TITLE 391 - CHILDREN'S SERVICES LICENSING

CHAPTER 5 - PRESCHOOLS

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.

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.

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.

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.)

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 and 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 20 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, aide, and any other individual who counts in the staff-to-child ratio.

Support staff means an individual employed by the preschool as a 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.

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.

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, if an individual or an individual in a partnership, 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 and volunteers 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, if an individual or an individual in a partnership, all staff and volunteers age 19 or older, for 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).

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.

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.

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, if an individual or an individual in a partnership, 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. A Report of Law Enforcement Contact for the applicant, all staff and volunteers age 19 or older, and all household members age 19 or older if the preschool is located in a private residence (see 5-006.03B);
4. Verification of director qualifications (see 5-006.04); and
5. 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.

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.

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.

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.

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.

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;

16. Written transcripts of administrative hearings;
17. Emergency orders; and
18. All final orders.

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.

5-004.08 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.

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.

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.

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

5-006.03A Criminal History Record Check: The applicant/licensee, if an individual or an individual in a partnership, must complete a pre-employment criminal history record check on him/herself, on each staff member and volunteer age 19 or older, and on 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 that includes 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, volunteer, 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, volunteers, and employees of the applicant/licensee.

5-006.03B Registry Checks: The applicant/licensee, if an individual or an individual in a partnership, staff, volunteers, 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.

5-006.03C Reports of Law Enforcement Contact: The applicant/licensee, if an individual or an individual in a partnership, must complete a Report of Law Enforcement Contact for him/herself and must obtain a completed report for each staff member and volunteer 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.

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, volunteers, 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.

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.

5-006.03F Health Information Report: The applicant, if an individual or an individual in a partnership, 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.

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 early childhood education, education or child/youth development;
2. Hold a bachelor's degree from an accredited college or university and at least six credit hours in early childhood education, education or child/youth development;
3. Have an associate degree from an accredited college or university in early childhood education, 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, early childhood education, 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.

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 early childhood education, education or child/youth development;

2. Hold an associate's degree from an accredited college or university in early childhood education, 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, early childhood education, 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.

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.

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 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 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 preschools 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 preschools 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.
4. This training counts toward the annual training requirement.

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.

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.

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. Documentation of Nebraska registry checks with no adverse findings; and
6. A written schedule that includes the hours and days of the week the individual serves as a volunteer.

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.

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 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 preschool'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.

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.

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.

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.

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

1. When a swimming or non-portable pool is in use (except in the case of organized swimming lessons), the staff-to-child ratio in 5-006.22H3 must be maintained.
2. 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. Have a permit issued by the Department;
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 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.

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.

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 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.

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.

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 resulting from sewage, mold, mildew, or other environmental or biological hazards or unsanitary conditions.
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.

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.

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 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 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.

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.

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 exceed the maximum contaminant levels set for nitrate, or total coliform 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 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.

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.

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, rubber mulch, wood chips, or small-to-medium size gravel.

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.