

CHAPTER 184
FORMERLY
SENATE BILL NO. 187

AN ACT TO AMEND TITLES 14 AND 31 OF THE DELAWARE CODE RELATING TO EARLY CHILDHOOD EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3001, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3001 State Early Childhood Education Program.

(d) The Department of Education shall establish Delaware Stars for Early Success, a quality rating and improvement system. Such rating system shall measure the level of quality of service provided by an early care and education program to safeguard and ensure the growth, development, and learning of the children. The rating and improvement system shall:

(1) Establish quality standards that build upon the child care licensing regulations and include quality standards in the categories of learning environment and curriculum, qualifications and professional development, family and community partnerships, and management and administration. The Department of Education shall ensure that Delaware Stars for Early Success standards are consistent with the regulations of the Office of Child Care Licensing.

Section 2. Amend Subchapter III of Chapter III of Title 31 by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

~~§ 341 Short title~~

~~This act may be referred to and cited as “The Delaware Child Care Act.”~~

~~§ 342 Definitions.~~

~~For the purpose of this act:~~

~~(1) “Child care” means and includes:~~

~~a. Any person, association, agency or organization which:~~

- ~~1. Has in custody or control 1 child or more under the age of 18 years, unattended by parent or guardian, for the purpose of providing such child or children with care, education, protection, supervision or guidance;~~
- ~~2. Is compensated for their services;~~
- ~~3. Advertises or holds himself, herself or itself out as conducting such child care;~~

~~b. The provision of, or arranging for, the placement of children in foster care homes, adoptive homes or supervised independent living arrangements; and~~

~~e. Family child care homes, large family child care homes, day care centers, child placing agencies, residential child care facilities and day treatment programs as currently defined by regulation. Day care centers operating part or full day are subject to licensure. Homes in which children have been~~

placed by any child placing agency properly licensed to place children in this State shall not be regarded as "child care."

(2) "Office of Child Care Licensing" (or "OCCL") means the Office of Child Care Licensing within the Department of Services for Children, Youth and Their Families.

~~§ 343. Powers of the Office of Child Care Licensing with respect to child care~~

~~(a) Any person or association conducting child care and all institutions, agencies and associations or organizations receiving and placing or caring for dependent, neglected or delinquent minors, including organizations providing care of children whether dependent or otherwise, in lieu of the care and supervision ordinarily provided by parents in their own homes for periods of less than 24 hours a day, must accord the Office of Child Care Licensing or its authorized agents right of entrance, privilege of inspection and access to its accounts and reports.~~

~~(b) A person or association conducting child care and all institutions, agencies, associations or organizations receiving and placing or caring for dependent, neglected or delinquent minors shall make reports at such time as is required by the Office of Child Care Licensing as to conditions of such child care, the manner and way in which children are taken care of, former addresses and such other information as will show the social status of the child, how and to whom dismissed, the extent and source of its income, the cost of maintenance and such other reasonable information as will enable the Office of Child Care Licensing to promote the general welfare of the children and to work out a general program for their care and protection.~~

~~(c) The Office of Child Care Licensing may prescribe, by regulation or otherwise, any reasonable standards for the conduct of such child care facilities, institutions, agencies, associations, or organizations and may license such of these as conform to such standards. Regulations promulgated under this subchapter must include all of the following:~~

~~(1) Any application form required to apply for licensure under this subchapter.~~

~~(2) All of the specific requirements to obtain, retain, or renew a license under this subchapter.~~

~~(3) Due process provisions that provide all of the following:~~

~~a. That notice is required when a deficiency is alleged.~~

~~b. The informal and formal procedures to contest an alleged deficiency.~~

~~§ 344. Child care licenses; investigation; requirements; notice; hearings and appeals~~

~~(a) No person may conduct child care, nor may any institution, agency, association or organization conduct child care, unless first having obtained a license from the Office of Child Care Licensing. Such license shall expire 1 year from the date it is issued unless renewed.~~

~~(b) In the case of a person conducting child care, no license shall be issued to such person until the Office of Child Care Licensing has made a thorough investigation and has determined in accordance with reasonable standards:~~

~~(1) The good character and intention of the applicant or applicants;~~

~~(2) That the individual home or facility meets the physical, social, moral, mental and educational needs of the average child;~~

~~(3) Whether the rules and requirements of the Office of Child Care Licensing are properly met; and~~

~~(4) That the required criminal background checks are completed and approved.~~

~~(e) In the case of an institution, agency, association or organization, no license shall be issued until the Office of Child Care Licensing has made a thorough investigation and has made a favorable determination of:~~

~~(1) The good character and intention of the applicant or applicants;~~

~~(2) The present and prospective need of the service rendered;~~

~~(3) The employment of capable, trained and experienced workers;~~

~~(4) Sufficient financial backing to ensure effective work;~~

~~(5) The probability of the service being continued for a reasonable period of time;~~

~~(6) Whether the methods used and disposition made of the children served will be to their best interests and that of society;~~

~~(7) Whether the rules and requirements of the Office of Child Care Licensing are properly met; and~~

~~(8) That the required criminal background checks are completed and approved.~~

~~(d) This section shall not apply to any institution, agency, association or organization under state ownership and control, nor shall it apply to any maternity ward of a general hospital.~~

~~(e) Before any license issued under this chapter is revoked or a license application is denied, notice shall be given in writing to the holder of the license setting forth the particular reasons for such action.~~

~~(1) Such revocation or license application denial shall become effective 30 business days after the date of the receipt by certified mail, regular U.S. mail or personal service of the notice, unless the applicant or licensee within 10 business days from the date of the receipt of such notice gives written notice to the Office of Child Care Licensing requesting a hearing, in which case the proposed action shall be deemed to be suspended.~~

~~(2) If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before a hearing officer designated by the Department of Services for Children, Youth and Their Families in accordance with § 10125 of Title 29.~~

~~(3) At any time during, or prior to the hearing, the Office of Child Care Licensing may rescind any notice upon being satisfied that the reasons for revocation or license application denial have been or will be removed.~~

~~(f) The procedure governing hearings authorized by this section shall be in accordance with § 10125 of Title 29 and regulations promulgated by the Department of Services for Children, Youth and Their Families.~~

~~(g) A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this section. A copy or copies of the transcript may be obtained by a party upon payment of the cost of preparing the transcript. Witnesses may be subpoenaed by either party.~~

~~(h) Within 10 business days of the date of the revocation or license application denial hearing, or within 5 business days of the date of a suspension hearing, the hearing officer will issue recommendations to the Secretary of the Department of Services for Children, Youth and Their Families, with a copy to each party, which shall include:~~

- ~~(1) A brief summary of the evidence and recommended findings of fact based upon the evidence;~~
- ~~(2) Recommended conclusions of law; and~~
- ~~(3) Recommended decision.~~

~~(i) The Secretary of the Department of Services for Children, Youth and Their Families shall accept, deny, or accept in part, and/or deny in part, the recommendations of the hearing officer in the case and issue a final decision within 10 business days of the date of mailing of the recommendations.~~

~~(j) A copy of the decision of the Department setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, regular U.S. mail or served personally upon the applicant or licensee. The decision shall become final 10 business days after it is so mailed or served. The applicant or licensee shall have 30 business days in which to appeal the decision to the Superior Court as provided in this section. The final decision of the Secretary will not be stayed pending appeal unless the Court so determines pursuant to § 10144 of Title 29.~~

~~(k) Any applicant or licensee who is dissatisfied with the decision of the Department as a result of the hearing provided in this section, may, within 30 business days after the mailing or service of the notice of decision as provided in said section, file a notice of appeal to the Superior Court in the office of the Prothonotary of the Superior Court of the county in which the child care facility is located or to be located, and serve a copy of said notice of appeal upon the Department. The Department shall promptly certify and file with the Court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Proceedings thereafter shall be governed by the Rules of the Superior Court of the State. This review shall be in accordance with the provisions of § 10142 of Title 29.~~

~~(l) Emergency suspension order. If the health, safety or well being of children in care of a licensee is in serious or imminent danger, the Office of Child Care Licensing may immediately suspend the license on a temporary basis without notice.~~

~~(1) Such emergency suspension may be verbal or written and the licensee shall cease all operation as stated in the emergency suspension order.~~

~~(2) Any verbal suspension order shall be followed by a written emergency suspension order within 3 business days.~~

~~(3) The order shall be temporary and state the reason(s) for the suspension.~~

~~(4) Within 10 business days of the issuance of the suspension order, the licensee may give written notice to the Office of Child Care Licensing requesting a hearing. This hearing will be scheduled within 10 business days of the receipt of the request.~~

~~(5) If no hearing is requested as provided above, the temporary order becomes a final order.~~

~~(6) At any time during, or prior to the hearing, the Office of Child Care Licensing may reinstate the license upon being satisfied that the reasons for the emergency suspension order have been removed.~~

~~§ 345. Penalties for violations~~

~~(a) The Office of Child Care Licensing may impose civil penalties not to exceed \$100 for each violation of § 344 of this title.~~

~~(b) The Office of Child Care Licensing may proceed for the collection of the money civil penalty not otherwise paid through an action brought by the Office of Child Care Licensing in any court of competent jurisdiction.~~

~~(c) Anyone who violates a provision of this subchapter may be fined not more than \$100 or imprisoned not more than 3 months, or both.~~

~~§ 346. Provider Advisory Board; appointments; composition; terms; vacancies~~

~~(a) There is hereby established within the Office of Child Care Licensing, a Provider Advisory Board.~~

~~(b) The Board shall consist of 7 members, who are residents of this State, and are appointed by the Governor.~~

~~The following shall be members of the Board:~~

~~(1) One provider from a family child care home from each of New Castle County, Kent County, and Sussex County;~~

~~(2) One director/owner of a private day care center from each of New Castle County, Kent County, and Sussex County; and~~

~~(3) One provider from a family child care home or 1 director/owner of a private day care center from the City of Wilmington.~~

~~Furthermore, at least 1 of the members of the Board appointed pursuant to this subsection (b) shall also be from a Boys and Girls Club within this State. For purposes of this subsection, a day care center at a Boys and Girls Club shall be considered a private day care center.~~

~~(c) The term of a Board member appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Board. A Board member shall continue to serve until his or her successor is duly appointed but a holdover under this provision does not affect the expiration date of a succeeding term.~~

~~(d) In case of a vacancy on the Board before the expiration of a Board member's term, a successor shall be appointed by the Governor within 30 days of the vacancy for the remainder of the unexpired term.~~

~~(e) The Board shall elect 1 of its members as Chair to serve for a 1 year term and who shall be eligible for reelection.~~

~~(f) The Board shall meet at the call of the Chair but no fewer than 4 times a year.~~

~~§ 347. Provider Advisory Board; powers and duties~~

~~The Board shall have the authority to serve in an advisory capacity to the Office of Child Care Licensing with regard to adopting, promulgating and amending such rules and regulations as are required to carry out this chapter with respect to early care and education and school age centers.~~

Section 3. Amend Chapter 30A of Title 14 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3001a Short title

This act may be referred to and cited as "The Delaware Child Care Act."

§ 3002a Definitions.

For the purpose of this act:

(1) “Child care” means and includes:

a. Any person, association, agency or organization which:

1. Has in custody or control 1 child or more under the age of 18 years, unattended by parent or guardian, for the purpose of providing such child or children with care, education, protection, supervision or guidance;

2. Is compensated for their services;

3. Advertises or holds himself, herself or itself out as conducting such child care;

b. The provision of, or arranging for, the placement of children in foster care homes, adoptive homes or supervised independent living arrangements pursuant to the provisions of Title 31; and

c. Family child care homes, large family child care homes, day care centers, child placing agencies, residential child care facilities and day treatment programs as currently defined by regulation. Day-care centers operating part- or full-day are subject to licensure. Homes in which children have been placed by any child placing agency properly licensed to place children in this State shall not be regarded as “child care.”

(2) “Office of Child Care Licensing” (or “OCCL”) means the Office of Child Care Licensing within the Department of Education.

§ 3003a. Powers of the Office of Child Care Licensing with respect to child care

(a) Any person or association conducting child care and all institutions, agencies, and associations or organizations receiving and placing or caring for dependent, neglected or delinquent minors, including organizations providing care of children whether dependent or otherwise, in lieu of the care and supervision ordinarily provided by parents in their own homes for periods of less than 24 hours a day, must accord the Office of Child Care Licensing or its authorized agents right of entrance, privilege of inspection, and access to its accounts and reports.

(b) A person or association conducting child care and all institutions, agencies, associations, or organizations receiving and placing or caring for dependent, neglected, or delinquent minors shall make reports at such time as is required by the Office of Child Care Licensing as to conditions of such child care, the manner and way in which children are taken care of, former addresses, and such other information as will show the social status of the child, how and to whom dismissed, the extent and source of its income, the cost of maintenance, and such other reasonable information as will enable the Office of Child Care Licensing to promote the general welfare of the children and to work out a general program for their care and protection.

(c) The Office of Child Care Licensing may prescribe, by regulation or otherwise, any reasonable standards for the conduct of such child care facilities, institutions, agencies, associations, or organizations and may license such of these as conform to such standards. Regulations promulgated under this subchapter must include all of the following:

(1) Any application form required to apply for licensure under this subchapter.

(2) All of the specific requirements to obtain, retain, or renew a license under this subchapter.

(3) Due process provisions that provide all of the following:

a. That notice is required when a deficiency is alleged.

b. The informal and formal procedures to contest an alleged deficiency.

§ 3004a. Child care licenses; investigation; requirements; notice; hearings and appeals

(a) No person may conduct child care, nor may any institution, agency, association, or organization conduct child care, unless first having obtained a license from the Office of Child Care Licensing. Such license shall expire 1 year from the date it is issued unless renewed.

(b) In the case of a person conducting child care, no license shall be issued to such person until the Office of Child Care Licensing has made a thorough investigation and has determined in accordance with reasonable standards:

(1) The good character and intention of the applicant or applicants;

(2) That the individual home or facility meets the physical, social, moral, mental, and educational needs of the average child;

(3) Whether the rules and requirements of the Office of Child Care Licensing are properly met; and

(4) That the required criminal background checks are completed and approved.

(c) In the case of an institution, agency, association, or organization, no license shall be issued until the Office of Child Care Licensing has made a thorough investigation and has made a favorable determination of:

(1) The good character and intention of the applicant or applicants;

(2) The present and prospective need of the service rendered;

(3) The employment of capable, trained and experienced workers;

(4) Sufficient financial backing to ensure effective work;

(5) The probability of the service being continued for a reasonable period of time;

(6) Whether the methods used and disposition made of the children served will be to their best interests and that of society;

(7) Whether the rules and requirements of the Office of Child Care Licensing are properly met; and

(8) That the required criminal background checks are completed and approved.

(d) This section shall not apply to any institution, agency, association, or organization under state ownership and control, nor shall it apply to any maternity ward of a general hospital.

(e) Before any license issued under this chapter is revoked or a license application is denied, notice shall be given in writing to the holder of the license setting forth the particular reasons for such action.

(1) Such revocation or license application denial shall become effective 30 business days after the date of the receipt by certified mail, regular U.S. mail, or personal service of the notice, unless the applicant or licensee within 10 business days from the date of the receipt of such notice gives written notice to the Office of Child Care Licensing requesting a hearing, in which case the proposed action shall be deemed to be suspended.

(2) If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before a hearing officer designated by the Department of Education in accordance with § 10125 of Title 29.

(3) At any time during, or prior to the hearing, the Office of Child Care Licensing may rescind any notice upon being satisfied that the reasons for revocation or license application denial have been or will be removed.

(f) The procedure governing hearings authorized by this section shall be in accordance with § 10125 of Title 29 and regulations promulgated by the Department of Education.

(g) A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this section. A copy or copies of the transcript may be obtained by a party upon payment of the cost of preparing the transcript. Witnesses may be subpoenaed by either party.

(h) Within 10 business days of the date of the revocation or license application denial hearing, or within 5 business days of the date of a suspension hearing, the hearing officer will issue recommendations to the Secretary of the Department of Education, with a copy to each party, which shall include:

(1) A brief summary of the evidence and recommended findings of fact based upon the evidence;

(2) Recommended conclusions of law; and

(3) Recommended decision.

(i) The Secretary of the Department of Education shall accept, deny, accept in part, and/or deny in part the recommendations of the hearing officer in the case and issue a final decision within 10 business days of the date of mailing of the recommendations.

(j) A copy of the decision of the Department setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, regular U.S. mail, or served personally upon the applicant or licensee. The decision shall become final 10 business days after it is so mailed or served. The applicant or licensee shall have 30 business days in which to appeal the decision to the Superior Court as provided in this section. The final decision of the Secretary will not be stayed pending appeal unless the Court so determines pursuant to § 10144 of Title 29.

(k) Any applicant or licensee who is dissatisfied with the decision of the Department as a result of the hearing provided in this section, may, within 30 business days after the mailing or service of the notice of decision as provided in said section, file a notice of appeal to the Superior Court in the office of the Prothonotary of the Superior Court of the county in which the child care facility is located or to be located and serve a copy of said notice of appeal upon the Department. The Department shall promptly certify and file with the Court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Proceedings thereafter shall be governed by the Rules of the Superior Court of the State. This review shall be in accordance with the provisions of § 10142 of Title 29.

(l) Emergency suspension order. If the health, safety, or well-being of children in care of a licensee is in serious or imminent danger, the Office of Child Care Licensing may immediately suspend the license on a temporary basis without notice.

(1) Such emergency suspension may be verbal or written, and the licensee shall cease all operation as stated in the emergency suspension order.

(2) Any verbal suspension order shall be followed by a written emergency suspension order within 3 business days.

(3) The order shall be temporary and state the reason(s) for the suspension.

(4) Within 10 business days of the issuance of the suspension order, the licensee may give written notice to the Office of Child Care Licensing requesting a hearing. This hearing will be scheduled within 10 business days of the receipt of the request.

(5) If no hearing is requested as provided above, the temporary order becomes a final order.

(6) At any time during, or prior to the hearing, the Office of Child Care Licensing may reinstate the license upon being satisfied that the reasons for the emergency suspension order have been removed.

§ 3005a. Penalties for violations

(a) The Office of Child Care Licensing may impose civil penalties not to exceed \$100 for each violation of § 3004a of this title.

(b) The Office of Child Care Licensing may proceed for the collection of the money civil penalty not otherwise paid through an action brought by the Office of Child Care Licensing in any court of competent jurisdiction.

(c) Anyone who violates a provision of this subchapter may be fined not more than \$100 or imprisoned not more than 3 months, or both.

§ 3006a. Provider Advisory Board; appointments; composition; terms; vacancies

(a) There is hereby established within the Office of Child Care Licensing, a Provider Advisory Board.

(b) The Board shall consist of 7 members, who are residents of this State and are appointed by the Governor.

The following shall be members of the Board:

(1) One provider from a family child care home from each of New Castle County, Kent County, and Sussex County;

(2) One director/owner of a private day care center from each of New Castle County, Kent County, and Sussex County; and

(3) One provider from a family child care home or 1 director/owner of a private day care center from the City of Wilmington.

Furthermore, at least 1 of the members of the Board appointed pursuant to this subsection (b) shall also be from a Boys and Girls Club within this State. For purposes of this subsection, a day care center at a Boys and Girls Club shall be considered a private day care center.

(c) The term of a Board member appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Board. A Board member shall continue to serve until his or her successor is duly appointed but a holdover under this provision does not affect the expiration date of a succeeding term.

(d) In case of a vacancy on the Board before the expiration of a Board member's term, a successor shall be appointed by the Governor within 30 days of the vacancy for the remainder of the unexpired term.

(e) The Board shall elect 1 of its members as Chair to serve for a 1-year term and who shall be eligible for reelection.

(f) The Board shall meet at the call of the Chair but no fewer than 4 times a year.

§ 3007a. Provider Advisory Board; powers and duties

The Board shall have the authority to serve in an advisory capacity to the Office of Child Care Licensing with regard to adopting, promulgating, and amending such rules and regulations as are required to carry out this chapter with respect to early care and education and school-age centers.

§ 3008a. Transfers and continuity.

(a) All investigations, petitions, hearings and legal proceedings pending before or instituted by the Office of Child Care Licensing within the Department of Services for Children, Youth and Their Families and not concluded prior to July 1, 2020, shall continue unabated and remain in full force and effect, notwithstanding the passage of this act and, where necessary, may be completed before, by, or in the name of the Department of Services for Children, Youth and Their Families. All orders, enforcement actions, agreements of understanding, rules, and regulations made by the Office of Child Care Licensing within the Department of Services for Children, Youth and Their Families and which are in effect on July 1, 2020, shall remain in full force and effect until revoked or modified in accordance with the law by the Department of Education. All contracts and obligations of the Department of Services for Children, Youth and Their Families made or undertaken in the performance of a function transferred to the Department of Education by this act and being in force on July 1, 2020, shall, notwithstanding this act, remain in full force and effect and be performed by the Department of Education until and unless the Department of Education takes formal action to modify any such contracts or obligations.

(b) Employees of the Office of Childcare Licensing within the Department of Services for Children, Youth and Their Families whose functions are consistent with and have been transferred to the Department of Education by this act shall continue and be deemed to be the employees of the Department of Education on July 1, 2020, and, where applicable, with all the benefits accrued as merit employees as of July 1, 2020.

Section 4. The Secretary of the Department of Education and Secretary of the Department of Services for Children, Youth and Their Families shall develop a plan to transfer positions and duties within the Office of Child Care Licensing from the Department of Services for Children, Youth and Their Families to the Department of Education. Said plan shall be implemented no later than July 1, 2020 and shall include all regulatory, budgetary, operational and personnel changes, including subsequent position classifications, necessary to implement the transition and ensure continued operations. Progress reports on the development of the transition plan shall be given at meetings of the Early Childhood Council. The Director of the Office of Management and Budget, in consultation with the Secretary of the Department of Human Resources and with the concurrence of the Controller General, shall have the authority to reallocate personnel costs and positions throughout the fiscal year.

Section 5. The provisions of Sections 1 through 3 of this Act shall take effect on July 1, 2020.

Section 6. The provisions of Section 4 of this Act shall take effect upon enactment.

Approved August 5, 2019