

## NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding CHILD CARE LICENSING - CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS as authorized by Section 9-2A-7 NMSA 1978:

- 8.16.2.7 NMAC - DEFINITIONS
- 8.16.2.19 NMAC - BACKGROUND CHECKS
- 8.16.2.21 NMAC - LICENSURE REQUIREMENTS FOR CENTERS
- 8.16.2.22 NMAC - ADMINISTRATIVE REQUIREMENTS FOR CENTERS
- 8.16.2.31 NMAC - LICENSURE REQUIREMENTS FOR HOMES
- 8.16.2.32 NMAC - ADMINISTRATIVE REQUIREMENTS FOR HOMES
- 8.16.2.40 NMAC - LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
- 8.16.2.41 NMAC - ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE

No technical scientific information was consulted in drafting these proposed rules.

**Purpose of proposed rules:** The purpose of the rules is to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. In addition, language will be included requiring policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

Copies of the proposed rules may be found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least 10 calendar days before the scheduled hearing.

**Notice of acceptance of written public comment:** Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD - ECS - [PublicComment@state.nm.us](mailto:PublicComment@state.nm.us) with the subject line "8.16.2 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502 - 5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

## AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere en la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que propone adoptar enmiendas a las siguientes leyes administrativas con respecto a LICENCIATURA DE CUIDADO DE NIÑOS - CENTROS DE CUIDADO DE NIÑOS, PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA, CASAS FAMILIARES DE CUIDADO DE NIÑOS, Y OTROS PROGRAMAS EDUCATIVOS DE PRIMERA INFANCIA según lo autorizado por la sección 9-2A-7 NMSA 1978:

- 8.16.2.7 NMAC - DEFINICIONES
- 8.16.2.19 NMAC - COMPROBACIÓN DE ANTECEDENTES Y HUELLAS
- 8.16.2.21 NMAC - REQUISITOS DE LICENCIATURA PARA CENTROS DE CUIDADO DE NIÑOS
- 8.16.2.22 NMAC - REQUISITOS ADMINISTRATIVOS PARA CENTROS DE CUIDADO DE NIÑOS
- 8.16.2.31 NMAC - REQUISITOS DE LICENCIATURA PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS
- 8.16.2.32 NMAC - REQUISITOS ADMINISTRATIVOS PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS
- 8.16.2.40 NMAC - REQUISITOS DE LICENCIATURA PARA PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA
- 8.16.2.41 NMAC - REQUISITOS ADMINISTRATIVOS PARA PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

**Propósito de las propuestas leyes administrativas:** El propósito de las leyes administrativas es enmendar los requisitos para comprobación de antecedentes y huellas añadiendo lenguaje para incorporar un proceso de dos pasos de autorización para proveedores. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles aprobadas) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con los requerimientos federales. Adicionalmente, lenguaje será incluido requiriendo pólizas y procesos que aseguren que un delincuente sexual registrado no tenga acceso a una casa donde niños estén presentes y requiriendo que miembros del hogar a punto de cumplir los 18 años de edad tienen que proporcionar su comprobación de antecedentes y huellas dentro de 30 días de haber cumplido su decimotavo cumpleaños.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @<https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de leyes administrativas:** La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibidas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us), especificando en la línea de Asunto: "8.17.2 NMAC Public Comment," o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 29 de agosto de 2019.

### **Proposed Rules/Reglas Propuestas**

#### **8.16.2.7 DEFINITIONS:**

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**F. "Attended"** means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection ~~[FFF]~~ UUU, 8.16.2.7 NMAC). \*\*\*

**RR.** **“Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

**RR.]SS.** **“Notifiable diseases”** means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

**SS.]TT.** **“Orientation”** means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

**TT.]UU.** **“Out of school time program”** means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

**UU.]VV.** **“Parent handbook”** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

**VV.]WW.** **“Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

**WW.]XX.** **“Pesticide”** means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

**XX.]YY.** **“Philosophy statement”** describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

**YY.]ZZ.** **“Policy”** is a written directive that guides decision-making. Policies form the basis for authoritative action.

**ZZ.]AAA.** **“Premises”** means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

**AAA.]BBB.** **“Procedure”** is a series of steps to be followed, usually in a specific order, to implement policies.

**BBB.]CCC.** **“Professional development”** is an on-going plan for continued professional development for each educator, including the director.

**CCC.]DDD.** **“Program administrator”** means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

**DDD.]EEE.** **“Punishment”** means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

**EEE.]FFF.** **“Ratio”** is the maximum number of children one educator can be responsible for.

**FFF.]GGG.** **“Requirements”** means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

**GGG.]HHH.** **“Restriction”** means to control enrollment, service type, capacity, activities, or hours of operation.

**HHH.]III.** **“Revocation”** means the act of making a license null and void through its cancellation.

**III.]JJJ.** **“Sanction”** means a measure imposed by the licensing authority for a violation(s) of these standards.

**JJJ.]KKK.** **“Sanitize”** means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

**KKK.]LLL.** **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

**LLL.]MMM.** **“School-age”** means a child in care who is age five to 18 years.

~~[MMM.]~~[NNN.] **“Staff evaluation”** means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

~~[NNN.]~~[OOO.] **“Staff member”** means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

~~[OOO.]~~[PPP.] **“Substitute”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

~~[PPP.]~~[QQQ.] **“Suspension”** means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

~~[QQQ.]~~[RRR.] **“Site director”** means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

~~[RRR.]~~[SSS.] **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

~~[SSS.]~~[TTT.] **“Substantiated complaint”** means a complaint determined to be factual, based on an investigation of events.

~~[TTT.]~~[UUU.] **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

~~[UUU.]~~[VVV.] **“Survey”** means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

~~[VVV.]~~[WWW.] **“Toddler”** means a child age 12 months to 24 months.

~~[WWW.]~~[XXX.] **“U/L”** means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

~~[XXX.]~~[YYY.] **“Unattended”** means an educator is not physically present with a child or children under care.

~~[YYY.]~~[ZZZ.] **“Unsubstantiated complaint”** means a complaint not determined to be factual based on an investigation of events.

~~[ZZZ.]~~[AAAA.] **“Variance”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

~~[AAAA.]~~[BBBB.] **“Volunteer”** means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

~~[BBBB.]~~[CCCC.] **“Waiver”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

**8.16.2.19 BACKGROUND CHECKS:** Background checks will be conducted in accordance with the most current regulations related to background checks and employment history verification provisions as promulgated by the children, youth and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member’s employment[;], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

**A.** the staff member was found eligible as a direct provider of care in a child care center, licensed child care, home licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

**B.** submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

**8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:**

**A. LICENSING REQUIREMENTS:**

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(2) **BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member's employment[-], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

**8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:**

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**C. POLICY AND PROCEDURES:** All facilities using these regulations must have written policies and procedures covering the following areas:

- (1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;
- (2) policies and procedures for admission and discharge of children;
- (3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;
- ~~[(3)]~~(4) policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- ~~[(4)]~~(5) policies and procedures for the handling of medications;
- ~~[(5)]~~(6) policies and procedures for the handling of complaints received from parents or any other person;
- ~~[(6)]~~(7) policies and procedures for actions to be taken in case a child is found missing from the center;
- ~~[(7)]~~(8) policies and procedures for the handling of children who are ill; and
- ~~[(8)]~~(9) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

**D. FAMILY HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following:

- (1) **GENERAL INFORMATION:**
  - (a) mission statement;
  - (b) philosophy statement;
  - (c) program information (location, license information, days and hours of operation, services offered);
  - (d) name of director and how he/she may be reached;
  - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
  - (f) daily schedule;
  - (g) a statement supportive of family involvement that includes an open door policy to the classroom;
  - (h) appropriate dress for children, including request for extra change of clothes;
  - (i) celebrating holidays, birthdays and parties; and
  - (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) **POLICIES AND PROCEDURES:**

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure; ~~and~~
- (m) policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and
- ~~(n)~~ (n) guidance policy

**E. CHILDREN'S RECORDS:** A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for 12 months after the child's last day of attendance. Records will contain at least:

(1) **PERSONAL INFORMATION:**

- (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
- (b) names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;
- (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

**F. PERSONNEL RECORDS:**

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. A center will keep the file for one year after the staff member's last day of employment. Records will contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, ~~[such as a submission receipt, shall]~~ must be placed in file. A background check must be conducted at least once every five years on all required individuals;

**8.16.2.31 LICENSURE REQUIREMENTS FOR HOMES:**

**A. LICENSING REQUIREMENTS;**

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(3) **BACKGROUND CHECK:** In addition to the basic requirements at 8.16.2.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial

license. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member's employment[-], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

#### **8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:**

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**C. PARENT HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following:

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**(2) POLICIES AND PROCEDURES:**

- (a)** enrollment procedures;
- (b)** disenrollment procedures;
- (c)** policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (d)** fee payment procedures, including penalties for tardiness;
- (e)** notification of absence;
- (f)** fee credits, if any (e.g. for vacations, absences, etc.);
- (g)** field trip policies;
- (h)** health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i)** emergency procedures, safety policies, and disaster preparedness plan;
- (j)** snow days and school closure;
- (k)** confidentiality policy;
- (l)** child abuse/neglect reporting procedure; ~~[and]~~
- (m)** policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and
- ~~[(m)]~~ **(n)** guidance policy.

**D. CHILDREN'S RECORDS:** A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records will contain at least:

**(1) PERSONAL INFORMATION:**

- (a)** name of the child, date of birth, gender, home address, mailing address and telephone number;
- (b)** names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;
- (c)** a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[?]. The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file.

**E. PERSONNEL RECORDS:** A home will keep the following records on file and make them available to the licensing authority.

- (1)** Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.

#### **8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

**A. LICENSING REQUIREMENTS:**

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- (3) BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be

responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department's background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member's employment[-], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

#### **8.16.2.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

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**C. PARENT HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following.

- (1) GENERAL INFORMATION:
  - (a) mission statement;
  - (b) philosophy statement;
  - (c) program information (location, license information, days and hours of operation, services offered);
  - (d) name of director and how he/she may be reached;
  - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
  - (f) daily schedule;
  - (g) a statement supportive of family involvement that includes an open door policy to the classroom;
  - (h) appropriate dress for children, including request for extra change of clothes;
  - (i) celebrating holidays, birthdays and parties; and
  - (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

- (2) POLICIES AND PROCEDURES:
  - (a) enrollment procedures;
  - (b) disenrollment procedures;
  - (c) expulsion procedures;
  - (d) fee payment procedures, including penalties for tardiness;
  - (e) notification of absence;
  - (f) fee credits, if any (e.g. for vacations, absences, etc.);
  - (g) field trip policies;
  - (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
  - (i) emergency procedures and safety policies;
  - (j) snow days and school closure;
  - (k) confidentiality policy;
  - (l) child abuse/neglect reporting procedure;
  - (m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;

~~(n)~~(n) guidance policy; and

~~(o)~~(o) emergency procedures, safety policies, and disaster preparedness plan.

**D. CHILDREN'S RECORDS:** A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
  - (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
  - (b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and work telephone numbers;



(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[?]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file.

**E. PERSONNEL RECORDS:**

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the staff member's last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a background check and employment history verification. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals;