

## **Proposed Rule Changes for the Department of Early Care and Learning (DECAL): Effective October 1, 2022**

### **Rules and Regulations for Family Child Care Learning Homes**

DECAL proposes to amend this rule chapter to remove wording referencing the acceptance of proof of criminal records check determinations in a paper format. DECAL processes and portability requirements are completed electronically, and documentation should be retained in an electronic format through DECAL KOALA accounts. The original intent of accepting paper copies was to allow providers who had been “grandfathered in” five years to obtain a new criminal background check. This five-year time span has lapsed, and all providers have now received electronic determinations.

#### **290-2-3-.03 Definitions**

In these rules, unless the context otherwise requires, the capitalized words and phrases set forth herein shall mean the following:

- (a) "Adult" means any competent individual eighteen (18) years of age or older.
- (b) "Adverse Action" means any Intermediate or Closure Action issued as a result of one or more rule violations.
- (c) "Child" or "Children" means any person(s) under 18 years of age for whom child care service(s) is (are) provided in a Home. For purposes of these rules, the terms shall not include Children that are related to the License Holder or applicant as defined in these rules or Children whose Parent(s) reside in the same residence as the License Holder or applicant.
- (d) "Closure Action" means the most restrictive category of Enforcement Actions including emergency closure, long-term suspension and revocation.
- (e) "Comprehensive Records Check Determination" means a satisfactory or unsatisfactory determination by the Department, based upon a Federal Bureau of Investigation fingerprint check, a search of the National Crime Information Centers National Sex Offender Registry, compliance with relevant state and federal law, and a search of the following registries, repositories or databases in the state where the actual or potential employee or provider resides and in each state where such individual resided during the preceding five years: criminal registry or repository; state sex offender registry or repository; and state based child abuse and neglect registry and database.
- (f) "Crime" means:
  - 1. Any felony pursuant to O.C.G.A. § 20-1A-30 and in accordance with 42 U.S.C. § 9858f(c)(1)(E);
  - 2. A violation of O.C.G.A. § 16-5-23, relating to simple battery, where the victim is a minor;
  - 3. A violation of O.C.G.A. § 16-5-23.1, relating to battery, where the victim is a minor;
  - 4. A violation of O.C.G.A. § 16-21-1, relating to contributing to the delinquency of a minor;
  - 5. A violation of O.C.G.A. § 16-6-1 *et seq.* relating to sexual offenses;
  - 6. A violation of O.C.G.A. § 16-5-29, relating to battery of an unborn child;

7. A violation of O.C.G.A. § 16-5-60, relating to reckless conduct causing harm when the victim is a minor;
8. A violation of O.C.G.A. § 16-5-70, relating to cruelty to children;
9. A violation of O.C.G.A. § 16-12-1.1, relating to child care facility operators being prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations;
10. A violation of O.C.G.A. §§ 16-12-100, 16-12-100.1, 16-12-100.2, 16-12-100.3, relating to obscenity and related offenses where the victim is a minor;
11. A violation of O.C.G.A. § 40-6-391, relating to endangering a child while driving under the influence of alcohol or drugs;
12. A violation of O.C.G.A. § 19-7-5, relating to a failing to report if mandated to do so by law;
13. Child pornography, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
14. Abuse of, endangerment of, or sexual assault against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
15. Any other violent misdemeanor against a child by an adult, in accordance with 42 U.S.C. § 9858f(c)(1)(E);
16. A violation of O.C.G.A. § 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or
17. Any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(g) “Criminal Record” means:

1. Conviction of a crime; or
2. Arrest, charge, and sentencing for a crime where:
  - i. A plea of nolo contendere was entered to the charge; or
  - ii. First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1 *et seq.*, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of O.C.G.A. § 16-13-1 *et seq.* if such violation or offense constituted only simple possession; or
  - iii. Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1 *et seq.* relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. § 17-3-1 *et seq.*

(h) "Department" means Bright from the Start: Georgia Department of Early Care and Learning.

(i) "Employee" means any person, other than the Provider or Provisional Employee, who has submitted a Records Check Application and has received a satisfactory Comprehensive Records Check Determination and who:

1. Regardless of age, is compensated by a Home for the care of children;
2. Regardless of age, cares for, supervises or has unsupervised access to children at the Home; or
3. Is 17 years of age or older and resides at the Home; or
4. Regardless of age, performs duties for or services that benefit the Home, with or without compensation, which involve personal contact between that person and any child being cared for by the Home, including but not limited to volunteers that perform consistent services for the Home, where services are considered consistent when provided more than once in a ninety calendar day period; or
5. Regardless of age, is a parent or legal guardian of a child in care who is deemed an employee by the Home or either resides at the Home and is age 17 or older, or is compensated in any fashion by the Home except through appropriate state or federal funds; or
6. Regardless of age, is an independent contractor hired by the Home to offer supplemental educational or physical activities for Children in care; or
7. Regardless of age, is a Student-in-Training.

(j) "Enforcement Action" means any action issued as a result of one or more rule violations ranging from technical assistance to a Closure Action.

(k) "Family Child Care Learning Home" or "Home" means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, at least three but not more than six Children under 13 years of age who are not Related to such persons and whose Parent(s) are not residents in the same private residence as the Provider and which is required to be licensed; provided, however, that the total number of unrelated Children cared for in such Home, for pay and not for pay, may not exceed six Children under 13 years of age at one time, except that a Provider may care for two additional children three years of age or older for two designated one hour periods daily upon approval by the Department.

(l) "Fingerprint" means any inked fingerprint card or an electronic image of a person's fingerprint.

(m) "Fingerprint Records Check Determination" means a satisfactory or unsatisfactory determination made by the Department that is based on national criminal history record information obtained by the use of Fingerprints.

(n) "Intermediate Action" means a moderately restrictive category of Enforcement Actions including public reprimands, fines, per rule fines, per day fines, restrictions, emergency monitoring and short-term suspension.

(o) "License" means the document issued by the Department to authorize the License Holder to whom it is issued to operate a Family Child Care Learning Home in accordance with these rules.

(p) "License Holder" means the individual issued a License by the Department to operate a Home at a particular location who is responsible for the operation and maintenance of the Home and who primarily provides care in the Home in accordance with these rules.

(q) "Parent" means a person related within the second degree of consanguinity by either blood or marriage, or a person with lawful custody, or a state-regulated foster parent, or a legal guardian of a child in care. For purposes of these rules, a Parent shall not be considered an Employee unless such Parent is deemed an Employee by the Home or either resides in the Home or is compensated in any way by the Home other than through appropriate state or federal funds.

(r) "Plan of Correction" means a written plan prepared by the License Holder or applicant and submitted to and approved by the Department which states the procedure(s), method(s) and time frame(s) that will be used to correct the area(s) of noncompliance with these rules.

(s) "Prevention Action" means the least restrictive category of Enforcement Actions including technical assistance, citation, formal notice letter and office conference.

(t) "Provider" means the License Holder or applicant of a Family Child Care Learning Home who has submitted a Records Check Application and has received a satisfactory Comprehensive Records Check Determination and who is also the person that primarily provides care in the Home.

(u) "Provisional Employee" means a person other than the Provider or Employee, who has submitted a Records Check Application to become an Employee and has not received a Comprehensive Records Check Determination but who has received a satisfactory Fingerprint Records Check Determination and who must be supervised at all times by another Staff member who has a current and valid satisfactory Comprehensive Records Check Determination on file.

(v) "Records Check Application" means a document created by the Department to be completed and submitted to the Department by every actual and potential Provider, Employee and Provisional Employee of the Home that indicates such information as the Department deems appropriate and which authorizes the Department to receive any sex offender registry, child abuse and neglect registry and criminal history record information pertaining to the individual from any local, state or national agency of appropriate jurisdiction and render a Fingerprint or Comprehensive Records Check Determination.

(w) "Records Check Clearance Date" means the date upon which an individual's fingerprint report was generated.

(x) "Related" or "Related Children" means children that are related to the Provider within the third degree of consanguinity or affinity by either blood or marriage (i.e. sons, daughters, grandchildren, nieces, nephews, first cousins), or under the legal guardianship, custody or state-regulated foster care of the Provider.

(y) "Staff" or "Personnel" means all persons including the Provider, Employees and Provisional Employees.

(z) "Supervision" and "Supervised" means that the Provider or authorized Adult providing care is alert, is providing watchful oversight to the Children, is able to respond promptly to the needs and actions of the Children and can intervene promptly in the case of an emergency.

(aa) "Student-in-Training" means a student currently enrolled in either a high school recognized by the Department of Education or an early education curriculum through an accredited school of higher education which requires or permits the student to observe and participate in the care of Children at a Home during a limited period of time, i.e., one quarter, one trimester or one semester, provided that they are under the direct supervision of Home personnel at all times.

(bb) "Valid Evidence" means ~~either paper or~~ electronic proof of a satisfactory Fingerprint Records Check Determination or a satisfactory Comprehensive Records Check Determination as follows:

1. Providers - a valid and current satisfactory Comprehensive Records Check Determination letter issued by the Department; provided that the letter for the Provider must have a Records Check Clearance Date that is no older than the immediate preceding 12 months of the date of licensure of the Home, and the Provider has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer;

2. Provisional Employees - a valid and current satisfactory Fingerprint Records Check Determination issued by the Department; provided that the letter for a newly hired Provisional Employee must have a Records Check Clearance Date that is within the immediate preceding 12 months of the Provisional Employee's date of hire, and the Provisional Employee has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer;

3. Employees - a valid and current satisfactory Comprehensive Records Check Determination letter issued by the Department; provided that the letter for a newly hired Employee must have a Records Check Clearance Date that is within the immediate preceding 12 months of the Employee's date of hire, and the Employee has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer.

(cc) "Violation Class" means the category on the compliance and enforcement chart that corresponds with the level of risk of harm or actual harm as a result of a rule violation.

(dd) "Violation History Level" means the category on the compliance and enforcement chart that corresponds with the prior history of continued rule violations.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq., [42 U.S.C. § 9857](#) et seq.

DECAL proposes to amend this rule chapter to align with the formatting of requirements for Child Care Learning Centers. In addition, DECAL proposes to amend this rule chapter to establish guidelines for allowing access to all parts of the Home during inspections and investigations, due to instances of children being kept in unlicensed space to avoid non-compliance; to define types of records subject to review and availability to encompass all potential documentation sources; and to require that all records related to any inspection or investigation be made available to the Department to assist in the determination of compliance with rule requirements and in an effort to promote transparency and cooperative practices.

### **290-2-3-.05 Inspections and Investigations**

The Department is authorized and empowered to conduct investigations and on-site inspections of any Home during the operating hours of the Home. ~~The proposed and current Provider, Provisional Employees and Employees shall cooperate with any inspection or investigation by responding truthfully to any legitimate Departmental inquiry.~~

- (a) Inspections and Investigations. The Department may conduct inspections and investigations in the following instances:
1. At regular intervals as the Department may determine or at the expiration of the current License or Permit;
  2. Upon receiving a report alleging child abuse, neglect or deprivation which occurred while the child was in the care of the Home Provider, Provisional Employees or Employees;
  3. Upon receiving a complaint concerning the Home which could endanger the health, safety or welfare of the children in care;
  4. Upon the Department or its duly authorized representative being made aware of any flagrant abuses, derelictions or deficiencies during the course of the inspection or at any other time. The Department shall immediately investigate such matters and may make an on-site inspection so as to take such actions as conditions may require;
  5. Subsequent to the receipt of a Plan of Correction, as determined necessary by the Department to monitor whether the Plan of Correction is being complied with by the Home.
- (ab) Consent to Entry. An application for a License to operate a Home or the issuance of a License by the Department constitutes consent by the applicant and Provider to allow any representative of the Department to enter the premises at any time Children are being cared for in the Home. This consent applies to both scheduled and unscheduled inspections and includes consent for meaningful access to all Staff, all parts of the premises of the Home where Children may be in care, all Children present, and all records, to include but not be limited to, audio, video, photos, written documentation, social media posts, and other electronic information required by these rules. The Department shall have the right authority to require the production of to a photocopy or reproduction of any record maintained by or on behalf of the Home as needed for any inspection or investigation ~~any books, records, papers, or other information~~ related to the initial or continued Licensure of the Home.
- (bc) Failure to Allow Access. Failure to allow access of the Department's representative to the Home, its Staff, or the Children receiving care at the Home or the records, maintained by or on behalf of the Home, to include but not be limited to, audio, video, photos, written documentation, social media posts, and books, ~~records, papers, or other electronic~~ information related to initial or continued Licensure, or failure to cooperate with an inspection or investigation by the Department shall constitute good cause for the denial, restriction, revocation or suspension of a License, or other penalty as provided by law.
- (d) Failure to Cooperate. The proposed and current Provider, Provisional Employees and Employees shall cooperate with any inspection or investigation by responding truthfully to any legitimate Departmental

inquiry. Failure to cooperate with a Department inspection or investigation shall constitute good cause for the denial, restriction, revocation or suspension of a License, Permit or commission.

- (ee) False or Misleading Statements. No Provider shall make or condone any Provisional Employee or Employee making false or misleading statements to the Department in connection with any authorized investigation or inspection being conducted by the Department.

**Authority: O.C.G.A. § [20-1A-1](#) et seq.**

DECAL proposes to amend this rule chapter to align with Child Care Learning Centers to require programs to notify parents in writing of viruses or illnesses that may not be on the most current communicable disease chart that is made available on the Department's website, but that may require reporting by the Department of Public Health. This would include situations of public health emergencies, like COVID-19 and would align with DECAL's required reporting policies already in place.

### **290-2-3-.08 Children's Records**

- (1) The Home shall maintain current and updated individual records on each Child in care. The Home shall maintain the records outlined herein while the Child is in care and for a period of one (1) year after such Child is no longer in care at the Family Child Care Learning Home. Such records shall include: identifying information (Child's name, birth date, Parent's name, home and business addresses, telephone numbers); name, address and telephone number of persons, including Child's physician, to contact in emergencies; and name, address, telephone numbers, relationship to Child and to Parent(s) and other identifying information of person(s) to whom the Child may be released.
- (2) Such records shall include evidence of age appropriate immunizations, or a signed affidavit certifying that the required immunizations conflict with the religious belief of the Parent or a physician statement that immunization is contraindicated. Evidence of immunizations or required documentation shall be on file for each Child upon admission to the Home or within 30 days thereafter.
- (3) Such records shall include written authorization for the Child to receive emergency medical treatment when the Parent is not available.
- (4) Such records shall include a record of any allergies and other known medical problems.
- (5) Such records shall include documentation of any medications given as required by these rules.
- (6) Such records shall include descriptions of accidents or serious illnesses occurring while the Child is in the Family Child Care Learning Home, including date, time and condition under which it occurred and the action taken.
- (7) Such records shall include parental agreements for transportation, field trips, swimming and/or other activities away from the Home if the Child will be participating in these activities.
- (8) Policies and Procedures. Each Family Child Care Learning Home shall establish policies and procedures, which shall be kept current, be consistent with applicable laws, including but not limited to the Americans with Disabilities Act, regulations and these rules, made available to the Parents, and used to govern the operations of the Family Child Care Learning Home.
  - (a) The policies and procedures shall include a written description of the services to be provided which specifies the following: ages of children served, months of operation, days of operation, hours of operation, dates the Family Child Care Learning Home will be closed, admission requirements, including parental responsibilities for supplying and maintaining accurate required record information and escorting Child to and from the Family Child Care Learning Home; standard fees, payment of fees, fees related to absences and vacations and other charges such as transportation, etc. and transportation provided, if any.
  - (b) The policies and procedures shall also include written procedures for the following:
    1. Guidance and discipline techniques;
    2. Handling emergency medical care, including where the Children will be taken for emergency medical care;
    3. Administering medication and recording noticeable adverse reactions to medication;

4. Notifying Parent(s) in writing of their Child's: illness, injury, and exposure to a notifiable communicable disease or any cases or suspected cases of viruses or illnesses (COVID-19, etc.) identified during a public health emergency, within twenty-four (24) hours after the Home becomes aware of the illness or the next working day;
  5. Noticeable adverse reaction to medication(s);
  6. Exclusion of sick children;
  7. Exclusion and readmission of children with communicable diseases, as defined on the most current version of the chart of communicable diseases chart, as found on the Department's website, or with cases or suspected cases of viruses or illnesses (COVID-19, etc.) identified during a public health emergency ~~which contains recommendations for the exclusion of sick children and their readmission, and is provided by the Department;~~
  8. Protection of children in the event of: severe weather, fire, and physical plant problems, such as a power failure, that affect climate control, loss of water, or structural damages;
  9. The transportation of Children to and from school or home, if provided, to include the procedure to be followed if no one is home to receive the transported Child;
  10. Identification of others providing care. The Provider must inform the Parents of Children in care of the names of any caregiver and their responsibilities, and the names of the persons who would be called upon in an emergency;
  11. Parents' ability to visit the Family Child Care Learning Home unannounced and at any time that their Child is in care;
  12. Any information requested by the Parent concerning the operation of the Family Child Care Learning Home or the care of the Child, including but not limited to a description of any special procedures to be followed in caring for the Child, such as any special services which the Home agrees to provide to a Child with special needs. The Parent(s) will be provided daily communication (verbal/written) regarding the care of the Child, especially with infants, toddlers and nonverbal Children. Additionally, the Provider must bring special problems or significant developments to the Parent's attention as soon as they arise;
  13. Notification of the existence of a firearm in the Family Child Care Learning Home;
  14. Notification of any changes in the regular composition of the household. The Provider must notify the Parent(s) of anyone regularly on the premises, including but not limited to spouse, friend(s), relative(s), or significant other(s);
  15. Notification of the existence of any pets or other animals residing in the Home or on the property of the Family Child Care Learning Home; and
  16. Notification of infant sleep position practices. The Provider must notify Parent(s) of Sudden Infant Death Syndrome (SIDS) risk reduction practices, sleep positioning policies, and arrangements for placing all infants on their backs for sleep.
- (9) Documenting the Child's arrival and departure. The Parent or person(s) authorized by the Parent to drop off and pick up the Child will document each time the Parent or authorized person drops off and picks up the Child. The documentation shall include at least the following information: the date, the Child's name, the arrival and departure times, and the signature or initials of the Parent or authorized person and shall be made available to the Department in printed or written form upon request.

- (10) The Home shall ensure that Children are only released to authorized person(s), and the Home shall take necessary steps to determine that any such person(s) presenting to pick up a Child in care is authorized by the Parent(s) of the Child and that person matches the identifying information provided by the Parent.
- (11) If applicable, notification of the absence of a liability insurance policy. If the Home is not covered by liability insurance sufficient to protect its clients, the Home must notify the Parent of each Child under the care of the program in writing. Each Parent must acknowledge receipt of such notice, and a copy of the acknowledgment shall be kept in the Child's file.
- (12) Documentation of family relationships for related children, other than the Provider's own children, cared for in the Home shall be maintained and shall include a notarized statement by the related child's Parent(s) attesting to the relationship.
- (13) Documentation of the non-pay status of related and unrelated children in care for whom no pay is received shall be maintained and shall include a notarized statement by such child's Parent(s) attesting to the non-pay status.
- (14) Documentation of all required training required by these rules shall be maintained in the Home by the Provider, and shall include the title of training courses received by the Provider and any staff, the dates and the number of hours of the courses, and the names of the trainers or sponsoring organizations.
- (15) If applicable, documentation of approved water and sewage disposal systems shall be maintained in the Home by the Provider.

**Authority:** O.C.G.A. § [20-1A-1](#) et seq.

DECAL proposes to amend this rule chapter to update terminology from “Department” of Family and Children Services to “Division” of Family and Children Services. In addition, DECAL proposes to amend this rule chapter to define types of records subject to review and availability to encompass all potential documentation sources and require that all records related to any required report be made available to the Department to assist in the determination of compliance with rule requirements.

### **290-2-3-.14 Reporting**

(1) Required Reports. Within twenty-four (24) hours or the next work day, the Home shall report or cause to be reported to the Department: any death of a Child while in the care of the Home; any serious illness or injury requiring hospitalization or professional medical attention other than first aid of a Child while in the care of the Home; any situation when a Child in care becomes missing, such as but not limited to, a Child who is left on a vehicle, a Child who leaves the Home, playground, or property, or a Child who is left behind on any trip; any fire; any structural disaster; any emergency situation that requires temporarily relocating children; and any time the Home’s operating status changes (i.e., open to closed or temporarily closed and temporarily closed to open).

(a) Availability of Records. The Home must make available all records related to any required report, to include but not be limited to, audio, video, photos, written documentation, social media posts, and other electronic information. The Department shall have the right to a photocopy or reproduction of any record maintained by or on behalf of the Home.

(2) Criminal Record. Within twenty-four (24) hours or the next work day, that the Home knows or reasonably should know that there has been an arrest or change in the Comprehensive Records Check Determination of any Provider or Employee (including any resident of the Home age 17 or older), or the Fingerprint Records Check Determination for any Provisional Employee, the Provider or designated person-in-charge shall report or cause to be reported to the Department the incident and the name of any such Provider, Employee or Provisional Employee of the Home.

(3) Child Abuse, Neglect or Deprivation. Within twenty-four (24) hours or the next work day, the Provider or designated person-in-charge shall report or cause to be reported any suspected incident of child abuse, neglect or deprivation to the local County ~~Department~~ Division of Family and Children Services in accordance with state law and to the Department, notifying that such a report was made.

(4) Communicable Diseases. The Provider or designated person-in-charge shall report or cause to be reported any cases or suspected cases of notifiable communicable diseases (COVID-19, Tuberculosis, Measles, etc.) or any viruses or illnesses identified during a public health emergency, immediately to the Department and to the local County Health Department as required by the rules of the Georgia Department of Public Health, Rule 511-2-1, Notification of Disease.

(5) Annual Reports. The Department may request an annual report from the Provider of a Home. If such a request is made, the Provider shall have up to thirty (30) days to submit the annual report to the Department.

**Authority:** O.C.G.A. § 20-1A-1*et seq.*, 42 U.S.C. § 9857*et seq.*

DECAL proposes to amend this rule chapter to align with the wording of the official Code of Georgia OCGA-20-1A-12 that establishes guidelines for the repercussions of the alteration or falsification of records maintained by an early care and education program.

### **290-2-3-.15 Enforcement and Adverse Actions**

(1) **Enforcement and Adverse Actions.** Under Georgia law, the Department, after considering the seriousness of the violation(s), including but not limited to the circumstances, extent and gravity of the prohibited act(s), the severity of the rule violation, the duration of non-compliance, the License Holder's prior Licensure or history, the voluntary reporting of the violation(s) for which an Adverse Action is being imposed and the hazard(s) or potential hazard(s) to the health or safety of the public, may take any of the following actions when a Home, Permit Applicant or License Applicant violates any of the rules for Family Child Care Learning Homes:

- (a) Refuse to grant a License or Permit;
- (b) Administer a public reprimand;
- (c) Suspend any License or Permit;
- (d) Prohibit any License Applicant, License Holder, Permit Applicant or Permit Holder from allowing a person who previously was involved in the management or control of any program which has had its License or Permit revoked or denied within the past 12 months to be involved in the management or control of such program;
- (e) Revoke any License or Permit;
- (f) Impose a fine, not to exceed a total of \$25,000, of up to \$500 per day for each violation of the law, rule, regulation or formal order related to the initial or ongoing licensing requirement of any program. If any violation is a continuing one, each day of such violation will constitute a separate violation for the purpose of computing the applicable enforcement fine;
- (g) Impose a late fee of up to \$250 for failure of a program to pay the annual License fee within 30 days of the due date;
- (h) Limit or restrict any License or Permit, including but not limited to, restricting some or all services of or admissions, into a Home;
- (i) Seek an injunction against an early care and education program operating without a License or Permit or in willful violation of these rules;
- (j) Make application for an inspection warrant to a court of competent jurisdiction to gain entry into a Home that is believed to be subject to licensure;
- (k) Order the emergency placement of a monitor or monitors in a Home at the expense of the Home; and
- (l) Order the emergency closure of a Home.

(2) **Adverse Actions Subject to the Compliance and Enforcement Chart.** In the majority of cases when a rule violation is found, the Department will determine the appropriate action in accordance with the Compliance and Enforcement Chart below. A Home will receive points based on the frequency and severity of citations and will land in the corresponding box. Accordingly, Prevention, Intermediate or Closure Actions will be imposed as outlined in the Enforcement Categories, Levels and Action Chart below. The Department will consider mitigating and aggravating factors to determine which action is appropriate and will have sole discretion in making this determination. The guidelines for determining the Violation History Level and Violation Class shall be posted on the

Department website and updated as needed. Note that if a rule violation is not found, the chart will not be applied, and no citations will be issued.

COMPLIANCE AND ENFORCEMENT CHART

V I O L A T I O N  C L A S S	Incident results in or could result in:	VIOLATION HISTORY LEVEL			
		I 0 Points	II 1-3 Points	III 4-9 Points	IV 10 + Points
C L A S S	D Extreme Harm or Risk of Harm Imminent Danger	I3-C D D			
	C High Harm or Risk of Harm	CI I1-I2 GS	CII I1-I3 S	CIII I2-C D	CIV I3-C D
	B Medium Harm or Risk of Harm	N/A	BII P2-P3 GS	BIII I1-I2 S	BIV I2-C D
	A Low Harm or Risk of Harm	AI P1-P2 GS	AII P1-P3 GS	AIII P2-P3 GS	AIV I1-I2 S

ENFORCEMENT CATEGORIES, LEVELS AND ACTIONS		
PREVENTION ACTION CATEGORY (P)	INTERMEDIATE ACTION CATEGORY (I) (Includes Citation and Prevention Actions)	CLOSURE ACTION CATEGORY (C) (Includes Citation and Prevention and/or Intermediate Actions)
<b>Prevention 1 (P1)</b>	<b>Intermediate 1 (I1)</b>	<b>Closure (C)</b>
Technical Assistance	Fine	Suspension of License (More than 1 week)
<b>Prevention 2 (P2)</b>	<b>Intermediate 2 (I2)</b>	Revocation of License
Citation	Per Rule Fine	Emergency Closure
<b>Prevention 3 (P3)</b>	Per Day Fine	
Formal Notice Letter	<b>Intermediate 3 (I3)</b>	
Office Conference	Public Reprimand	
	Fine and Restrictions	
	Restricted License	
	Restricted License & Per Rule/Per Day Fine	
	Emergency Monitor & Per Rule/Per Day Fine	
	Short-term Suspension (Less than 1 week)	

**(3) Adverse Actions Not Subject to the Compliance and Enforcement Chart.** In the event that any of the rule violations described below are identified, the Department will not apply the Compliance and Enforcement Chart, but will take Adverse Action as follows:

(a) The Department shall refuse to issue a License or shall otherwise restrict a License or Permit for any applicant who has had a License denied, suspended or revoked within one year of the date of the application.

(b) The Department shall refuse to issue a License or shall otherwise restrict a License for any applicant, alter ego or agent of the applicant who has transferred ownership or governing authority of a program when such transfer was made in order to avert payment of an enforcement fine, denial, revocation or suspension of such License.

(c) The Department shall refuse to issue a License upon a showing of non-compliance with rules and regulations, flagrant and continued operation of an unlicensed facility, or failure to pay the License fee.

(d) The Department shall refuse to issue a License or Permit if the applicant or the operation or management of a Home knowingly or intentionally makes or causes another to make any false statement of material information in connection with the application for a License or Permit, or in statements made, ~~records maintained~~, or on documents submitted to the Department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program.

(e) The Department shall refuse to issue a License or Permit if the applicant or Home fails to provide the Department with information pertinent to an investigation, or the initial or continued licensing of a program within the time specified by the formal notice provided by the Department.

(f) The Department shall refuse to issue a License or Permit if a Home repeatedly fails or refuses to allow the Department access to the Home for the purpose of determining whether the Home is in compliance with these rules.

(g) The Department shall refuse to issue a License or Permit if a Home knows or should reasonably know that any actual or potential Provider, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination and allows such individual to either reside at the Home or be present at the Home while any Child is present for care.

(h) The Department may revoke a License or Permit if a Home displays a multi-year pattern of failure to correct a correctable abuse, dereliction or deficiency in the operation or management of a Home within a reasonable time after having received notice from the Department.

(i) The Department shall revoke a License or Permit if a non-correctable abuse, dereliction or deficiency exists in the operation or management of the Home.

(j) The Department shall revoke a License if a Home fails to pay the annual License fee within a reasonable time after the Department provides formal notice of such fee.

(k) The Department shall revoke a License or Permit if a Home knows or should reasonably know that any actual or potential Provider, Employee (including Independent Contractors, Students-in-Training, and Volunteers) or Provisional Employee has a Criminal Record, an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination and allows such individual to either reside at the Home or be present at the Home while any Child is present for care.

(l) The Department shall revoke a License or Permit if a Home knowingly or intentionally violates other provisions relating to Criminal Records or Comprehensive Background Checks.

(m) The Department shall revoke a License if a Home fails to pay an enforcement fine within the time specified by the formal notice provided by the Department.

(n) The Department shall revoke a License or Permit if the operation or management of a Home knowingly or intentionally makes or causes another to make any false statement of material information in connection with the

application for a License or Permit, or in statements made, ~~records maintained~~, or on documents submitted to the Department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program.

(o) The Department shall revoke a License or Permit if a Home fails to provide the Department with information pertinent to an investigation, or the initial or continued licensing of a program within the time specified by the formal notice provided by the Department.

(p) The Department shall revoke a License or Permit if a Home repeatedly fails or refuses to allow the Department access to the Home for the purpose of determining whether the Home is in compliance with these rules.

#### **(4) Rights and Responsibilities of a License Holder or Permit Holder**

(a) A License Holder or Permit Holder has the right to submit a written statement within ten (10) days of the receipt of notice of the Departmental intent to impose an Adverse Action as to why the Department should not take the Adverse Action. If the licensee submits a written statement, it will be placed in the facility's state file.

(b) The imposition of any Enforcement Action by the Department shall not preclude the Department from taking any additional action authorized by law or regulation.

(c) Right to a Hearing. The Department's Enforcement Actions shall be preceded by a notice and opportunity for a hearing and shall constitute a contested case in accordance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*, except that only thirty (30) days' notice in writing from the Commissioner's designee shall be required prior to License or Permit revocation except that the hearing held relating to such action by the Department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(d) The notice of revocation, suspension or restriction of a License or Permit becomes effective thirty (30) days from the day of notice unless the License Holder or Permit Holder requests a hearing. A request for a hearing must be made in writing within ten (10) days of receipt of the notice or of revocation, suspension or restriction.

(e) Payment of an enforcement fine must be made within thirty (30) days of receipt of the notice, unless otherwise specified in writing by the Department.

(f) The notice of the emergency closure of a Home becomes effective upon delivery of the order, unless otherwise provided in the order. A request for a hearing must be made in writing within 48 hours, excluding weekends and holidays, from the receipt of the emergency order.

(g) When the Department issues a revocation or emergency order that is based upon health and safety rule violations, the following actions shall be taken:

1. the Department shall both hand-deliver and send the formal notice to the Home by certified or registered mail;
2. the Home shall post the formal notice in an area that is visible to the Parents and others whose Children attend the Home;
3. the Department shall provide a brief notice of revocation or emergency action to the Home; and
4. the Home shall distribute the brief notice to all Parents or persons authorized to pick up Children from care for the Parents.

- (h) When the Department issues a revocation or emergency order that is not based upon health and safety rule violations, the Department shall either hand-deliver or send the formal notice or both to the Home by certified or registered mail.
- (i) The Department may post any notice of any Adverse Action on the Department's website.
- (j) The Department may share any notice of any Adverse Action and any information pertaining thereto with any other agencies which may have an interest in the welfare of the children in care at the Home.
- (k) When the Department has issued a notice of revocation or emergency action required to be posted in accordance with these rules, the Home shall ensure that the notice continues to be visible to the Parents and others throughout the pendency of the revocation or emergency action, including throughout any appeal period.
- (l) When the Home transports Children in care to and from the Home and Parents do not come to the Home on a regular basis, the Home shall send home copies of the brief notice of the revocation or emergency action with the Children on the day that it is delivered by Department.
- (m) When the Department has issued a notice of revocation or emergency order required to be posted in accordance with these rules, the Home shall post any inspection reports that are prepared by the Department during the pendency of any revocation or emergency action in an area that is readily visible to the Parents and others.
- (n) A Home shall not permit the removal or obliteration of any notices of revocation, emergency action, resolution, or inspection survey report posted on the premises of the Home during the pendency of any revocation or emergency action.

**Cite as Ga. Comp. R. & Regs. R. 290-2-3-.15**

**Authority: O.C.G.A. § [20-1A-1](#) et seq. and [42 U.S.C. § 9857](#) et seq.**

DECAL proposes to amend this rule chapter to remove wording referencing the acceptance of proof of criminal records check determinations in a paper format. DECAL processes and portability requirements are completed electronically, and documentation should be retained in an electronic format through DECAL KOALA accounts. The original intent of accepting paper copies was to allow providers who had been “grandfathered in” five years to obtain a new criminal background check. This five-year time span has lapsed, and all providers have now received electronic determinations.

### **290-2-3-.21 Criminal Records and Comprehensive Background Checks**

#### **(1) Satisfactory Fingerprint Records Check Determination or Satisfactory Comprehensive Records Check Determination Required**

- (a) The Home must ensure that the Provider, every actual and potential Employee (including residents age 17 and older) and Provisional Employee of the Family Child Care Learning Home must submit both a Records Check Application to the Department and Fingerprints to an authorized fingerprinting site.
- (b) Every Provider must have a current and valid satisfactory Comprehensive Records Check Determination on file prior to being present at the Home while any child is present for care or before residing in the Home. The Comprehensive Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the license date; provided, however, if the Provider has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Comprehensive Records Check Determination is required.
- (c) Every Employee must have a current and valid satisfactory Comprehensive Records Check Determination on file prior to being present at the Home while any child is present for care or before residing in the Home if age 17 or older. The Comprehensive Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, however, if the Employee has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Comprehensive Records Check Determination is required.
- (d) Every Provisional Employee must have a current and valid satisfactory Fingerprint Records Check Determination on file prior to being present at the Home while any child is present for care or before residing in the Home if age 17 or older and must be supervised at all times by a Provider or Employee with a current and valid satisfactory Comprehensive Records Check Determination. The Fingerprint Records Check Determination must have a Records Check Clearance Date that is no older than the preceding 12 months of the hire date; provided, however, if the Provisional Employee has had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, a new satisfactory Fingerprint Records Check Determination is required.
- (e) No actual or potential Provider, Employee or Provisional Employee of the Family Child Care Learning Home with an unsatisfactory Fingerprint Records Check Determination or an unsatisfactory Comprehensive Records Check Determination may be present at a Home when any child is present for care or reside in a Home.
- (f) Valid Evidence of a satisfactory Fingerprint Records Check Determination must be maintained at the Family Child Care Learning Home for each Provisional Employee for the duration of employment or residency plus one year, and such ~~paper or~~ electronic evidence must be made immediately available to the Department upon request.
- (g) Valid Evidence of a satisfactory Comprehensive Records Check Determination must be maintained at the Family Child Care Learning Home for the Provider; and each Employee (including Students-in-Training, volunteers, independent contractors and residents age 17 and older) for the duration of employment or residency plus one year, and such ~~paper or~~ electronic evidence must be made immediately available to the Department upon request.
- (h) Every Provider must receive a satisfactory Comprehensive Records Check Determination before October 1, 2018.

(i) The Home must ensure that every Provisional Employee requests child abuse and neglect registry information and criminal history documents from any U.S. state, territory or tribal land other than Georgia in which they have resided in the preceding five years and submit such documents to the Department in a timely manner. Failure to request out-of-state information will result in the issuance of an unsatisfactory Comprehensive Records Check Determination.

(j) For a Provisional Employee to become a permanent Employee, the individual must have a satisfactory Comprehensive Records Check Determination.

(k) Portability for Providers, Employees and Provisional Employees, excluding Students-in-Training. Only the most recently issued determination letter is eligible for portability and must be ported electronically. A Provider may accept a satisfactory Fingerprint Records Check Determination letter for a Provisional Employee or a satisfactory Comprehensive Records Check Determination letter issued by the Department for a potential Employee if the individual's Records Check Clearance Date is within the preceding 12 months from the hire date, the individual has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, and the Provider does not know or reasonably should not know that the individual's satisfactory status has changed.

(l) Portability for Students-in-Training. Only the most recently issued determination letter is eligible for portability and must be ported electronically. A Provider may accept a satisfactory Fingerprint Records Check Determination or a satisfactory Comprehensive Records Check Determination letter issued by the Department for a Student-in-Training if the Records Check Clearance Date is within the preceding 24 months from the hire date, the Provider has verified and maintains evidence on file at the Home that the Student-in-Training is currently enrolled in a high school recognized by the Department of Education or an early education curriculum through an accredited school of higher education, the individual has not had a lapse of employment from the child care industry that lasted for 180 days (6 months) or longer, and the Provider does not know or reasonably should not know that the individual's satisfactory status has changed.

(m) Recheck Required. The Home must immediately require that every Provider, Employee and Provisional Employee submit to the Comprehensive Records Check Determination process at the following times:

1. When the Provider knows or reasonably should know that an Employee or Provisional Employee has been arrested or charged for any covered Crime;
2. When there is a lapse of employment from the child care industry that lasted for 180 calendar days (6 months) or longer;
3. At least once every five years; and
4. When the Department so requests.

**Authority:** O.C.G.A. § [20-1A-1](#)et seq., [42 U.S.C. § 9857](#)et seq.