



Advocates for Children of New York

Protecting every child's right to learn

April 18, 2018

New York City Board of Health
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
Via e-mail: resolutioncomments@health.nyc.gov

Re: Comments on Proposed Amendment of Article 47 of the New York City Health Code

Board of Directors

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Advocates for Children of New York (AFC) appreciates the opportunity to submit comments on the proposed amendment of Article 47 of the New York City Health Code regarding child care programs and family shelter-based drop-off child supervision programs. For more than 45 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City parents navigate the education system, starting from the time children are born. We conduct trainings for parents and professionals, including child care providers. We use our on-the-ground experience to identify barriers and work to pursue systemic change. Recognizing that the first five years of children's lives have a profound impact on their education and future, AFC's Early Childhood Education Project provides in-depth assistance and legal representation to families who are facing obstacles to accessing child care and other early childhood education programs and services. As a result of this experience, we are well-positioned to comment on these proposed amendments. We are focusing our comments on a few recommendations for changes.

Section 47.25(a)(2)(A)

We support the proposed 90-day grace period after enrollment for children in foster care receiving services in a child care program, and all children receiving services in a family shelter-based drop-off child supervision program, to obtain the required immunizations. However, we strongly recommend extending this grace period to children who are homeless receiving services in a child care program.

Section 658E(c)(2)(I)(i)(I) of the federal Child Care and Development Block Grant Act (CCDBG) requires a grace period that allows *children experiencing homelessness* and children in foster care to receive child care services while their families, including foster families, take any necessary action to comply with immunization and other health and safety requirements. Similarly, federal regulations require lead



agencies to “establish a grace period that allows *children experiencing homelessness* and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.” 45 CFR § 98.41(a)(1)(i)(C) (emphasis added).

While some children who are homeless may enroll in a family shelter-based drop-off child supervision program prior to enrolling in another child care program, other children who are homeless will attempt to enroll directly in a child care program. Not all children who are homeless reside in a shelter, and not all shelters have family shelter-based drop-off child supervision programs. We want to ensure that children who are homeless have a grace period to provide immunizations regardless of whether they enroll in a child care program or a family shelter-based drop-off child supervision program.

Furthermore, this grace period should apply not only to immunization documentation requirements but to physical examinations and screenings.

Therefore, we recommend moving the paragraph regarding the grace period from § 47.25(a)(2)(A) to § 47.25(a)(3) and amending the proposed paragraph in the following ways:

In addition, there shall be a 90-day grace period after enrollment for children in foster care and children who are homeless receiving services in a child care program, and all children receiving services in a family shelter-based drop-off child supervision program, to obtain the required immunizations and physical examinations and screenings. Documentation of all immunizations, physical examinations and screenings, and exemptions shall be kept on site and made available to the Department upon request except as otherwise required by law.

Section 47.67(c)

While we support the minor proposed amendments to § 47.67(c) regarding a statement on behavior management, we recommend adding language to emphasize the importance of *positive* behavior interventions and supports. Unfortunately, AFC hears from families whose children are facing expulsion from child care, often due to behaviors related to their disabilities. Instead of providing accommodations for these children with disabilities, as required by federal law, and supporting them in developing appropriate social-emotional skills, certain child care providers seek to exclude them, creating a crisis for their families and leaving these children without the educational and behavioral support they need. The federal CCBDG regulations highlight the importance of having child care providers use “effective, age-appropriate behavior management strategies and training, including positive behavior



interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors.” 45 C.F.R. § 98.53(a)(1)(iii); *see also* 45 C.F.R. § 98.44(b)(2)(iii). In addition, federal guidance from the U.S. Department of Health and Human Services and the U.S. Department of Education emphasizes the importance of having child care providers pursue “developmentally appropriate social-emotional and behavioral health promotion practices” and “prevent, severely limit, and ultimately eliminate expulsion and suspension practices” in early childhood settings. *See* https://www.acf.hhs.gov/sites/default/files/eecd/expulsion_ps_numbered.pdf. In New York City, EarlyLearn NYC and Pre-K for All programs must use positive behavior management strategies and may not suspend or expel a child. *See* <http://schools.nyc.gov/NR/rdonlyres/0C9C8A8A-3FE4-4F7D-A880-DD3D86B3C94D/0/StatementonPositiveBehaviorGuidance.pdf>. The City should be helping all child care programs move in this positive direction.

Therefore, we recommend the following language:

§ 47.67(c) Child behavior management. A written policy regarding management of the behavior of children, consistent with the requirements of this Article shall be distributed to every staff member, posted in a prominent location within the facility and made available to parents upon request. Such policy shall include effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing or eliminating suspensions and expulsions of children under age five for such behaviors, and shall be consistent with federal laws regarding accommodations for children with disabilities. Permittees shall act consistently with such policy.

Section 47.37(b)(6)

We support the expansion of training to all staff for topics covered under § 47.37(b)(6), including cognitive, social, emotional, and physical development; Early Intervention; meeting the needs of children with physical or emotional challenges; and behavior management. We have three suggestions for further strengthening this language.

First, while the Department is expanding the training provisions, we encourage you to add “preschool special education services” to § 47.37(b)(6)(B)(v). It is vital that staff members working with children under the age of five learn not only about Early Intervention services (for children from birth to three years of age with developmental delays or disabilities), but also about preschool special education services (for children from three to five years of age).



Second, we recommend changing “Meeting the needs of children with physical or emotional challenges” (§ 47.37(b)(6)(B)(v)(dd)) to “Meeting the needs of children with developmental delays or disabilities, including children with delays in physical development and social-emotional development” in recognition of the fact that staff must be prepared to work with children with a range of disabilities, not only with children who have delays in the physical and social-emotional domains.

Third, we recommend changing “Behavior management” (§ 47.37(b)(6)(B)(v)(ee)) to “Effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing or eliminating suspensions and expulsions of children under age five for such behaviors” or, at a minimum, to “Positive behavior intervention and support” for the reasons noted above, including the emphasis on these strategies in the federal CCDBG regulations.

Section 47.31(c)

Finally, we have one recommendation regarding the proposed amendment regarding medication administration in § 47.31(c). As other paragraphs of the regulations make clear, a child care program may be required to administer medication to a child with a disability, pursuant to the Americans with Disabilities Act, regardless of other policies or regulations. We are concerned about potential conflicts between federal disability laws and the proposed changes to § 47.31(c). In order to avoid confusion for programs, help programs comply with federal law, and prevent the exclusion of children with disabilities who need medication administration in order to access a child care program, we recommend that you add a clause to § 47.31(c) to clarify that the provision applies “except where required by the Americans with Disabilities Act or other applicable law.”

Thank you for the opportunity to submit comments. If you have any questions, please feel free to contact me at 212-822-9532 or rlevine@afcnyc.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Randi Levine". The signature is written in a cursive, flowing style.

Randi Levine
Policy Director