

**Written Comments submitted prior to the October 14, 2021, public hearing**

[REDACTED]

**Comment 1:**

I would like to state the impact that the recent rule changes have had on my family.

I left a physically abusive marriage, and initially I had no job or income and was living with my children in my mom's house after I separated. I got a job and was able to live on my own with my kids, but my income was still not enough to cover all my expenses, including legal fees for my divorce.

Over the past year, I have been able to save some money in a college savings account for my kids due to the fact that I didn't need to pay my son's daycare co-payment. I never dreamed that I would be able to set aside money for my kids' college when I could barely pay for everyday expenses. This last year has allowed us to look to the future, instead of being trapped.

I hope more families, especially single mothers, can have the same experience and that these policies are made permanent.

Thank you.

**Department response:** ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

[REDACTED]

**Comment 2:**

The increases that were given were a great help. We have many school age children and feel that those children should of also relieved an increase. That age group requires lots of time and materials, replaced due to use and breakage. I hope they look at this a bit closer. Thank you.

**Department response:** ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

**Department response:** New Mexico's latest rate increases, including those for school age children, were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

[REDACTED]

**Note:** The Department received comments from different individuals at this provider's office, and they are consolidated here.

**Comment 3:**

To Whom It May Concern:

Public hearing comments regarding 8.16.2 NMECED proposed child care licensing regulations Please take into consideration our appeal as we are a private business and quality early childhood provider.

1. Administrative requirements for centers currently consist of Family handbook requirements that we already adhere to and comply with. Each licensing surveyor has access to our Family Handbook and the capacity to review it on site. Each childcare is a private business who should be able to update their Family handbook without approval and submission. We are appealing the changes stating, "Upon updating the parent handbook, changes must be approved and submitted to the licensing authority and new signatures by parents or guardians must be obtained within 30 days." As listed in **8.16.2.22 D & G and 8.16.2.32 C & F**

**Department response:** Thank you for your comment. The Department will revise the language to read "Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area." However, insofar as the proposed regulation change requires approval by the licensing authority of any changes to a center's family or personnel handbook, such approval would align with the requirements that new centers seeking licensure must obtain the licensing authority's approval of family and personnel handbooks prior to licensure. See 8.16.2.21 NMAC. Thus, seeking approval for changes to the family or personnel handbook would bring the regulations into alignment with the initial licensure requirements.

2. We are appealing the reference to Cease and Desist listed in 8.16.2.7 C 2 and 8.16.2.12 M

There needs to be an ability to appeal the Cease and Desist. By not providing an appeal you are legally violating due process rights. If a Cease and Desist is issued, a provider should be entitled to a mechanism of immediate appeal either administratively or in a court of law.

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.



**Comment 4:**

I commend Secretary Groginsky and the entire staff of the New Mexico Early Childhood Education and Care Department on an extremely challenging first year! There have been many positive changes implemented by the new department. The Secretary's commitment to transparency and collaboration has been felt deeply throughout the Early Childhood Community.

Unfortunately, the proposed 8.16.2 regulation changes still reference CYFD in nearly every section. With the addition of the 'Cease and desist letter', it certainly *\*feels\** very much like the 'old CYFD'. The definition listed seems to contradict the spirit of 'Cease and Desist' - which by nature is typically issued to intimidate or threaten. This specifically needs *\*much\** more clarification before it should be put into regulation.

I respectfully ask that there be more time for discussion regarding 8.16.2.7 C (2) (along with all other mentions of 'cease and desist' throughout the regulation) before including this new item in 8.16.2.

Please see the attached document detailing other specific areas of concern within 8.16.2.

Thank you.

8.16.2 Issues:

**8.16.2.1 ISSUING AGENCY:** Children, Youth and Families Department (CYFD). [8.16.2.1 NMAC - Rp, 8.16.2.1 NMAC, 10/1/2016]  
Should this not be New Mexico Early Childhood Education and Care Department?

**Department response:** Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

**8.16.2.2 STATUTORY AUTHORITY:** The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico children, youth and families department, by authority of the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, and Subsection D of Sections 24-1-2, Subsection I of 24-1-3 and 24-1-5 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.

[8.16.2.3 NMAC - Rp, 8.16.2.3 NMAC, 10/1/2016] This needs to be addressed along with 8.16.2.8 E-G. All mention CYFD regs. Is CYFD still in fact the issuing agency?

**Department response:** Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the

licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

8.16.2.7 C(2) “Cease and desist letter” means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, *but there is not an immediate threat to the health and safety of children* in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

Cease and Desist Letters are typically punitive/threatening in nature. What is the purpose? This seems unnecessary given that the survey reports outline deadlines for compliance in any items found not in compliance at the time of inspection. We anticipated that the new Early Childhood Education and Care Department would offer more supports to struggling programs – not be punitive in nature.

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.

**8.16.2.7 L(1) “License”** means a document issued by CYFD **Should read ECECD** to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

**8.16.2.7 N(1) “National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD **Should read ECECD** determines the program criteria and standards to evaluate and approve accrediting bodies.

(a) The following are the only national accrediting bodies that are approved by CYFD: **Should read ECECD**

(b) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies. **Should be removed. No longer relevant.**

**8.16.2.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):** The child care services bureau, licensing section, of the early childhood services division of the New Mexico children, youth and families department, hereafter called the licensing authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16, NMSA 1978, as amended. [8.16.2.10 NMAC - Rp, 8.16.2.10 NMAC, 10/1/2016] **This needs to be addressed**

**8.16.2.11 A(1)(f)** 5-star level is voluntary and requires meeting and

maintaining licensing requirements, FOCUS levels 3, 4 and 5 quality criteria at all times and maintaining CYFD **Should read ECECD** approved national accreditation status.

**8.16.2.11 B(1)** A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. CYFD **Should read ECECD** -approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25 late fee must be submitted with the renewal fee. **8.16.2.11 F, 8.16.2.12 N(1), 8.16.2.14 D all have the same verbiage.**

**8.16.2.12A(8)** substantiated abuse or neglect of children by an educator, staff member, volunteer, or household member as determined by CYFD **Should read ECECD** or a law enforcement agency;

- B. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.
- C.
- D. The children, youth and families department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

**Department response:** Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

**8.16.2.12M** There shall be no right to an appeal or administrative review when the licensing authority issues a cease and desist letter; provided, however, that the licensee shall have the right to an appeal or administrative review of any subsequent action taken by the licensing authority as set forth herein. **Given that the purpose of the cease and desist letter is unclear, no right to an appeal seems inappropriate.**

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance

with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.

**8.16.2.22D FAMILY HANDBOOK:** All facilities using these regulations must have a parent handbook [which includes]. Upon updating the parent handbook, changes must be approved and submitted to the licensing authority and new signatures by parents or guardians must be obtained within 30 days. **Family handbook is a more inclusive term than ‘parent handbook’.** **The term should be consistent in the regulation – including the definition (8.16.2.7 P(2)).** **Regarding the new signatures: this seems overly burdensome to large programs with 100+ families. Would it not be acceptable to have documentation that all families were notified of the changes and where to find the updated version online (email notification for example)?**

**Department response:** Thank you for your comment. The Department will revise the section to change the word “parent” to “family” and remove the requirement for new signatures by parents or guardians. The sentence will now read “Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area.”

**8.16.2.22D(2)(n)** anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexualorientation, or gender identity), national origin, disability, or age (40 or older). **Not appropriate categories regarding non-discrimination of children.**

**Department’s response:** Thank you for your comment. The Department has proposed the referenced categories of protected individuals in regulation not only to protect the rights of children, but also to protect the rights of the entire family seeking child care, which would include parents, guardians, and possibly other family members.

**8.16.2.22E(1)(g)**a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD; **Report to CYFD protective services AND licensing (ECECD)?**

**Department response:** Thank you for your comment. While ECECD has statutory authority to enforce the provisions set forth in 8.16.2 NMAC, it does not have the statutory authority to remove CYFD’s name in regulation and replace it with ECECD’s name. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words “Children, Youth and Families Department” or “CYFD” with “Early Childhood Education and Care Department” or “ECECD.” The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide

it the proper statutory authority to make the change in regulation. Moreover, all providers are required to report potential abuse to CYFD's Statewide Central Intake.

**8.16.2.22G PERSONNEL HANDBOOK:** The center will give each employee a personnel handbook that covers all matters relating to employment [and includes]\_ Upon updating the parent **should read personnel** handbook, changes must be approved and submitted to the licensing authority and new signatures by staff must be obtained within 30 days. The handbook will include the following critical contents

**Department response:** Thank you for your comment. The Department will revise the language to read "Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority and new signatures by staff must be obtained within 30 days."

**Oral Comments received during the NMAC 8.16.2 public hearing Thursday, October 14, 2021.**



**Comment 5:**

Good morning, everybody. Thank you for the opportunity to provide public comment. There are three specific, four actually, specific regulations that I would like to address.

The first being 8.16.2.17 [NMAC] Surveys for Child and Child Care Facilities, item G, which states "if a facility has video cameras on the premises that has recording capabilities footage must be accessible to the licensing authority upon request." The comments that I have are there are many concerns to making this a regulation. For one, there is an expectation of privacy that exists from parents. Situations arise where children and teachers may be exposed to certain times. Children may soil themselves; teacher may end up having to change out of a shirt because they were thrown up upon, different, different items. Yeah, they can be out of a classroom, but possibly in an area where cameras are. Guests at the center are unaware of filming and photography policies and have not consented to any public viewing of such activities.

Number two, ECECD is a state agency. Thus, you're subject to balancing individual rights from privacy and societal safety. Thus, why warrants are required? Yes, licensed childcare centers must allow review of paperwork and logs and non-site inspections, but these activities are not nearly as invasive as filming. I, for one, agree the cameras are good ideas, but giving someone free range to view is not. How about the ability to view when a legitimate complaint exists, and limiting the viewing to that complaint? Next, cameras can be used for lots of different things such as training purposes, and sometimes without the full context can be misconstrued. For example, this just recently happened when the Border Patrol agent was seen as it was viewed as he was whipping migrants. Well, that in fact didn't happen, but it was misconstrued that way because video taken out of context. Will the individual sites be allowed to dictate their own retention policies and procedures? The costs. Storage of audio and video is expensive. I, myself, at my center have been looking into overhauling most of our system. I am well now over \$50,000. So, we are in need of having to do it in increments. It's going to cost us hiring a contract company and make sure things operate correctly. And the security around the storage is the biggest chunk of that money. Redaction software will be needed if this regulation is implemented. Currently, we right now limit who on staff can view our cameras. If I let the state agency view, does that set precedents that anyone with an interest, i.e., a parent, can go in and view cameras? Are they background checked? This policy opens a can of worms that has not been well thought out. Will this

open a free for all viewing of privacy expectations? What will happen is you will end up discouraging facilities from even using cameras. That isn't good for anyone. This policy needs to be vetted and proper policies that can take everything into consideration need to be explored before a rule is even considered.

**Department response:** ECECD appreciates this comment but does not propose adopting this recommendation at this time or changing the proposed regulation change in this section. The ability to view the surveillance video is very helpful to identify any violations of the state Child Care Licensing Act and often provides the best, most reliable evidence of what actually occurred. As written, the proposed regulation change to 8.16.2.17(G) would only permit the licensing authority to review footage and not any other individuals unless permitted by the child care entity. Given universal privacy concerns, surveillance cameras should only be placed in public places such as playgrounds, classrooms, kitchens, and dining areas/cafeterias and other areas without an accepted expectation of privacy. Further, the proposed regulation does not require any child care entity to install cameras, or mandate the type of cameras or equipment used, as those are individual choices for each provider to make. Rather, the proposed regulation dictates that if cameras are installed and operating, then the licensing authority shall have the ability to view the footage upon request. This proposed change is also supported by other regulation currently in effect, namely 8.16.2.18(D) (“The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to sanctions, up to revocation.”).

The next regulation I’d like to address is 8.16.2 D [NMAC] The Family Handbook. It states all facilities using these regulations must have a parent handbook with the following, addition is “upon updating the parent handbook changes must be approved and submitted to the licensing authority and new signatures or guardians must be obtained within 90 days.” My concern with this regulation is the words “changes must be approved to the licensing authority.” Approved implies that ECECD will have to approve our personal business policies under regulation. ECECD can mandate “having a policy”, however, ECECD cannot nor should not mandate what it states. Therefore, they cannot approve the wording of the policy itself, only the fact that a policy exists. I object to the wording “approved by the licensing authority” and ask for consideration that it be removed.

**Department response:** Thank you for your comment. The Department will revise the language to read “Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area.” However, insofar as the proposed regulation change requires approval by the licensing authority of any changes to a center’s family or personnel handbook, such approval would align with the requirements that new centers seeking licensure must obtain the licensing authority’s approval of family and personnel handbooks prior to licensure. See 8.16.2.21 NMAC. Thus, seeking approval for changes to the family or personnel handbook would bring the regulations into alignment with the initial licensure requirements.

Next item is 8.16.2 G [NMAC] The Personnel Handbook “the center will give each employee a personnel handbook that covers all matters relating to employment.” The new addition is “upon updating a parent handbook changes must be approved and submitted to the licensing authority and new signatures by staff must be obtained within 30 days.” As stated in the previous, the wording of “approved by” is what I would like reconsidered to be taken out for the reasons set forth, that ECECD cannot... they can mandate having a policy, however, they cannot dictate what that policy is to state. That should be at the leisure of the personal business. Every business is different. The policy needs to fall within their

own guidelines. I asked that that wording “approved by” be removed. The last, I’m sorry, I need to find, if you give me one second.

**Department response:** Thank you for your comment. Insofar as the proposed regulation change requires approval by the licensing authority of any changes to a center’s family or personnel handbook, such approval would align with the requirements that new centers seeking licensure must obtain the licensing authority’s approval of family and personnel handbooks prior to licensure. See 8.16.2.21 NMAC (“...supporting documents...”). Thus, seeking approval for changes to the family or personnel handbook would bring the regulations into alignment with the initial licensure requirements.

The last item is 8.16.2.9 [NMAC]. I will read it. “A program will maintain staff child ratios and group sizes at all times.” The new insertion and highlighted in green is “based on the youngest child present in the group.” This is a new insertion, which will greatly benefit, which will greatly hurt a childcare business. Right now, the regulation reads that it is the majority of the age of a group of children. For example, if you have two’s and three year olds, if the majority are three year olds, you can follow the ratio of three year olds. This in itself will lead to a big cost to a child care center in having two year olds that turn three, and having to wait to change the ratio of that room until that very last child turns three. I asked for reconsideration in this change to the regulation based on the youngest child present in the room. I asked that that not considered to be taken out and not added. Thank you. That is all for my comments.

**Department response:** Thank you for your comment. The correct section is **8.16.2.23(A)(9)**- The department will revise the language to read “A program will maintain staff/child ratios and group sizes at all times based on the age of the majority of children in the group.” The department is making this change to ease administrative burdens on childcare providers.

[REDACTED]

**Comment 6:**

Again, I’m [REDACTED] I’m the Executive Director of before. We represent the business owners of Early Childhood Education Centers and Programs. The ECECD was a dream of our membership. And we advocated for it wholeheartedly. We wanted a new regulatory agency who worked collaboratively, not punitively, with our programs. Unfortunately, the proposed regulation for a cease and desist is aggressive, subjective, and punitive. We need support and correction from the ECECD, not punitive action. If a program is struggling with compliance, we would like to see the department offer referrals for funding or training to support the program into getting into compliance. This was our vision for the department from the start, and I hope you consider this while moving forward in regulation changes and reconsider your idea the cease and desist regulation. Thank you.

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or

cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.

[REDACTED]

**Comment 7:**

Thank you. My name is [REDACTED] and I am the CFO of TLC Development Center. We have seven locations in New Mexico. Five in Albuquerque, one in Belen, and one in Edgewood. So three different counties. So that's always fun. Anyway, first I'd like to commend Secretary Groginsky and the entire staff of New Mexico Early Childhood Education and Care Department on an extremely challenging first year. There have been many positive changes implemented by the new department. And the Secretary's commitment to transparency and collaboration has been felt deeply throughout the community.

My concerns with 8.16.2 [NMAC] the proposed changes. Well, first, I'm sorry, I'd like to say that I'm concerned that there aren't some changes. 8.16.2.1 [NMAC] the issuing agencies still references Children Youth and Families Department, and the statutory authority, statutory authority is still given to Children Youth and Families. The license in 8.16.2.7 [NMAC] the license definition means a document issued by CYFD. They're not issued by CYFD anymore. And 8.16.2.7 N (1) [NMAC] the definition of National Accreditation Status also says that they're approved by CYFD. And the 8.16.2.10 [NMAC] Licensing Authority Administration and Enforcement Responsibility is still given also to CYFD. So, I think those things have not been changed and I don't know how they need to be addressed but I'm assuming they do need to be addressed.

**Department response:** Thank you for your comment. While ECECD has statutory authority to enforce the provisions set forth in 8.16.2 NMAC, it does not have the statutory authority to remove CYFD's name in regulation and replace it with ECECD's name. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

Also, regarding 8.16.2.7 C [NMAC] Cease and Desist Letter, that reads "Cease and Desist letter means a formal letter from the licensing authority outlining any ongoing violations of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violations before additional action, including suspension or revocation, is taken by the licensing authority. A Cease and Desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and safety of children in care and seeks to compel compliance before more serious action is taken. A Cease and Desist letter must provide the specific deadlines to rectify the violations 24 to 72 hours and can specify the subsequent action the licensing authority will take if the violation is not corrected by that deadline." Now cease and desist letters are typically punitive or threatening in nature,

historically, so I don't understand what the purpose of this addition is. And it seems unnecessary given that the survey reports outline deadlines for compliance on any items that are found not in compliance at the time of inspection. The definition that is listed seems to contradict the spirit of cease and desist, again, which by nature is typically issued to intimidate or threaten. I think this specific, this specifically needs much more clarification before it should be put into regulation.

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.

And I also agree with Barbara Tedrow regarding 8.16.2.17 G [NMAC]. The video footage being available as faded is too broad of a scope. It needs to be narrowed down to targeted incident investigations or other such circumstances.

**Department response:** ECECD appreciates this comment but does not propose adopting this recommendation at this time or changing the proposed regulation change in this section. The ability to view the surveillance video is very helpful to identify any violations of the state Child Care Licensing Act and often provides the best, most reliable evidence of what actually occurred. As written, the proposed regulation change to 8.16.2.17(G) would only permit the licensing authority to review footage and not any other individuals unless permitted by the child care entity. Given universal privacy concerns, surveillance cameras should only be placed in public places such as playgrounds, classrooms, kitchens, and dining areas/cafeterias and other areas without an accepted expectation of privacy. Further, the proposed regulation does not require any child care entity to install cameras, or mandate the type of cameras or equipment used, as those are individual choices for each provider to make. Rather, the proposed regulation dictates that if cameras are installed and operating, then the licensing authority shall have the ability to view the footage upon request. This proposed change is also supported by other regulation currently in effect, namely 8.16.2.18(D) ("The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to sanctions, up to revocation.").

Also, regarding the cease and desist letter in 8.16.2.12 M [NMAC] "there shall be no right to an appeal or administrative review when the licensing authority issued a cease and desist letter." Given that the purpose is unclear, stating that there's no right to an appeal seems inappropriate.

**Department response:** Thank you for your comment. The Cease and Desist Letter proposed in regulation is not intended to be punitive and would be sent to providers as a means to warn that a practice or policy violates regulation and needs to cease immediately. In this sense, the Cease and Desist Letter serves to provide a time period whereby providers can bring themselves into compliance with regulations before facing or avoiding more serious consequences, such as suspension or revocation, or notify the licensing authority of information it may not possess and thereby avoid a more serious regulatory action. There is no means to appeal the Cease and Desist Letter because it does not constitute an adverse action. Rather, the Cease and Desist Letter provides 24 to 72 hours to rectify or

cure the regulatory violation before an appealable action, such as a suspension, is served on the provider.

In 8.16.2.22 D [NMAC] The Family Handbook “all facilities using these regulations must have a parent handbook.” The family handbook is a more inclusive term than parent handbook and the term should be consistent in the regulation, including in the definition. But where its, where it requires the new signatures by parents or guardians obtained within 30 days, that will, that seems overly burdensome to larger programs with 100 or more families. Would it not be acceptable to have documentation that all families were notified of the changes and where to find the updated version online? For example, an email notification, or some other such electronic version of that documentation. And I also have submitted written comments that was, was better thought out, I think, but I think that, that's all I have for the oral comments. Thank you so much for your time.

**Department response:** Thank you for your comment. The Department will revise the language to read “Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area.”