

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10A NCAC 09 .2902 and .2903.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp>

Proposed Effective Date: November 1, 2015

Public Hearing:

Date: August 10, 2015

Time: 1:00 p.m.

Location: Nature Research Center, William G. Ross Environmental Conference Center, 4th floor, 121 W Jones St, Raleigh, NC

Reason for Proposed Action: *The NC Child Care Commission proposes to amend rule 10A NCAC 09 .2902 as the result of a rule-making petition received from the NC Association of Directors of Development Day Centers (NCADD). The petitioner requests that a requirement be added to Rule .2902 to state the hours of operation for Developmental Day Centers (DDC) as a minimum of eight (8) hours per day, five (5) days per week, and twelve (12) months per year. Rule 10A NCAC 09 .2903 is referenced in the petition but no changes were requested by the petitioner. However, since this rule also refers to the length of time a DDC must operate, the Commission has included recommended changes to it to correspond with the changes requested by the petitioner in Rule .2902.*

Note: Rule .2902 was submitted pursuant to a rule-making petition and the NC Child Care Commission wishes to solicit comments regarding the potential impact of the proposed rule language. The commission has not taken a position as to whether the rule should be adopted.

Comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919) 527-6502, fax (919) 715-0970, email Dedra.Alston@dhhs.nc.gov*

Comment period ends: August 14, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 09 – CHILD CARE RULES

SECTION .2900 - DEVELOPMENTAL DAY SERVICES

10A NCAC 09 .2902 LICENSE

(a) Developmental Day services shall be available for preschool children for a minimum of 8 hours per day, 5 days per week, and 12 months per year except in the following circumstances:

- (1) In counties where no community-based Developmental Day Center operates, a Developmental Day program operated by the Local Education Agency may provide services for the 10 month school year (as defined by the State Board of Education).
- (2) If a Community-Based Developmental Day center opens in a county where Developmental Day services are only provided by a Developmental Day program operated by the Local Education Agency, the Developmental Day program operated by the Local Education Agency may continue to provide services for the 10 month school year until the end

of the following school year. At the end of the following school year, all Developmental Day services in the county shall be available as described in Paragraph (a) of this Rule.

~~(b)~~ For purposes of this Rule, a "Community-Based Developmental Day Center" means a Developmental Day Center not operated by the Local Education Agency.

~~(a)(c)~~ Developmental Day Centers shall maintain a four or five star rated license with an average score of 5.0 on the appropriate environment rating scale in each classroom evaluated.

~~(b)(d)~~ A child care center with a temporary license may receive certification status if all rules in this Section are met, except for Paragraph ~~(a)(c)~~ of this Rule, and an application for a two to five star rated license has been submitted. At the end of the temporary license period the child care center must receive a four or five star rated license as specified in Paragraph ~~(a)(c)~~ of this Rule. Failure to receive a four or five star rated license shall result in the removal of certification status as a Developmental Day Center.

~~(e)(e)~~ The license shall indicate certification as a Developmental Day Center.

~~(d)(f)~~ The center shall comply with the staff-child ratio and maximum group size as follows:

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0-12 Months	1/4	8
1 to 2 Years	1/5	10
2 Years and Older	1/6	18

~~(e)(g)~~ A minimum of two staff members shall be on site at all times while children are in attendance at the facility.

~~(f)(h)~~ A child care center may appeal the removal of certification status in accordance with G.S. 110-94; however, an appeal does not preclude a Local Education Agency from removing contracted children from the program before a final decision on the appeal is reached.

Authority G.S. 110-85; 110-88(14).

10A NCAC 09 .2903 STAFF QUALIFICATIONS

(a) Each center serving children ages birth to three years shall have a minimum of one staff who holds an Infant Toddler Family Specialist certification issued from the North Carolina Division of Public Health; Birth-through-Kindergarten (B-K) Standard Professional I licensure; or provisional licensure in B-K issued from the Department of Public Instruction. This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) In accordance with G.S. 115C-84.2(a)(1), during the 185 day school year (as defined by the State Board of Education), each child aged three years old and older on or before the initial school entry date specified in G.S. 115C-364 (school entry date) shall be served in a classroom with at least one lead teacher who holds a B-K Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction.

(c) Children who turn three years old after the school entry date who are identified as a child with a disability as evidenced by an Individualized Education Program (IEP), shall be served in a classroom with a B-K licensed teacher.

~~(d) During the time when school is not in session,~~ For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development, or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

~~(e) For centers operating for 10 months as specified by Rule .2902(a), during~~ During the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. During the time when school is not in session, For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(f) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of verifiable work experience with children with developmental delays or disabilities.

Authority G.S. 110-85; 110-88(14).

Fiscal Note
Hours of Operation for Developmental Day Centers

Rule Title: 10A NCAC 09 .2902 and .2903
Agency: DHHS – Division of Child Development and Early Education
Contact: Dedra Alston (919-527-6502), Janice Fain (919-527-6511)
Authority: N.C.G.S. 110-85; 110-88(14)
Summary of Impact: State government: Yes Local government: Yes
Federal government: No Substantial impact: No

I. Necessity:

The Division of Child Development and Early Education (the Division or DCDEE) received a petition from the North Carolina Association of Directors of Developmental Day Centers (NC ADD) to request that a new developmental day (DD) services rule be adopted by the Child Care Commission (Commission). NC ADD requests that a requirement be added to the beginning of Rule 10A NCAC 09 .2902 to state the hours of operation for developmental day centers (DDC). Note, Rule 10A NCAC 09 .2903 is referenced in the petition, but no changes are requested by the petitioner. However, since this rule also refers to the length of time a DDC must operate, the agency has included recommended changes to it in the Appendix, to correspond to the changes requested by the petitioner to .2902. This does not result in any additional fiscal impact.

II. Summary of Proposed Rule Change:

The rule change would require all DDCs to operate a minimum of 8 hours per day, 5 days per week, and 12 months per year. However, LEA-based DDCs may operate only 10 months if there is no community-based DD program in their jurisdiction. Table 1 presents the estimated impacts.

Table 1. Summary of Estimated Impacts to Affected Parties (Million \$)

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Costs					
Local Education Agencies	\$ 0	\$ (35,600)	\$ (35,600)	\$ (35,600)	\$ (35,600)
Other costs to LEAs	-	unquantified	unquantified	unquantified	unquantified
Affected Parents	-	unquantified	unquantified	unquantified	unquantified
Total Costs	\$ 0	\$ (35,600)	\$ (35,600)	\$ (35,600)	\$ (35,600)
NPV of Costs*	\$ (112,700)				
Benefits					
Community-based DDCs	-	unquantified	unquantified	unquantified	unquantified
Unused DPI DDC Funds	-	unquantified	unquantified	unquantified	unquantified
DHHS/DCDEE (minimal)	\$ 0	\$0	\$0	\$0	\$0
Net Impact on Children	-	unquantified	unquantified	unquantified	unquantified
Net Impact	\$ 0	\$ (35,600)	\$ (35,600)	\$ (35,600)	\$ (35,600)

* NPV means net present value, and was computed as of June 30, 2015 using the statutory discount rate of 7%.

III. Description of Rule Change:

A. Initial Proposal

An initial fiscal note was prepared on the proposed rule change as requested by the petitioner, i.e.:

“Developmental Day services shall be available for preschool children for a minimum of eight (8) hours per day, five (5) days per week, and twelve (12) months per year.”

The proposed change would have impacted DD centers that are not currently offering or providing services according to these operating hours and months. Most of these would have been centers operated by the Local Education Agencies (LEAs), which would have incurred a cost of more than \$6.5 million per year starting in school year 2016-17, making the initial proposal one with substantial economic impact. More specifically, LEAs would have:

- Incurred \$107,000/ year in additional costs for 6 DD centers to extend their services for two additional months, and
- Foregone more than \$6.4 million/year in special DD funds provided by the NC Department of Public Instruction (DPI) from not being able to maintain developmental day certification for some LEA-based DDCs in counties where no community-based DDC options are available.

The Office of State Budget and Management notified DCDEE staff that the initial proposal for the rule change could not be certified since it was not meeting the certification criteria for substantial economic impact rule changes laid out in statute, G.S. 150B-19.1(a)(2), (5), and (6). DCDEE staff reviewed the fiscal note with the Commission and explained the note could not be certified as proposed. The Commission considered the following alternatives to the initial proposal:

- 1) The Commission could choose to not grant the petition because of the potential fiscal impact to LEAs, and due to uncertainty of whether community-based DDCs are already at enrollment capacity. The advantage to this option is that LEA-based DDCs would not lose DD funds provided by DPI that are made available to LEAs for the 10-month school year. The disadvantage of this option as noted by the petitioner is that DD services would not be provided to children for 12 months (although DD funding is only available for 10 months). This option may also result in limiting expansion of community-based DD centers, as it has been noted that there has been increased growth in LEA-based DD centers. The petitioner states this has impacted the financial stability of community-based DD centers.
- 2) DPI could include some more guidance in their application on awarding DDC funds to suggest that the IEP team give preference to the community-based DDC placement first, unless certain circumstances apply (i.e. the IEP team is trying to keep siblings together,

etc.). The advantage to this option is that services would be provided to children for 12 months in the community-based DD program (however, the DD programs would only receive DPI DDC funds for the 10 month school year). The disadvantage to this option is that it would be a policy or best practice rather than a requirement.

- 3) A possible compromise is for the Commission to grant the petitioner's request, but place a stipulation in the rule that if a county does not have a community-based DD program, the LEA can continue to operate its DD program for the 10 months for which they receive DPI DDC funding. The advantage to this option is that there would be no loss of DPI DD funds within LEAs, and DD programs would be required to operate for 12 months as the petitioner requests, in areas where there are both community-based and LEA-based DD programs

B. Revised Proposal

After reviewing the alternatives, the Commission chose to proceed with the third option. They voted to grant the petitioner's request, with a stipulation in the rule that if a county does not have a community-based DD program, the LEA can continue to operate its DD program for the 10 months they receive DPI DDC funds. In this way, there would be no loss of DPI DDC funds within LEAs, and DD programs would be required to operate for 12 months as the petitioner requested, in areas where there are both community-based and LEA-based DD programs.

The revised proposal would only impact LEA-based DD centers in counties where there were both LEA-based and community-based DD centers in operation. The impact would be to those LEA-based DD programs that could possibly extend services to 12 months. A revised summary of the impact is shown in Table 1.

IV. Purpose and Background:

During the 2009 Legislative Session, the NC General Assembly passed House Bill 1046,¹ which transferred the rulemaking authority for certified Developmental Day Centers from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) to the NC Child Care Commission.

When the authority for the rules was with the Division of MH/DD/SAS, the rules indicated the hours of operation required for certification as a developmental day program:

“10A NCAC 27G .2403

¹ An Act to Transfer the Authority to Adopt Rules Establishing Standards Applicable to Child Care Centers that Provide Developmental Day Programs. Session Law 2009-187. North Carolina General Assembly. <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1046v5.pdf>

(a) Hours. Developmental day services for preschool children shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, twelve months a year.” (Effective May 1, 1996)

According to the petitioner, NC ADD, “when developmental day rules were transferred to the Division in 2010 from the Division of MH/DD/SAS, this specific language was inadvertently omitted.” DCDEE staff could not confirm whether the language was intentionally or inadvertently omitted; however, this rule change was made and approved as a result of a multi-agency workgroup process, which included input from all interested parties.

Based on information submitted by the petitioner, the proposed rule change addresses an omission in the current rules and, thus, would remedy the negative consequences to community-based developmental day centers that the petitioner perceives to be brought on by an increased number of public schools with Development Day certification.

The Commission adopted the current set of rules for certified Developmental Day Centers and centers requesting DD certifications, Section .2900 within 10A NCAC 09 Administrative Code, and these rules were effective July 1, 2010. In Section .2900, the rules do not reference the hours, days or months a DD program must operate. Therefore, the agency does not take into consideration this information when determining if the program meets the requirements to operate/provide DD services. In order to obtain the DD Center certification, the program has to comply with all applicable childcare laws and requirements, including the DD services requirements outlined in Section .2900. The DD Center certification status is noted on the license. If the program meets the DD Center certification, they may apply for funds to serve children with developmental needs through the DPI. However, the DD funds that the NC Department of Public Instruction provides to DD certified centers only pay for services for 10 months out of the year.

According to its petition, it is NC ADD’s belief that paragraph (b) in rule 10A NCAC 09 .2903 Staff Qualifications, infers that developmental day programs shall operate twelve months per year:

“10A NCAC 09 .2903 Staff Qualifications

[...]

(b) In accordance with G.S. 115C-84.2(a)(1), during the 185 day school year (as defined by the State Board of Education), each child aged three years old and older on or before the initial school entry date specified in G.S. 115C-364 (school entry date) shall be served in a classroom with at least one lead teacher who holds a B-K Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction.

[...]

(d) During the time when school is not in session, each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child

development, or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(e) During the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. During the time when school is not in session, each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.”

The petitioner noted that the rule text includes phrases such as “during the 10 month school year..” or “during the time when school is not in session...” The petitioner noted this inferred that programs are required to operate more than 10 months.

The DCDEE/Regulatory Services Section has not been interpreting this rule language to mean that a licensed DD program has to be in operation for twelve months. The rules are interpreted by DCDEE staff to mean a center must employ staff that meet a higher education level during 10 months out of the year, and if in operation during an additional two months out of the year (when school is not in session, typically during the summer months) the staff qualifications are less stringent.

To ensure that DDCs are available and accessible to families, the Division works with Community-based centers and Local Education Agencies (LEAs) to license programs that meet the requirements to provide Developmental Day Services. A childcare center is identified as a Certified Developmental Day Center by meeting applicable Child Care Requirements, as outlined in Child Care Law and Rules, which includes the requirements in Section .2900 for Developmental Day Services. The regulations are the same for both community-based and school based settings.

Currently, there are a total of 4,746 licensed childcare centers with 124 of these centers licensed to provide DD services. Of the 124 centers, 69 are school based (pertaining to 36 different LEAs) and 55 are community-based. DCDEE has confirmed that there has been an increase in the number of LEAs obtaining DD certification since July 2010, based on DCDEE Regulatory System data. Prior to July 2010, 44 DD centers were LEA operated. Nineteen of the 24 DD centers licensed since 2010 are LEA operated.² This may be because of the 2011 legislative requirement for all public school sites participating in NC Pre-K obtain licensure by July 1, 2014. Many LEAs seeking NC Pre-K licensure decided to meet licensure requirements that would allow them also to provide services to children eligible for DD. Both sets of requirements

² Note that figures may not track across years as they are snapshots for a particular timeframe, i.e., classroom and enrollment numbers may change throughout each year. For this fiscal note, SFY 13-14 data were used where possible.

(DD and NC Pre-K), include higher standards (than the minimum licensing requirements) and some of the requirements for both are the same or very similar in what is required.

V. Impact:

Based on the alternative chosen by the Commission to only require 12 months of operation in counties where both LEA based and community-based DDCs are in operation, there is no substantial economic impact to LEAs (the initial proposal would have resulted in a substantial impact to LEAs, see section II.A. above). This is because under the proposed rules, if the LEA-based DDC could not meet the proposed 12 month requirement, there would be a community-based DDC in the county where the children could receive child care services, thereby maintaining the LEAs' eligibility for DPI DDC funding. In this situation, there would be a shift in the DPI DDC funds to community-based DDCs within the LEA during the 10-month school year, but no loss of those funds within the LEA. However, there could be some fiscal impact to LEAs who may choose to extend operations to 12 months in counties where there are both LEA-based and community-based DDCs.

There is positive, but unquantifiable, impact to community-based developmental day centers that already operate for 12 months in a county where the LEA-based DD center would not be able to operate for 12 months.

It is possible that the proposed rule change could impact DPI if the NC General Assembly changed the allocation DPI receives to provide DD services, or if fewer programs were DD certified. However, since it is not known whether the NCGA will revise the DD allocation, the fiscal impact is not included.

There is no anticipated fiscal impact to DCDEE. Due to the small number of centers licensed to provide DD services, if any LEAs lost their DD certification due to the proposed rule change, this is not a significant reduction to the number of licenses and DCDEE staff caseloads.

For parents of children receiving DD services in LEA programs that would not continue to operate if there is a community-based DDC in the county, it is not known whether they already pay for child care for the two months that DD services are not provided and how this proposal would impact them from a financial perspective, if at all. The proposed rule does not change how their children's services would be provided, but just the setting in which they are provided and that could create conveniences or inconveniences that are difficult to quantify. Therefore, the agency was not able to estimate the impact on parents as a result of the proposed rule changes.

The following section describes in more detail the impact on LEAs and community-based DDCs. The assumption is that if the Child Care Commission approves the proposed rule change, the rule would be effective no sooner than the 2015-16 school year.

A. Costs

1. Cost to Local Education Agencies

Of the 58 LEAs with DD programs, 10 would be impacted by the proposed rule change, as shown in Table 2.

Table 2. Number LEAs with DDC Presence

LEAs with only Community DDCs (not impacted)	22
LEAs with LEA DDCs, no Community DDCs (not impacted)	26
LEAs with both LEA DDC and Community DDCs (impacted)	10
Total	58

Regardless of the rule change, LEAs are responsible for providing special education and related services to children with disabilities for 10 months per year. When LEAs provide these services in a DDC setting, whether a community-based or LEA-based center, they receive funding per student from DPI for 10 months per year.

Cost for Two LEAs to Provide Two Additional Months of Services:

There are currently 36 LEAs that have public school programs certified to provide DD services. Twenty-six of these LEAs have no community-based DD center in their jurisdiction and so the certified public school classrooms or centers are the sole providers of DD services for children with need in the area. There is no impact to these LEAs since the proposed rule would allow LEA-based DD programs operating in counties without a community-based DD center to continue to provide 10 months of services.

There are 10 LEAs that do have a community-based DD center in their area, and only two would be able to meet the proposed requirement and maintain their DD certification if the operation requirement is changed. Therefore, the two LEA-based centers could incur costs related to facility operation for the extra two months per year, if they chose to extend their operations to meet the proposed requirement. The cost to provide services for the additional two months would not be covered by the DDC funding provided by DPI, since this funding is only available for the 10 months.

The agency estimates that the projected cost for the two LEAs to operate two additional months to be about \$35,600, assuming that each LEA operated one classroom.³ According to DPI, the classroom operates with one teacher receiving annual salary and benefits of approximately \$47,000 and two teacher assistants with annual salary and benefits for both estimated to be \$60,000. According to these figures, the monthly staffing costs are about \$8,900. When this cost was multiplied by two months for the two LEAs (\$8,900 x 2 months x 2 LEAs), the projected total was about \$35,600. This cost is estimated to stay mostly constant over the next few years.

If the LEAs could not cover this cost, it is likely that they would charge the expense to operate two more months to the parents who choose for their children to remain in the program. Since it is not known if both LEAs would absorb this cost or pass it on to parents, or how much they would charge, the \$37,600 is included as a direct cost to the LEAs in this fiscal note.

Unquantified Cost to LEAs:

There are potential impacts to these LEAs that could not be quantified for the fiscal note. Besides the teachers' compensation to extend services from 10 months to 12, the LEAs who choose to extend their operations in counties where community-based DDCs are operating could incur facility costs. This cost is likely to vary and the agency does not have the necessary information to estimate it for each individual LEA and the schools/classrooms they operate.

Another example of unquantified cost is if DD programs operated by LEAs did not choose to operate for the proposed 12 months, but contracted with community-based DD programs for services, the LEA may incur costs to transport the children to the community-based DD program. Transportation costs are always the responsibility of the LEA and are not covered by DD funds during the 10-month school year while providing special education and related services to the students with disabilities served in a DD program. The agency could not quantify these costs because the location of children's placements for DD services is not known (distance from LEA, etc.) as well as the LEAs ability to cover the transportation cost in this situation (resources vary by community).

Additional Potential Costs to LEAs

Within the eight LEAs, where both LEA-based and community-based DDCs are operating and where the LEA-based DDCs cannot provide 12 months of services, the LEAs would need to find a different setting to provided services. A large unknown is the number of slots community-based DDCs would have available.

³ A conservative assumption of 1 classroom operating per LEA during the summer months is used to compute the estimated cost for two months of additional operation. The actual number and locations of classrooms operated during the two additional months will vary by LEA.

As shown in Table 3, in SFY 2013-14, there were an estimated 340 students served in school-based DDCs in 10 LEAs that have a community-based option as well.

Table 3. Number of Children Receiving DD Services

	SFY 13-14
Children in LEA DDCs with no Community DDC	690
Children in LEA DDCs with Community DDC	340
Total	1,030

To account for growth, it was anticipated, based on information from DPI, that there would be an increase of 250 new children who would need services by SFY 16-17. At that point, the growth in children served is assumed to stop due to both the unknown capacity for additional funding and children aging out of the service. The increase was applied to the SFY 13-14 distribution of children as follows:

Table 4. Assumptions in the Growth of Number of Children Receiving DD Services

	SFY 13-14	Increase	SFY 16-17
Children in LEA DDCs with no Community DDC	690 (67%)	167	857
Children in LEA DDCs with Community DDC	340 (33%)	83	423
Total	1,030	250	1,280

Based on information provided by DPI, the agency estimates that about 280 of the 423 students could continue to be served by the two LEA DDCs that could meet the requirements set in the proposal rule. Therefore, LEAs would need to find a different setting for providing services to the other 143 students.

If community-based DDCs have less than 143 slots available to accommodate the students from the LEA-based DDCs that cannot extend their hours of operation, then those eight affected LEAs would not be able to provide services to the affected students in a DD setting and could lose some of the DD funding provided by DPI – up to a maximum of about \$1,435,900 per year (143 students x \$1,004/student in DD funding provided by DPI x 10 months/year) if no slots at all are available. Because the capacity of community-based DDCs in these counties to serve additional children is not determined (see discussion below), this cost cannot be quantified with certainty.

2. Cost to Community-based Developmental Day Centers

If an LEA DDC impacted by the proposed 12 month requirement lost its certification, it is very likely that the children they served would be transferred to community-based DDCs in the same jurisdiction. As a result, the agency asked the petitioner whether there would be costs to existing community-based sites if new children were enrolled, or if there would be expansion costs necessary to meet an increased demand for services. The petitioner responded that none of the

children in LEA classrooms would go unserved, nor would all of them be referred to community-based DD centers. The petitioner noted that the LEA is legally required to provide services (i.e., special education and related services to students with disabilities during the 10-month school year). It was noted that community-based programs do private fundraising to be able to serve the children for the 12 months. With no cost projections provided, the agency assumes that any cost to the community-based DD centers to serve additional children during the 10-month school year would be offset by any DPI DD funds it could receive from LEAs during the school year, or by private funds.

3. Unquantified Impact on Schools

As mentioned above, the agency estimates that as a result of the proposed rule change schools in eight LEAs would lose their DDC certification. LEAs would need to provide services to an estimated 143 students in a different setting, whether it is a community-based DDC or a non-DDC setting within the school. To the extent students will be served in community-based DDCs, LEAs could shift up to about \$1,435,900 per year away from schools to community-based DDCs. However, while schools would lose this funding they would also not bear the cost of providing the services and these two opposite impacts may cancel out. The agency does not have the necessary information to be able to estimate what the net impact on schools would be, especially since the number of available slots the community-based DDCs is unknown and the amount of fund LEAs would transfer to schools to provide services to those students who may remain in a non-DDC school setting could be highly variable.

B. Benefits

Community-based Developmental Day Centers

The petitioner was asked whether community-based DDCs have the capacity to serve additional children if the LEA DD programs no longer operated; or whether it was possible new community-based DDCs may open. The petitioner did not provide information on additional capacity of community-based DDCs, noting that the LEA would still be required to continue to serve the children.

However, if rule language is changed requiring that LEAs provide 12 months of Developmental Day services in counties where community-based DDCs operate, it is possible that if an LEA loses its DD certification, DD services may be contracted to the community-based DD programs. The LEA would still be able to access DD funds for the children from DPI, but they would be contracted to the community-based centers.

To estimate the number of children for whom funds may transfer from LEA DDs to community-based DDs, the estimated 423 children in LEA DDCs with community DDCs in SFY 16-17 was reduced by 280, which is the number of children in the two LEA DDCs that could potentially

meet the new requirement. If there is capacity at the community-based DD centers to serve the remaining 143 children and if the placement is determined by the IEP team, this transfer could result in community-based DD centers receiving up to an additional \$1,435,800 in DD funds annually (\$10,041 x 143 children), beginning in SFY 16-17.

C. Net Impact on Children Receiving Developmental Day Services

Regarding whether the services provided to children would be impacted, it has been noted that LEAs are responsible for ensuring that children with special needs are served, regardless of the types of programs available in each LEA. A change in available services will have a net impact on children. IEP teams make decisions about providing a Free and Appropriate Education (FAPE) in the Least Restrictive Environment (LRE) for each individual child. The IEP team, which the parent is a part of, makes a decision about the level of service and continuum the child with disabilities will receive in his/her special education and related services in order to make progress on IEP goals. In counties where both LEA-based and community-based DDCs are operating, when the LEA-based DDC cannot meet the 12-month requirement, it is possible there may be fewer options from which the parent may be able to choose for their children to receive services.

The petitioner, however, notes that the proposed rule change could help ensure more comprehensive services are provided to children over a 12-month, rather than 10-month period. The petitioner states that additional months of services would allow for greater continuity and help prevent regression of children's growth. (For clarification, the agency notes that DPI DDC funds only support the 10-month school year.)

VI. Uncertainties in Estimation

The estimates related to the impacted LEAs potentially shift in DD funds to pay for community-based services or foregoing DPI provided DD funding assume that the amount DPI provides per child (\$1,004.10 per month for 10 months) would not change over the next five years. If the legislature were to change the allocation, that would affect the estimated impact of the rule change.

It has been noted that the IEP team, which includes the parent, ultimately determines the level of services and placement for a child with special needs. While it is possible that in communities where LEA-based DD programs would not maintain certification the community-based centers may be contracted to serve the children, ultimately the placement decision is made by the IEP team. Therefore, the impact on community-based DD centers is hard to predict.

Also, as mentioned in the Costs section, there is uncertainty regarding the capacity for community-based DD centers to enroll children who had been receiving services from LEA-based DD programs that may not meet the proposed requirement. If there is not sufficient

capacity in community-based programs, there may be a loss of DD funds within LEAs rather than a transfer of DD funds to community-based programs.

Regarding the numbers of children impacted by the proposed rule change, these were based on children served in SFY 2013-14. An estimated increase in children to be served was projected based on growth from SFY 13-14, up to 250 additional children in SFY 16-17. Since the capacity for providing future services (both where new enrollment could be absorbed or expanded by community-based DDs, as well as future funding for increased services) is unknown, further increases were not projected but may be likely.

Finally, the agency could not determine the fiscal impact to parents whose children are not currently receiving 12 months of DD services, if no longer served in impacted LEA-based DD programs that could not meet the new requirement. The extra two months of services are not covered by the 10 months of DD funding and parents are responsible for care during that time. It is possible that some families may change their child care arrangement during that time if their children received some other type of service.

APPENDIX

10A NCAC 09 .2902 LICENSE

(a) Developmental Day services shall be available for preschool children for a minimum of 8 hours per day, 5 days per week, and 12 months per year, except under the following circumstances:

- (1) In counties where no Community-Based Developmental Day Center operates, a Developmental Day program operated by the Local Education Agency may provide services for the 10 month school year (as defined by the State Board of Education).
- (2) If a Community-Based Developmental Day Center opens in a county where Developmental Day services are only provided by a Developmental Day program operated by the Local Education Agency, the Developmental Day program operated by the Local Education Agency may continue to provide services for the 10 month school year until the end of following school year. At the end of the following school year, all Developmental Day services in the county shall be available as described in Paragraph (a) of this Rule.

(b) For purposes of this Rule, a “Community-Based Developmental Day Center” means a Developmental Day Center not operated by the Local Education Agency.

~~(a)~~(c) Developmental Day Centers shall maintain a four or five star rated license with an average score of 5.0 on the appropriate environment rating scale in each classroom evaluated.

~~(b)~~(d) A child care center with a temporary license may receive certification status if all rules in this Section are met, except for Paragraph ~~(a)~~ (c) of this Rule, and an application for a two to five star rated licensed has been submitted. At the end of the temporary license period the child care center must receive a four or five star rated license as specified in Paragraph ~~(a)~~ (c) of this Rule. Failure to receive a four or five star rated license shall result in the removal of certification status as a Developmental Day Center.

~~(e)~~(e) The license shall indicate certification as a Developmental Day Center.

~~(f)~~(f) The center shall comply with the staff-child ratio and maximum group size as follows:

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0-12 Months	1/4	8
1 to 2 Years	1/5	10
2 Years and Older	1/6	18

~~(e)~~(g) A minimum of two staff members shall be on site at all times while children are in attendance at the facility.

~~(f)~~(h) A child care center may appeal the removal of certification status in accordance with G.S. 110-94; however, an appeal does not preclude a Local Education Agency from removing contracted children from the program before a final decision on the appeal is reached.

History Note: Authority G.S. 110-85; 110-88(14);

Eff. July 1, ~~2010~~ 2010;

Amended Eff. _____.

10A NCAC 09 .2903 STAFF QUALIFICATIONS

(a) Each center serving children ages birth to three years shall have a minimum of one staff who holds an Infant Toddler Family Specialist certification issued from the North Carolina Division of Public Health; Birth-through-Kindergarten (B-K) Standard Professional I licensure; or provisional licensure in B-K issued from the Department of Public Instruction. This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) In accordance with G.S. 115C-84.2(a)(1), during the 185 day school year (as defined by the State Board of Education), each child aged three years old and older on or before the initial school entry date specified in G.S. 115C-364 (school entry date) shall be served in a classroom with at least one lead teacher who holds a B-K Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction.

(c) Children who turn three years old after the school entry date who are identified as a child with a disability as evidenced by an Individualized Education Program (IEP), shall be served in a classroom with a B-K licensed teacher.

(d) ~~During the time when school is not in session,~~ For centers operating for 12 months as specified by 10A NCAC 09 .2902(a), during the two additional months of operation each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development, or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(e) For centers operating for 10 months as specified by 10A NCAC 09 .2902(a), ~~During~~ during the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. ~~During the time when school is not in session,~~ For centers operating for 12 months as specified by 10A NCAC 09 .2902(a),

during the two additional months of operation each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(f) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of verifiable work experience with children with developmental delays or disabilities.

History Note: Authority G.S. 110-85; 110-88(14);

Eff. July 1, 2010;

Amended Eff. _____; March 1, 2014.