

S.B. 19-104 Commission to Eliminate Duplicate Regulations Summary Report

Submitted to:

**Colorado Department of Education
Colorado Department of Human Services
Colorado Department of Public Health and Environment
Colorado Department of Public Safety
Colorado General Assembly**

By:

S.B. 19-104 Commission to Eliminate Duplicate Regulations

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Executive Summary

In 2019, the Colorado General Assembly passed SB 19-104 Elimination of Duplicate Regulation of the Property of a School District, District Charter School, or Institute Charter School. The law created the Elimination of Duplicate Regulations Commission (the Commission) within the Colorado Department of Education (CDE) to analyze and identify duplicate regulations relating to the health and safety requirements for school-aged child care programs that operate on the property of a school district, district charter school, or Institute charter school. Representatives from CDE, the Department of Human Services, the Department of Public Health and Environment, and the Division of Fire Prevention and Control within the Department of Public Safety are to serve on the Commission, along with at least three practitioners. As part of its analysis, the Commission must also consider oral and written public testimony.

The Commission was established and began meeting in late 2019 in accordance with its statutory charge. However, the COVID-19 pandemic and subsequent public health orders forced the cancelation of the Commission's scheduled meetings in the Spring of 2020. As a result, the Commission chose to publish its recommendations and findings from its initial work in order to provide guidance to state agencies. The Commission acknowledges that it may continue its work and provide further recommendations related to school-age child care programs once work routines allow for larger in-person meetings and the future of the school-age child care regulatory landscape becomes clearer.

Commission Structure and Meetings

In the Fall of 2019, the Commissioner of the Colorado Department of Education appointed 12 individuals to serve on the Commission, including four representatives from state agencies and eight practitioners. In addition, staff from the Education Commission of the States assisted in meeting preparation and facilitation. Please see Appendix A for a full list of Commission members.

The Commission held two in-person meetings (December 16, 2019 and February 24, 2020). While the Commission had intended to hold two additional meetings in April and May, these meetings were canceled due to the COVID-19 pandemic and subsequent public health orders. Given the Commission's findings at its first two meetings and the likely changing nature of child care regulations in the face of new public health guidelines, there was consensus across the Commission to formally document those recommendations for state agencies and other stakeholders that were established in the first meetings, while acknowledging that the Commission may continue its work once new work routines have normalized and there is a better understanding of the new child care landscape and challenges in Colorado.



Regulatory Findings

At its first two meetings, the Commission worked to identify all current regulations across state agencies that govern the practices and procedures of school-age child care programs that operate on public school property. The Commission identified ten sets of regulations under which there may be potential duplication. A list of state agency regulations examined by the Commission can be found in Appendix B.

Through discussions of various “pain points” and areas where practitioners had experienced conflicting statements, practices, or requirements, the Commission determined that these issues were not a result of duplicate or conflicting regulations. While the specific language of these rules did not appear to be duplicated, there were areas where application of policy, training, or interpretation differed across agencies. Further, many of the issues identified were not a result of duplicative regulations, but a duplication of requirements outlined in the existing regulations. For example, requiring a fire inspection for a facility that had already been inspected and approved for other purposes. Accordingly, the Commission’s recommendations detailed in this report are focused on policy implementation or regulatory changes, rather than the elimination of duplicate regulations. It should be noted that, with the cancelation of 50 percent of the Commission’s meetings, the Commission may still find an actual duplication of regulations in future meetings or discussions.

Recommendations

At its February meeting, the Commission discussed issues relating to fire inspections, playground safety, building maintenance, and group size and staffing ratios. For each of these topics, the Commission developed specific recommended actions for state agencies in order to both clarify and more consistently and effectively implement regulations for school-age child care programs operating in public school buildings. The recommendations detailed in this report range from additional and more consistent training of inspectors to potential statutory changes to provide additional clarity.

Conclusion

Overall, the Commission’s work did not reveal significant duplication in state agency regulations governing school-age child care programs operating in public school settings. However, by bringing various state agencies and practitioners together, the Commission was able to better understand how the various regulations affect the operations of these programs in ways that are different from other child care settings. In examining these differences, the Commission was able to make recommendations as to how specific policy and implementation changes can provide clarity and ease unintended burdens for these programs.



Introduction

In 2019, the Colorado General Assembly passed [SB 19-104 Elimination of Duplicate Regulation of the Property of a School District, District Charter School, or Institute Charter School](#). The law created the Elimination of Duplicate Regulations Commission (the Commission) within the Colorado Department of Education (CDE) to analyze and identify duplicate regulations relating to the health and safety requirements for school-aged child care programs that operate on the property of a school district, district charter school, or Institute charter school. The bill requires representatives from CDE, the Department of Human Services, the Department of Public Health and Environment, and the Division of Fire Prevention and Control within the Department of Public Safety to serve on the Commission, along with at least three practitioners. As part of its analysis, the Commission must also consider oral and written public testimony.

The Commission was established and began meeting in late 2019 in accordance with the statutory charge. However, the COVID-19 pandemic and subsequent public health orders forced the cancellation of the Commission's scheduled meetings in the spring of 2020. As a result, the Commission chose to publish its recommendations and findings from its initial work in order to provide guidance to state agencies. This report reflects those recommendations and findings. In addition, the Commission acknowledges that it may continue its work and provide further recommendations related to school-age child care programs once work routines allow for larger in-person meetings and the future school-age child care regulatory landscape becomes clearer.

Commission Structure and Meetings

In the fall of 2019, the Commissioner of the Colorado Department of Education appointed 12 individuals to serve on the Commission, including four representatives from state agencies and eight practitioners. In addition, staff from the Education Commission of the States assisted in meeting preparation and facilitation. Please see Appendix A for a full list of Commission members.

The Commission held two in-person meetings (December 16, 2019 and February 24, 2020). At its first meeting, Commission members received state-mandated training on Colorado's open meetings and record laws, and reviewed the Commission's statutory charge, bylaws, and structure for meetings and discussions. The Commission also developed a list of issues for which practitioners experienced conflicting regulatory and/or policy guidance. At the second meeting, the Commission reviewed the applicable state agency regulations and discussed in detail issues related to fire inspections, playground safety, building maintenance, and group size and staffing ratios. For each of these issues, the Commission developed recommendations for state agencies and stakeholders.

While the Commission had intended to hold two additional meetings in April and May, these meetings were canceled due to the COVID-19 pandemic and subsequent public health orders. Given the



Commission's findings at its first two meetings and the likely changing nature of child care regulations in the face of new public health guidelines, there was consensus across the Commission to formally document its recommendations for state agencies and other stakeholders, while acknowledging that the Commission may continue its work once work routines have normalized and there is a better understanding of the new child care landscape and challenges in Colorado.

Regulatory Findings

At its first two meetings, the Commission worked to identify all current regulations across state agencies that govern the practices and procedures of school-age child care centers that operate on public school property. The Commission identified ten sets of regulations under which there may be potential duplication. A list of state agency regulations examined by the Commission can be found in Appendix B.

Through discussions of various "pain points" and areas where practitioners had experienced conflicting statements, practices, or requirements, the Commission determined that these issues were not a result of duplicate or conflicting regulations. While the specific language of these rules did not appear to be duplicated, there were areas where application of policy, training, or interpretation differed across agencies. Further, many of the issues identified were not a result of duplicative regulations, but a duplication of requirements outlined in the existing regulations. For example, requiring a fire inspection for a facility that had already been inspected and approved for other purposes. Accordingly, the Commission's recommendations detailed in this report are focused on policy implementation or regulatory changes, rather than the elimination of duplicate regulations. It should be noted that, with the cancelation of 50 percent of the meetings, the Commission may find an actual duplication of regulations in future meetings or discussions.

Recommendations

The sections below detail the Commission's discussion and policy recommendations for issues related to fire inspections, playground safety, building maintenance, and group size and staffing ratios as those policies are implemented in school-age child care programs that operate in public school settings.

Fire Inspection

In discussing compliance issues related to fire inspection, practitioners serving on the Commission noted that their organizations were often responsible for fixing any fire code issues in their program's school setting, as opposed to the school or school district that owns the building. This reality was due to both the timing of the inspections and because these programs face licensure implications from the Colorado Department of Human Services (CDHS) if any code violations are found. In order to remedy this issue so that schools and districts also understand fire code issues in their buildings and can share in the responsibility for remedying those issues, the Commission makes the following recommendations:

Recommendation 1: Schools and school districts should receive a copy of any fire code inspection issues and/or code failures at the same time as the school age child-care program.



Recommendation 2: The Colorado General Assembly could enact a statutory change to ensure that all inspections be done by a fire code official through Division of Fire Prevention and Control under the Colorado Department of Public Safety (CDPS). Current statute, in section 26-6-104(4), C.R.S., requires facilities to conform to requirements of “local fire departments in the locality of the facility.” On the other hand, schools must be inspected by a CDPS approved fire code official. Aligning these statutes such that fire code officials conduct all inspections would allow for more consistency and uniformity across programs and school buildings. This would also allow for a single inspection for a building to be used to meet licensing requirements for both the school and child care program which occupies the building.

Playground Safety

In discussing regulatory issues related to playground safety, practitioners noted that there appeared to be certain structures that were safe for students during the school day, but were deemed unsafe for use by school-age child care programs. The primary focus of these concerns was related to the CDHS licensing height level requirements (six feet) of certain playground structures.

Representatives from CDHS confirmed that the current regulations for playground safety were based on national standards and recommendations. Further, practitioners also confirmed that these structures that were used by students during the school day had also been inspected by national playground safety experts or other commercial inspectors. Accordingly, the Commission makes the following recommendations related to playground safety:

Recommendation 1: CDE’s Capital Construction office should make similar recommendations and/or issue guidance to schools and school districts regarding certification and structure height when they purchase playground materials. In aligning these recommendations and guidance with the guidance from CDHS, state agencies can ensure that all structures are meeting the same standards.

Recommendation 2: CDHS should consider revising its child care licensing regulations (12 CCR 2509-8 Rule 7.712.71) such that, if the playground structures have been certified by a national playground safety expert, that certification should satisfy licensing inspection requirements. CDE’s Public School Facility Construction Guidelines (1 CCR 303-1) state that “all playground equipment shall be purchased from an International Playground Equipment Manufacturers Association (IPEMA) certified playground equipment manufacturer with adequate product liability insurance. Each piece of equipment purchased shall have an IPEMA certification.”

Staffing (Maximum Group Size and Ratios)

In discussing staffing issues, the Commission chose to address issues pertaining to maximum group size requirements and appropriate ratios. The Commission confirmed that, for school-age child care programs, these requirements exist in CDHS child care regulations (12 CCR 2509-8 Rule 7.712.43), which are based on national standards. CDE regulations and state statute do not dictate teacher-pupil ratios for K-12 students in public schools and districts.

Practitioners on the Commission and some of the written comments received by the Commission noted a lack of flexibility or understanding for potential fluctuations or deviations from these requirements in emergency situations. On the other hand, CDHS representatives highlighted the need for these concrete



regulations, along with the strict monitoring of the requirements, in order to prevent potential and more negative forms of employee sanctions (e.g., charges of neglect if children go missing). After further discussion, there appeared to be common ground on what actually constituted a licensure violation versus what could be considered an exception in case of emergency. The maximum group size and ratio requirements were a clear example where there was not a duplication in state agency regulations, but practitioners and programs felt the implementation of the regulations lacked consistency. Accordingly, the Commission made the following recommendations:

Recommendation 1: Increase training for local child care licensing inspectors on flexibility related to emergency situations and maximum size/ratio issues. This training could apply to various scenarios so that inspectors do not issue findings in emergency situations or where the requirements are not applicable. Further, CDHS may need to provide more information to the field on the appeals process and waivers. These avenues may be appropriate for emergency situations and should be more clearly communicated to the field.

Recommendation 2: CDHS should consider revising its rules to allow for a band of time for exception to ratio and maximum size requirements in emergency situations. Providers on the Commission agreed to provide language from other states that may be used in this situation, as long as the time period is limited and well-defined. Examples of that language are listed below:

- **Texas School-Age Child Care Rule #744:1507**: In emergency situations, you may use employees of the operation who do not meet caregiver qualifications for a limited time while a substitute caregiver is being secured. The time must be no longer than is reasonably necessary to secure a qualified substitute caregiver. Emergency situations include, but are not limited to, illness, accident, or death.
- **Indiana Child Care Rule #470 IAC 3-4.7-48 Child/staff ratios and supervision**: To protect children from harm, understanding that it is permissible for a staff member to leave the classroom only to use the restroom or to take care of an emergency situation for a particular child in the classroom and return immediately provided there is at least one qualified staff person remaining in the classroom.
- **North Carolina School-Age Child Care Rule #10A NCAC 09 .2506 GENERAL SAFETY REQUIREMENTS**: Staff/Child ratios may be altered when emergencies necessitate, for brief periods of time.

Building Maintenance

In discussing building maintenance issues, the Commission examined the child care licensing regulations from CDHS and health code regulations from the Colorado Department of Public Health and Environment (CDPHE). Practitioners on the Commission noted a similar issue to the fire inspections--the child care programs were often responsible for fixing health code violations that exist on school- or district-owned property. Based on information from CDPHE, the Commission came to understand that the crux of the problem is not that schools and districts do not have to meet the same code standards. Instead, the issue likely is the fact that local county health departments are not inspecting or monitoring those schools and districts with the same rigor or regularity with which CDHS licensing officials they are inspecting or monitoring child care programs. The lack of monitoring and inspection at the local county level is due to limited resources of these county departments. Accordingly, the Commission made the following recommendations:



Recommendation 1: Ensure that a copy of health and safety violations from licensing inspections of school-age child care programs are also given to the school and/or district where the program operates. Further research into the potential liability that this creates for schools and districts will be needed.

Recommendation 2: State agencies should consider supporting a statutory change requiring local county health departments to inspect schools and districts (which would require resources and is outside of the Commission's scope).

It is worth noting that while the basis for these recommendations is still relevant, the COVID-19 pandemic likely will change the nature of health requirements and inspections of school buildings and child care programs. In addition, the role, priorities, and capacity of local county health departments has greatly changed since the Commission's discussion of this topic.

Conclusion

Overall, the Commission's work did not reveal significant duplication in state agency regulations governing school-age child care programs operating in public school settings. However, by bringing various state agencies and practitioners together, the Commission was able to better understand how the various regulations affect the operations of these programs in ways that are different from other child care settings. In examining these differences, the Commission was able to make recommendations as to how specific policy and implementation changes can provide clarity and ease unnecessary burdens for these programs.



Appendix A - Commission Members

Alicia Elmore - Douglas County School District Before and After School Enterprise

Brandi Cowles - Boulder Valley School District School Age Care Program

Carrie Lachermeier - Adams 12 Five Star Schools Before and After School Enterprise Programs

Chris Burr - Upper Rio Grande School District

Chris Brunette - Colorado Department of Public Safety

Chris Coker - YMCA After School

Jon Paul Burden - Weld RE-4 School District Preschool Program

MaryAnne Snyder - Colorado Department of Human Services

Melissa Bloom - Colorado Department of Education

Scott Bright - ABC's Bright School-Age Programs

Therese Pilonetti - Colorado Department of Public Health and Environment

Susan Zimmerman - Saint Vrain Valley School District Community Schools



Appendix B - State Agency Regulations

- 1 CCR 301-45 Rules for the Administration of the Educator Licensing Act
- 1 CCR 301-37 Rules for the Administration of Protections of Persons from Restraint
- 1 CCR 301-68 Rules for the Administration of Medication
- 1 CCR 301-79 Rules for the Administration of Healthy Beverages
- 1 CCR 303-1 Public School Facility Construction Guidelines
- 6 CCR 1010-6 Rules and Regulations Governing Schools
- 6 CCR 1010-7 Health and Sanitation of Child Care Facilities in Colorado
- 8 CCR 1507-30 Code Enforcement and Certification of Inspectors for Public Schools, Charter Schools, and Junior Colleges
- 8 CCR 1507-101 Building and Fire Code Adoption and Certification of Inspectors for Fire and Life Safety Programs
- 12 CCR 2509-8 Child Care Facility Licensing