TITLE 391 CHILDREN'S SERVICES LICENSING

CHAPTER 5 PRESCHOOLS

NOTE TO READERS: Changes since the August 2011 public hearing are shown in bold.

5-001 SCOPE AND AUTHORITY: These regulations will become operative three months after their effective date. These regulations govern the licensing of preschools by the Department of Health and Human Services. Statutory authority for these regulations is in the:

1. Child Care Licensing Act (Neb. Rev. Stat. §§ 71-1908 to 1923);
2. Child Protection Act (Neb. Rev. Stat. §§ 28-710 to 28-727);
3. Clean Indoor Air Act (Neb. Rev. Stat. §§ 71-5716 to 71-5734;
4. Quality Child Care Act (Neb. Rev. Stat. §§ 43-2601 to 43-2625);
5. Sex Offender Registration Act (Neb. Rev. Stat. §§ 29-4001 to 29-4014); and
6. Neb. Rev. Stat. §§ 4-108 to 4-114.

The Child Care Licensing Act requires the Department to develop regulations establishing standards for the physical well-being, safety, and protection of children in programs licensed under the Act. The purposes of the Act are to provide statewide licensure standards for persons providing child care programs and to provide the Department with authority to coordinate the enforcement of standards on licensees. The standards ensure that programs are providing proper care for and treatment of the children served, and that the care and treatment are consistent with the children's physical well-being, safety, and protection.

The Child Protection Act authorizes the Department to use information in the state child abuse/neglect central register for purposes of licensing providers of child care programs, and the Clean Indoor Air Act addresses smoking in licensed child care programs.

The Quality Child Care Act requires the Department to develop regulations for mandatory training requirements for child care providers designed to meet the health, safety, and developmental needs of children and tailored to the needs of licensed providers. The Act states that the Legislature's intent is to encourage high-quality, affordable, and accessible child care services that are educationally and developmentally appropriate.

The Sex Offender Registration Act authorizes the disclosure of information to providers who serve children for the purpose of conducting confidential background checks for employment.

Neb. Rev. Stat. §§ 4-108 to 4-114 provide that no state agency or political subdivision of the State of Nebraska may provide public benefits to a person who is not lawfully present in the United States. A child care license is considered a public benefit.

~~1-001 Legal Basis~~

~~1-001.01 State Statute: The Nebraska Department of Health and Human Services is assigned responsibility for licensing child care programs in Nebraska Revised Statutes, Sections 71-1908 through 1918.~~

~~1-002 Agency Organization: The licensing of child care programs is administered within the Department of Health and Human Services.~~
~~Department staff are responsible for the compliance with appropriate statutes, development and implementation of all child care licensing regulations, administration of child care licensing programs, license issuance, protection of provider's rights, fiscal control, public awareness, parent education, and statistical analysis.~~

~~Department staff accept and process the applications of child care/preschool providers and conduct background checks on staff in all child care license types.~~

5-001.01 These regulations apply to Preschools, which provide a partial-day early child care program of primarily education services to any number of children age three or older, and where children do not nap and are not served a meal. A preschool may be located in the licensee's residence or another location.

~~2-001 License Requirement: A license is required when care is provided to four or more children under age 13 at any one time, from families other than that of the provider, for compensation, either direct or indirect. This care must be in lieu of care or supervision normally exercised by parents in their own home.~~

5-001.02 The following are exempt from mandatory licensure, but may be voluntarily licensed:

1. Any person who provides child care:
   a. On an irregular, informal basis and with no established pattern of occurrence;
   b. Without cost to the parents and who receives no form of compensation;
   c. To three or fewer children at any one time, except by a person whose license has been suspended or revoked;
2. Recreation camps as defined in Neb. Rev. Stat. § 71-3101, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in Neb. Rev. Stat. § 13-304;
3. Classes or services provided by a religious organization other than child care or a preschool or nursery school;
4. A preschool program conducted in a school approved under Neb. Rev. Stat. § 79-318;
5. Programs operated or contracted by a public school district and subject to the rules and regulations of the State Department of Education under Neb. Rev. Stat. § 79-1104;
6. Services provided only to school-age children during the summer and other extended breaks in the school year;
7. Care provided only to children 13 years of age or older;

8. Care provided for less than two hours per week on average;
9. Foster care as defined in Neb. Rev. Stat. § 71-1901;
10. Care provided by grandparents to only their grandchildren;
11. Care provided on federal military installations;
12. Care provided on Indian reservations by Native Americans; or
13. Care provided by non-Native Americans on Indian reservations when tribal authorities have assumed jurisdiction for regulating the care.

~~2-004 Services Exempt from Licensure: The following services are exempt from licensure, but may voluntarily be licensed:~~

1. ~~Facilities providing irregular child care (care provided randomly with no established pattern of occurrence);~~
2. ~~Care provided without cost or any form of compensation;~~
3. ~~Care given to three or fewer children at any one time, except by a person whose license has been suspended or revoked;~~
4. ~~A recreation camp;~~
5. ~~Classes or services provided by a religious organization other than child care, preschools, or nursery schools;~~
6. ~~A preschool program conducted in a school approved pursuant to Nebraska Revised Statutes, Section 79-318;~~
7. ~~Care provided to children 13 years of age or older;~~
8. ~~Care provided by grandparents to their grandchildren;~~
9. ~~Care provided on military installations;~~
10. ~~Care provided on Indian Reservations by Native Americans; and~~
11. ~~Care provided by non-Native Americans on Indian reservations when tribal authorities have assumed the jurisdiction for regulating the care.~~

5-002 DEFINITIONS

Accredited school means a public school district or a nonpublic school or group of nonpublic schools under a governing body organized to provide education in elementary, middle, secondary, and/or high school grades accredited pursuant to 92 NAC 10.

Adequate and appropriate supervision includes:

1. Knowing the whereabouts and being within sight or sound of all children at all times;
2. Being awake, alert, attentive, and responsive to the needs of all children, and
3. Protecting or removing children from harm.

Agency representative means an individual employed by or under contract with the Nebraska Department of Health and Human Services, the State Fire Marshal, or their designated agents.

Ages of Children:

1. Infant means a child age 6 weeks to 18 months;
2. Toddler means a child age 18 months to 3 years;
3. Preschooler means a child age 3 or older who has not attended kindergarten; and
4. School-ager means a child who attends kindergarten or above.

Approved school means a nonpublic school or group of nonpublic schools under a governing body organized to provide education in elementary and/or secondary grades approved pursuant to Title 92 NAC 14.

Certificated teacher means an individual who holds a valid Teaching Certificate issued by the Nebraska Department of Education.

Child care means the care and supervision of children in lieu of parental care and supervision and includes programs. (See definition of program.)

Class B pool means a swimming pool operated at a facility including, but not limited to, an apartment, a condominium, a property owner association, a child care facility, a health club, lodgings such as hotels and motels.

Department means the Nebraska Department of Health and Human Services.

Designee means an individual given responsibility to act on another's behalf.

Director means the individual who is responsible for the daily operation of the preschool, including compliance with all regulations **when that individual is not the licensee, as provided in 391 NAC 5-006.01(4) and 391 NAC 5-006.02.**

Early Childhood Training Center means the entity authorized in Neb. Rev. Stat. § 79-1102 and established within the Nebraska Department of Education. Its purpose is to train individuals who provide education and development activities for infants and young children and their parents.

Family means individuals who are not household members and have one or more children enrolled in the child care program.

GED means a General Educational Development credential, also sometimes known as a General Education Diploma or General Equivalency Diploma.

Health authority means the local health department, which by law has the authority and duty for communicable disease control in the counties under its jurisdiction.

Household member means any individual residing in or regularly present in the preschool, including children and youth for whom 24-hour care is provided.

Licensed health care professional means an individual for whom administration of medication is included in the scope of practice.

Licensee means the owner of the preschool program and the individual, partnership, limited liability company, corporation, or governmental unit to whom the license is issued **and who is responsible for compliance with all regulations.**

Locked storage means a container or closet used to store poisonous materials, medications, and weapons that is secured by lock and key, combination lock, or magnetic lock approved by the Department.

NAC means the Nebraska Administrative Code, the compiled regulations of all state agencies maintained by the Secretary of State. Properly adopted regulations have the force and effect of law. These regulations are 391 NAC 5. Within this chapter, references to other parts of the same chapter do not show "391 NAC"; they are shown simply as 5-003.01, for example. References to different regulations show the full citation; for example, 179 NAC 2-002.

Parent means the natural parent, adoptive parent, step parent, guardian, or other legally responsible custodian.

Physical hold means applying minimal physical force by placing the arms around a child to restrict the child's movement.

Premises means the home or facility, including areas of the home or facility not used for child care/preschool, all attached and all outbuildings, and all areas included within the lot boundaries.

Preschool means a partial-day early childhood program for children age three or older that provides primarily education services and where children do not nap and are not served a meal.

Program means the provision of services in lieu of parental supervision:

1. For children under 13 years of age;
2. For compensation, either directly or indirectly; and
3. On the average of less than 12 hours per day, but more than two hours per week.

Program includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services under Neb. Rev. Stat. § 79-1104, or preschool or nursery school.

Proper hand washing means washing and scrubbing the hands for at least ~~ten~~ **twenty** seconds with soap and warm running water, rinsing well under running water, and drying with a paper towel, air dryer, or clean towel.

Restraint means the use of manual restraints (direct application of physical force) or mechanical restraints (straps, belts, towels, blankets, tape) or other means to subdue a child or otherwise limit a child's freedom of movement. Restraint does not refer to physical holds or braces or other devices used to assist, obtain, and maintain normal body function.

Room means an area with four walls flush from the floor to the ceiling and at least one passageway or doorway. A partition is considered a wall if the partition is at least four feet high, is flush to the floor and to the other walls.

Special needs means a child has a requirement for extra care because of an acute or chronic physical or mental condition. Acute special needs include temporary conditions that require special medical attention and isolation from other children, e.g., recovery from surgery, etc. Chronic special needs include long-standing medical or behavioral problems that require medical, behavioral or other services at all times, e.g., medically fragile, attention deficit, etc. To be considered a child with a special need, the child must have one or more of the following conditions which are not related to chronological age:

1. Emotional impairment: including behavioral impairment, requiring special equipment or assistance;
2. Developmental age level lower than chronological age and requires assistance via special supervision;
3. Movement impairment: requires assistance or is unable to move;
4. Sensory impairment: requires special environmental modifications or assistance;
5. Speech impairment: requires special equipment or assistance;
6. Hygiene: requires assistance or special equipment;
7. Feeding: requires special equipment or assistance;
8. Toileting: requires assistance or special equipment;
9. Medical conditions: requires respiratory aids or special procedures;
10. Therapy required: physical, occupational, speech, or respiratory;
11. Medications: requires assistance or special procedures.

Diseases such as measles, chicken pox, flu, etc., are not considered special needs.

Staff means an individual who provides direct care to the children attending the preschool, including the licensee, director, teacher, and any other individual who counts in the staff-to-child ratio.

Support staff means an individual employed by the preschool as an aide, food service, clerical, custodial, or transportation staff.

Swimming pool means any artificial basin of water modified, improved, constructed, or installed for the purpose of swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool on the preschool premises, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park.

Swimming pool includes a spa, hot tub or whirlpool or similar device which is designed for recreational use and not to be drained, cleaned and refilled after each individual use.

Teacher means an individual who is responsible for the direct care of the children.

Uncompensated parent helper means the parent of a child enrolled in the preschool who, **without compensation,** assists in the care of children, who does not count in the staff-to-child ratio, and who is not left alone with children other than his/her own at the preschool.

USCIS means United States Citizenship and Immigration Services.

Volunteer means an individual who assists in the care of children, who does not count in the staff-to-child ratio, and is not left alone with children other than his/her own at the preschool.

Wading pool means a portable, above-ground basin filled with 12 or fewer inches of water, and designed for the purpose of wading.

~~1-003.01 Common Definitions: The following definitions apply to all child care/preschool programs:~~

~~Agency Representative - Any person employed by or under contract with the Nebraska Department of Health and Human Services, the Nebraska Department of Health and Human Services Regulation and Licensure, the State Fire Marshal, or their designated agents.~~

~~Ages of Children -~~

1. ~~Infant - A child 6 weeks to 18 months of age.~~
2. ~~Toddler - A child age 18 months to 36 months.~~
3. ~~Preschooler - A child age 36 months to school-age.~~
4. ~~School-age - A child who attends grades kindergarten and above.~~

~~Child Care - The provision of care -~~

1. ~~To four or more children under age 13 at any one time from families other than that of the provider;~~
2. ~~For on the average of less than 12 hours per day;~~
3. ~~For compensation, either indirect or direct;~~
4. ~~On a regular basis; and~~
5. ~~By a person other than their parents/guardians. (Nebraska Revised Statutes, Section 71-1910).~~

~~Child Care Resource Specialist - A Department staff person responsible for measuring compliance with licensing regulations, and who provides consultation and technical assistance to child care providers.~~

~~Crib - Federally-approved infant equipment with a mattress.~~

~~Department - The Nebraska Department of Health and Human Services.~~

~~Delivery of Medication - Giving or applying a dose of medication to a child, either prescription or nonprescription.~~

~~Family - Individuals who are not household members and have one or more children enrolled in the child care program.~~

~~Fence - A barrier at least 36 inches in height, and flush with the ground.~~

~~Household Member - Any person residing in or regularly present in the child care home including children and youth for whom 24-hour care is provided.~~

~~Infant - A child age six weeks to 18 months.~~

~~Medication Route - The method in which medication is given to a child. Routes are defined as:~~

1. ~~Oral - given by the mouth;~~
2. ~~Topical - applied externally to the skin;~~
3. ~~Inhalant - given via the respiratory tract by having children breathe in the medication; or~~
4. ~~Instillation - placing drops or ointments into the eye, ears, or nose.~~

~~Own Children - The term "own children" includes biological, adoptive, foster children and grandchildren below age eight.~~

~~Parent - The natural parent, adoptive, or step parent(s), guardian, or other legally responsible person.~~

~~Premises - The home/facility, including areas of the home/facility not used for child care/preschool, all attached and all outbuildings, and all areas included within the lot boundaries.~~

~~Preschooler - A child age 36 months to school-age.~~

~~PRN - Giving children medication that is not routine and is taken on an as-needed basis.~~

~~Recreation Camp - Programs or services that are recreational, social, or instructional and that are provided on a time-limited or irregular schedule and are not for the purpose of providing child care services.~~
~~Regulation - A requirement or policy having the force and effect of law.~~

~~Schoolage Child - A child who attends kindergarten or above.~~

~~Swimming Pool - Any artificial basin with more than 12 inches of water which has been designed for the purpose of swimming.~~

~~Toddler - A child age 18 months to 3 years.~~

~~Wading Pool - A portable, above-ground basin filled with 12 or fewer inches of water, and designed for the purpose of wading.~~

~~1-003.05 Definitions for Preschools: These definitions are specific to Preschools.~~

~~Director - The person who is responsible for the daily operation of the preschool, including compliance with all regulations.~~

~~Licensee - The owner of the preschool program and the person(s) to whom the license is issued.~~

~~Preschool - An early childhood program which provides primarily educational services where children do not nap and where children are not served a meal.~~

~~Support Staff - Those persons, whether paid or volunteer, employed by the preschool in such positions as aides, food service, clerical, custodial, and transportation.~~

~~Teacher/Assistant Teacher - The person who is responsible for the direct care of the children, whether paid or volunteer.~~

5-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain a preschool**, unless exempt and not seeking voluntary licensure as provided in 391 NAC 5-001 and 391 NAC 5-002,** must first obtain a license from the Department. An applicant must show that the preschool program meets all license requirements contained in these regulations, 391 NAC 5.

~~2-000 The Department shall issue a license only when the applicant -~~

1. ~~Is in compliance with all applicable regulations, or~~
2. ~~Has been granted an alternative compliance, or~~
3. ~~Has a corrective action plan approved by the Department that specifies how compliance will be achieved within a specific time period, AND~~
4. ~~Pays required fees.~~

~~2-003 Types of Licenses: All child care/preschool licenses are effective only for the address shown on the license, and as follows:~~

1. ~~Provisional License: The license issued to all newly licensed providers for the first year of operation. This license may be extended for one six month period.~~
2. ~~Operating License: The standard non-expiring license issued to providers who have been licensed for more than one year and are in full compliance with all regulations.~~
3. ~~Probationary License Status: The license status determined when a provider is found to be out of compliance with regulation(s) and has a corrective action plan approved~~

~~by the Department that specifies how compliance will be achieved in no more than six months. This status cannot be renewed or extended.~~

~~The maximum capacity, days, and hours of operation will be indicated on every license issued by the Department.~~

5-003.01 Provisional License: Provisional licenses are issued to all newly licensed preschool programs. Provisional licenses are effective for one year.

5-003.01A Application Requirements: An applicant for a provisional preschool license must submit:

1. A complete, accurate, written, and signed application and disclosure of ownership on a form provided by the Department, which contains all information required and authorized by the Child Care Licensing Act;
2. For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, an attestation that s/he is a U.S. citizen or a qualified alien lawfully present in the U.S. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
3. Consent for central registry checks and authorization for release of information for the applicant, all staff age 13 or older, and all household members age 13 or older if the preschool is to be located in a private residence;
4. Documentation of criminal history record checks for the applicant, all staff age 19 or older, all household members age 19 and older if the preschool is to be located in a private residence, and for the individual who will be the director of the preschool if the applicant is a limited liability company, a corporation, or a governmental unit (see 5-006.03A);
5. A Report of Law Enforcement Contact for the applicant, or for the individual who will be the director of the preschool if the applicant is a limited liability company, a corporation, or a governmental unit, and for household members age 19 or older if the preschool is to be located in a private residence (see 5-006.03C);
6. A Health Information Report for the director on a form provided by the Department (see 5-006.03F);
7. Documentation of director qualifications (see 5-006.04);
8. A sketch, diagram, or blueprint of the facility showing the dimensions, arrangement of rooms to be used by the children, and outdoor play area;
9. Copies of zoning approval from the relevant jurisdiction;
10. A Fire Inspection Approval issued by the appropriate fire marshal's office;
11. A written description of services;
12. A sample daily schedule;

13. The planned occupancy date; and
14. The required licensing fee (see 5-004.07).

~~3-003 Preschools: The licensing process for preschools requires prelicensing visits by -~~

~~1. The State Fire Marshal and/or their delegated authority for a fire safety inspection; and~~
~~2. The Nebraska Department of Health and Human Services for determination of compliance with licensing regulations.~~

~~3-003.01 Required Materials: Health and Human Services will not issue a license to operate a preschool until the following materials are on file:~~

~~1. An application which is current, accurate, and complete, and includes a list of all staff including volunteers and substitutes;~~
~~2. Inspection reports showing compliance with all fire safety rules and all Department of Health and Human Services rules; and~~
~~3. Written verification of completion of preservice orientation training by the Director.~~

5-003.01B Denial of Provisional License: See 5-008 for grounds under which the Department may deny a provisional license.

5-003.01C Extension of Provisional License: The Department may extend a provisional license once for a period no longer than six months. The Department's decision regarding extension of a provisional license may not be appealed. A provisional license may be extended if the Department determines:

1. The provisional licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;
2. The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department which is to be completed within the extension period.

~~4-001.01 Extension of a Provisional License: The provisional license may be renewed once if the Department determines that -~~

~~1. A licensee is unable to complete all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;~~
~~2. An effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and~~
~~3. The licensee has a written plan of correction that has been approved by the Department which is to be completed within six months.~~

5-003.01D Expiration of Provisional License: The Department will send a notice of expiration to the licensee no later than 90 days before the date of expiration.

1. If a provisional licensee does not submit a complete application for an operating license on or before the expiration date, the provisional license expires.
2. If the former licensee submits a complete application and is in compliance with all regulations within 90 days after expiration, the Department will issue an operating license effective when issued.
3. If the former licensee submits an application more than 90 days after expiration, the Department will process the application as a provisional license application.

~~3-001.08 Voluntary Closure/Expiration~~

1. ~~Upon notice by the provider of the voluntary closure of the licensed child care/preschool program, the Department staff shall complete the necessary closure form.~~
2. ~~Providers with a Provisional License who voluntarily close and no negative actions are pending shall -~~
   - ~~a. Reapply for a Provisional License. The previous license will not be reactivated;~~
   - ~~b. Not have to pay fire inspection fees if the fire/safety inspection was approved and still effective;~~
   - ~~c. Complete a continuous year with a Provisional License before the issuance of an operating license.~~
3. ~~Providers with a Provisional License whose license expires -~~
   - ~~a. May apply for an operating license up to 60 days after expiration when the Provisional License period of one year has been completed;~~
   - ~~b. Shall apply for a Provisional License if the application is submitted more than 60 days after expiration;~~
   - ~~c. Shall not have to pay fire inspection fees if the fire/safety inspection was approved and still effective.~~
4. ~~Providers with an Operating License who voluntarily close and no negative actions are pending -~~
   - ~~a. May reapply for an operating license up to 60 days after closure if a continuous year of licensing has occurred;~~
   - ~~b. May reapply for an operating license if licensed for three years or more within the past five years;~~
   - ~~c. Shall apply for a Provisional License if the application is submitted more than 60 days after closure and if not licensed for three consecutive years or more within the past five years;~~
   - ~~d. Shall not have to pay fire inspection fees if the fire/safety inspection was approved and still effective.~~
5. ~~Providers with an Operating License or Provisional License whose license has been revoked -~~

~~a. Shall not be issued a license for two years from the date of Finding and Order or Declaratory Order;~~

~~b. After two years, shall apply for a Provisional License.~~

~~6. Amended applications will not be processed whenever a negative license action is pending.~~

~~7. License effective dates not backdated unless due to agency error.~~

5-003.02 Operating License: Operating licenses are standard, non-expiring licenses issued to preschool programs that have been licensed for more than one year and are in full compliance with all regulations. Licensees must have completed one full year with a provisional license with satisfactory compliance with all regulations before qualifying for an operating license.

5-003.02A Application Requirements: An applicant for an operating preschool license must submit:

1. A complete, accurate, written and signed application and disclosure of ownership on a form provided by the Department, which contains all information required and authorized by the Child Care Licensing Act;
2. For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, an attestation that s/he is a U.S. citizen or a qualified alien lawfully present in the U.S. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
3. Verification of director qualifications; and
4. The required licensure fee (see 5-004.08).

5-003.02B Denial of an Operating License: See 5-008 for grounds under which the Department may deny an operating license.

5-003.03 Change of Ownership: Preschool licenses are not transferable or assignable. A change of ownership terminates the license. The new owner must apply for a license.

5-003.03A Change of ownership includes the sale or transfer of the ownership or control of a preschool to a person other than the current licensee.

Change of ownership does not include a change of name or location of the preschool.

5-003.03B Requirements of New Owner: If there is a change of ownership and the preschool remains on the same premises, the new owner must apply for a provisional license as required in 5-003.01A, except that:

1. Criminal history record checks, Reports of Law Enforcement Contact, and Health Information Reports are required only for new employees who have not already submitted or completed these documents; and

2. A sketch, diagram, or blueprint of the facility, a written description of services, and a sample daily schedule are required only when the new owner changes the use of the facility and/or changes the description of services or daily schedule.

5-003.03C Mergers: If there is a change of ownership based on the merger of a parent and subsidiary company, affiliated businesses, or governmental units, and the preschool remains on the same premises, the new owner must submit:

1. A Full Disclosure of Ownership Statement on a form provided by the Department; and
2. An application for a preschool license.

5-003.03D Denial of License: See 5-008 for grounds on which the Department may deny a license.

5-003.04 Temporary and Voluntary Cease of Operation: A licensee may request to voluntarily cease operation of the child care program for a period of up to one year. The licensee must:

1. Have attained an operating license;
2. Intend to re-open the child care program at the same location;
3. Not serve any children during the period of ceased operation;
4. Not be the subject of any disciplinary action, investigation of alleged non-compliance with regulations, or outstanding non-compliance; and
5. Pay license fees during the period as specified in 5-004.08.

5-003.04A If the licensee is the subject of any negative or disciplinary action, the period of ceased operation does not count toward the period of negative or disciplinary action.

5-003.04B No routine fire safety, sanitation, or Department inspections will be conducted during the period of ceased operation.

5-003.04C The period of ceased operation may be extended beyond the one-year limit if the licensee shows a reasonable cause.

5-003.04D Reinstatement: A preschool licensee may request reinstatement after a period of ceased operation by submitting an application at least 30 days before the scheduled re-opening date. The Department will review the application and decide if additional information, an on-site inspection, or a fire safety or sanitation inspection is needed to determine compliance with regulations.

5-003.05 Negative Actions: The Department may initiate a negative action when a licensee is not in compliance with regulation but the violation does not rise to the level of

a disciplinary action. (Disciplinary actions are described in 5-008.) Negative actions are voluntary and not appealable. The Department may conduct unannounced monitoring inspections of licensees under negative action. If a licensee does not agree to the terms of the negative action, the Department may initiate a disciplinary action. The two types of negative action are a Licensing Agreement and Corrective Action Status, described as follows.

5-003.05A Licensing Agreement

5-003.05A1 Determining Need for a Licensing Agreement: The Department may request a written licensing agreement if:

1. The licensee is unable to comply with all licensure requirements and standards or has a history of noncompliance; and
2. The effect of noncompliance with any rule or regulations does not present an unreasonable risk to the health, safety, or well-being of children or staff.

5-003.05A2 The Licensing Agreement must:

1. Identify the length of time the Department has determined the agreement will be in effect;
2. Identify regulation violation(s);
3. Identify conditions agreed to by the licensee or director to correct any identified issue and to maintain compliance with licensing regulations;
4. Be signed by the licensee or designee, with permission of the licensee; and
5. Be witnessed by a notary public, Department staff, or non-relative of the licensee.

~~CHAPTER 4-000 NEGATIVE LICENSURE ACTIONS:~~

~~4-001 Child Care/Preschool: The options described in the following material are available to the Department to address noncompliance with regulations in licensed child care/preschool programs. The specific option determined by the Department will be based on the seriousness of the risk to the safety of children, the seriousness of the noncompliance, the compliance history of the provider, and the ability/willingness of the provider to develop and implement a corrective action plan.~~

~~4-001.02 Licensing Agreements: A Licensing Agreement is a document signed by the provider and witnessed by a Department staff member, a notary public or another non-relative witness identified by the provider. Licensing Agreements may be issued when household members and/or staff have a history of behaviors indicating a potential risk to children, excluding sexual abuse or sexual assault, and/or a rule violation is determined.~~

~~Licensing Agreements may not be issued for any regulation for which denial or suspension/revocation action(s) has been taken.~~

~~The purpose of the Licensing Agreement is to specify areas of concern as they relate to licensing standards, to obtain the agreement of the licensee to correct any identified problem, and to maintain compliance with licensing standards.~~

~~Licensing Agreements may be offered in lieu of denial, probationary status, revocation, or emergency closing order of a license where the Department determines that a Licensing Agreement does not present an undue risk to children in care. Licensing Agreements are voluntary and discretionary and are not appealable.~~

~~4-001.03 Probationary License Status: A probationary license status will be determined when providers are found to be out of compliance with regulations and have a corrective action plan approved by the Department that specifies how compliance will be achieved within a six-month period. A probationary status is determined in the following circumstances:~~

1. ~~A licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;~~
2. ~~The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and~~
3. ~~The licensee has a written plan of correction that has been approved by the Department.~~

~~The Director may issue a probationary license status following an administrative hearing.~~

5-003.05B Corrective Action Status: The Department may place a provisional or operating license on corrective action status for up to six months if:

1. The licensee is unable to comply with all licensure requirements and standards or has a history of noncompliance;
2. The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department. The Department may discipline the license if the written plan of correction is not approved.

5-003.05B1 The written plan of correction must:

1. Identify the issue(s) of concern;
2. Identify who is responsible for corrections and maintenance of compliance;
3. Include timelines; and
4. Specify the documentation to be provided to the Department.

5-003.06 Voluntary Surrender of a License: A licensee may voluntarily surrender a license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of the license if the licensee is under investigation or if the Department has initiated disciplinary action against the license. If the Department accepts the surrender, the licensee must return the license to the Department within one week of surrender.

5-003.06A Reapplication for an Operating License Less Than One Year After Voluntary Surrender: A licensee who voluntarily surrendered a preschool operating license less than one year before the date of reapplication may reapply for an operating license. The licensee must meet the requirements of 5-003.02A.

5-003.06B Reapplication One Year or More After Voluntary Surrender: A licensee who voluntarily surrendered a preschool provisional or operating license one year or more before the date of reapplication must reapply for a provisional license. The applicant must meet the requirements of 5-003.01A.

~~3-001.08 Voluntary Closure/Expiration~~

1. ~~Upon notice by the provider of the voluntary closure of the licensed child care/preschool program, the Department staff shall complete the necessary closure form.~~
2. ~~Providers with a Provisional License who voluntarily close and no negative actions are pending shall -~~
   - ~~a. Reapply for a Provisional License. The previous license will not be reactivated;~~
   - ~~b. Not have to pay fire inspection fees if the fire/safety inspection was approved and still effective;~~
   - ~~c. Complete a continuous year with a Provisional License before the issuance of an operating license.~~
3. ~~Providers with a Provisional License whose license expires -~~
   - ~~a. May apply for an operating license up to 60 days after expiration when the Provisional License period of one year has been completed;~~
   - ~~b. Shall apply for a Provisional License if the application is submitted more than 60 days after expiration;~~
   - ~~c. Shall not have to pay fire inspection fees if the fire/safety inspection was approved and still effective.~~
4. ~~Providers with an Operating License who voluntarily close and no negative actions are pending -~~
   - ~~a. May reapply for an operating license up to 60 days after closure if a continuous year of licensing has occurred;~~
   - ~~b. May reapply for an operating license if licensed for three years or more within the past five years;~~
   - ~~c. Shall apply for a Provisional License if the application is submitted more than 60 days after closure and if not licensed for three consecutive years or more within the past five years;~~

~~d. Shall not have to pay fire inspection fees if the fire/safety inspection was approved and still effective.~~

~~5. Providers with an Operating License or Provisional License whose license has been revoked -~~

~~a. Shall not be issued a license for two years from the date of Finding and Order or Declaratory Order;~~

~~b. After two years, shall apply for a Provisional License.~~

~~6. Amended applications will not be processed whenever a negative license action is pending.~~

~~7. License effective dates not backdated unless due to agency error.~~

5-003.07 Permanent Closure: When a preschool is to be permanently closed, the licensee must return the license to the Department within one week of closing.

5-004 GENERAL REQUIREMENTS

5-004.01 License Not Transferable: A preschool license is not transferable or assignable and is only valid at the address printed on the license.

5-004.02 Separate License: An applicant for a preschool license must obtain a separate license for each program that the applicant seeks to operate.

1. A single license may be issued for a preschool operating in separate buildings or structures on the same premises under one licensee.
2. Multiple licenses may be issued for child care centers, preschools, and school-age-only centers operating on the same premises under multiple licensees.

~~3-001.07 Multiple Licenses: When multiple licenses are issued to the same provider, all appropriate regulations must be met and all appropriate inspections must be completed. Multiple licenses or approvals may be granted for different types of programs at the same location, i.e., for child care, foster care, adult or elder care. In addition to determining the child care license capacity per program, the Fire Marshal shall determine the maximum number of children, youth, and/or vulnerable adults that can be on the premises at any one time.~~

~~An individual may hold a license for more than one child care/preschool program in different locations as long as there is an on-site primary provider/director who meets required regulations and all other staffing requirements are met.~~

5-004.03 Posting of License and Availability of License Record Information: The licensee must ensure the current license, including any applicable status or amendment, is prominently posted and clearly visible in the child care area. License record information and inspection reports must be available for public inspection upon request.

~~(6-001) The current license will be prominently posted so that it is clearly visible to parents and others.~~

5-004.04 Change in Premises: When there is a change in premises:

1. Ninety days before the scheduled date of occupancy of the new premises, the licensee must submit an application for the same type of license (provisional or operating) currently held, except that:
   a. The following items must be submitted before the license will be issued:
      (1) A sketch, diagram, or blueprint of the facility showing the dimensions, arrangement of room to be used by children, and outdoor play area;
      (2) A fire inspection approval issued by the State Fire Marshal or delegated authority;
      (3) Copies of zoning approval from the relevant jurisdiction;
      (4) Planned occupancy date;
      (5) Any additional information required by the Department to provide affirmative evidence of the applicant's ability to comply with these regulations; and
   b. Remaining items must be submitted only if there are changes since the previous application process;
2. The Department will conduct an inspection(s) of the proposed location to determine compliance with these regulations before use or occupancy by the applicant; and
3. The new premises cannot be used for a child care program until a license has been issued by the Department. The license for the initial premises will become null and void when a license for the new premises is issued.

5-004.05 Alternative Compliance: The Department may grant alternative compliance with a regulation under the following conditions:

5-004.05A Written Request: A request for alternative compliance must be submitted to the Department in writing and must include:

1. The regulation for which alternative compliance is being requested;.
2. The reason for the alternative compliance request
3. A description of how the alternative will meet the intent of the regulation; and
4. How the alternative will offer equal protection for all children.

5-004.05B Review and Approval: The Department may request additional information from the applicant or licensee in order to reach a decision to approve or deny the alternative compliance request. To be considered for approval, the proposed alternative must:

1. Be consistent with the overall intent and purposes of the regulation; and
2. Protect the health, rights, safety, and well-being of all children in care.

5-004.05C Terms of Alternative Compliance: An alternative compliance may be granted:

1. For a period of time that ends when the conditions of the approval no longer exist; and
2. To permit the applicant or licensee time to come into compliance.

5-004.05D Requirements Not Qualifying for Alternative Compliance: Alternative compliance will not be granted for the following requirements:

1. Capacity/Ratio;
2. Transportation;
3. Supervision;
4. Fire Safety;
5. Criminal history/background checks;
6. Licensee and staff;
7. Any regulation for which a discipline has been initiated or completed.

5-004.05E Notification of Department Decision: When the Department receives an alternative compliance request and has obtained all information needed to process the request, the Department will notify the applicant or licensee in writing of its decision to approve or deny the request. The notification will be made within 30 days of **the Department's receipt of all appropriate information**. ~~receipt of the alternative compliance request and any additional information requested by the Department~~

~~3-001.06 Alternative Compliance: The Department may grant alternative compliance with regulations if the Department determines that the alternative offers equal protection for children and meets the intent of the regulation for which alternative compliance is sought. Alternative compliances are not intended to waive or provide exemptions from regulations. Alternative compliances will not be granted for -~~

~~1. Exceeding the license capacity;~~
~~2. Staffing;~~
~~3. Transportation;~~
~~4. Supervision;~~
~~5. Fire safety inspection disapprovals; and/or~~
~~6. Any regulation for which denial or suspension/revocation action(s) has been taken.~~

~~Alternative compliances will be time limited.~~

5-004.06 Notification of Changes: An applicant or licensee must notify the Department:

5-004.06A An Amendment to Application must be submitted at least 90 working days before the planned effective date for a change:

1. In location (see 5-004.04); or

2. In building or building usage.

5-004.06B An Amendment to Application must be submitted at least five working days before the planned effective date for a change:

1. In the days of the week care is provided;
2. In the hours of the day care is provided;
3. In the age of children for whom the preschool provides care; and
4. In household members age 13 or older, if the preschool is located in a private residence.

5-004.06C An Amendment to Application must be submitted within two working days after the following changes are effective:

1. In director; and
2. In household members age 12 or younger, if the preschool is located in a private residence.

5-004.07 Information Available to Public: The Department will release the following information to the public upon request:

1. Application;
2. Name of licensee;
3. Name of facility;
4. Facility address;
5. Facility telephone number;
6. Alternative compliances;
7. Type of license;
8. Relevant license information (for example, licensed capacity, hours and days of operation, ages of children served, license effective dates)
9. Copies of inspection reports;
10. Fire safety inspection reports and correspondence;
11. Licensing agreements;
12. Provisional license extension notices;
13. Corrective action status notices;
14 Discipline notices;
15. Corrective action plans;
17. Written transcripts of administrative hearings;
18. Emergency orders; and
19. All final orders.

~~5-001 Public Access to Licensing Files: Department staff shall release information regarding the name of the child care/preschool provider, address, telephone number, type of license, license capacity, hours and days of care, ages of children served, and license effective dates upon verbal or written request.~~

~~The following forms, reports, correspondence and documents will be released upon either verbal or written request:~~

~~Application/Affidavit~~
~~Alternative Compliance Request~~
~~Registration Referral Form - Fire Safety Inspection/Fire Marshal~~
~~Registration Referral Form - Sanitation Inspection/Department of Health and Human Services Regulation and Licensure~~
~~Rules Compliance Checklist~~
~~Closure Form~~
~~Noncompliance Report/Compliance Review~~
~~Fire Safety Inspection Reports and Correspondence~~
~~Sanitation Inspection Reports and Correspondence~~
~~Letters initiating revocation, denial, suspension, extension of a license or probationary license status~~
~~Licensing Agreements~~
~~Emergency Closing Orders~~
~~Order of License Reinstatement~~
~~Finding and Order resulting from an appeal hearing~~
~~Declaratory Ruling resulting from a failure to appeal~~

~~5-001.01 Information Released to Other Governmental Entities: Copies of the following documents may be sent to other governmental entities:~~

~~Warning letters~~
~~Noncompliance Reports/Compliance Reviews~~
~~Extensions of provisional licenses~~
~~Issuances of probationary licenses~~
~~Letters initiating action to deny, suspend, revoke, extend a license or place on probationary license status~~
~~Emergency Closing Orders~~

~~If the above information includes any reference to specific names of children, their parents, Child Protective Services reports or records or law enforcement investigative reports, these references must be deleted before release.~~

5-004.07A The Department will not release the following information to the public:

1. Names, addresses, and telephone numbers of complainants;
2. Names, addresses, and telephone numbers of enrolled children and their parents/guardians;
3. Social Security or Federal Tax Identification numbers;
4. Health Information Reports and any physical or behavioral health information on the licensee and staff;
5. Reports of Law Enforcement Contact by the licensee, staff, and household members;

6. Law enforcement reports;
7. Child welfare reports or records, including the state child abuse/neglect central register under Neb. Rev. Stat. § 28-718;
8. Adult protective services (APS) reports or records, including the APS central registry under Neb. Rev. Stat. § 28-376;
9. Nebraska State Patrol Sex Offender Registry information not available to the public under the Sex Offender Registration Act;
10. Internal Department correspondence, notes, and investigation reports.

~~5-001.02 Information Not Released: The following information documents or forms will NOT be released:~~

~~Names, addresses and phone numbers of complainants~~
~~Names of enrolled children and their parents/guardians~~
~~Child Protective Services reports or records, Adult Protective Services reports or records, Nebraska Child Abuse and Neglect Central Registry and Nebraska Adult Protective Services Central Registry information or law enforcement investigative reports~~
~~Felony/misdemeanor statements~~
~~Reference release statements~~
~~Reference letters~~
~~Enrollment/Attendance Form~~
~~Internal Department correspondence~~
~~Investigative reports and notes~~
~~Documentation regarding unlicensed care investigations~~
~~Medical records/Health Information Reports~~

~~Department staff shall not release information until the licensee has received the information or a reasonable effort has been made to provide the licensee with the information.~~

~~Requested information will be available five working days after the request is received.~~

~~If a determination is made to deny a request for information and the requesting party objects or further insists on production, Department staff shall consult with Legal Services for assistance in preparation of a written response as required by Nebraska Revised Statutes, Section 84-712.04.~~

5-004.08 Fees

1. Initial and annual licensure fees for preschools are:
   a. Programs with licensed capacity of 1-29 $25
   b. Programs with licensed capacity of 30 and up $50
2. Initial and annual licensure fees are nonrefundable, except:
   a. If the Department denies an application for a license and has not completed an inspection before the denial, the Department will return the license fee to the applicant; and

b. If an applicant withdraws an application for a license and the Department has not completed an inspection before the withdrawal, the Department will return the license fee to the applicant.

3. Fees will be accepted in the form of a check or money order. Cash will not be accepted.

~~2-002 License Fees: There is a twenty-five dollar fee charged for the issuance of each license for providers with a license capacity of less than thirty children and a fifty dollar fee charged for the issuance of each license for providers with a license capacity of thirty or more children.~~

~~An annual license fee of twenty-five dollars must be paid by providers with a licensing capacity of less than thirty children and an annual license fee of fifty dollars must be paid by providers with a licensing capacity of thirty or more children.~~

~~Fire inspection fees are determined and collected by the State Fire Marshal and/or their delegated authority after initial licensure.~~

~~3-002.02 Fees: A non-refundable license fee and fire inspection fee will be collected at the time of initial application.~~

~~A non-refundable license fee will be collected annually.~~

~~Fire inspection fees are determined and will be collected by the State Fire Marshal and/or their delegated authority after initial licensure.~~

~~Fees will be accepted in the form of a check or money order only. Cash will not be accepted.~~

5-005 INSPECTIONS AND COMPLAINT INVESTIGATIONS: To determine compliance with licensing regulations, the Department will inspect preschool programs as provided under the Nebraska Child Care Licensing Act.

5-005.01 Initial Licensure Inspection: The Department will:

1. Schedule the date and time for the inspection visit with the applicant and/or the applicant's designee;
2. Conduct an initial on-site inspection to determine compliance with these regulations within 30 days of receipt of a complete application for a provisional license; and
3. Provide a preliminary copy of the inspection report to the applicant and/or the applicant's designee at the conclusion of the inspection.

5-005.02 Provisional-to-Operating License Inspection: The Department will:

1. Conduct an unannounced on-site inspection to determine compliance with these regulations;

2. Conduct the inspection within 30 days of receipt of a complete application for an operating license;
3. Provide a preliminary copy of the compliance report to the applicant and/or designee at the conclusion of the inspection; and
4. Document any violations of these regulations determined at the inspection.

5-005.03 Annual and Semi-Annual License Inspections: To determine compliance with licensing regulations, the Department will conduct unannounced inspections:

1. A minimum of once each year of preschools licensed for 29 or fewer children; and
2. A minimum of twice each year of preschools licensed for 30 or more children.

5-005.04 Follow-Up Inspection: The Department may conduct a follow-up inspection to determine if the licensee has corrected all violations and to determine full compliance with regulations following any type of inspection. If conducted, the follow-up inspection will:

1. Occur no later than 60 days after the original inspection, or sooner if the licensee requests or the violation needs to be corrected immediately; and
2. Be unannounced unless the preschool is closed.

5-005.05 Monitoring Inspections: The Department may conduct unannounced monitoring inspections to determine compliance with regulations and the conditions of any negative action or discipline.

5-005.06 Inspection Results

1. The Department will provide a copy of the compliance report to the child care program within ten working days after completion of an inspection.
2. When the Department finds that the applicant or licensee has complied substantially, but has failed to comply fully with all regulations, the applicant or licensee may request an alternative compliance (see 5-004.05).
3. When the Department finds that the applicant or licensee has complied substantially, but has failed to comply fully with all regulations and the failure(s) would not pose an imminent danger of death or serious harm, the Department may:
   a. Allow the applicant or licensee a period of time to correct all the violations; or
   b. Initiate negative action or discipline if the applicant or licensee fails to correct all violations within the time frame given by the Department or has a history of violating the same or similar regulations at previous inspections.
4. When the Department finds that the applicant or licensee has failed to meet the regulations, the Department may initiate negative action or discipline or require the applicant or licensee to make all corrections at the time of

inspection. If compliance cannot be achieved immediately, the Department may allow a reasonable period of time after the inspection was conducted to make corrections.

5-005.07 Complaint Investigations: The Department will investigate any licensed child care center after receiving an allegation of violation of licensing regulations.

1. The Department will accept complaints from anyone **who witnessed a violation or a parent/guardian of a child who witnessed a violation.**
2. The Department will accept complaints via telephone, letter, fax, electronically, or **in person.**
3. The identity of a complainant is not public information.
4. **Only if found to be credible by the Department can such an allegation or complaint result in any negative action or discipline.**

5-005.08 Complaints of Allegedly Improper Unlicensed Care: The Department will investigate any complaint of a person allegedly providing a preschool program without an appropriate license. The Department will accept complaints from anyone via telephone, letter, fax, or electronically. The identity of a complainant is not public information.

The Department may request enforcement by the Attorney General or the appropriate County Attorney if a person continues to provide a child care program without a license.

5-005.09 Inspections by Other Entities

5-005.09A Fire Inspection: The Department will make a fire inspection referral when:

1. An application is received for an initial preschool license;
2. When the preschool is licensed for 13 or more children, every two years following the initial fire inspection unless the preschool is located in a health care facility or school that receives more frequent fire inspections;
3. Whenever the preschool requests to use space that was not previously approved for use;
4. There is a change in address;
5. There is a complaint specific to fire safety issues; or
6. Department staff observe conditions that may endanger the health or safety of children in care.

~~3-002.05 Visits Conducted by Department Staff:~~

~~1. Types of Visits:~~
~~a. Initial Visits:~~
~~- These visits will be scheduled in advance with the child care/preschool center licensee/director.~~

- These visits will assess compliance with all applicable regulations.

b. Annual Visits:
- These visits will be unannounced and to child care centers/preschools with a license capacity of less than thirty children.
- These visits will assess compliance with applicable regulations.

c. Semi-Annual Visits:
- These visits will be unannounced and to child care centers/preschools with a license capacity of thirty or more children.
- These visits will assess compliance with applicable regulations.

d. Amendment Visits:
- These visits can be announced or unannounced.
- These visits will be to child care centers/preschools when there is -
  1. Change in location;
  2. Change in building or building usage;
  3. Change in director;
  4. Change in licensee/owner;
  5. Change in age of children for whom the facility provides care; and
  6. Change in hours care is provided.

e. Complaint Investigations:
- These visits will be unannounced.
- Allegations of maltreatment of children will be addressed within 24 hours of the receipt of the complaint.
- Allegations of licensing violations will be addressed within five working days of the receipt of the complaint.
- Allegations regarding unlicensed care will be addressed within ten working days of the receipt of the complaint.

f. Consultation/Technical Assistance Visits:
- These visits will be scheduled only upon request of child care center licensee(s)/director(s).
- These visits will be an opportunity for providers to become better informed of the applicable regulations.

2. Documentation of Visits:

a. Licensing Activity Visits
(1) Compliance Reviews will be completed for all visits with the exception of Consultation/Technical Assistance Visits. Providers will be given the opportunity to include written comments on the review form and will be given a copy of the review form or checklist at the time of the visit.
(2) Forms needed to complete initial licensure, annual inspections and amendments to the license will be completed as documentation for these visits.
(3) Sanitation and Fire Safety referrals will be made to the appropriate agency or delegated authority and documented with an inspection referral when applicable.
(4) Referrals to other HHS programs or non-HHS resources can be made at the request of the provider or upon determination of actual or potential non-compliance with regulations. Written documentation is not required for resource-only referrals.

b. Complaint Visits

~~(1) All allegations of non-compliance on licensed child care/preschool programs and unlicensed care complaints will be entered and tracked on the automated Child Care Complaint Tracking System.~~

~~(2) When a complaint visit is conducted, a Compliance Review form will be completed. Providers will be given the opportunity to include written comments on the review form and will be given a copy of the review form or checklist.~~

~~3. Referrals:~~

~~a. Child Protective Services/Law Enforcement~~

~~(1) When a complaint alleging child abuse or neglect in a child care/preschool facility is received, staff shall inform the Child Protective Services Unit, providing the name of the complainant whenever possible.~~

~~(2) Coordination with Child Protective Services and/or law enforcement will be maintained throughout the investigation process.~~

~~(3) Copies of Child Protective Services and/or law enforcement report(s) will be obtained following the conclusion of the investigation.~~

~~(4) If non-compliance with regulations is alleged from the investigation, a visit will be made to the child care/preschool program to determine compliance with regulations.~~

~~b. Sanitation/Health and Fire Safety~~

~~(1) When a complaint alleging sanitation/health and/or fire safety concerns is received or staff observe conditions that may endanger the health or safety of children, an inspection referral will be sent to the appropriate health/sanitation and/or fire safety authority.~~

~~(2) If the health/sanitation and/or fire safety inspection referral is returned indicating disapproval, staff shall proceed with actions necessary to deny or revoke the child care/preschool license.~~

~~3-002.05,3b. Sanitation/Health and Fire Safety~~

~~(1) When a complaint alleging sanitation/health and/or fire safety concerns is received or staff observe conditions that may endanger the health or safety of children, an inspection referral will be sent to the appropriate health/sanitation and/or fire safety authority.~~

~~(2) If the health/sanitation and/or fire safety inspection referral is returned indicating disapproval, staff shall proceed with actions necessary to deny or revoke the child care/preschool license.~~

5-006 STANDARDS OF OPERATION AND CARE: To provide adequate protection to children in care and to comply with state law, a preschool must meet the following standards.

5-006.01 Licensee Requirements: The licensee must:

1. Ensure that the preschool is administered and managed appropriately;
2. Maintain compliance with all applicable state statutes and preschool regulations;

3. Permit announced and unannounced inspections by agency representatives during the hours of operation;
4. Either manage the day-to-day operations of the preschool or designate a director who is responsible for the day-to-day management of the preschool and define the duties and responsibilities of the director in writing; and
5. Ensure that the preschool has sufficient resources to provide a safe, healthy, and nurturing environment to all children enrolled in the preschool.

5-006.02 Director Requirements: The director is responsible for managing the day-to-day operations of the preschool. The director must report to the licensee all matters related to the maintenance, operation, and management of the preschool and be directly responsible to the licensee or to a person delegated governing authority by the licensee. The director must:

1. Be responsible for the preschool's compliance with rules and regulations;
2. Be within the preschool area a sufficient number of hours to permit adequate attention to the management of the preschool;
3. When not in the preschool area, designate another staff to act in his or her absence who will be responsible and accountable for management of the preschool;
4. Provide written personnel policies and policies and procedures specific to:
   a. Job descriptions and responsibilities; and
   b. Position qualifications, skills, knowledge, abilities and physical demands of the job,
5. Assess his/her own ability and the ability of all staff to provide care for children with special needs while meeting the needs of other children enrolled;
6. Provide orientation for new staff, including training on preschool regulations;
7. Schedule training and continuing education for all staff and ensure that records are maintained including the date, topic, and length of time for each training entry;
8. Ensure that preschool staff identify and review incidents, accidents, complaints, and concerns, and monitor patterns and trends in overall operation and take action to alleviate problems;
9. Develop and implement written procedures that require the reporting of any evidence of physical abuse, neglect, or sexual abuse of any child in care at the preschool;
10. Immediately file a report with the Child Abuse-Neglect Hotline (1-800-652-1999) and/or appropriate local law enforcement agency when s/he has reason to believe child abuse, neglect or sexual abuse may be occurring in the preschool, in the child's home, or elsewhere, or ensure that a report is filed;
11. Not knowingly allow any individual who is a registered sex offender on the premises, except that a parent who is a registered sex offender may be allowed on the premises only to pick up and drop off his/her child;

12. Ensure that the maximum capacity of the preschool is not exceeded at any time;
13. Ensure that staff-to-child ratios are met at all times;
14. Ensure that parents have access to their children at all times that children are in care; and
15. Develop and use written criteria to assess the ability of staff to give or apply medication safely.

~~9-001 Administration: The preschool shall pay an initial license fee and annually thereafter.~~

~~The current license must be prominently posted so that it is clearly visible to parents and others.~~

~~Preschool staff shall permit visits, unannounced or announced, by parents of enrolled children or agency representatives during hours of operation.~~

~~The preschool's program goals and a sample daily schedule must be available in writing to parents of all enrolled children.~~

~~The preschool shall have on file a completed "Children's Record," (Form DSS-0363), or a form which contains at least the same information, for each child within 30 days of the child's first day of attendance. This information must be available to Department staff upon request.~~

~~The preschool shall maintain copies of children's immunization records. These records will be available for review upon request.~~

~~The preschool shall comply with all Nebraska Department of Health and Human Services requirements regarding the immunization status of all enrolled children.~~

5-006.03 Background Checks, Health Information, and Employment Limitations

5-006.03A Criminal History Record Check: The applicant/licensee must complete a pre-employment criminal history record check on him/herself, each staff member age 19 or older, and each household member age 19 or older if the preschool is located in a private residence. Documentation must be kept and available for review by the Department.

The check must be conducted through the Nebraska State Patrol or through one or more local law enforcement agencies, as appropriate to the individual's residence(s). If an individual has lived in Nebraska less than 12 months, the applicant/licensee must obtain documentation of a criminal history record check from the previous state(s) of residence.

5-006.03A1 Permanent Child Care Disqualification: An individual is permanently disqualified from holding a child care license or working as a staff member or volunteer in a preschool if s/he has a criminal history including conviction of any unlawful act endangering the health or safety of

another individual. **Such convictions include** crimes against a child or vulnerable adult, crimes involving intentional bodily harm, **crimes involving the sale, distribution or procurement** of a controlled substance, or crimes involving moral turpitude on the part of the individual. These crimes include but are not limited to:

1. Aggravated or armed robbery;
2. Assault, first or second degree;
3. Child abandonment;
4. Child abuse;
5. Child molestation or debauching a minor;
6. Child neglect;
7. Commercial sexual exploitation of a minor;
8. Domestic violence;
9. Exploitation of a minor involving drug offenses or **conviction of drug offenses that involved a minor;**
10. Felony controlled substances offenses, **other than possession**;
11. Felony violation of custody;
12. Incest;
13. Kidnapping;
14. Murder, first or second degree;
15. Sexual abuse of a minor;
16. Sexual assault;
17. Sexual exploitation of a minor, including child pornography; or
18. Voluntary manslaughter.

5-006.03A2 Twenty-Year Disqualification: An individual is disqualified from holding a child care license or working as a staff member or a volunteer in a preschool if s/he has a criminal history that includes conviction in the last 20 years of:

1. **Arson;**
2. **Criminal non-support;**
3. **Felony possession of controlled substance offences;**
4. **Felony theft; or**
5. **Robbery.**

The 20-year disqualification begins the date the conviction became final. Any time the individual is incarcerated, either in jail or a state or federal correctional facility, is not included in the calculation of the 20-year period of disqualification. If the individual has more than one conviction, the 20-year disqualification begins the date the most recent conviction became final.

5-006.03A3 Five-Year Disqualification: An individual is disqualified from holding a child care license or working as a staff member or a volunteer in a preschool if s/he has a criminal history that includes conviction in the last five years of:

1. Burglary;
2. Driving under the influence: two or more convictions;
3. Felony bad check writing;
4. Misdemeanor controlled substances offenses;
5. Misdemeanor contributing to the delinquency of a child; or
6. Misdemeanor theft.

The five-year disqualification begins the date the conviction became final. Any time the individual is incarcerated, either in jail or a state or federal correctional facility, is not included in the calculation of the five-year period of disqualification. If the individual has more than one conviction, the five-year disqualification begins the date the conviction became final.

5-006.03A4 An applicant, licensee, staff member, or household member, must not have had his/her rights as a parent terminated by a Court because of a finding of abuse or neglect of a child or inability to care for a child.

5-006.03A5 Department Determination: An individual may hold a child care license or work as a staff member or a volunteer in a preschool with a pending complaint or indictment or conviction of other crimes if the Department determines the individual has the present character and fitness to work with children. In making this determination the Department may consider the following factors:

1. The age of the individual at the time of the conduct;
2. The recency of the conduct;
3. The seriousness of the conduct;
4. The factors underlying the conduct;
5. The cumulative effect of the conduct;
6. The evidence of rehabilitation;
7. The individual's positive social contributions since the conduct;
8. The individual's honesty in providing information; and
9. The materiality of any omissions or misrepresentations.

The Department may deny or take action against a license if an individual is found to have a criminal history that includes conviction or substantial evidence of committing or permitting, or aiding or abetting another to commit, any unlawful act endangering the health or safety of another

individual or a history of convictions or behavior that shows an inability or unwillingness to comply with laws or regulations. This applies to the applicant/licensee, household members who reside at the place where the child care program will be/is provided, and employees of the applicant/licensee.

5-006.03B Registry Checks: The applicant/licensee, staff, and household members if the preschool is located in a private residence, must not be listed as a perpetrator of abuse or neglect on the Nebraska:

1. Child abuse/neglect central register under Neb. Rev. Stat. § 28-718 if the individual is age 13 or older;
2. Adult protective services central registry under Neb. Rev. Stat. § 28-376 if the individual is age 18 or older; or
3. State Patrol sex offender registry.

The individual must provide enough information for an accurate check of the registries and must authorize the release of registry information. The Department will conduct the child and adult registry checks and provide the results to the applicant/licensee.

The licensee must conduct the State Patrol sex offender registry check. All registry checks must be completed before the individual assumes responsibility for the care and supervision of children.

Any individual who is listed on any of the registries must not be on the premises during the hours of operation, except that a parent listed as a perpetrator may be allowed on the premises only to pick up and drop off his/her child.

~~9-005 Registry Checks: The Department of Health and Human Services shall clear the names, as indicated on the application, of all staff, both paid and volunteer, with the Nebraska Central Registry of Child Abuse and Neglect, and the Nebraska Adult Protective Services Central Registry, before issuing a license. If a preschool is located within a private residence, the director shall submit the names of all household members 13 years and older for clearance with the Nebraska Central Registry of Child Abuse and Neglect and the names of all household members 18 years and older for clearance with the Nebraska Adult Protective Services Central Registry.~~

~~9-006 Prior to Hire: Candidates being considered for employment as a director, teacher, assistant teacher, and all support staff must be checked against the Nebraska Central Registry of Child Abuse and Neglect and the Nebraska Adult Protective Services Registry before being hired.~~

~~Candidates being considered for employment as a director, teacher, assistant teacher, and/or support staff shall submit a signed AFelony/Misdemeanor Statement@ (DSS-600) to the licensee or director. The licensee or director shall request additional information from the~~

~~appropriate law enforcement agency as needed to comply with Department regulations. The licensee is responsible for reporting any arrests, misdemeanor tickets other than traffic violations, pending criminal charges, and/or any felony/misdemeanor convictions on themselves, the director and staff, which includes teachers/assistant teachers and all support staff.~~

5-006.03C Report**s** of Law Enforcement Contact: The applicant/licensee must complete a Report of Law Enforcement Contact for him/herself and must obtain a completed report for each staff member age 19 or older and each household member age 19 or older if the preschool is located in a private residence. The statement must:

1. Be updated, signed, and dated annually;
2. Be updated any time one of these individuals is arrested, issued a citation other than a minor traffic violation, or charged with or convicted of any felony, misdemeanor, or infraction;
3. List all previous and pending criminal charges and arrests, both felony and misdemeanor, regardless of prosecution;
4. List any record of felony and/or misdemeanor charges and arrests related to crimes against children;
5. List any record of felony and/or misdemeanor convictions;
6. List any current or past parole or probation status, including diversion or court supervision; and
7. List details, dates, county and state of the contact, arrest, charge, conviction, and disposition, if any.

~~9-004 Felony/Misdemeanor Statement: The licensee of a preschool shall submit a "Felony/Misdemeanor Statement," signed and dated by the licensee, director, and staff, which includes teachers, assistant teachers, and all support staff, age 19 and older, which includes the following information:~~

~~1. Felony and/or misdemeanor arrests related to crimes against children;~~
~~2. Misdemeanor tickets, other than minor traffic violations;~~
~~3. Felony and/or misdemeanor convictions;~~
~~4. Any pending criminal charge(s); and~~
~~5. Current parole or probation status.~~

~~This statement must include all law enforcement contacts, regardless of prosecution.~~

5-006.03D Notification of Law Enforcement Contact: As soon as the licensee/director becomes aware of the occurrence, s/he must notify the Department of any arrest, misdemeanor ticket other than a traffic violation, pending criminal charges, and any felony or misdemeanor convictions of him/herself, staff, or household members if the preschool is located in a private residence. The licensee/director must request a criminal history record check on the individual

within five working days. Failure to notify the Department of law enforcement contacts as described may result in disciplinary action.

~~(9-006) The licensee is responsible for reporting any arrests, misdemeanor tickets other than traffic violations, pending criminal charges, and/or any felony/misdemeanor convictions on themselves, the director and staff, which includes teachers/assistant teachers and all support staff.~~

5-006.03E Investigations and Repeat Registry Checks

1. Any time the licensee or director has reason to believe that a staff member is being or has been investigated for abuse, neglect, or sexual abuse of a child or vulnerable adult, the licensee or director must submit the name of that individual to the Department for a check with the child abuse/neglect or adult protective services registry.

2. Any individual who is under investigation for abuse, neglect, or sexual abuse of a child or vulnerable adult must not be left alone with children until the investigation is completed and the findings are determined.

~~(9-003) The director shall not knowingly allow any person, neither paid nor volunteer staff, to be on the premises if s/he has been convicted of, admitted to, or there is substantial evidence of crimes involving intentional bodily harm, crimes against children, crimes involving the illegal use of a controlled substance, or crimes involving moral turpitude. Preschool staff, whether paid or volunteer, shall not engage in or have a history of behaviors injurious to or which may endanger the health or morals of the children in care.~~

5-006.03F Health Information Report: The applicant must submit a completed Health Information Report on a form provided by the Department for him/herself as part of the initial application. All staff who are responsible for the care and supervision of children for more than 20 hours per week must complete the report within 30 days of hiring. The Health Information Report must be completed annually.

The Health Information Report must include an assessment by a health professional of the individual and any health conditions that could negatively affect his/her ability to care for children. If the information indicates that the individual has, or has had, a health condition that could negatively affect his/her ability to care for children, the Department may request additional information.

~~(9-002) Within 30 days of hiring, each staff member shall provide a "Health Information Report" (DSS-0915) current within six months of hiring or a report containing the same information. Form DSS-0915 is due annually.~~

5-006.04 Director Qualifications: The director must be at least 19 years of age and of good moral character, and must meet one of the following requirements:

1. Hold a bachelor's degree from an accredited college or university in education or child/youth development;
2. Hold a bachelor's degree from an accredited college or university and at least six credit hours in education or child/youth development;
3. Have an associate degree from an accredited college or university in education or child/youth development;
4. Have a Child Development Associate Credential;
5. Have successfully completed six credit hours or 36 clock hours of Department-approved training in administration, education, or child/youth development. Business courses may be included, not to exceed one-half of the credit or clock hour requirements; or
6. Have a high school diploma or GED and 3000 clock hours of verifiable experience in organized group activities for children age birth to 13 as indicated by a positive reference from a former employer or supervisor.

~~9-003 Director Qualifications: The director shall have reached the legal age of majority and have a high school diploma or General Education Diploma. In addition, the director shall meet one of the following requirements:~~

1. ~~Have a written Department-approved plan to acquire at least six semester hours, or the equivalent thereof, or 36 clock hours of Department-approved in-service in the area of child development or early childhood education in a period not to exceed 12 months;~~
2. ~~Have a minimum of six credit hours, or the equivalent thereof, in early childhood education or child development;~~
3. ~~Have a minimum of two years of verifiable experience in preschool education, as indicated by a positive reference from a parent of an enrolled child, a former employer/ supervisor, primary education teacher, early childhood teacher, or child development teacher;~~
4. ~~Have a Child Development Associate Credential; or~~
5. ~~Hold a certificate of training, community college certificate, associate degree, or bachelor degree in fields related to the education of children from birth to eight years (e.g., child development, early childhood education, Montessori certificate, elementary education, or special education).~~

5-006.05 Teacher Qualifications

5-006.05A Certificated Teachers: An individual who holds a valid Nebraska Teaching Certificate and who is employed as a staff member or **used as a** volunteer at a licensed preschool that is on the premises of an accredited **or approved** school will be considered to have met the qualifications, background checks, health information, and training requirements in these regulations.

5-006.05B Non-Certificated Teachers: To be employed as a teacher at a licensed preschool, an individual who is not a certificated teacher must be at least 18 years

of age and of good moral character, and must meet one of the following requirements:

1. Hold a bachelor's degree from an accredited college or university in education or child/youth development;
2. Hold an associate's degree from an accredited college or university in education or child/youth development;
3. Have a Child Development Associate Credential; or
4. Have a high school diploma or GED; and
   (1) 1500 verified clock hours of experience in organized group activities for young children as indicated by a positive reference from a former employer or supervisor; or
   (2) Submit a written plan for Department approval to acquire at least three credit hours or 45 clock hours of training in administration, education, or child/youth development, in a period not to exceed six months. The licensee must maintain a copy of the written plan and Department approval for Department review.

~~9-007 Teacher Qualifications: Teachers shall have reached the legal age of majority and have a high school diploma or General Education Diploma. In addition, each teacher shall meet one of the following requirements:~~

~~1. Have a written Department-approved plan to acquire at least three semester hours, or the equivalent thereof, or 15 clock hours of Department-approved in-service in the area of child development or early childhood education in a period not to exceed 12 months;~~
~~2. Have a minimum of three credit hours, or the equivalent thereof, in early childhood education or child development;~~
~~3. Have a minimum of one year of verifiable experience in preschool education, as indicated by a positive reference from a former employer/supervisor or primary education teacher, early childhood teacher, or child development teacher;~~
~~4. Have a Child Development Associate Credential; or~~
~~5. Hold a certificate of training, community college certificate, associate degree, or bachelor degree in fields related to the education of children from birth to eight years (e.g., child development, early childhood education, Montessori certificate, elementary education, special education).~~

~~At least 50 percent of the preschool staff shall meet teacher qualifications.~~

5-006.06 Substitute, Uncompensated Parent Helper, and Volunteer Qualifications

1. The director may hire substitute staff. The substitute must meet the age requirement for the position s/he is assuming and be of good moral character. If the substitute works over 20 hours per week and is counted in the staff-to-child ratio, the substitute must meet the staff requirements for the position s/he is assuming.

2. The director may use uncompensated parent helpers. Uncompensated parent helpers may be counted in the staff-to-child ratio. Uncompensated parent helpers must be supervised by the director or a teacher and must not be left alone with any children other than their own.
3. The director may use volunteers. Volunteers do not count in the staff-to-child ratio. Volunteers must be supervised by the director or a teacher and must not be left alone with any children other than their own.

~~9-002 Staff Qualifications: The director shall make available to the Department of Health and Human Services, written verification of meeting staff qualifications (i.e., copy of transcript, letter of verification, grade reports, reference letters, certificates).~~

~~Within 30 days of hiring, each staff member shall provide a "Health Information Report" (DSS-0915) current within six months of hiring or a report containing the same information. Form DSS-0915 is due annually.~~

~~Substitute staff and volunteers are exempt from staff qualifications (except for behaviors injurious to or which may endanger (9-003)) and in-service requirements.~~

5-006.07 Director Orientation and Training: When a new preschool director is employed, that individual must complete Department-approved director orientation within 30 days of starting employment. The director must also complete:

5-006.07A Safety Training: The director must complete training developed by the Early Childhood Training Center (ECTC) on child abuse/neglect and reporting. Any proposed equivalent training must be approved by the Department.

1. In ~~**programs**~~ **preschools** licensed on or after the operative date of these regulations, the director must complete the training within three years of the date of provisional licensure and every five years thereafter.
2. In ~~**programs**~~ **preschools** licensed before the operative date of these regulations, the director must complete the training within three years of that operative date and every five years thereafter.
3. This training counts toward the annual training requirement.

5-006.07B Nebraska's Early Learning Guidelines Training: The director must complete training in the seven domains of Nebraska's Early Childhood Learning Guidelines developed by the ECTC. Any proposed equivalent training must be approved by the Department. The domains are: Approaches to Learning, Creative Arts, Health and Physical Development, Language and Literacy Development, Mathematics, Science, and Social and Emotional Development.

1. In programs licensed on or after the operative date of these regulations, the director must complete training in one domain within four years of the date of provisional licensure and one domain annually thereafter.

2. In programs licensed before the operative date of these regulations, the director must complete training in one domain within four years of that operative date and one domain annually thereafter.
3. This training counts toward the annual training requirement.

5-006.08 Teacher Training: The licensee must ensure that teachers employed at the preschool complete the following training:

5-006.08A Safety Training: Teachers must complete training developed by the Early Childhood Training Center (ECTC) on Sudden Infant Death Syndrome (SIDS), safe sleep, shaken baby syndrome, and child abuse/neglect and reporting. Any proposed equivalent training must be approved by the Department.

1. Beginning three years after the operative date of these regulations, 50% of all teachers employed by the preschool must have completed this training.
2. This training counts toward the annual training requirement.

5-006.08B Nebraska's Early Learning Guidelines Training: Teachers must receive training in the domains of Nebraska's Early Childhood Learning Guidelines developed by the ECTC. Any proposed equivalent training must be approved by the Department.

1. Beginning four years after the operative date of these regulations, 25% of all teachers employed by the preschool must have completed training in at least one domain.
2. Beginning five years after the operative date of these regulations, 50% of all teachers employed by the preschool must have completed training in at least one domain.
3. Beginning six years after the operative date of these regulations, 75% of all teachers employed by the preschool must have completed training in at least one domain.

5-006.08C Evidence of Teacher Training: The director must maintain a list of all teachers for each calendar year that identifies which individuals have completed:

1. Orientation training;
2. Safety training;
3. Nebraska Early Learning Guidelines Training;
4. Clock hours of annual training; and
5. CPR and First Aid training.

5-006.09 Staff and Volunteer Orientation and Training

5-006.09A Orientation: When new staff or volunteers are employed, those individuals must be provided with orientation prior to their having direct responsibility for the care of children. The orientation must include:

1. Job duties and responsibilities;
2. Infection control practices including proper hand washing techniques, personal hygiene, and disposal of infectious material;
3. Information on abuse, neglect and sexual abuse of children and the state's reporting requirements;
4. Preschool regulations;
5. Evacuation plans in the event of fire;
6. Safety plans in the event of a tornado;
7. Emergency preparedness in the event of a natural or man-made disaster; and
8. The preschool's method of interacting with children and discipline policies.

5-006.09B Transportation Training: Individuals who transport children on behalf of a preschool must:

1. Receive and maintain a valid certificate of completion of the "Safe Kids Buckle Up" program within 90 days of employment and every five years thereafter. Individuals who transport children who were employed before the operative date of these regulations must receive and maintain a valid certificate of completion for "Safe Kids Buckle Up" within one year and every five years thereafter.
2. Maintain valid certificates for Cardiopulmonary Resuscitation (CPR) and First Aid Training. Individuals who transport children who were employed before the operative date of these regulations must complete CPR and First Aid Training within one year and maintain valid certificates thereafter.

~~9-015 Transportation: The director shall ensure that -~~

1. ~~Safety restraints are available and used for each child transported. All children three years or younger or under 40 pounds must be correctly secured in a federally approved child safety seat. All children age 4 or older or a weight of 40 pounds or more must be secured in a safety belt. Restraints are not required for children transported by public transportation or school bus.~~
2. ~~The number of children transported does not exceed the seating capacity indicated by the vehicle manufacturer.~~
3. ~~All doors on the vehicle are locked when the vehicle is in motion, except for the driver's door.~~
4. ~~Parent or guardian-signed permissions are obtained to allow the preschool to transport children. These permissions must be kept on file.~~
5. ~~If more than six children are transported, at least two adults are present in the vehicle.~~

5-006.09C Annual Training: Each staff member, not including substitutes or volunteers, who provides direct care to children must obtain a minimum of 12 clock hours of training annually. Staff who work 20 hours or less must obtain six clock hours of training annually.

5-006.09C1 Training must include but is not limited to the following topics:

1. Safe Environments;
2. Healthy Environments;
3. Learning Environments;
4. Physical Development;
5. Cognitive Learning;
6. Communication;
7. Creative Learning;
8. Self-Esteem;
9. Social Development;
10. Guidance;
11. Family Relationships;
12. Program Management; and
13. Professionalism.

Audio, video, and reading material specific to one or more of these training topics will count toward the annual training requirement only if an Independent Learning Summary is completed on a form provided by the Department. The actual length of audio and video material will be counted, and 50 pages of text will be considered equal to one clock hour of training.

Two hours of CPR and one hour of First Aid will be counted toward the annual training requirement in the year each is taken.

5-006.09C2 Each clock hour spent participating in any of the following types of activities counts toward the annual training requirement:

1. Preschool-sponsored training;
2. Workshops and conferences;
3. College courses;
4. Non-credit course work; and
5. Adult education courses.

5-006.09D CPR and First Aid Training

1. CPR training must be obtained from an entity that has been approved by the Nebraska Board of Emergency Medical Services. The

Department will provide the program with information about approved CPR courses.

2. At least one staff member with current CPR and First Aid training must be on the premises at all times during the hours/days of operation.
3. The CPR card and documentation of First Aid training must be available upon request.

~~9-007.01 In-Service Requirements: Each teacher shall obtain at least two clock hours of in-service annually for each full day per week in which s/he teaches. (For example, if a teacher teaches four half days per week, s/he would be required to obtain four clock hours each year.)~~

~~Each in-service hour for teaching staff must be specifically related to the care or teaching of children.~~

~~Each hour spent participating in any of the following types of activities counts toward yearly in-service requirements:~~

~~1. Staff orientation;~~
~~2. Staff sponsored in-service;~~
~~3. Workshops;~~
~~4. College courses;~~
~~5. Non-credit course work;~~
~~6. Adult education courses; and~~
~~7. Department-approved reading material.~~

~~Written documentation must be available for each of the above types of training.~~

5-006.10 Employee Records Requirements: The licensee must ensure the following employee records are maintained, updated as needed, and made available to the Department upon request. Records must be maintained for at least one year after an employee leaves the preschool.

5-006.10A Records for all staff, except substitutes and volunteers, must include:

1. Name;
2. Address and telephone number;
3. Social Security number;
4. Date of employment/termination;
5. A completed Report of Law Enforcement Contact;
6. Documentation of a criminal history record check;
7. A completed Health Information Report;
8. Documentation of Nebraska registry checks with no adverse findings;
9. Documentation that the individual has met the qualifications for the position;

10. Documentation of orientation training and required ongoing training; and
11. Documentation that the individual has read and understands these regulations.

5-006.10B Substitutes: Records for each substitute must include:

1. Name;
2. Address and telephone number;
3. Social Security number;
4. Documentation that the individual has met the qualifications for the position;
5. Documentation of a criminal history record check;
6. A completed Report of Law Enforcement Contact;
7. Documentation of Nebraska registry checks with no adverse findings; and
8. Documentation that the individual has read and understands these regulations.

5-006.10C Uncompensated Parent Helpers and Volunteers: Records for each uncompensated parent helper and volunteer must include:

1. Name;
2. Address and telephone number;
3. Start date;
4. A completed Report of Law Enforcement Contact; and
5. A written schedule that includes the hours and days of the week the individual serves as a volunteer.

~~9-001.01 Staff Records: Staff records must include, but are not limited to -~~

~~1. The name, address, and telephone number of each staff member;~~
~~2. "Health Information Report," (Form DSS-0915), or a report containing the same information;~~
~~3. A statement from the director certifying that s/he has verified staff qualifications of all staff before hiring;~~
~~4. Dates of employment and separation; and~~
~~5. A statement from each staff person, including volunteers, substitutes, and the director, providing information concerning any felony and/or misdemeanor arrests and convictions and of any pending criminal charges. The statement must be signed and dated.~~

5-006.11 Child's Record: A Child's Record must be completed before the child's enrollment. The record must be kept current and available for review upon request by the Department. A Child's Record form may be used or a form may be created and must contain the following information for each child:

1. Name of child;
2. Birth date of child;
3. Enrollment date;
4. Date care ceased, if applicable;
5. Parent or guardian's home address and telephone number;
6. Parent or guardian's employment address and telephone number;
7. Individual to whom the child may be released by the staff;
8. Individual who will take responsibility for the child in an emergency when the parent or guardian cannot be reached;
9. Consent to contact a physician in an emergency;
10. Current health status of the child; and
11. List of child's allergies and intolerance to food, insect bites, or stings, or other factors that result in a medical reaction, and clear instructions in the event of an exposure to the factor.

~~(9-000) The preschool shall have on file a completed "Children's Record," (Form DSS-0363), or a form which contains at least the same information, for each child within 30 days of the child's first day of attendance. This information must be available to Department staff upon request.~~

5-006.12 Parent Information Brochure: At the time of enrollment, the licensee must give the parent(s) of each enrolled child a Parent Information Brochure provided by the Department. The licensee must maintain receipts signed and dated by the parent and make the receipts available for review by the Department.

5-006.13 Description of Preschool Services and Policies: The licensee must ensure that the preschool has a written description of preschool services and written policies, and that they are available to the Department. Copies of both must be given to all staff and the parents of all enrolled children, except that the preschool is not required to give parents the preschool's personnel policies. The licensee must maintain receipts signed and dated by the staff and parent and make the receipts available for review by the Department.

5-006.13A Description of Services: The preschool must have a written description of the range of services available. The written description must include:

1. Ages of children served;
2. Days and hours of operation;
3. A description of the preschool's child development program;
4. Special services provided;
5. What is expected of parents;
6. Name, address, and phone number of the preschool's owner or authorized representative; and
7. Information provided by the Department that describes how regulations can be accessed, how child care licensing staff can be contacted, and how complaints can be made;

5-006.13B Preschool Policies: The preschool must have written policies on:

1. Exclusion of ill children;
2. Conditions for suspending and terminating care;
3. Fees/contract information for parents;
4. Verifying the identification of individuals approved to remove children from the preschool;
5. Parent grievances, questions, or concerns; and
6. Personnel policies, including:
   a. Staff qualifications;
   b. Staff training requirements;
   c. Staff discipline procedures; and
   d. Staff immunization and exclusion of ill staff.

5-006.14 Licensed Capacity, Staff–to-Child Ratio, and Staffing Requirements

5-006.14A Licensed Capacity: The number of children in care at any one time must not exceed the preschool's licensed capacity. Licensed capacity will be determined by the Department based on available space and the capacity authorized by the State Fire Marshal or delegated authority. Whichever number is smaller will be the licensed capacity of the preschool.

In determining whether the licensed capacity of the preschool has been exceeded, all children are counted except children who have left the preschool for an activity and will not be returning that day.

5-006.14B Staffing Requirements

1. Each room where children are receiving care must have a teacher who is involved with the direct care of children.
2. At least 50 percent of the preschool staff must meet teacher qualifications.

5-006.14C Staff-to-Child Ratio: The preschool must maintain accurate staff and daily attendance records to verify compliance with staff-to-child ratios. Compliance with staff-to-child ratios is determined on a preschool-wide basis.

Only staff involved in the direct care of children are counted. The appropriate staff-to-child ratios must be met at all times, as follows.

Age of Children	Number of Children in Care	Number of Staff Required
3 years	10	1
4, 5, and 6 years	12	1

5-006.15 Communicable Diseases: The Department will provide the ~~**program**~~ **preschool** with information about communicable diseases to assist the program in carrying out its responsibilities.

5-006.15A Notification to Parents: The licensee/director must notify parents of all enrolled children of any case of any **reportable** communicable disease on the same day the licensee is informed of or observes the illness, unless otherwise directed by the health authority. The health authority is the local health department for the area. Proper notification includes:

1. Notification to parents of children in attendance;
2. Notification to parents of enrolled children who are not in attendance on that day; and
3. Posting notice of the outbreak in a conspicuous place.

5-006.15B Confidentiality: Names of ill children must not be released to anyone except health authorities, unless parents have given their permission.

5-006.15C Health Authority: The preschool must follow all directives given to the licensee by the health authority in the event of a communicable disease outbreak.

5-006.16 Children Excluded Due to Illness: The preschool must have a written policy that identifies the circumstances under which children would be excluded from preschool due to illness. To assist in writing the policy, the Department will provide the licensee with materials that include recommendations on:

1. Exclusion based on specific conditions such as fever, diarrhea, vomiting, etc.; and
2. Exclusion based on specific contagious and infectious diseases such as chickenpox, measles, mumps, etc.

The licensee must enforce the program's exclusion policy and make it available to the Department and to the parents of enrolled children.

5-006.17 Immunizations: Within 30 days of a child's enrollment, the licensee/director must obtain documentation of the child's immunization record. Immunization records must be available for review upon request by the Department and updated each time the child receives additional immunizations. Each child's immunization record must include:

1. Documentation of age-appropriate immunization;
2. Certification by a physician, advanced practice registered nurse, or physician assistant that immunization is not appropriate for a stated medical reason; or
3. A written statement that the parent or guardian does not wish to have the child immunized and the reasons for that decision.

5-006.17A Immunization Report: The licensee must comply with all state statutes and regulations (Neb. Rev. Stat. §§ 71-1913.01 to 71-1913.03 and 173 NAC 4) regarding immunization status of all enrolled children. This includes annual reporting to the Department as specified in 173 NAC 4. The Department will provide the program with materials to assist the program in carrying out its responsibilities.

~~(9-001) The preschool shall maintain copies of children's immunization records. These records will be available for review upon request.~~

~~The preschool shall comply with all Nebraska Department of Health and Human Services requirements regarding the immunization status of all enrolled children.~~

5-006.18 Supervision: Adequate and appropriate supervision must be provided to children at all times children are in attendance, including during outdoor play. Ultimate responsibility for supervision rests with the licensee.

5-006.18A Permission for Off-Premises Supervision: The licensee must ensure that parents are informed and give written permission when children will be outside the premises of the preschool and supervised by preschool staff. Written permission must be available to the Department on request.

~~(9-008) Staff shall have knowledge of where each child in attendance is at all times and be within hearing distance of all children.~~

~~Children must be accompanied by a staff person during outdoor play.~~

~~Preschool staff or any person designated by the licensee as having responsibility for children shall have the responsibility to provide adequate and appropriate supervision at all times children are in attendance. Evidence of negligent or willful lack of supervision is basis for denial of an application or suspension or revocation of the preschool's license.~~

5-006.19 Discipline: When parents are not present, the responsibility for the discipline of children in care lies only with the licensee/director or the designated substitute.

5-006.19A Unacceptable Forms of Discipline: The following actions are prohibited as a form of discipline:

1. Spanking;
2. Slapping;
3. Pinching;
4. Punching;
5. Shaking;
6. Striking with any object;
7. Use of soap, hot sauce, or other unpleasant food and non-food items;

8. Isolating a child in a locked or closed room or closet;
9. Handling roughly;
10. Biting;
11. Denial of food;
12. Forced napping;
13. Subjecting children to derogatory remarks about the child or the child's family;
14. Abusive or profane language directed at children;
15. Yelling or screaming at children;
16. Threats of physical punishment; or
17. Mechanical restraints.

5-006.19B Child Behavior That Cannot be Disciplined: Children must not be disciplined for:

1. Toileting accidents;
2. Refusal to take medication; or
3. Refusal to eat.

~~9-010 Discipline: The director shall ensure that no child is spanked, slapped, pinched, punched, shaken, struck with any inanimate object, handled roughly, or bitten as a discipline; a brief, supervised separation from the group may be used.~~

~~Staff shall not discipline children:~~

~~1. By denial of food;~~
~~2. By forced napping;~~
~~3. For toilet training accidents; or~~
~~4. With subjection to derogatory remarks about themselves or their families, abusive or profane language, yelling or screaming, or threats of physical punishment; or~~
~~5. For refusing to take medication.~~

5-006.19C Use of Time Out: Separation from the group, if used, must be brief and appropriate for the child's age. The time out period must:

1. Take place within a safe, lighted, and well ventilated area;
2. Occur within direct vision of staff; and
3. Not exceed more than one minute for each year of the child's age. If the time a child spends in time out is extended, it must be carried out as indicated by a behavioral management plan developed and monitored by a licensed or certified professional qualified to identify the special needs of a child, as having a physical, emotional, or social developmental delay or impairment.

5-006.19D Use of Physical Hold: Preschool staff may restrict a child's movement by the use of a physical hold. A physical hold may be used only:

1. When the child is hurting him/herself, others, or property;
2. When the hold does not prevent the child from breathing or speaking; and
3. Until the child is calm and able to demonstrate reasonable control of his/her behavior.

5-006.19D1 Notification and Documentation: The licensee/director must notify the child's parents **within 24 hours of the physical hold** when a physical hold is used on their child. Written documentation of each use of a physical **hold** must be available for review by the parents and the Department. The documentation must include:

1. Child's name;
2. Date of the incident;
3. Description of the incident; and
4. Names of the staff involved.

5-006.19E Use of Restraints: The use of restraints is prohibited except under the following conditions:

1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints;
2. The training curriculum must be accepted by the Department;

3. The training must be taught by a certified trainer; and
4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:

   a. Child's name;
   b. Date of the incident;
   c. Description of the incident; and
   d. Names of the staff involved.

5-006.20 Prohibited Language, Materials, and Actions: Children of any age must not be exposed to:

1. Profanity used by staff;
2. Sexually explicit material;
3. Acts of violence toward a person or animal; or
4. Acts of racism.

5-006.21 Child Development Program: The licensee must provide an age-appropriate program that addresses these developmental domains:

1. Approaches to Learning;
2. Creative Arts;
3. Health and Physical Development;
4. Language and Literacy Development; and
5. Social and Emotional Development.

Information about the program must be given to parents and the Department upon request.

5-006.21A Toys, Equipment, and Reading Material: The licensee must ensure that the preschool has a sufficient number of age-appropriate toys, equipment, and children's books so at any one time, each child enrolled at the preschool can be individually involved. Toys and reading material must be offered to children and must be replaced as needed.

~~9-011 Materials and Equipment: The licensee shall ensure that -~~

1. ~~Enough age-appropriate play materials are provided so that, at any one time, each child present can be individually involved.~~
2. ~~Play materials, equipment, and furnishings are easily cleanable, kept clean and in good repair, have no sharp edges, and have no rusty or loose parts.~~
3. ~~Furniture and equipment is arranged so as not to interfere with exits or cause a safety hazard for children.~~
4. ~~Stationary outdoor equipment such as a climbing apparatus, swings, or slides are located away from traffic areas in the play yard and securely anchored, unless designed to be portable.~~
5. ~~Swing seats are made of a pliable material, not hard plastic, wood, nor metal.~~
6. ~~The area under climbing equipment, swings, slides, and other equipment from which children might fall, is of a resilient material such as sand, pea gravel, dirt, grass, or rubber matting.~~

5-006.22 Wading and Swimming Activities: Children must be accompanied, kept safe, and adequately supervised during swimming and wading activities while in care.

5-006.22A Prohibited Water Sources: Children must not be allowed to use the following water sources for wading or swimming activities:

1. Natural bodies of water;
2. Hot tubs, spas or saunas;
3. Livestock tanks; or
4. Decorative ponds.

5-006.22B Wading: If the licensee allows children to participate in wading or other water play activities:

1. Children must be accompanied and directly supervised; and
2. The licensee must ensure that the wading pool is drained and sanitized daily and is inaccessible to children when not in use.

5-006.22C Permission for Non-Preschool-Supervised Activities Off the Premises: If the licensee does not allow children to participate in swimming activities while in care, but a parent requests that their child leave the premises to go to a swimming pool, the licensee must obtain a written and signed statement from the parent that is kept on file on the premises and available to the Department upon request. The statement must indicate that the child is allowed to leave care and must acknowledge that the licensee is not responsible for supervision.

5-006.22D Permission for Preschool-Supervised Activities Off the Premises: If the licensee allows children in care to participate in swimming activities under the supervision of preschool staff but off the preschool's premises, the licensee must obtain a written, signed, and dated statement from the parent that is updated annually. The statement must be available to the Department upon request, and must indicate the following:

1. The parent gives permission for their child(ren) to leave the preschool's premises for swimming/wading;
2. The location of the pool where the child is allowed to swim; and
3. Whether the child is allowed to swim in water over his/her head.

5-006.22E Licensure of Swimming Pools: The licensee must ensure that swimming pools off the preschool's premises where children are taken are licensed by the Department.

5-006.22F Water Safety: When the depth of a pool's water is over four feet, the licensee must ensure that someone who has satisfactorily completed a swimming water safety course is on duty at all times children in care are at the pool.

5-006.22G Pool on the Premises Not Used by Children in Care: The licensee must meet the following requirements if an above-ground or in-ground swimming pool is on the premises that children in care are not allowed to use:

1. The pool must be enclosed with a fence that is at least four feet high and flush with the ground;
2. Above-ground pools must have non-climbable side walls;
3. When a pool is covered, the cover used must be the manufacturer's recommended cover;
4. Equipment needed to rescue a child or adult must be readily accessible; and
5. Children must be accompanied and directly supervised if the pool is located in the outdoor play area.

5-006.22H Pool on the Premises Used by Children in Care: If children in care are allowed to use a pool on the premises, the licensee must meet the requirements in 5-006.22G and:

1. Meet all requirements of a Class B pool;
2. If the depth of the water is over four feet, an individual who has satisfactorily completed a swimming water safety course must be on duty at all times children are at the pool; and
3. Maintain the following staff-to-child ratios:

	Number of Children	Number of Staff Required
Preschoolers	4	1

5-006.23 Transportation: When transportation is provided for children in care, the licensee must ensure the following conditions are met:

1. No child must ever be left alone in the vehicle;
2. Smoking is prohibited in the vehicle ~~when children are being transported~~ **used to transport children**;
3. All doors on the vehicle must be locked when the vehicle is in motion;
4. Any individual who transports children must be at least 19 years of age, and must possess a current and valid driver's license for the type of vehicle used to transport children, as verified by the Department of Motor Vehicles;
5. The vehicle used to transport children must be properly registered and insured, and must contain a first aid kit and parent contact information for each child being transported;
6. The number of children transported must not exceed the seating capacity of the vehicle as indicated by the manufacturer;
7. All children transported must be properly secured in the appropriate restraint system as required by Neb. Rev. Stat. §§ 60-6,267 and 60-6,268;
8. All car seats must be federally approved and must be the correct type for the child's age and developmental level;
9. Written permission from parents for the preschool to transport children must be obtained, kept on file, and made available to the Department;
10. Children must not be transported to any location without the prior knowledge of the parent(s), except in a medical or other emergency;
11. Children must not be transported to avoid violations of capacity or staff-to-child ratio; and
12. **Staff-to-child ratio must be maintained whenever children are in care;**
13. The preschool must have a written transportation policy that is given to all staff who transport children and is available to parents and the Department upon request. The transportation policy must describe:

a. Restraints and safety equipment;
b. Procedures to ensure children are never left alone in a vehicle at any time; and
c. Emergency procedures in the event a child becomes ill, the vehicle breaks down or is involved in an accident, or other emergencies.

~~9-015 Transportation: The director shall ensure that -~~

1. ~~Safety restraints are available and used for each child transported. All children three years or younger or under 40 pounds must be correctly secured in a federally approved child safety seat. All children age 4 or older or a weight of 40 pounds or more must be secured in a safety belt. Restraints are not required for children transported by public transportation or school bus.~~
2. ~~The number of children transported does not exceed the seating capacity indicated by the vehicle manufacturer.~~
3. ~~All doors on the vehicle are locked when the vehicle is in motion, except for the driver's door.~~
4. ~~Parent or guardian-signed permissions are obtained to allow the preschool to transport children. These permissions must be kept on file.~~
5. ~~If more than six children are transported, at least two adults are present in the vehicle.~~

5-006.24 Medications: The licensee must ensure the following conditions are met when preschool staff give or apply medication.

5-006.24A Giving or Applying Medication: Any staff who gives or applies medication must do so in accordance with the "Five Rights" as set out in the Medication Aide Act. The Five Rights are:

1. The right drug;
2. The right recipient;
3. In the right dose;
4. By the right route; and
5. At the right time.

5-006.24B Competence to Give or Apply Medication: Parents or any licensed health care professional are responsible for determining if preschool staff are competent to give or apply medication. Any licensed health care professional, as directed by the prescribing health professional, is competent to give or apply medication under any circumstances **as long as it is within the scope of practice of that health care professional**. The preschool director has the responsibility to assess the ability of staff to give or apply medication.

5-006.24C Confidentiality: Any staff who gives or applies medication must not disclose information about a child's medication or physical or mental health condition unless such information is needed to protect the health of other children or staff. The use of a posted medication sign-in sheet does not violate

confidentiality if the parent has been advised in writing that the parent has the option of using a private method of informing preschool staff of the child's medication needs.

5-006.24D Written Permission and Instructions: Any staff who gives or applies prescription or non-prescription medication may do so only with prior written permission and written instructions from a parent. Staff must comply with the instructions provided by the parent or inform the parent the medications will not be given or applied.

1. Any error in the giving or applying of medication must be reported to the parent.
2. The dosage must not exceed that which is printed on the label.
3. Expired medication must not be given or applied to a child and must be returned to the parent or destroyed.

5-006.24E Unusual Circumstances: The licensee must obtain a written statement from the licensed health care professional who prescribed the medication allowing preschool staff to give the medication when:

1. Any prescription medication is given or applied as needed (PRN); or
2. By a route other than oral, topical, inhalant, or instillation.

The written statement must describe the route and what symptoms need to exist in order for the medication to be given or applied.

5-006.24F Hand Washing: All individuals must properly wash their hands before giving or applying any medication. If handling any bodily fluids is involved, individuals must properly wash their hands after giving or applying medication.

5-006.24G Storage: All medications must be kept in proper storage. This includes:

1. All prescription and non-prescription medications must be kept in locked storage at all times children are in care;
2. Separate locked storage must be provided for medications requiring refrigeration;
3. All medications must be kept in the original container and stored according to instructions, clearly labeled for a named child, and returned to the parent when no longer needed; and
4. Over-the-counter, non-toxic topical ointment such as lip balm, petroleum jelly, sun block and diaper ointment must be kept out of the reach of children.

5-006.24H Record-Keeping: The licensee/director must maintain a record as to the time and amount of medication given or applied.

~~9-012 Child Health~~

~~9-012.01 Delivery of Medication: Any child care provider, center, or preschool staff person who gives or applies medication shall do so in accordance with the "5 Rights" as required in Nebraska Statutes 71-6718 through 6742. These are:~~

~~1. The right drug;~~
~~2. The right recipient;~~
~~3. In the right dose;~~
~~4. By the right route;~~
~~5. At the right time.~~

~~9-012.02 Parental Responsibility: Parents or any licensed health care professional shall determine if child care providers or center and preschool staff are competent to give or apply medication. Center and preschool directors shall assess the ability of staff to give or apply medication safely.~~

~~9-012.03 Confidentiality: Any child care provider, center or preschool staff person who gives or applies medication shall not disclose information about a child's medication unless such information is needed to protect the health of other children or staff.~~

~~9-012.03A The use of a posted medication sign in sheet does not violate 9-012.03 if the child care provider, center, or preschool staff has advised the parent in writing that the parent has the option of using a private method of informing the preschool staff of the child's medication needs.~~

~~9-012.04 Written Permission and Instruction: All child care providers, center, or preschool staff shall give or apply medication both prescription and non-prescription, only with prior written permission and written instructions from a parent. Child care providers, center or preschool staff shall comply with the instructions provided by the parent. Medication shall be in the original container, stored according to instructions, clearly labeled for a named child, and returned to the parent when no longer needed. The dosage will not exceed that which is printed on the label. Expired medication shall not be given or applied to a child and shall be returned to the parent. The preschool shall maintain a record as to the time and amount of medication given or applied.~~

~~9-012.04A Report to Parents: Any error in the giving or applying of medication shall be reported to the parent.~~

~~9-012.05 Unusual Circumstances: There must be a written statement from the licensed health care professional who prescribed the medication allowing the provider to give the medication when:~~

~~1. Any prescription medication is given or applied as needed (PRN); or~~
~~2. By a route other than oral, topical, inhalant, or instillation.~~

5-006.25 Emergency Preparedness

5-006.25A Telephone: A working, non-coin operated telephone must be available on the premises at all times. Emergency telephone numbers, including fire, rescue, police (or 911) and Poison Control, must be prominently posted.

5-006.25B Fire and Tornado Drills: Fire and tornado drills must be practiced with the children and staff. Written documentation of drills must be kept and available for review by the Department, and must include the date and time of the drill and the number of children and staff present.

1. Fire drills must be completed a minimum of ~~four times per year in alternating months~~ **once each month the preschool is operating.**
2. Tornado drills must be completed a minimum of two times per year during the months of March through September.

5-006.25C Fire and Tornado Safety Diagrams: Fire and tornado safety diagrams must:

1. Show the layout of the licensed preschool area(s);
2. Be prominently posted and visible in each room where care is provided;
3. Include how the evacuation of children with special needs will be conducted;
4. Include fire evacuation routes; and
5. Include tornado safety locations.

5-006.25D Disaster Preparedness: The licensee must have a written plan that addresses:

1. Evacuating and moving children to a safe location in the event of a fire, tornado, flood or other natural or man-made disaster;
2. Notification of parents of children in care of an emergency;
3. Reunification of parents with their children in the event of an emergency that requires evacuation; and
4. How children with special needs will be safe in the event of a disaster including evacuation and reunification with the parent.

5-006.25E Notification to the Department Regarding Emergencies: The licensee/director must notify the Department within 24 hours or next business day of the following occurrences at the preschool:

1. The death of a child;
2. Any accident or injury to a child which requires hospitalization or treatment at a medical facility;
3. **When a child has been missing, lost, or left unsupervised on or**

off the premises; and/or

4. An emergency or disaster that results in damage to the preschool or the inability of the licensee/director to comply with regulations.

~~(9-001) The director shall report to the Department of Health and Human Services, within 24 hours, the death of any child on the premises or any accident to a child while on the preschool premises which requires hospitalization or extensive medical attention.~~

5-006.25F First Aid Kit: A first aid kit must be available on the premises. It must be inaccessible to children. If any poisons or medications are stored in the kit, it must be kept in locked storage as required in 5-006.23G. The first aid kit must include the following supplies:

1. Fever thermometer;
2. Soap;
3. Bandages;
4. Sterile gauze pads;
5. First aid tape;
6. Scissors; and
7. Disposable gloves.

~~9-013 Safety and Emergency: The director shall develop a written fire evacuation plan, (except in one-room facilities), and a tornado safety plan to be posted in a conspicuous place in each licensed area. A tornado drill must be practiced during the second semester, with dates and times recorded.~~

~~At least one staff member who has received first aid training and CPR training must be on duty during all times children are present, as evidenced by a staffing chart. The CPR instructor must be certified by the American Heart Association, American Red Cross, the National Safety Council, or Emergency Medical Planning America (Medic First Aid). Written verification of current training must be available.~~

~~The effective dates of the CPR training will be determined by the certified instruction program. The effective dates of the First Aid training will be determined by the instruction program. If dates are not indicated on the First Aid certificate, the training will be considered valid for three years.~~

~~The director shall ensure that -~~

1. ~~Emergency phone numbers for the following are posted near the phone: fire, police, hospital, and ambulance (or 911 for those services), and Poison Control.~~
2. ~~A vehicle is immediately accessible for use by staff members for emergency purposes if the 911 emergency phone is not available.~~
3. ~~A first aid kit containing the following is available for treatment of minor injuries but inaccessible to children: fever thermometer; soap; bandaids or tape; sterile gauze pads; and scissors.~~

~~4. Electrical outlets in the licensed area which are within reach of the children are covered with safety caps.~~

5-006.26 Environmental Services: The licensee must ensure that the preschool program is provided in a safe, clean, comfortable environment. Every area and building on the same premises used for preschool must comply with these regulations.

5-006.26A Housekeeping and Maintenance: The licensee must ensure that the necessary housekeeping and maintenance are provided to protect the health and safety of children in care. The preschool and grounds must be kept clean, safe, and in good repair.

1. The preschool and any building on the premises in or around areas where children are present must be kept free of exposed lead-based paint surfaces that are flaking, peeling, or chipped.
2. Rooms, walls, floors, and ceilings must be kept clean, dry, in good repair, and free of odor.
3. Heating, ventilation, and lighting in all rooms used for preschool must be adequate to protect the health of children.
4. The licensee must equip and maintain the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin. All doors opening to the outside must be self-closing (except sliding doors) and all windows used for ventilation must be screened. The preschool must have effective screening of all openings to the outside when flies or other flying insects are present.
5. All garbage and rubbish must be disposed of in a manner that minimizes odor and the transmission of infectious diseases, and prevents the attraction of rodents, flies, and all other insects and vermin. This includes:
   a. Using rubbish containers, both indoor and outdoor, for garbage and rubbish that are watertight, have tight fitting covers, and are fly and rodent proof;
   b. Keeping all garbage and rubbish containers clean; and
   c. Not burning garbage on the premises.
6. If carpeting is used in a bathroom, it must be removable, washable, and non-shag.

~~9-016.01 Facility: Each preschool director shall ensure that -~~

~~1. All floors, walls, and ceilings are clean, dry, and maintained in good repair.~~
~~2. Facility doors in the licensed area opening to the outside are self-closing (except for sliding doors) and all facility windows used for ventilation purposes are screened.~~
~~3. The temperature of rooms where children are present is maintained at least 65 degrees Fahrenheit minimum temperature.~~

4. ~~All rooms are adequately lighted with a minimum of 20 foot-candle power (measure of illumination).~~
5. ~~There is no carpeting in bathrooms. Carpeting is prohibited in new, remodeled, and renovated kitchens. Existing carpeting in kitchens may be accepted, provided it is in good repair and properly maintained at all times.~~
6. ~~The facility has conveniently located toilet facilities at a ratio of one stool per 15 children two years of age and above. Toilet and toilet training chairs must be conveniently located, cleaned, and disinfected daily, and in good repair.~~
7. ~~Each toilet is of suitable height or equipped with a steady platform and equipped to be easily and safely used by children.~~
8. ~~Doors to the toilet room opening directly from food service areas are self-closing and tight-fitting.~~
9. ~~A lavatory for every 15 children with hot and cold running water and soap is available. Each lavatory must be of suitable height or equipped with a steady platform or steps to be safely used by the children.~~
10. ~~A sink is located within 60 feet of each toilet and/or diapering area.~~
11. ~~The use of a common drinking container is prohibited. Drinking water must be provided by sanitary drinking fountains or individual cups.~~
12. ~~Common grooming items must not be used.~~
13. ~~Only single service towels and washcloths are used. The use of a common towel and washcloth is prohibited. Soap must be available.~~
14. ~~No adult or child resumes work or play after using the bathroom, changing diapers, or handling pets without first washing his/her hands.~~
15. ~~All child care providers, center, or preschool staff shall wash hands before giving or applying any medication. If handling any bodily fluids are involved, caregivers must also wash hands after giving or applying that medication.~~

~~9-016.03 Sewage and Garbage: The director shall ensure that -~~

1. ~~All garbage and refuse is collected, stored, and disposed of in a manner which will not create a nuisance, provide a breeding place for flies, or provide food or harborage for rodents.~~
2. ~~All containers, both indoor and outdoor, for garbage and refuse are watertight, have tight-fitting covers, and are fly and rodent proof.~~

5-006.26B Maintenance of Equipment, Fixtures, Furnishings, and Toys: The licensee must ensure that equipment, fixtures, furnishings, and toys used in the preschool are kept clean, safe, and in good repair.

1. The licensee/director must create and follow a process for routine and preventative maintenance of equipment, fixtures, furnishings, and toys so they are kept safe, in good repair, and available to meet the intended use. This includes ensuring no sharp edges, rust, or loose parts.
2. Furniture and equipment must be arranged so as not to interfere with exits.

5-006.27 Environmental Safety: The licensee is responsible for maintaining a safe and hazard-free environment to protect the health and safety of children in preschool.

5-006.27A Smoking: Smoking anywhere indoors in a preschool is prohibited at all times, unless the preschool is located in a private residence. If the preschool is located in a private residence, the licensee must ensure that:

1. No one smokes indoors during the hours of operation when one or more children who are not occupants of the residence are present; and
2. Parents are informed before enrollment if the licensee or any household member smokes.

~~9-012.06 Smoking: Preschool staff shall not smoke in the presence of children.~~

5-006.27B Alcohol and Controlled Substances

1. If the preschool is located in a private residence, alcohol as defined by Neb. Rev. Stat. § 53-103 must not be ~~present~~ **consumed** in any area used for child care whenever any child in care is present.
2. If the preschool is not located in a private residence, alcohol as defined by Neb. Rev. Stat. § 53-103 must not be ~~consumed~~ **present** in any area used for child care during the hours of operation.
3. The unlawful use or possession of controlled substances, as defined by Neb. Rev. Stat. §§ 28-401 to 28-403 and 28-439, is prohibited. Controlled substances that have not been legally prescribed must not be on the premises.

5-006.27C Animals/Pets: The licensee must ensure that any animal at the preschool does not negatively affect the children. The licensee must:

1. Have all pets examined annually by a licensed veterinarian and have documentation available;
2. Complete all vaccinations recommended by the licensed veterinarian that include, at a minimum, current rabies vaccinations for dogs, household cats, and ferrets, and have documentation available;
3. Have provisions for pet care necessary to prevent the acquisition and spread of fleas, ticks and other parasites; and
4. Comply with any state or local law or ordinance relating to the care and ownership responsibilities of pets or specific breeds identified by those laws or ordinances.

5-006.27D Prohibited Animals: Exotic or unusual animals, or any animal that has **bitten or attacked anyone without provocation or has been determined by the local health authority to be dangerous**, must not be allowed on the premises during the hours of operation.

5-006.27E Other Environmental Safety Requirements

1. Surfaces must be smooth and free of sharp edges, mold, or dirt, and the environment must be kept free of other conditions which may pose a potential risk.
2. All cleaning agents, medications (both prescription and nonprescription), and poisonous materials must be kept in locked storage at all times children are in preschool. Separate locked storage must be provided for medications requiring refrigeration.
3. All firearms, other potentially hazardous weapons, weapon accessories, and ammunition must not be on the premises of the preschool, unless the preschool is located in a private residence.
   a. If the preschool is located in a private residence, all firearms, other potentially hazardous weapons, weapon accessories, and ammunition must be kept in locked storage. Firearms must be unloaded and ammunition must be stored separately from firearms.
4. Electrical outlets within reach of children under age six must be covered with safety caps, ground fault interrupters, or have safety outlets installed.
5. Shared use of the following items is prohibited:
   a. Disposable towelettes;
   b. Drinking containers, cups, or glasses;
   c. Personal care items such as toothbrushes and hair brushes; and
   d. Towels and washcloths.
6. The licensee must ensure storage that is:
   a. Clean and adequate for all personal items of staff;
   b. Clean and adequate for all personal items of children;
   c. Covered and waterproof for soiled or wet clothing; and
   d. For staff and children's storage, areas separate from where food and medication are kept.
7. Deep freezers that cannot be opened from the inside must be locked or stored in a locked room.

~~9-016.04 Storage: The director shall ensure that -~~

~~1. Enclosed waterproof containers are provided for storing soiled, wet clothing.~~
~~2. Medications in the licensed area are stored separately under lock and key.~~
~~3. Separate locked storage is provided for insecticides, cleaning, polishing, and sanitizing agents, and any other poisons kept in the licensed area. These poisons must be kept separate from food items and inaccessible to children in the licensed area.~~
~~4. Weapons and ammunition are contained in locked storage.~~
~~5. Deep freezers with self-locking latches are locked or stored in a locked room.~~

5-007 PHYSICAL PLANT STANDARDS: The preschool must be designed, constructed and maintained in a manner that is safe, clean, and functional for a preschool program. The following regulations apply to all areas of the preschool.

5-007.01 Activity Space: The preschool must have space for children's activities, free play, and quiet time. The activity space must:

1. Have furnishings to accommodate all activities and age-appropriate needs of all children in preschool;
2. Be available for all children; and
3. Have at least 35 square feet of activity space per child. Bathrooms, kitchen, isolation room, office, passageways, storage, or space occupied by built-in cabinets must not be considered when computing activity space.

~~9-014 Facility: Each preschool must have at least 35 square feet of indoor activity space for each child present. Bathrooms, kitchen, isolation room, office, passageways, storage space, or built-in cabinets are not considered when computing activity space.~~

~~The director shall ensure that a working non-coin operated telephone is available on the premises.~~

5-007.02 Plumbing, Water Supply, and Sewer Requirements

5-007.02A Plumbing: The licensee must ensure that:

1. No plumbing fixture or other device that provides a connection between a drinking water supply and a drainage, soil, waste, or other sewer pipe so as to make possible the backflow of sewage or waste water into the

   potable water supply system. Water that has been used for cooling or for any other purpose must not be returned to the system; and
2. All plumbing conforms to the local plumbing code. Where no plumbing code is in effect, plumbing must conform to national standards as provided in Neb. Rev. Stat. § 18-1915.

5-007.02B Water Supply: The licensee must ensure the preschool has and maintains an accessible, adequate, safe, and potable supply of water for drinking, food preparation, and hand washing.

1. If water is obtained from a source other than a public water supply system, the water must not contain contaminants that ~~**meet or**~~ exceed the maximum contaminant levels set for nitrate, or **total** coliform ~~**and lead**~~ for public water supply systems in 179 NAC 2-002, **and 179 NAC 3 or the lead action level set in 179 NAC 12.** The licensee must report to the Department the results of all tests that show the water

contains contaminants that ~~**meet or**~~ exceed a maximum contaminant **or action level**.

a. The water supply must be tested annually and the tests results must be available for review upon request.
b. If the water supply does not meet nitrate, **total** coliform **bacteria** and lead standards, the licensee must, until the contaminants are lowered to acceptable levels:
(1) Obtain water from a source approved by the Department; or
(2) Purchase water from a commercial source.

2. Drinking water must be provided by sanitary drinking fountains or individual or disposable cups.
   a. The use of common drinking containers is prohibited.
   b. Sanitary dispensing and disposal units must be provided for paper cups.
   c. Drinking fountains must have mouth guards with water issuing under sufficient pressure.
3. The licensee must ensure that:
   a. Running water under pressure is provided;
   b. Each hot water storage tank is provided with a pressure and temperature relief valve;
   c. Adequate water heating facilities are provided so that a sufficient amount of hot water for general cleaning as well as washing and sanitizing utensils is available at proper temperatures;
   d. Water supply to all hand washing and bathing locations is maintained between a minimum of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit; and
   e. Soap is available for hand washing.

~~9-016.02 Water Supply: The director shall ensure that water temperature at each lavatory used by the children is at least 100 degrees F, but no greater than 120 degrees F.~~

~~If the water supply is not obtained from a municipal system, the Department shall make a referral to the Department of Health and Human Services Regulation and Licensure for an inspection.~~

5-007.02C Sewer Requirements: When a municipal sewage system is not available, the licensee must:

1. Collect, treat, and dispose of sewage and all liquid waste with a sewage system that conforms to local ordinances; or
2. Where local ordinances do not exist, sewage disposal systems must comply with the regulations of the Nebraska Department of Environmental Quality.

~~9-018 Nebraska Department of Health and Human Services Regulation and Licensure Regulations: Compliance with the regulations in this section is determined by Nebraska Department of Health and Human Services Regulation and Licensure staff.~~

1. ~~The preschool shall obtain its water supply from a source which is properly located, constructed, and operated to protect it from contamination and pollution. Water must meet current standards set by the Nebraska Department of Health and Human Services Regulation and Licensure as to bacteriological, chemical, and physical tests for purity. Bacteriological and nitrate tests must be provided at least annually on private water supplies.~~
2. ~~Sewage and all liquid wastes must be properly discharged into a municipal sewage system where such system is available. If it is not available, the sewage must be collected and treated in an independent sewage system which complies with the practices recommended by local ordinances. Where local ordinances do not exist, sewage treatment systems for individual premises must comply with regulations of the Nebraska Department of Health and Human Services Regulation and Licensure.~~
3. ~~No plumbing fixture or other device which provides a connection between a drinking water supply and a drainage, soil, waste or other sewer pipe so as to make possible the backflow of sewage or waste water into the potable water supply system may be installed or remain installed. Water which has been used for cooling or for any other purpose must not be returned to the system.~~
4. ~~All plumbing must conform to the local plumbing code. Where no plumbing code is in effect, plumbing must conform to the National Plumbing Code USA A 40.8-1955.~~

5-007.03 Outdoor Play Area: The licensee must ensure that an outdoor play area is available. The area must be kept clean and safe and contain no accident hazards or debris.

5-007.03A Outdoor Play Equipment: The licensee must ensure that:

1. Stationary outdoor equipment such as climbing apparatus, swings, or slides are located away from traffic areas in the outdoor play area;
2. Stationary outdoor equipment is securely anchored, unless designed to be portable;
3. Equipment is free of rust and free of sharp and hazardous edges; and
4. Swing seats are made of a pliable material. Seats must not be made of hard plastic, wood, or metal.

5-007.03B Playground Surfaces: The area under climbing equipment, swings, slides, and other equipment from which children might fall must be of resilient material such as sand, dirt, grass, rubber matting, wood chips, or small-to-medium size gravel.

~~(9-011)~~

4. ~~Stationary outdoor equipment such as a climbing apparatus, swings, or slides are located away from traffic areas in the play yard and securely anchored, unless designed to be portable.~~

~~5. Swing seats are made of a pliable material, not hard plastic, wood, nor metal.~~
~~6. The area under climbing equipment, swings, slides, and other equipment from which children might fall, is of a resilient material such as sand, pea gravel, dirt, grass, or rubber matting.~~

~~9-017 Grounds: If an adjoining outdoor play area is used by the children, the director shall ensure that the preschool complies with the following regulations:~~

~~1. If there are unsafe areas such as drainage ditches, open storm sewers, wells, holes, railroad tracks, or heavy street traffic in or near the outdoor play area, a fence must be provided. The fence must be at least three feet high, free from sharp, hazardous edges, in good repair, and of sufficient construction to keep animals and intruders out.~~
~~2. Pets, if present, must be physically controlled or restrained, and proof of vaccination must be available for cats and dogs.~~
~~3. The grounds must be kept neat and clean, free from rodent harborages, and properly sloped or drained to prevent stagnant water collection.~~
~~4. Accident hazards, such as flammable materials, deep pools, farm and lawn equipment, must be inaccessible. Potential accident hazards such as uncovered wells, broken glass, boards containing nails, and other debris must be eliminated.~~

5-007.04 Toilets and Sinks: The preschool must have sufficient toilets and sinks available for children's use. A minimum of one operable toilet and one operable sink must be available per 15 children. Toilet rooms must be fully enclosed. A sink must be readily available to each toilet. Sanitary dispensing and disposal units must be provided for paper towels and must be installed at heights convenient for the children's use. Toilets and sinks must be:

1. Conveniently located;
2. Clean, operable, and in good repair;
3. Designed to accommodate children with special needs, when applicable; and
4. Of suitable height for children or have a safe stepstool.

5-007.04A If a door to the toilet room opens directly from a food service area, the door must be self-closing and tight-fitting.

5-007.04B The licensee must ensure that no adult or child resumes work or play after using the bathroom without first washing his/her hands.

5-007.05 Fire Safety: The licensee must maintain fire safety approval at all times.

5-008 DENIAL AND DISCIPLINARY ACTIONS

5-008.01 Grounds for Denial or Disciplinary Action: The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act;
2. Violation of an order of the Department under the Act;
3. Conviction of, or substantial evidence of committing or permitting, aiding or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:
   a. Physical abuse of children or vulnerable adults as defined in Neb. Rev. Stat. § 28-371;
   b. Endangerment or neglect of children or vulnerable adults;
   c. Sexual abuse, sexual assault, or sexual misconduct;
   d. Homicide;
   e. Use, possession, manufacturing or distribution of a controlled substance listed in Neb. Rev. Stat. § 28-405;
   f. Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and
   g, Use of a weapon in the commission of an unlawful act;
4. Conduct or practices detrimental to the health or safety of an individual served by or employed at the preschool;
5. Failure to allow an agent or employee of the Department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
6. Failure to allow state or local inspectors, investigators, or law enforcement offices access to the program for the purposes of investigation necessary to carry out their duties;
7. Failure to meet requirements relating to sanitation, fire safety and building codes;
8. Failure to comply with or violation of the Medication Aide Act;
9. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. § 28-372 and 28-711;
10. Violation of any city, village, or county rules, regulations, or ordinances regulating licensees; or
11. Failure to pay fees required under the Child Care Licensing Act.

5-008.02 Types of Disciplinary Action: The Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

1. Issue a probationary license;
2. Suspend or revoke a provisional, probationary, or operating license;
3. Impose a civil penalty of up to $5 per child, based upon the number of children for which the program is authorized to provide child care on the

effective date of the finding of violation, for each day the program is in violation;

4. Establish restrictions on new enrollment in the program;
5. Establish restrictions or other limitations on the number of children or the age of the children served in the program; or
6. Establish other restrictions or limitations on the type of service provided by the program.

5-008.02A Considerations: In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
2. The diligence exercised by the program in identifying or correcting the violation;
3. The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
4. Any previous violations committed by the program; and
5. The financial benefit to the program of committing or continuing the violation.

5-008.02B Additional Action: If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action.

5-008.03 Unpaid Fines: Any fine imposed and unpaid under the Child Care Licensing Act will constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The Department will, within 30 days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

5-008.04 Department's Emergency Power: Whenever the Department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in the program, the Department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection will be effective immediately. Any person to whom the order is directed must comply immediately, and upon application to the Department, the person will be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing, the Department will continue to enforce the order or rescind or modify it.

5-008.05 Re-Application After Revocation: A former licensee whose child care license has been revoked for any cause other than nonpayment of fees is not eligible to reapply for a license for two years. The former licensee must:

1. Apply for a provisional license;
2. Meet the requirements for provisional licensure in 5-003.01; and
3. Demonstrate to the Department's satisfaction the ability and willingness to comply with all licensing regulations.

~~3-001.12 Denial of a License: Denial of a license will be based upon any of the following circumstances:~~

1. ~~The applicant's unwillingness or inability to comply with regulations;~~
2. ~~Any entry of the applicant, child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistant teachers, and all support staff) as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry for inconclusive or court-substantiated child abuse, child neglect, or child sexual abuse;~~
3. ~~Misdemeanor or felony conviction of the applicant, child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistant teachers, and all support staff) for child abuse or neglect, child sexual abuse, or sexual assault;~~
4. ~~Any entry of the applicant, child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistant teachers, and all support staff) as a perpetrator on the Nebraska Adult Protective Services Central Registry for physical abuse or sexual assault;~~
5. ~~Conviction, admission, or substantial evidence of any offenses against children or adults including, but not limited to: physical abuse, sexual abuse, sexual assault, neglect, or endangerment by the applicant, child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistant teachers, and all support staff);~~
6. ~~Conviction, admission, or substantial evidence of one or more of the following offenses as outlined below, by the applicant, child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistant teachers, and all support staff):~~
   a. ~~Any offenses against adults excluding sexual assault and sexual abuse;~~
   b. ~~Felony conviction for the use, possession, manufacturing, or distribution of any controlled substance as defined in Nebraska Revised Statutes, Section 28-405, as it may be amended, or applicable Federal law;~~
   c. ~~A history of property crimes, including but not limited to fraud, embezzlement or theft by deception.~~

   ~~Mitigating circumstances, number of offenses, length of time since last offense, and intervention, treatment, or rehabilitation may be considered.~~
7. ~~Fire safety (inspection) disapproval;~~
8. ~~Sanitation (inspection) disapproval;~~

9. When child care/preschool is being provided in the home of the child care/preschool provider, the following applies to household members:
   a. Any entry as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry for inconclusive or court-substantiated child sexual abuse;
   b. Admission, conviction or substantial evidence of any child/adult sexual abuse, sexual assault, or crimes of a sexual nature including, but not limited to: obscene telephone calls, or any act considered to be lewd, indecent, or lascivious;
   c. Any entry as a perpetrator on the Nebraska Adult Protective Services Central Registry for sexual assault;
   d. Any household member appearing as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry for inconclusive or court-substantiated physical abuse or neglect, or as a perpetrator on the Nebraska Adult Protective Services Central Registry for physical abuse or neglect, or having a conviction, admission or substantial evidence of having perpetrated physical abuse or neglect of any child or adult must not be on the premises during the hours of operation. Failure on the part of the licensee to comply with this condition will be grounds for denial or revocation of the license.

3-001.13 Appeal Process: Pursuant to Nebraska Revised Statutes, Section 71-1911, the licensee has the right to appeal the denial of a child care/preschool license within ten days of delivery of the notice from the Nebraska Department of Health and Human Services. To initiate action to deny -

1. The licensee must appeal in writing to Legal Services of the Nebraska Department of Health and Human Services Finance and Support within ten days of receiving denial notice.
2. A hearing will be afforded the licensee and notice sent to the licensee with the date, time and location of the hearing.
3. The hearing will be conducted pursuant to the applicable provisions of the Administrative Procedures Act (Nebraska Revised Statutes, Section 84-901, et seq.) as they may be amended from time to time.
4. The burden of proof at the hearing is upon the Department and the standard of proof will be by the preponderance of the evidence.

If an appeal is not made to Legal Services within ten days of notice, a Declaratory Order finding the charges to be true will be issued within fifteen days of delivery of notice.

3-001.13A Action Following the Hearing: Following the hearing, the Director of the Nebraska Department of Health and Human Services shall determine whether the charges are true or not by a preponderance of the evidence, and if true, the Department Director may either -

1. Deny the application for a license; and/or
2. Impose a civil penalty of $5.00 for each child in the program for each day in violation after the Department issues its finding and violation.

~~If the Department Director determines that the charges are not true by a preponderance of the evidence, the child care/preschool license will be issued.~~

~~3-001.13B Waiver of Attendance at or Failure to Appear at Appeal Hearing: The applicant may waive his/her right to an appeal hearing. The hearing notice provides the applicant with a written means to waive attendance at the hearing.~~

~~Failure of an applicant to appear at a scheduled hearing will result in a hearing being held and a decision entered.~~

~~After the Director has made a hearing decision, the applicant has the right to appeal this decision to the Nebraska District Court in accordance with Nebraska Revised Statutes, Chapter 84, Article 7.~~

~~4-001.04 Suspension or Revocation: The Department may initiate suspension or revocation proceedings under any of the following circumstances:~~

1. ~~When a licensee has shown a history of repeated violations of regulations;~~
2. ~~When a licensee has violated a regulation(s) so as to create a situation which places children at substantial risk;~~
3. ~~When a complaint of suspected child abuse or neglect has been filed;~~
4. ~~When any Department representative observes conditions or behaviors which may indicate suspected child abuse or neglect;~~
5. ~~When the child care/preschool provider has a criminal charge filed against him/her involving a crime against children or a crime involving intentional bodily harm;~~
6. ~~When a child in care dies at the facility;~~
7. ~~When a licensee has violated any state statute regarding the care and protection of children;~~
8. ~~When the licensee has violated any state statutes regarding the proper restraint of children when transporting;~~
9. ~~When there is a fire safety (inspection) disapproval;~~
10. ~~When there is a sanitation (inspection) disapproval;~~
11. ~~When there is a conviction, admission, or substantial evidence of any offenses against children or adults including, but not limited to: physical abuse, sexual abuse, sexual assault, neglect, or endangerment by the child care provider;~~
12. ~~When there is a conviction, admission, or substantial evidence of one or more of the following offenses by the child care provider:~~
    a. ~~Any offenses against adults excluding sexual assault and sexual abuse;~~
    b. ~~Felony conviction for the use, possession, manufacturing, or distribution of any controlled substance as defined in Nebraska Revised Statutes, Section 28-405, as it may be amended, or applicable federal law;~~
    c. ~~A history of property crimes, including but not limited to fraud, embezzlement, or theft by deception.~~

    ~~Mitigating circumstances, number of offenses, length of time since last offense, and intervention, treatment, or rehabilitation may be considered.~~
13. ~~An entry of the child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes~~

~~teachers, assistance teacher, and all support staff) as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry and/or Nebraska Adult Protective Services Central Registry;~~

~~14. When child care is being provided in the home of the child care/preschool provider, the following applies to household members:~~

~~a. Any entry as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry for inconclusive or court-substantiated child sexual abuse;~~

~~b. Admission, conviction or substantial evidence of any child/adult sexual abuse, sexual assault, or crimes of a sexual nature including, but not limited to: obscene telephone calls, or any act considered to be lewd, indecent, or lascivious;~~

~~c. Any entry as a perpetrator on the Nebraska Adult Protective Services Central Registry for sexual assault;~~

~~d. Any household member appearing as a perpetrator of physical abuse/neglect on the Nebraska Child Abuse and Neglect Central Registry or the Nebraska Adult Protective Services Central Registry, or having a conviction, admission or substantial evidence of having perpetrated physical abuse or neglect of any child or adult shall not be on the premises during the hours of operation. Failure on the part of the provider to comply with this condition will be grounds for denial or revocation of the license.~~

~~15. A provisional license or probationary license status may be suspended or revoked if periodic reviews indicate that insufficient progress has been made toward compliance;~~

~~16. Denial of the extension of a provisional license will occur when any of the following is determined:~~

~~a. A licensee is unable to complete all licensing requirements and standards and has not made a good faith effort to comply and/or is incapable of compliance within a six-month period;~~

~~b. The effect of the provider's inability to comply with a rule or regulation present an unreasonable risk to the health, safety, or well-being of children or staff;~~

~~c. The licensee does not have a written plan of correction approved by the Department.~~

~~17. When a licensee has violated any regulation;~~

~~18. When a licensee has failed to pay the annual license fee.~~

~~When the Department initiates a negative action to suspend or revoke a license, the suspension or revocation action may continue to finality even if the license is surrendered by the licensee.~~

~~The licensee shall not transfer the license to a household member or current staff member while a suspension or revocation action is still pending.~~

~~Any staff person having knowledge of any of the previous circumstances shall immediately notify the appropriate Department staff.~~

~~5-004 Notification of Parents When an Emergency Closing Order Is Issued: Whenever the Director of the Nebraska Department of Health and Human Services finds that an emergency~~

~~exists requiring immediate action to protect the physical well-being and safety of children in a child care program, the Director may issue an "Emergency Closing Order" declaring the existence of an emergency and requiring that action be taken as the Director deems necessary. Any licensed child care/preschool provider to whom the Emergency Closing Order is directed shall comply immediately.~~

~~Department staff shall inform the parents of enrolled children of the issuance of the Emergency Closing Order by telephone and in writing.~~

~~Parents and appropriate Department staff must be informed of the following:~~

1. ~~An Emergency Closing Order issued by the Director of the Nebraska Department of Health and Human Services to protect the physical well-being and safety of the children in care at the facility;~~
2. ~~The date and time the order is effective;~~
3. ~~A general description of the circumstances which endangered the health and safety of the children;~~
4. ~~An explanation of how parents may obtain information regarding the facility's compliance with licensing standards;~~
5. ~~The names and telephone numbers of resources that could assist parents in locating another provider, if necessary; and~~
6. ~~The name and work number of the appropriate Department staff.~~

~~Appropriate Department staff must be notified when a decision has been made to issue an Emergency Closing Order and when the Order has been delivered.~~

~~5-004.01 Lifting of an Emergency Closing Order: If an Emergency Closing Order is lifted, written notice will be immediately provided.~~

~~The Department shall inform the parents of enrolled children in writing when an Emergency Closing is lifted.~~