistance; or (4) dependent upon mechanical aids such as crutches, walkers or wheelchairs.

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Non-peak hours – For programs operating during traditional daytime hours, before 9:00 a.m. and after 4:00 p.m.; and for programs operating outside of traditional daytime hours, time periods as specified in writing to, and accepted by, OSSE.

OAH – The Office of Administrative Hearings.

OAH Act – Office of Administrative Hearings Establishment Act of 2002, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*).

Office of the State Superintendent or OSSE – The office established by Section 2 of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601).

Out-of-school-time care – Care and other services, supervision and guidance provided to one or more children of legal school age and under the age of fifteen (15) years, who are enrolled in public, private, or charter schools, before and after normal school hours at a Child Development Facility.

Parent – A legal mother or father of a child, by blood, adoption, foster care placement, or appointment as legal guardian or custodian of that child by a court of competent jurisdiction.

Peak hours – For programs operating during traditional daytime hours, the hours between 9:00 a.m. until 4:00 p.m.; and for programs operating

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outside of traditional daytime hours, time periods as specified in writing to, and accepted by, OSSE.

Person – A corporation, partnership, and government as well as an individual.

Premises – Land and any structure, building or improvement, or any portion thereof, operated by a Child Development Facility licensed by OSSE to provide care and other services, supervision and guidance for children, infants, and toddlers on a regular basis. The term includes, but is not limited to, all land, structures or buildings used for educational functions and all land, structures, buildings, or other improvements used for accessory uses normally incidental to provide care and other services, supervision and guidance for children, infants, and toddlers on a regular basis, including but not restricted to indoor and outdoor areas, field houses, gymnasiums, parking lots, greenhouses, playgrounds, stadiums, and open space.

Preschool or preschooler – A child thirty-six (36) to sixty (60) months of age but younger than school age.

Pre-service training – Required training for paid employees of a Child Development Facility that shall take place prior to or within ninety (90) calendar days of providing service.

Pre-k Act – Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008

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(D.C. Law 17-202; D.C. Official Code §§ 38-271.01 *et seq.*).

Pre-K age children – Children who are

- (a) Three (3) years of age on or before September 30 of the program year for which the child is being enrolled;
- (b) Four (4) years of age; or
- (c) Five (5) years of age after September 30 of the program year for which the child is being enrolled.

Pre-K education service – The purposeful, well planned and developmentally appropriate practice and instruction provided by community-based organizations to pre-K age children.

Primary caregiver – An individual who operates an Expanded Child Development Home and who is in charge of the day-to-day operations of the Home.

Related person – Any legal guardian or any of the following relationships established by marriage, adoption, or blood to the fifth (5th) degree: parent or step-parent; grandparent; brother, sister, step-sister, or step-brother; uncle or aunt; or niece or nephew.

Safety-sensitive position – Employment in which the employee has (1) direct contact with

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children and youth, (2) is entrusted with the direct care or custody of children and youth; and (3) whose performance of his or her duties may affect the health, welfare, or safety of children and youth, as defined in D.C. Official Code § 1-620.31(10).

School-age child – A child who is between five (5) years of age and eighteen (18) years of age on or before September thirty (30) of the current school year.

Special needs – Conditions or characteristics of a person that reflect a need for particular care, services or treatment, most commonly physical and/or mental disabilities and/or delays and is evidence by IFSP or IEP.

Staff or staff member – An individual who provides child care or related services directly to a child on a person-to-person basis in a Child Development Facility, whether compensated or uncompensated. “Staff” includes a Center Director, teachers, assistant teachers, caregiver, assistant care giver.

Subsidized child care – Part-time or full-time child care services, subsidized in whole or in part to eligible families pursuant to local and federal law, including but not limited to Sections 5a and 6 of the Day Care Policy Amendment Act of 1998, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code §§ 4-404.01 and 4-405), and the Child Care and Development Block Grant Act of 2014,

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approved November 19, 2014 (Pub. L. 113-186; 128 Stat. 1971).

Toddler – A child twelve (12) months to thirty-six (36) months of age.

Unencumbered Instructional or Play Space – Space that is free of permanent fixtures, architectural structures, equipment, bedding, and furniture that are unrelated to the program

Unusual incident – Any accident, injury, or other extraordinary event that involves a child in care, a staff member, or the operation of a Child Development Facility, including suspected child maltreatment or abuse.

Volunteer – A person rendering services to a Child Development Facility without compensation by the Facility, including a person so rendering services as part of an internship or otherwise under the auspices of an educational or training program. Volunteer does not include a chaperone providing service for a field trip, party or special event.