

## Chapter 13: ADMINISTRATIVE ACTIONS

### Purpose Of These Requirements

Administrative actions are a means that the Division uses to require child care operators to comply with the child care rules and law. The child care licensing law and the North Carolina Administrative Procedures Act empower the Division to issue administrative actions. Administrative actions are designed to direct child care operators in taking corrective action to achieve and maintain satisfactory compliance and promote safe environments to sustain quality child care.

### Definitions

**Administrative Action:** an action taken by the Division against a facility as the result of violations of the child care requirements or a substantiation of child abuse or neglect.

**DSS:** Department of Social Services

**Substantiation:** when an allegation is found to be true or to have occurred.

**Corrective Action Plan (CAP):** a detailed plan of action developed to correct current violations and decrease the chances of the violations or the incident from reoccurring.

### SECTION 1: CAUSES OF AN ADMINISTRATIVE ACTION

Administrative actions may be issued when any of the following occur:

- The operator fails to make a reasonable effort to comply, fails to correct violation(s), delays in making corrections, or is unable to comply;
- Substantiation of child abuse or neglect;
- Failure to comply with the CAP of a previous administrative action;
- When an administrative action was issued in the past and the violation(s) continue to be cited;
- Recommendation made by a local inspector to allow time to correct a violation of building, fire, or sanitation requirements;
- Pattern or history of violations over a period of time; or
- Compliance history score less than 75% over 18 month period.

The type of administrative action that is issued is based upon the incident that occurred and is not limited to the reasons above.

Violations of child care requirements impacting children's health and safety, such as violations of staff-child ratios, supervision, inappropriate discipline, and safety of children often lead to the recommendation of an administrative action. In addition, a pattern or history of noncompliance, regardless of the violation type may result in the recommendation of an administrative action.

## Sequence of events prior to an administrative action

1. Violations cited at the facility as the result of a monitoring visit, investigation of a complaint, and/or child abuse/neglect report.
2. The operator does not comply with child care rules and/or law, is unable to correct the violation(s), or corrects a violation that still warrants an administrative action.
3. Child care and/or abuse/neglect consultant recommends an administrative action.

## SECTION 2: ADMINISTRATIVE ACTIONS

The type of administration action taken as a consequence to noncompliance varies with the seriousness of the incident or area of noncompliance. The intent of the Division is to help a child care facility recognize the violation, and make changes so that the child care facility is providing and maintaining a healthy and safe child care program for children. With that purpose in mind, the Division incorporates Corrective Action Plans (CAP) in many of the issued administrative actions. The purpose of a CAP is to ensure child care facilities are given adequate support through monitoring, training, and oversight during the time the CAP is in place. The CAP also serves to assist Division staff to plan and manage progress and outcomes of a CAP issued as part of an administrative action. A CAP specifically tells the child care facility operator what to do to correct the violation(s) and/or remedy the child abuse/neglect situation that is the basis for the administrative action. The timeframe for the CAP to be completed is included in the administrative action.

It is also the intent of the Division to make child care providers notify parents of the substantiation of any child abuse or neglect complaint or the issuance of any administrative action against a child care facility. The Division feels it is important for parents to be aware of these types of situations. To ensure parents are notified the following child care rules have been adopted.

### **Parent Notification Child Care Rule .2201**

- ★ Following the substantiation of any child abuse or neglect complaint or the issuance of any administrative action against a child care facility, the operator must notify all parents of children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility. This includes administrative actions that may be pending an appeal.
- ★ The notification must be in writing, it must state the nature of the substantiated complaint or the type of administrative action taken, and be given to all parents.

- The written notification must state where a binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents.

- Copies of the documentation of the substantiated complaint investigation or the administrative action must be maintained in a binder for 3 years, and be accessible to parents.
- The date the written notification was given to all parents must be on file at the child care facility.

**Written Reprimands**  
**Child Care Rule .2201 & .2202**

- A written reprimand may be issued when the Division determines that an incident was a brief uncustomary event which is unlikely to recur in the ordinary continuing operation of the facility.
- The written reprimand will describe the reasons for its issuance, including identification of the specific section of the statutes or rules violated.
- Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- A written reprimand may be issued if:
  - The incident is not likely to happen again as long as you maintain compliance with the requirements.
  - You have already taken corrective action to prevent reoccurrence and no further action is necessary.
- A written reprimand does not typically include a CAP.
- In certain situations, a civil penalty (fine) may be issued in connection with a written reprimand. Most written reprimands are issued without a civil penalty. Civil penalties will be discussed later in this chapter.
- A written reprimand does not change your license and it does not have to be posted in the facility.
- A copy of the written reprimand will be placed in your file and is available to the public. The Division’s web site will indicate that an administrative action has been issued.
- You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

## Written Warning Child Care Rule .2201 & .2203

- ★ A written warning may be issued for any violation to give you an opportunity to demonstrate compliance with all child care requirements.
- ★ The written warning and request for compliance will describe the reasons for its issuance, including identification of the specific section of the statutes or rules violated. It will also describe the CAP.
- ★ If you fail to achieve compliance during the specified time period, the Division can employ more restrictive action to achieve compliance or can revoke your license.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- A written warning puts you on notice that unless corrective action is taken, and compliance is maintained, a more serious administrative action may be necessary.
- A CAP is issued with the written warning and will indicate the timeframe during which you must make all necessary corrections.
- In some circumstances, a civil penalty may be issued in connection with a written warning. Civil penalties will be discussed later in this section.
- A written warning does not change your license and it does not have to be posted in the facility.
- A copy of the written warning will be placed in your file and is available to the public. The Division's web site will indicate that an administrative action has been issued.
- You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

### **Provisional License Child Care Rule .0401 & .2201**

- ★ A provisional license may be issued for up to one year upon the Division's determination that you are making a reasonable effort to conform to child care requirements previously found to be out of compliance.
- ★ The notice ordering a provisional license will describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and specify the period of the provisional. It will also specify terms of the provisional license with which you must comply to retain a license.
- ★ The provisional license and the notice describing the reasons for its issuance must be posted in a prominent place in your facility.
- ★ Failure to comply with the CAP may result in a more stringent action, up to and including a revocation.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- Provided that a situation is not hazardous to children, a provisional license can be issued in the following cases:
  - To allow a specific time period for correcting a violation of the building, fire, or sanitation requirements, provided the appropriate inspector documents that the violation is not hazardous to the health or safety of the children but still necessitates a provisional classification until corrected.
  - To allow a specific time period for you to comply with licensing requirements other than building, fire, or sanitation and to demonstrate that compliance will be maintained, provided that conditions at the facility are not hazardous to the health/safety of the children or staff.
  - To allow time for you to request a declaratory ruling when you do not agree with a decision by the Division because you do not think it applies to the circumstance at your child care facility.
  - As a possible administrative action for substantiation of child abuse or neglect.
- You will be notified in advance of the Division's intent to issue a provisional license. You will have 15 calendar days to respond to this proposed administrative action in writing, stating why you believe the action should not be taken.
- A CAP is always included and must be completed as specified.

- ☑ In some circumstances, a civil penalty may be issued in connection with a provisional license. Civil penalties will be discussed later in this section.
- ☑ When you receive and post your provisional license, you must return your prior license to the Division.
- ☑ A copy of the provisional license will be placed in your file and is available to the public. The Division’s web site will indicate that an administrative action has been issued.
- ☑ You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

**Probationary License  
Child Care Rule .2201 & .2204**

- ★ A license may be placed in probationary status for up to one year, when a violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety.
- ★ The notice ordering probation will describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and specify the period of probation. It will also specify terms of probation with which you must comply to retain a license.
- ★ The probationary license and the notice describing the reasons for its issuance must be posted in a prominent place in your facility.
- ★ Failure to comply with the CAP may result in a more stringent action, up to and including a revocation.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- ☑ You will be notified in advance of the Division’s intent to issue a probationary license. You will have 15 calendar days to respond to this administrative action in writing, stating why you believe the action should not be taken.
- ☑ A CAP is always included and must be completed as specified.
- ☑ In some circumstances, a civil penalty may be issued in connection with a probationary license. Civil penalties will be discussed later in this section.
- ☑ When you receive and post your probationary license, you must return your prior license to the Division.

- ☑ A copy of the probationary license will be placed in your file and is available to the public. The Division's web site will indicate that an administrative action has been issued.
- ☑ You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

### **Special Provisional License Child Care Rule .1904 & .2201**

- ★ A special provisional license may be issued for up to six months when it is determined that child abuse or neglect occurred in your child care facility.
- ★ The notice ordering a special provisional will describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and specify the period of the special provisional. It will also specify terms of the special provisional with which you must comply to retain a license.
- ★ The special provisional license and notice describing the reasons for its issuance must be posted in a prominent place in your facility.
- ★ Failure to comply with the CAP may result in a more stringent action, up to and including a revocation.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- ☑ In some circumstances, no new children may be enrolled until the Division is satisfied that the abusive or neglectful situation no longer exists and gives you written permission to accept new children. When no new children can be enrolled a restriction will be indicated on the license and will be part of the CAP. The local DSS is notified of the no new enrollment permit restriction.
- ☑ You will be notified in advance of the Division's intent to issue a special provisional license. You will have 15 calendar days to respond to this administrative action in writing, stating why you believe the action should not be taken.
- ☑ A CAP is always included and must be completed as specified.
- ☑ In some circumstances, a civil penalty may be issued in connection with the special provisional license. Civil penalties will be discussed later in this section.

- ☑ When you receive and post your special provisional license, you must return your prior license to the Division.
- ☑ A copy of the special provisional license will be placed in your file and is available to the public. The Division's web site will indicate that an administrative action has been issued.
- ☑ You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

### **Suspension of a License Child Care Rule .2201 & .2205**

- ★ Suspension of a license can be ordered for up to forty-five days when a violation of statutes or child care requirements has been willful, continual, or hazardous to children's health or safety, and/or you have not made reasonable efforts to conform to standards.
- ★ You will be notified in advance of the Division's determination to suspend your license and the reasons for such action.
- ★ The suspension order will specify the time period of suspension and the reasons for its issuance. You must return your current license to the Division on the effective date of the suspension order and refrain from operating a facility during the suspension period.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- ☑ You will be notified in advance of the Division's intent to issue a suspension of a license. You will have 15 calendar days to respond to this administrative action in writing, stating why you believe the action should not be taken.
- ☑ Suspension of a license means you must temporarily close. During this time, the problem that led to the suspension must be corrected, if your facility is to re-open.
- ☑ The Division only uses suspension of a license when other administrative actions have failed to bring your facility into compliance with requirements.
- ☑ A copy of the notice of suspension of a license will be placed in your file and is available to the public. The Division's web site will indicate that an administrative action has been issued.
- ☑ You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

## **Revocation of a License**

### **Child Care Rule .2201 & .2206**

- ★ A revocation may be recommended when violations of any section of the statutes or child care requirements has been willful, continual, or hazardous to the health or safety of the children, or when you have not made reasonable efforts to comply with child care requirements once found to be out of compliance, or with serious incidents of child abuse and neglect.
- ★ Written notification of the administrative action must be given to all parents of children currently enrolled and copies of documentation must be maintained on-site in a binder accessible to parents.

- You will be notified in advance of the Division's intent to issue a revocation. You will have 15 calendar days to respond to this administrative action in writing, stating why you believe the action should not be taken.
- Revocation orders will be hand-delivered.
- The revocation orders will specify the reason(s) for its issuance and the effective date of revocation. The revocation orders must be posted prominently in your facility immediately upon receipt.
- A CAP and civil penalty are not included in a revocation of a license.
- You must return your current license on or before the effective date of the revocation order, and refrain from operating thereafter.
- If you appeal a revocation, your facility can remain open until a final decision is made. Further information regarding the appeal process will be discussed later in this chapter.
- Failure to comply with a revocation order may result in civil action or a criminal penalty.
- If your facility license is revoked and you choose not to appeal, your facility must close immediately.
- All subsidy services vouchers are terminated 45 days after the issuance of a revocation of a license, regardless whether the action is appealed.
- A copy of the notice of revocation of a license will be placed in your file and is available to the public. The Division's web site will indicate that an administrative action has been issued.
- You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

## **Summary Suspension of a License Child Care Rule .2207**

- ★ A summary suspension of a license is issued when the Division's determinates that emergency action is required to protect the health, safety, or welfare of children at your facility.
- ★ You must return your license on the effective date of the suspension order and refrain from operating your facility until final action is determined.

- Summary suspension means that you must immediately close and return your license to the Division.
- Unlike a regular suspension, the Division is not required to give advance notice of a summary suspension. This is a temporary emergency administrative action.
- Summary suspension orders will be hand-delivered.
- Once summary suspension of a license is ordered, the Division continues to investigate the situation and determines a permanent administrative action to take.
- A summary suspension order will remain in effect during any suspension or revocation proceedings, or until a less stringent action is issued.
- If you appeal a summary suspension, your facility must remain closed, unless a District Court Judge reverses the summary suspension decision.
- All subsidy services vouchers are terminated upon issuance of the summary suspension and remain terminated until the facility is allowed to re-open.
- A copy of the notice of summary suspension of a license will be placed in your file and is available to the public.
- You may request an agency review of the situation and/or file a petition to appeal the action taken. Procedures for requesting an agency review and the appeal process will be discussed later in this chapter.

## SECTION 3: DENIAL OF A LICENSE

### Denial of a License Child Care Rule .0306 & .1702

- ★ When an applicant fails to meet the applicable requirements for issuance of a license, including failing to obtain an approved building, fire or sanitation inspection, the Division is authorized to deny the license. In addition, an application for a license may be denied under the following circumstances:
  - If any child care facility license previously held by that person has been denied, revoked, or summarily suspended by the Division;
  - If the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
  - During the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
  - If the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action;
  - Based in the person's previous non-compliance as an operator; or
  - If abuse or neglect has been substantiated against this person, regardless of whether the substantiation resulted from an incident in a child care facility or in another setting.

## SECTION 4: CIVIL PENALTIES

### Civil Penalties for Child Care Centers Child Care Rule .2208, .2209 & .2013

- ★ A civil penalty (fine) can be issued with any administrative action or as a separate action. The child care rules establish the criteria and maximum amounts for civil penalties based on the violations that were documented and whether the child care facility is a center or a family child care home.
- ★ The Division may levy a civil penalty against you for willful violation of one or more child care requirements.

- The amount of any penalty assessed will be based upon the following factors:
  - willful non-compliance or negligence by the operator
  - any other factors relevant to the unique situation
  - extent of deviation from the regulation
  - evidence of good faith effort to comply
    - history of non-compliance
- The civil penalty in an amount up to one thousand dollars (\$1,000.00) may be imposed for the following violations:
  - Non-compliance with the standards for: staff-child ratios; adequate supervision of children; transportation

of children; or use of swimming pools and other swim areas;

- Disapproved fire safety, building or sanitation inspection reports;
- Exceeding licensed capacity of center, or use of unauthorized space;
- Change of ownership or relocation of center without prior notification to the Division;
- Substantiation that a child (or children) was abused or neglected while in the care of the center; or
- Willful, repeated pattern of non-compliance with any requirement over extended period of time.

- A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:
  - Non-compliance with the standards for:
  - Staff health requirements;
  - Staff qualifications;
  - Children’s health requirements;
  - Proper nutrition;
  - Sanitation and personal hygiene practices;
  - Discipline of children;
  - Indoor or outdoor space; or
  - Emergency medical plan;
  - Failure to comply with a corrective action plan;
  - Denial of entry to an authorized representative of the department or Division.
- A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following violations:
  - Non-compliance with the standards to provide age appropriate activities or staff development.
- Violation of other standards may result in the assessment of penalty according to the effect or potential effect of the violation on the safety and well-being of children.
- Money collected by the Division of Child Development through civil penalties goes into the Public Education Fund.

**Notice of Assessment of a Penalty  
Child Care Rule .2210**

 You will be notified by registered or certified mail of the amount and reasons for the assessment of the civil penalty. Notice will specify the factors used to determine the amount of the penalty and will specify a time period by which payment must be received by the Division.

- Notice of Assessment of Penalty will be included as part of the Notice of Administrative Action.

**Failure to Pay Assessed Penalty  
Child Care Rule .2212**

 Failure to pay the assessed penalty or to exercise appeal rights within 30 days after receipt of a Notice of Assessment may result in civil action by the Division.

- Each facility must pay any penalty assessed by the Division within 30 days of receipt of the Notice of Assessment.
- If the Notice of the Administrative Action is appealed, the civil penalty does not have to be paid until the final outcome of the contested case.

**SECTION 5: ADMINISTRATIVE ACTION PROCEDURES**

**Definitions**

- **OAH:** Office of Administrative Hearings
- **DHHS:** Department of Health and Human Services
- **DCD:** Division of Child Development
- **Prior Notice:** A letter sent to an operator that notifies operator of the Division’s intent to issue an administrative action (proposed action) against a facility.
- **Notice of Administrative Action:** Official notification sent to an operator that an Administrative Action has been issued against a facility.
- **Contested Case:** An administrative proceeding to resolve a dispute between an agency and another person that involves that person’s rights, duties, or privileges, including licensing or the levy of monetary penalty.

**Issuing the Administrative Action**

**Prior Notice for Administrative Actions**

 With any action that changes the status of a license, except a summary suspension of a license, a prior notice is used to inform you that the Division plans to take administrative action against your facility.

- A prior notice letter is sent to you when the recommended administrative action will affect the status of the license issued to your facility.
- Actions that change the status of a license:
  - Provisional License
  - Probationary License
  - Special Provisional License
  - Suspension of License
  - Revocation of License
- A certified letter explaining that the Division is considering taking administrative action is sent to you before the action is taken. Attached to the letter is a notice describing the proposed action and the reasons for the action.
- An operator has 15 calendar days from the date the prior notice letter is received to submit a written response for review by the Division. The written response should include why action should not be taken, how the operator has come into compliance and how the operator plans to maintain compliance.
- Prior to issuing the Final Notice of Administrative Action, a review will be completed of any documents submitted by you and any additional information submitted by the child care consultant, child abuse/neglect consultant, or the regulatory supervisor.
- Based on this review, it will be determined whether the action should go forward as proposed, be changed, or withdrawn.
- If no written response is received within 15 calendar days, the Division proceeds with the action specified in the prior notice letter.
- A Final Notice of Administrative Action always follows a Prior Notice. Final actions may be appealed through OAH, which will be discussed later in this chapter.
- The 2 administrative actions that do not affect the status of a license are:
  - Written Reprimands
  - Written Warnings

### **Final Notice of Administrative Action**

 Final notice is used to inform an operator that an Administrative Action has been officially issued by the Division against a facility.

- A certified letter explaining that the Division has taken administrative action is sent to you.

- ☑ An operator has 30 calendar days from the receipt of Notice of Administrative Action to appeal the administrative action. A petition for a contested case hearing must be filed with OAH, in accordance with the Administrative Procedures Act (APA) found in Chapter 150B-23(a) of the North Carolina General Statutes.
- ☑ The Division's position is to always try to resolve cases through an agency review. Although this will not extend the timeframe to file a petition, the operator may request an informal meeting with Division staff to discuss the administrative action.

## SECTION 6: CONTESTED CASES

Whenever an administrative action is issued against a facility, the Administrative Procedures Act (APA) must be followed. When an operator believes they are aggrieved by an administrative action, the APA allows for them to file a petition to appeal the administrative action. When a petition is filed, the case becomes a *contested case*.

- ☑ The following section explains the sequence of steps taken for a contested case hearing. After the Division provides the operator with a Notice of Administrative Action, the operator is allowed 30 calendar days from the date of receipt of the Notice to file a petition. The appeals process may take several months, depending on an individual case's circumstance.
-  To access a copy of the APA, visit the NC Office of Administrative Hearing's web site at [www.ncoah.com/150b.pdf](http://www.ncoah.com/150b.pdf).
-  The **Procedure for Appeal** process is located in the resource section.

## **Informal Meeting** **General Statute 150B-22**

 In accordance with North Carolina General Statute 150B-22, it is the policy of this agency to try to settle any disputes between the agency and any other person through informal procedures.

- The Division is available at the operator's request for discussion or consultation that might resolve the matter.
- Informal Meeting information is attached to all Final Notices of Administrative Action.
- Informal Meetings are conducted at the Raleigh office.
- You must contact the Licensing Enforcement Unit of the Division to request an Informal Meeting.
- The Licensing Enforcement Unit will send you a request form to complete.
- After you complete the request form and return it to the Licensing Enforcement Unit, the meeting will be scheduled as soon as possible.
- Division staff, including the regional manager and supervisor for your local area, will attend.
- If you bring an attorney, the Division's attorney will also attend the meeting.
- The purpose of the meeting is for you, the operator, to talk with Division staff regarding why you think an administrative action should be changed or removed from your record.
- No judge is present at these meetings.
- No decision is made at the Informal Meeting regarding the administrative action issued to your facility. You will receive written notification regarding the outcome of the meeting.
- Use of this informal procedure does not extend the 30 calendar days allowed to file a petition for a contested case hearing.

## **Right to a Hearing Child Care Rule .2211**

 If you contest an administrative action, you are entitled to an administrative hearing and judicial review in accordance with the APA, Chapter 150B, Article 3 of the North Carolina General Statutes.

- When you receive the Notice of Administrative Action, you have 30 calendar days to file a petition with the Office of Administrative Hearings (OAH). Contact information and procedures for appeal are attached to the notice explaining how to file your appeal.
- Once a petition is accepted by the OAH, they may send you additional forms to be completed to initiate the Contested Case Hearing proceedings.
- An appeal of an administrative action must be filed with OAH, not the Division.
- Failure to properly file an appeal may result in the dismissal of the appeal.
- Technical questions about contested case processes should be directed to OAH, not the Division.
- OAH will notify the Division that the operator has filed a petition for a Contested Case Hearing.
- You may represent yourself or hire an attorney to represent you in the administrative hearing.
- OAH sets a hearing date and assigns an Administrative Law Judge to the case.
- Pre-hearing statements may be filed by you or an attorney hired to represent you, and the Division's counsel.
- Pre-hearing statements may consist of preliminary information regarding the case, issues to be heard, and any witnesses expected to be present at the hearing.
- OAH will send a Notice of Hearing to all parties at least 15 days prior to the hearing.

## **Mediation**

- Mediated settlement conference may be ordered by the chief administrative law judge involving the parties of a contested case and conducted by a mediator prior to a contested case hearing.

- A mediator is a neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.
- Conference: The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted insofar as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under North Carolina General Statute 7A-38.
- Attendance: The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.
- Costs: Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervener, unless otherwise apportioned by the administrative law judge.
- Inadmissibility of Negotiations: All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules. This means all conduct or communication during the mediation settlement conference is not admissible in a contested case hearing.

### **After a Hearing**

- Once a hearing is conducted, the administrative law judge may request one or both parties to prepare a proposed finding or recommended decision documents.
- The administrative law judge has 45 calendar days from the closing of the hearing record to issue a Final Recommended Decision to the final agency decision maker.
- The Division director is the final agency decision maker for all contested cases.

### **Recommended Decision**

- All parties will receive the administrative law judge's recommended decision.

- ☑ OAH will forward an official record of the hearing and Recommended Decision to the Division for its Final Agency Decision.
- ☑ The Division director will notify all parties of their right to file exceptions to the Recommended Decision if either party does not agree with the administrative law judge's decision.
- ☑ Exceptions are received by the Division director and the Division has 60 calendar days to issue its Final Agency Decision or to request an additional 60 calendar days to prepare its Final Agency Decision.

### **Final Agency Decision**

- ☑ You may appeal the Final Agency Decision by requesting a judicial review in the Superior Court in your county.
- ☑ If the administrative action is upheld and you do not intend to appeal the decision, you must accept the administrative action and proceed with any necessary steps to be in compliance with the action. This could include posting a license, implementing a CAP, or surrendering your license.

# RESOURCE SECTION

## Chapter 13: ADMINISTRATIVE ACTIONS

**The following pages contain resource materials discussed in or related to the preceding chapter.**

Some of the resources are forms created by the Division of Child Development and must be used by licensed child care centers. Other materials are provided as a resource only for child care centers and can be used at the discretion of the center.

Center operators may also wish to use this section to add any additional resource materials they have that are related to the chapter or information that is specific to their child care center.