

Date: May 12, 2000

To: Larry Michael RS, Regional Environmental Health Specialist
Children's Environmental Health Branch

From: Robert Grigston RS,
Wake County Environmental Services Department

Re: Clarification concerning G.S. 110-92, G.S. 110-106 and rule .2802(a)
of the sanitation rules governing child care centers

Larry, this memo is to follow up on our recent phone conversation concerning rule .2802(a), which in part states that "The initial inspection for new construction or the first inspection following modifications to existing child care centers shall not be made by the local health department unless these plans have been approved." As I noted at the time, our office occasionally receives requests for inspections from child care centers that have constructed without benefit of plan review. While this is in clear violation of rule .2802, I have been concerned that G.S. 110-92 appears to require us to inspect such a facility when it states: "When requested by an operator of a day care facility or by the Secretary, it shall be the duty of local and district health departments to visit and inspect a day care facility to determine whether the facility complies with health and sanitation standards----". In your opinion, is there any conflict with these two requirements, and should sanitation inspections be denied to any facility that has not had plans approved?

Related to the above is the question of church day cares. G.S. 110-106, which establishes the reporting procedures for church day care facilities, appears to allow operation prior to the evaluation of the facility for compliance with sanitation standards, and no specific mention of prior plan review is made in this statute. Again, in the instance of a church day care, should an evaluation for compliance with day care rules be denied until such time as plans for the childcare are submitted and are approved?

Thanks as always for your assistance and advice, and please let me know if further clarifications on my concerns are needed.

September 19, 2000

MEMORANDUM

TO: Robert P. Grigston, R.S., Environmental Health Supervisor
Wake County Department of Environmental Services

FROM: Larry D. Michael, R.S.,
Regional Environmental Health Specialist
Children's Environmental Health Branch

THROUGH: Ed Norman, Program Supervisor
Children's Environmental Health Branch

SUBJECT: Clarification of G.S. 110-92, Duties of State and Local
Agencies; G.S. 110-106, Religious-sponsored Child Care
Facilities; and 15A NCAC 18A .2802(a), Approval of
Construction and Renovation Plans

The purpose of this memo is to provide clarification that you requested in your memorandum dated May 12, 2000, concerning G.S. 110-92, G.S. 110-106, and 15A NCAC 18A .2802(a) of the *Rules Governing the Sanitation of Child Care Centers*.

To address your first question, the rules of law must be considered. As you pointed out, 15A NCAC 18A .2802(a) states, in part, that "The initial inspection for new construction or the first inspection following modifications to existing child care centers shall not be made by the local health department unless the plans have been approved." In addition, G.S. 110-92 states, in part, "When requested by an operator of a child care center or by the Secretary, it shall be the duty of local and district health departments to visit and inspect a child care center to determine whether the center complies with the health and sanitation standards..." According to the Attorney General's Office, the statute takes precedence whenever a statute and rule are in conflict. Therefore, since the aforementioned rule and statute conflict, G.S. 110-92 takes precedence.

When requested by an operator of a child care center, sanitation inspections should not be denied to any center, regardless of the status of plan approval. Again, G.S. 110-92 explicitly states that it is the duty of the local health department to "visit and inspect." According to the Attorney General's Office, this will apply to both existing (e.g., licensed) and proposed child care centers

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since G.S. 110-92 does not distinguish between existing and proposed centers or licensed and unlicensed centers. Therefore, pertaining to your second question, when requested by an operator, local health departments must also visit and inspect religious-sponsored child care facilities, regardless of licensure status.

Be advised that G.S. 110-92 says "visit and inspect;" therefore, if an operator makes such a request, an inspection should also be conducted. Thus, the plan review process benefits the child care center since a superior classification must be granted prior to obtaining a license from the Division of Child Development (DCD). However, rule .2802(a) does not prohibit the local health department from making visits to proposed centers for the purpose of plan review, in which case an inspection is not required. In any case, the Attorney General's Office advises that a visit to any child care center (licensed or unlicensed) should be documented.

To ensure statewide consistency in conducting visits to unlicensed (e.g., proposed) child care centers that have not had plans approved, a written request from the DCD child care consultant should be obtained. For example, when an individual contacts the health department concerning a proposed child care center (prior to plan review approval), simply have them contact the child care consultant assigned to their area to submit a written referral. This will assure that the DCD is involved with the proposed center and will alleviate any unnecessary visits by the local health department.

Thank you for your questions concerning this issue. The Children's Environmental Health Branch intends to address the above conflict between the rule and the statute when the child care sanitation rules are revised in the future. Please contact me at (919) 718-0837 if you have any further questions regarding this matter.

cc: EHSS Standard Distribution List
Bertha Fields, Assistant Attorney General