

**STATE OF NEW JERSEY**  
**Department of Children and Family Services**  
**NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION**  
**PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)**  
**COVID-19 STATE OF EMERGENCY**

Temporary Rule Suspension and Modification adopted by Christine Norbut Beyer,  
Commissioner Department of Children and Families

Date: October 7, 2020

Authority: N.J.S.A. App.A.9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”)

Effective Date: October 7, 2020

Expiration Date: Concurrent with expiration of EO 103

This is an emergency adoption of a temporary rule suspension and modification of the Department’s Office of Licensing rules in N.J.A.C Title 3A, Chapter 52 as outlined below.

Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Children and Families is making the following modifications to regulations at Title 3A, Chapter 52. The Department’s March 16, 2020 temporary rule action regarding Chapter 52 remains in effect and is only altered as stated herein.

DCF is undertaking these modifications to fulfill the department’s statutory mandate under N.J.S.A. 30:5B-1 et seq. (The Child Care Center Licensing Act) to license childcare, and to reconcile that obligation with the emergent need for specialized childcare centers for school-aged children receiving online or remote education from a school district or private school during the public health emergency, and to ensure the availability of other safe, quality childcare during the public health emergency. As there are many school districts relying on remote learning, the resulting lack of childcare has created an unexpected need during the public health crisis.

The most significant changes made herein pertain to the modification of the regulations to allow for the legitimate and safe function of what will be referred to as General Accommodation

Program Childcare Centers (GAP Centers) which will provide supervised care for children receiving remote education from a school as a result of the COVID-19 virus and subsequent public health emergency. The definitions added by this modification classify these COVID-19 created GAP centers as either (1) Satellite GAP Centers (SGAPs) which are operated and licensed under the auspices of a qualified, licensed childcare center, or (2) Autonomous GAP Centers (AGAPs), which are licensed independently as childcare centers without a sponsor. All licenses issued under this subchapter will expire by function of these regulations no later than the expiration of Executive Order 103.

New definitions are added to N.J.A.C. 3A:52-1.4 for “General Accommodation Program Supervision Childcare Centers” and “Remote Education Students.” These definitions strictly limit the applicability of the new license to a narrowly defined class of school aged children, enrolled in and receiving remote education services from a New Jersey private school or New Jersey public school district during the public health emergency.

Modifications to N.J.A.C. 3A:52-2.1 establish the application process for GAP Centers, including documents and information which must be submitted, eligibility for SGAP sponsoring programs, and detailed requirements for the required Sponsoring Agency Agreement between the SGAP and its sponsoring program. This section requires, among other things, that all GAP centers comply with the requirement in Executive Order No. 149 (2020) to submit an attestation that the center will comply with health and safety standards related to the COVID-19 public health emergency.

Modifications to N.J.A.C. 3A:52-2.2 establishes an expiration date for all licenses issued under the new subchapter, which shall be no later than the expiration of Executive Order 103. GAP Center licenses are intended to be temporary measures for services provided during the current school year; centers wishing to continue operating long term will be required to obtain a regular childcare center license.

To accommodate the unfortunate realities of the public health emergency, DCF is waiving regulatory provisions in N.J.A.C. 3A:52-2.2 that limit the time that a center, including both GAP Centers and all other licensed centers, can operate on a temporary license to 18 months, and which require centers that have no enrollment for more than six months to obtain a new license. DCF is also waiving, for all centers, the regulation that terminates a license if the center is not operating for six months.

To allow childcare centers to add new spaces and expand capacity quickly during the COVID-19 public health emergency, the requirements in N.J.A.C. 3A:52-2.3 that limit a single license to programs operating on a single property is modified to allow for the addition of GAP Centers and school aged programs at remote locations within the same municipality or school district.

DCF has modified N.J.A.C. 3A:52-2.4 and 2.5 to recognize that DCF is authorized to suspend or revoke a childcare license for failure to abide by public health and safety guidance issued during the COVID-19 public health emergency, and that actions so pursued may entail bypassing the administrative hearing opportunity otherwise provided for in N.J.A.C. 3A:52-2.4.

Modifications to N.J.A.C. 3A:52-4.3 establish the child to staff ratio for SGAP centers at 1:15, and require that staff be at least 18 years of age. The ratio for AGAP programs is set at 1:12, with a requirement for two staff to be present, at minimum.

Modifications to N.J.A.C. 3A:52-4.4 establish the maximum group size during the COVID-19 public health emergency for both GAP centers and all school aged programs at 15, in accord with health and safety guidance promulgated by the New Jersey Department of Health.

Because remotely delivered education mitigates the need for programmatic services and education to be provided by childcare staff, modifications to N.J.A.C. 3A:52-4.6 make staff education and experience requirements inapplicable to SGAP centers, which are able to rely on established sponsoring programs for expertise and oversight. AGAP centers continue to be subject to staff qualification requirements applicable to school aged childcare programs.

In further recognition of the COVID-19 public health emergency and resultant non-traditional model employed in GAP centers, modifications to N.J.A.C. 3A:52-4.7 and 4.8 make training and orientation requirements inapplicable to those centers.

Because GAP centers are temporary programs during the COVID-19 public health emergency, serving school-aged children exclusively, and may need to be established in facilities that are not purpose-built for childcare, modifications to N.J.A.C. 3A:52-5.3 make specific physical plant requirements inapplicable to those programs. These modifications also allow certain documentation of environmental tests to be provided 60 days after licensure, rather than prior to licensure, as a disruption in operation during the COVID-19 public health emergency would leave many parents without options for necessary child supervision. These requirements are consistent with the lesser scrutiny afforded to school aged and public-school based programs under the remainder of Chapter 52, in recognition that many of the health and environmental risks addressed by testing are of lesser significance for programs serving school aged children, for whom the risks are lesser or non-existent, exclusively. During the COVID-19 public health emergency, centers licensed to provide childcare for younger children and remote education childcare on the same premises shall be required to adhere to the more demanding standards found elsewhere in Chapter 52.

Also in N.J.A.C. 3A:52-5.3, during the COVID-19 public health emergency, DCF is continuing the waiver, for all centers, of indoor space requirements in excess of limits imposed by the facilities' certificate of occupancy and the fire code. This is a continuation of a waiver promulgated in March.

Also in N.J.A.C. 3A:52-5.3, during the COVID-19 public health emergency, DCF is modifying the requirement that all rooms and spaces used by childcare centers be inspected and approved before use. Owing to an anticipated need to provide licensure to GAP centers that have already begun operation or are working to meet the needs of supervision of remote learning students during the COVID-19 public health emergency, and to minimize the need for in-person inspectors in centers while social distancing rules remain in place, this modification will allow for the approval of spaces based on photographs, architectural drawings, floorplans, or a combination thereof, at the discretion of the Office of Licensing.

Modification at N.J.A.C. 3A:52-6.1 strictly limits activities at these GAP centers to the receipt of individual supervision and assistance with remote learning arranged by public or provide school, provision of meals and snacks, and limited recreation and socialization during breaks in instruction or before or after school. Centers will not be permitted to provide care to children not receiving remote education, including siblings of children otherwise enrolled, unless separately licensed as a Child Care Center. The GAP centers are being licensed as such due to the COVID-19 public health emergency and the unanticipated consequence of remote learning creating a lack of sanctioned and regulated child supervision throughout the state.

In N.J.A.C. 3A:52-6., DCF is also waiving the inactivity and screen time limits for school aged children, which will enable remote education as provided by school districts. In the same section, the 30 minute limit on screen time for children between ages 2 and 6 are increased to 45 minutes to allow more time for center staff to undertake duties related to the COVID-19 public health emergency, including enhanced sanitation, and entry screening. To reduce the movement of children within centers, DCF is also waiving the prohibition on extended periods of inactivity, the requirement that school aged programs engage in small and large group activity and reducing the number of activity stations in toddler programs from four to three.

The text of the modified regulations are as follows, with insertions indicated in **bold** print:

N.J.A.C. 3A:52-1.4, Definitions of Other Terms:

**“General Accommodation Program Supervision Childcare Center” or “GAP Center” means a childcare center serving Remote Education Students during the COVID-19 public health emergency while those children receive remote education services, and during reasonably adjacent periods, i.e. meal periods, break periods, and before and after school periods on the same day that remote education is received. These may be either:**

**Autonomous General Accommodation Program Supervision Childcare Centers (AGAP Centers), which are independently and separately licensed during the COVID-19 public health emergency; or**  
**Satellite General Accommodation Program Supervision Childcare Centers (SGAP Centers), which are contractually partnered with a program meeting eligibility criteria stipulated in N.J.A.C. 3A:52-10.5, and approved to operate under the license of the partner**

**program during the COVID-19 public health emergency. SGAP Centers shall be considered extensions of the sponsoring program, the physical location of which may be either the physical location of the SGAP Center or the physical location of the sponsoring program. SGAP Centers may, for example, keep program records at either the SGAP location or the Sponsor Program location.**

**“Remote Education Students” means children enrolled in a New Jersey public or private school in grades kindergarten through 8<sup>th</sup> grade, who are receiving remotely delivered education services from the school on a full or part time basis as a result of the COVID-19 Public Health Emergency.**

N.J.A.C. 3A:52-2.1, Application for a License

(a) No Change.

(b) A person applying for an initial license or renewal license to operate a center or relocation of a center shall submit a completed application to the Office of Licensing at least 45 days prior to the anticipated opening of the center or to the expiration of its existing regular license. **During the COVID-19 public health emergency, a person applying for a GAP Center license shall submit a completed GAP application by October 23, 2020 or prior to operating.**

(c)-(f) No Change.

**(g) In addition to other requirements prescribed by these regulations, prior to issuance of a GAP Center license during the COVID-19 public health emergency, GAP centers must provide the following to the Office of Licensing:**

- 1. A completed application for licensure, which shall include the following:**
  - i. Name of the GAP Center.**
  - ii. Full physical and mailing addresses for the GAP Center.**

- iii. **An email address for the GAP Center.**
- iv. **A telephone number for the GAP Center.**
- v. **The name of the owner/director of the GAP Center and all staff.**
- vi. **An attestation, on form proscribed by DCF, that the center will abide by all applicable health and safety standards implemented in response to the COVID-19 Public Health Emergency.**

**2. If applying as a SGAP Center:**

**i. Identification of an eligible Sponsoring Program which:**

- (A) Is a New Jersey Licensed Childcare Center;**
- (B) Has been licensed for at least one three-year licensing cycle; and**
- (C) Has not previously had its license, or a license issued to the same owner, sponsor or sponsor representative, suspended or revoked, and is not currently subject to the revocation or suspension of its license.**

**ii. A copy of the executed Sponsorship Agreement which:**

**(A) Includes terms, which cannot be waived by separate agreement, that vest the Sponsoring Program director with sufficient authority over the GAP Center during the COVID-19 public health emergency to ensure compliance with these requirements and any requirements imposed on centers by executive action during the public health emergency, including at a minimum:**

- I. Authority to approve and dismiss all employees, volunteers or other persons acting as staff in the GAP Center;**
- II. Authority to control, restrict and prohibit access to the GAP Center premises by any person, including**

the property owner or leaseholder, during operating hours;

- III. Authority to close the center if compliance with legal requirements cannot be assured or maintained;
- IV. Full access to the premises, including any areas attached to the unit but not used for childcare and any external areas subject to inspection by public officials (e.g. fire suppression systems and control boards).
- V. Full access to program records and information, including contact information for all staff and children served.

(B) Includes terms, which cannot be waived by separate agreement, mutual obligations to report allegations of child abuse and neglect to the Division of Child Protection and Permanency.

(C) Includes terms, which cannot be waived by separate agreement, mutual obligations to ensure the reporting of information related to COVID-19 exposure or outbreak to the local department of health, and the Office of Licensing.

(D) Does not include any provision providing for the complete indemnification of the Sponsoring Program by the GAP Center. Indemnification of the GAP Center by the Sponsoring Program is permitted.

- 3. Proof of liability insurance as required by N.J.A.C. 3A:52-3.4.
- 4. A floorplan which clearly identifies points of entry and egress.
- 5. A Certificate of Occupancy indicating both an appropriate usage category and capacity.
  - i. A fire certificate issued by the fire official with jurisdiction over the physical location of the center.

N.J.A.C. 3A:52-2.2, Issuance of a License

(a) The Office of Licensing shall issue a regular license to a center that has achieved full compliance with all applicable provisions of this chapter. **During the COVID-19 public health emergency the Office of Licensing shall issue a GAP Center License to GAP Centers that have achieved those requirements identified as applicable to GAP Centers.**

(b) No Change.

(c) A temporary license may be issued for a period not to exceed six months. The Office of Licensing may issue as many temporary licenses as it deems necessary. [However, a center shall not operate pursuant to temporary licenses for more than 18 months.]

(d) Each licensing period, which may include the issuance of one or more temporary licenses and/or one regular license, shall be three years[.]**except for GAP Centers for which the licensing period will conclude no later than the expiration of Executive Order 103.**

(e)-(h) No Change.

[(i) For those centers that do not have children in attendance for a period of six months or more, the centers shall be deemed as closed and a new license shall be issued should the center decide to serve children in the future.]

N.J.A.C. 3A:52-2.3, Location of a Center

(a) No Change,

(b) When two or more buildings are, or will be, utilized to accommodate centers operated by the same sponsor or sponsor representative, the sponsor or sponsor representative shall apply to the Office of Licensing for [either]:

1. No Change.



2. A single license covering all the buildings that comprise a single center provided that:

i. The buildings are on the same or contiguous properties **or, during the COVID-19 public health emergency, are comprised of a licensed center and sponsored GAP Center programs within the same municipality or school district.**

ii.-iii. No Change.

N.J.A.C. 3A:52-2.4 Denying, suspending, revoking or refusing to renew a license or a Certificate of Life/Safety Approval

(a) The Office of Licensing may deny an application or suspend, revoke, or refuse to renew a license or a Certificate of Life/Safety Approval for good cause, including the following, as applicable:

1.-14. No Change.

**15. During the COVID-19 public health emergency, failure to abide by applicable guidance or directives made pursuant to Executive Order #103 or any other Executive Order relating to the COVID-19 public health emergency.**

N.J.A.C. 3A:52-2.5 Administrative Hearings

(a)-(c) No Change.

**(d) During the COVID-19 public health emergency, the Department may also choose to take action pursuant to N.J.S.A. App. A:9-30 to -63 and N.J.S.A. 26:13-1 to -31.**

N.J.A.C. 3A:52-4.3 Staff/Child Ratios and Supervision

(a)-(l) No Change.

**(k) During the COVID-19 public health emergency, for SGAP Centers only, at least one staff member, at least 18 years of age, shall be present for every group of 15 children or part thereof in attendance. For AGAP Centers, at least one staff member, at least 18 years of age, shall be present for every group of 12 children or part thereof in attendance, and the minimum number of staff at all times shall be no less than 2.**

#### N.J.A.C. 3A:52-4.6 Staff Qualifications

(a)-( c) No Change.

(d) For school-age child care programs **and AGAP Centers**, the following shall apply:

1.-5. No Change.

**(e) During the COVID-19 public health emergency, this subsection is not applicable to SGAP Centers.**

#### N.J.A.C. 3A:52-4.7 Staff Orientation and Development

(a) No Change.

**(b) During the COVID-19 public health emergency, only orientation training as specified in NJAC 3A:52-4.8 shall be required for GAP Centers.**

#### N.J.A.C. 3A:52-4.8 Orientation Training

(a)-(g) No Change.

**(h) During the COVID-19 public health emergency, staff at SGAP Centers shall only be required to complete orientation training required by (c)(4) above. Staff at AGAP centers shall be required to complete all orientation training, excluding training required by (c)(9) and (c)(10).**

N.J.A.C. 3A:52-5.3 Physical Plant Requirements for All Centers

(a) Indoor maintenance and sanitation requirements are as follows:

1-10. No Change.

11. All windows and other glass surfaces that are not made of safety glass and that are located within 36 inches above the floor shall have protective guards. **This requirement is not applicable to GAP Centers, due to the COVID-19 public health emergency.**

12. Install window guards, with approval of the local fire official, or provide an alternative method to ensure that children cannot fall out of windows. **This requirement is not applicable to GAP Centers, due to the COVID-19 public health emergency.**

13.-16. No Change.

17. All televisions and computers shall be secured on a stable surface and shelving shall be secured and not be overloaded. **This requirement is not applicable to GAP Centers, due to the COVID-19 public health emergency**

18.-20. No Change.

21. The center shall ensure all guardrails accessible to children are no more than four inches apart or are otherwise protected to prevent head entrapment. **This**

**requirement is not applicable to GAP Centers, due to the COVID-19 public health emergency.**

(b)-(g) No Change

(h) Lead paint precautions are as follows:

1.-7 No Change.

**8. GAP Centers shall submit any documentation required by this subsection within 60 days of licensure, due to the COVID-19 public health emergency.**

(i) Environmental condition precautions are as follows:

1-4 No Change

5. At the time of the initial application, any renewal application, relocation of an existing licensed center and, in the discretion of the Office of Licensing, any other time, the applicant or facility operator shall certify in writing that the center provides a potable water supply provided by a public community water system.

i. If the facility is supplied by a public community water system, the applicant or facility operator shall provide documentation of water testing conducted by a laboratory certified by the Department of Environmental Protection for water testing for lead and copper from all faucets and other sources used for drinking water or food preparation and at least 50 percent of all indoor water faucets utilized by the center. **Due to the COVID-19 public health emergency GAP Centers shall provide this documentation within 60 days of licensure provided that bottled water is provided for child consumption at all times prior to the submission of this documentation.**

ii.-iii No Change.

6.-9. No Change

**10. GAP Centers shall submit any documentation required by this subsection within 60 days of licensure.**

(j) – (p) No Change.

(q) Space and room requirements are as follows:

1. All space and rooms within the center to be used by children shall [be inspected and] approved by the Office of Licensing prior to their use. In making its determination, the Office of Licensing shall consider whether the space is too far removed, remote, or isolated from other areas of the center to be used by children. **Spaces and rooms may be approved based on a review of a floor plan, photograph or architectural drawing at the discretion of the Office of Licensing, but shall be subject to in-person inspection within one year of approval, or for GAP Centers not later than the expiration of Executive Order 103.**

i. -ii. No Change.

2.-4. No Change.

(r) No Change.

#### N.J.A.C. 3A:52-6.1 Activities

(a) No Change.

(b) The staff member(s) specified in N.J.A.C. 3A:52-4.5 who are responsible for developing and overseeing the implementation of the center's daily activities shall ensure that:

1.-5. No Change

6. Children are provided with daily structured and unstructured developmentally appropriate indoor and outdoor energetic physical activity as follows:

i.-ii No Change.

[iii. Whenever feasible, and unless the child is eating, sleeping, needs to complete a seated activity, or is ill, children shall not be inactive for more than 30 minutes; and] (sic)

7. The use of a television, computers, and other video equipment shall be limited to educational and instructional use, shall be age and developmentally appropriate, [and shall not be used as a substitute for planned activities or for passive viewing] **and passive viewing shall be limited to no more than 45 minutes per day.**

**i.-iii. No Change.**

(c)-(f) No Change.

(g) For early childhood programs, the following shall apply:

1. No Change.

2. Centers serving children less than 18 months of age shall provide at least [four] **three** types of children's daily activities including, but not limited to, sensory; language and dramatic play; manipulative; building; large muscle; music; or other comparable activities; and at least four types of supplies and equipment for each activity area chosen by the center.

i.-iv. No Change.

3.-4. No Change.

(h) For school-age childcare programs, the following shall apply:

1. Centers shall plan and implement programs that include:

i.-iv. No Change.

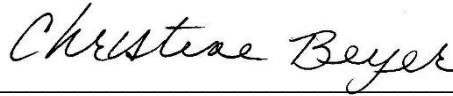
v. Daily schedules that include individual quiet times, structured and unstructured activities. [, and small-group and large-group activities.]

**(i) For GAP Centers, activities shall be limited to supervision of remote education students engaged in educational programs arranged by public or private schools, provision of meals and snacks, and limited recreation and socialization during breaks and/or or before or after school. No GAP Center is permitted to provide care to children not receiving remote education, including siblings of children otherwise enrolled, unless separately licensed as a childcare center.**

I find that waiver/suspension/modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

October 7, 2020

Date



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Christine Norbut Beyer, M.S.W.

Commissioner