

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION

NORTH CAROLINA CHILD CARE COMMISSION

Request for Declaratory Ruling Meeting

Monday, April 17, 2017

DCDEE, Room 130
820 South Boylan Avenue
Raleigh, NC 27603

Commission Members Present via Conference Call

Glenda Weinert, Chairperson	Amelie Schoel
Zac Everhart, Vice Chairperson	Linda Vandevender
Elliott Blades	William Walton, III
Lisa Humphreys	
Charles F. McDowell III	

Commission Members Absent

Jonathan Brownlee, Sr.,	Kay Lowrance
Melanie Gayle	Laurie Morin
Elizabeth Gilleland	Donnette Thomas
Brooke King	

Division of Child Development & Early Education Staff Present

Janice Fain, Administration/Policy
Rachel Kaplan, Administration/Policy
Heather Laffler, Administration/Policy

Attorney General's Office Staff

Bethany Burgon, Commission Attorney
Alexi Gruber, DCDEE Attorney

Public

Linda Piper

This purpose of this meeting is for the NC Child Care Commission to vote on a request for a Declaratory Ruling received from Crème de la Crème, Inc. concerning Rules 10A NCAC 09 .0510 Activity Areas: Preschool Children Two Years and Older and 10A NCAC 09 .1401 Indoor Space.

10A NCAC 09 .0510 Activity Areas: Preschool Children Two Years and Older

Crème de la Crème, Inc. requests that the Commission grant a Declaratory Ruling, clarifying that Crème de la Crème, Inc.'s model is appropriate under 10A NCAC 09 .0510. N.C.G.S. § 110-91(12) states that "each **facility** shall have developmentally appropriate activities and play materials." However, 10A NCAC 09 .0510(4)(a) states that a facility "...shall have at least four activity areas available in the **space** occupied by each group of children."

If space is interpreted as each **room**, then Crème de la Crème, Inc.’s use of single-use rooms is prohibited under the rule but not the law from which the rule was taken.

10A NCAC 09 .1401 Indoor Space

This rule goes above and beyond the law, G.S. § 110-91(6), which states that “there shall be no less than 25 square feet of indoor space for each child for which a child care center is licensed, exclusive of closets, passageways, kitchens and bathrooms.” Rule .1401 includes “single-use rooms, including music rooms and gymnasiums”, which prohibits Crème de la Crème, Inc. from carrying out their single-use rooms model. Crème de la Crème, Inc. is requesting that the Commission consider removing “single-use rooms,” “music rooms” and “gymnasiums” from the language of the rule.

Welcome—Chairperson Glenda Weinert called the conference call meeting to order at **9:07 a.m.** and thanked everyone for participating. Chairperson Weinert asked Ms. Rachel Kaplan to perform roll call, which she completed, establishing that there was a quorum of members present to complete official action.

Chairperson Weinert asked Ms. Bethany Burgon to explain the Declaratory Ruling.

Ms. Burgon stated that the Commission had previously denied Crème’s de la Crème, Inc.’s petition for rule-making because the Commission is currently reviewing *all* rules during the review of rules process and the rules that would need to be modified per this request are scheduled to be part of the public hearing that will be held on May 8th. Crème de la Crème has requested a Declaratory Ruling.

Ms. Burgon stated the purpose of today’s teleconference meeting is twofold: 1) to determine if the Commission *has the authority* to issue a Declaratory Ruling and 2) for the Commission to decide *whether to grant* the Declaratory Ruling, if it does have that authority. The immediate discussion today will only include whether to move forward with the Declaratory Ruling process; if the Commission determines that it does have the authority. If the Commission chooses to provide a Declaratory Ruling, the group will then have 45 days to determine the content of its ruling.

Ms. Burgon stated that per her understanding, the Commission does have authority to issue a Declaratory Ruling in this matter. Ms. Burgon stated that, while Rule .0510 is currently in statutory review, and will be changing, she recommends proceeding with issuing the Declaratory Ruling. If Crème de la Crème believes they need a new Declaratory Ruling based on the changes made to Rule .0510, then they can request a new Declaratory Ruling after the rule has been changed. Ms. Burgon stated that the letter stating that the Commission is going to issue a Declaratory Ruling will be mailed by Friday, April 21.

Chairperson Weinert stated that while Crème de la Crème specifically submitted this request, she thinks this clarification will be helpful for all providers. She also stated that she is in favor of issuing a letter granting the Declaratory Ruling. Ms. Schoel asked when the Commission will decide the language of the ruling? Ms. Burgon stated that she will have a draft of the language available at the next Commission meeting, May 8, for the Commission to review and vote on.

Motion for Request for Declaratory Ruling

Commission Action: **Mr. William Walton motioned to grant the Declaratory Ruling; Ms. Linda Vandevender seconded the motion which passed unanimously.**

Chairperson Weinert asked Ms. Burgon to proceed with creating the letter by Friday notifying Crème's de la Crème Inc. that a Declaratory Ruling will be made, and to have a draft of the suggested ruling language by the next Commission meeting on May 8.

Chairperson Weinert asked Ms. Heather Laffler to include the discussion of the Declaratory Ruling on the agenda for the next Child Care Commission meeting on May 8, 2017.

The meeting adjourned at 9:20 a.m.