

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.1 that the Child Care Commission intends to adopt the rules cited as 10A NCAC 09 .3101-.3104.

Codifier of Rules approved these rules as emergency rules effective August 13, 2020 and received for publication the following notice and proposed temporary rules on August 5, 2020.

Public Hearing:

Date: August 19, 2020

Time: 9:00 a.m.

Location: Web Ex, Event address for attendees:

<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=e4ecbb8ed69b589ad53dcd0e2a221e12>

Reason for Proposed Temporary Action: The NC Child Care Commission has adopted emergency rules and is proposing temporary rules to comply with the Governor's declaration of a state of emergency due to the Coronavirus Disease (COVID-19) to enact protective measures to help prevent the spread of the disease. This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing emergency rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.

Comment Procedures: Comments from the public shall be directed to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2200; phone 919-814-6307; email Dedra.Alston@dhhs.nc.gov. The comment period begins August 12, 2020 and ends September 2, 2020.

CHAPTER 09 - CHILD CARE RULES

SECTION .3100 – CARE FOR SCHOOL-AGE CHILDREN DURING STATE OF EMERGENCY

10A NCAC 09 .3101 SCOPE

The rules in this Section apply to care for school-age children, as defined by 10A NCAC 09 .0102(41), during the declared State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"). All rules in Section .2500 of this Chapter apply except as provided in this Section.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Emergency Adoption Eff. August 14, 2020;
Temporary Adoption Eff. October 23, 2020.

10A NCAC 09 .3102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning.

- (1) "Public schools" means:
 - (a) any building that is approved for school occupancy and which houses school-age children as part of the public school system during the school year; or
 - (b) a Remote Learning Facility.
- (2) "Remote Learning Facility" means any building that is used by a public school system, pursuant to a Contractual Arrangement, to house school-age children enrolled in that public school system during the school year for the purpose of facilitating online or remote learning programs, and which follows the "Strong Schools NC: Public Health Toolkit (K-12) Interim Guidance" established by the North Carolina Department of Health and Human Services.
- (3) "Contractual Arrangement" means a written agreement wherein the local school administrative unit agrees as follows:
 - (a) to be responsible for the enrollment and attendance of school-age children at a Remote Learning Facility; and
 - (b) that it shall be liable for any incidents or occurrences at the Remote Learning Facility in the same way it would be liable if the school-age child(ren) were in a building that is approved for school occupancy and which houses any part of the public school system. Notwithstanding the foregoing, this provision shall not prohibit the local school administrative unit from obtaining liability insurance or from contracting with the Remote Learning Facility regarding indemnification or other terms regarding the apportionment of liability between themselves for incidents or occurrences.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Emergency Adoption Eff. August 14, 2020;
Temporary Adoption Eff. October 23, 2020.

10A NCAC 09 .3103 PUBLIC SCHOOLS

Pursuant to G.S. 110-86(2)(e), Public schools are not child care and are, therefore, exempt from licensure. Notwithstanding any other provision of this Section, all NC Pre-K programs, as defined in Section .3000 of this Chapter, and Developmental Day Services, as defined in Section .2900 of this Chapter, and any program or arrangement housed in a Public school that is not operated by the local school administrative unit and provides care to three or more infants, toddlers, or preschoolers on a regular basis of at least once per week for more than four hours from persons other than their guardians or full time custodians or from persons not related to them by birth, marriage, or adoption are child care as defined in G.S. 110-86(2) and requires a child care license.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Emergency Adoption Eff. August 14, 2020;
Temporary Adoption Eff. October 23, 2020.

10A NCAC 09 .3104 ADDING SPACE AT LICENSED CENTERS FOR CARE OF SCHOOL-AGE CHILDREN

If an operator of a licensed child care center wishes to use space, regardless of location, not previously approved for child care ("additional space") to care for school-age children during the Declaration of a State of Emergency, the operator shall notify the Division of the desired change pursuant to 10A NCAC 09 .0204, but shall have six months to obtain any required inspections of the additional space by the local health, building, and fire inspections in accordance with G.S. 110-91(1), (4), and (5). If all other standards set forth in G.S. 110-91 and this Chapter are met, the operator may provide care to school-age children in the additional space and the Division shall document the same in a manner that will notify parents and the public of the change. Once the operator provides documentation that the additional space conforms to all applicable sanitation, building, and fire standards, and if all applicable requirements of G.S. 110, Article 7 and this Chapter are met, the Division shall issue a new license pursuant to 10A NCAC 09 .0204. If a health, building, and/or fire inspection reveals that the additional space does not conform to the required standards, the Division may issue a provisional license under the polices of the Commission, as set forth in 10A NCAC 09 .2204. Any additional space that the operator desires to use as additional space for care of school-age children, which is not located within the currently licensed facility, shall not be required to meet the outdoor space and fencing requirements of G.S. 110-91(6). If there is no safe outdoor space at the additional space to be used for care of school-age children, which is not located within the currently licensed facility, operators shall not be required to meet the requirements of 10A NCAC 09 .0508(c). Notwithstanding any other provision in this Section, operators shall provide adequate indoor space for daily gross motor activities when safe outdoor space is not available.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Emergency Adoption Eff. August 14, 2020;
Temporary Adoption Eff. October 23, 2020.