

ORIGINAL: 2539

June 27, 2006

Jennifer Lau
Bureau of Certification Services
Office of Child Development
Department of Public Welfare
1401 North Seventh Street
P.O. Box 2675
Harrisburg, PA 17105

RECEIVED
2006 JUN 28 PM 2:13
INDEPENDENT REGULATORY
REVIEW COMMISSION

**Re: 55 Pa. Code Chs. 3270, 3280, 3290 and 3300
Child Care Facilities**

Dear Ms. Lau:

On behalf of our clients, Community Legal Services Inc. (CLS) commends the Department of Public Welfare (DPW) for updating the minimum health and safety standards for child care facilities in the State of Pennsylvania. These standards are necessary to support the developing professional goals of child care workers, to reflect best practice standards in the field, and to protect the children the industry serves. While CLS represents thousands of low-income children and families in the Philadelphia area, who need child care so parents can move toward self-sufficiency, it also represents hundreds of low-income and nonprofit child care providers and advocates for quality, affordable child care through its Child Care Law Project. From this vantage point, CLS respectfully submits the following comments regarding the DPW proposed rulemaking on child care facilities.

Child care standards should both protect children and further the goal of high quality care. At the same time, the standards must not be so unreasonable and burdensome so as to reduce the availability of various types of care or to prevent providers from entering or staying in the field; particularly home-based providers¹ that serve low-income and inaccessible communities. Therefore, the proposed regulations must be viewed in the context of other issues in the child care field, such as compensation of child care workers and parent choice.

Several studies have shown a direct relationship between compensation and quality child care in all settings. Pennsylvania child care workers are paid so little that they often fall below the poverty line and leave the field in search of higher wages, resulting in high turnover at facilities. In child care centers, full-time child care teachers and aides generally earn between \$13,000 and \$19,400 annually.² The interrelationship of compensation and quality is even more apparent for home-based providers who are increasingly being required to meet higher standards, costing the provider additional expenses, time and staff; yet they are not receiving any

¹ The reference to home-based providers in this document includes both family day care homes (home providers that care for up to 6 children) and group child daycare homes (home providers that care for 7 to 12 children).

² David H. Bradley, *Low Child Care Wages and High Turnover Shortchange Pennsylvania Children: Findings from Surveys of Child Care Providers in Allegheny County, Southeast Pennsylvanian and York County*. The Keystone Research Center, October 2001, p. 2.

comparable increase in compensation. Home-based providers average about \$19,000 annually,³ but in Philadelphia, a family day care home (FDCH) provider earns an average yearly net income of only \$9,337⁴. In addition, home-based providers often have lower child care subsidy rates than centers and may find the proposed requirements financially infeasible.

Parents however, rely on home-based care, because it is accessible, flexible and inexpensive. Home-based care is often located in the same neighborhoods as working families. Many home-based providers offer flexible schedules, such as evening, night and weekend care and working families depend on the affordability and flexibility of small child care providers. These characteristics are often attractive to parents who have very young children, work nontraditional schedules or have limited resources. The proposed regulations should support the availability of this type of care for Pennsylvania families.

As the daycare regulations are updated, it is important to achieve a considerable compromise between success of the child care industry, parent choice, and quality child care standards. Please accept the comments below on specific areas of the proposed rulemaking, which we feel will have a significant effect on the supply, efficiency and abilities of low-income home daycare providers.

PROVIDER QUALIFICATIONS/TRAINING

- **Minimum qualification standards prevent many well qualified people from entering the field and subsequently preventing parents from selecting a provider of their choice. Alternative minimum qualifications, such as years of experience, should be acceptable as a substitute for the High School Diploma or GED for requirement for a Family Day Care Home provider.**

§ 3290.31 (*relating to age and training*)

This section proposes that FDCH providers be required to have a general educational development certificate (GED) or high school (HS) diploma upon renewal of the registration certificate. While some minimum qualification standards for child care workers facilitate a better learning environment for the children, these standards should not be so inflexible that it bars child care providers who can otherwise demonstrate their ability to provide quality care. This proposed regulation does not strike an appropriate balance between alternative minimum qualifications and the need for quality early childhood education.

Obtaining a HS diploma or GED may be a daunting task for a provider that has been in the field for several decades. The proposed regulation attempts to recognize this challenge. It has a “grandfather” provision: Providers without the minimum education requirement and are registered as of the effective date of the amended regulations may continue operating. It accepts both the HS diploma and GED as an acceptable minimum education requirement. It also states that new providers have until the renewal of their registration to get their GED or HS diploma, meaning new providers will have up to 2 years from the date of their initial registration to come into compliance.

³ *Id.*

⁴ *The Worthy Wage Campaign of the Delaware Valley*, Brochure.

Currently, many providers already have a high school diploma, because it is required for a Childhood Development Associate (CDA), to participate in Keystone Stars⁵, or for accreditation. In fact the proposed rulemaking states that as of 2002, 97% of family child care providers had a high school diploma or GED.

Nonetheless, a HS diploma or GED requirement may be prohibitive for some providers, particularly for Limited English Proficient (LEP), low-income, minority or older providers. For instance, GED tests are only offered in Spanish, French and English, which does not cover the multitude of LEP residents in Pennsylvania. The test also costs on average \$40-\$60, plus traveling and preparation expenses. Likewise, obtaining a HS diploma may be very time consuming and adult education opportunities may not be readily available throughout the State.

Moreover, a requirement of a HS diploma can have a racially disparate impact and thus violate the civil rights laws. In Griggs v. Duke Power Co., 401 U.S. 424 (1971), the Supreme Court found a violation of Title VII based on a high school diploma requirement where there was no business necessity for that requirement. See also EEOC Guide to Pre-Employment Inquiries (copy attached). If DPW mandates HS diplomas, it may face Title VI charges based on this rationale.

Recommendation: Any imposed minimum qualification requirement should be flexible and should include alternatives. To make this requirement more feasible for FDCH providers, the Department should allow a combination of experience and training as an acceptable substitute for education requirements.

- **Alternatives must be made available so that child care providers may attend the Pre-certification Training requirement without causing an undue burden on their programs and finances.**

§§ 3270.11, 3280.11 and 3290.11 (relating to application for and issuance of a registration or certificate of compliance)

The proposed regulations require that providers attend pre-certification training offered by the DPW within 12 months before issuance of a certificate of compliance or registration by DPW.

DPW's full day orientation introduces new providers to the state regulations and offers additional resources. However, not all child care providers are able to attend the orientation without incurring significant costs in time and money.

First, providers have to find the means to get to and from the training. Traveling may be impractical for providers in rural communities where public transportation is not as accessible or the regional office is quite a distance away. The proposed rulemaking states that a provider traveling 200 miles round trip would incur travel costs of an estimated \$97, or nearly a third of a home-based provider's net salary for the week.

⁵ Keystone Stars is a voluntary quality initiative program that recognizes regulated child care providers who exceed state health and safety certification requirements.

The proposed rulemaking explains that home-based providers would have to hire a substitute teacher during the day of orientation. For a low-income FDCH provider, hiring a substitute teacher to attend a full day orientation may not be fully viable. FDCH providers operate out of their personal residence and unlike group child care homes, are often the only staff person for their program. The provider is the only person the children and their parents know and are comfortable with. Often times a FDCH does not have a relationship with a substitute teacher or teacher's aide. Hiring a substitute teacher means the provider would have to trust a stranger with her home, her business and the families she serves.

Additionally a substitute teacher could cost a provider an estimated \$68, an additional portion of the provider's modest weekly earnings. In some cases where a substitute teacher is not a possibility, the family day care home provider may decide to close the facility for the day, resulting in a loss of day's income and also inconveniencing the families.

Lastly, a potential child care provider would incur costs as well. Someone employed outside of the industry would have to miss a day of work to attend orientation. That person may lose wages in average of \$147 in addition to traveling expenses. Unemployed persons will have to find resources to cover traveling expenses or may have to pay for daycare.

Recommendation: To reduce the costs and time barriers for attending pre-certification orientation, the child care orientations should be offered frequently, at nontraditional times and locations throughout the state. Weekend and evening orientations should be available, as well as video, on-line and self-study opportunities.

SERVICES TO CHILDREN WITH SPECIAL NEEDS

- **CLS's supports the Department's efforts to promote compliance with the Americans with Disabilities Act (ADA).**

Chapter 3300 *(relating to specialized day care services for children with disabilities)*

§§ 3270.4, 3280.4, and 3290.4 *(relating to definitions and specifically, defining "children with special needs")*

§§ 3270.17, 3280.16, 3290.15 *(relating to services to a child with a disability)*

§§ 3270.133, 3280.133, 3290.133 *(relating to child medication and special needs)*

There is an urgent need to reinforce inclusion in child care facilities, where many providers are unaware of or ignore the requirements of the ADA and DPW has been less than rigorous in its enforcement. Inclusion of children with special needs enables parents to work, because they have access to quality inclusive child care services. Inclusion also enriches the classroom, by creating an environment of acceptance, respect and cooperative learning. While providers must understand that outright denying care to a child with special needs is illegal, providers must also have access to resources to help them care for children with special needs.

These proposed sections promote the inclusion of children with special needs in child care programs. Specifically, Chapter 3300 of the regulations, relating to special needs children, will be deleted and Chapters 3270, 3280 and 3290 will be amended to clarify that all child care facilities must make reasonable accommodations for children with special needs and to comply with ADA policy. Each Chapter is updated with a more appropriate term and definition for "children with special needs". In addition to compliance with the ADA, child care operators will be required to allow service providers on site to work with children with special needs, to make reasonable accommodations for administering medication and special diets to children with special needs, and to make facility staff aware of services available for children with special needs. All of these proposed changes foster the availability of more accessible child care options for children with special needs.

These changes are not in effect imposing any new requirements on providers, as most providers, if not all, are already required to comply with the reasonable accommodation standards. The ADA applies to all "public accommodations" which includes child care programs- small and large⁶. Compliance with ADA regulations is often encouraged by accreditation organizations. Also, child care providers who receive federal funds from sources such as the Child and Adult Care Food Program or child care subsidies through the Child Care and Development Block Grant or Temporary Assistance for Needy Families are required to comply with ADA regulations.⁷

The Department states that it will provide information and materials to child care facilities about community resources for children with special needs. These materials should be available to parents, child care workers, advocates and DPW employees and should inform them about inclusion policies in child care that are vital to the successful implementation of the ADA. With extensive training and education, child care providers and DPW staffers will be able to evaluate when reasonable accommodations must be provided to admit a child with special needs. Also, conflicts between parents of children with special needs and child care operators will be more easily resolved and DPW staff will be able to more fully explain requirements to providers. Providers, families, and advocates need to know the definitions of a "child with special needs" and "reasonable accommodations" and to understand under what limited circumstances a provider may deny care.

Recommendation: ADA training and other support resources should be made available for parents, child care staff and DPW employees to enhance services to children with special needs.

Thank you for the opportunity to submit these comments.

Sincerely yours,

Donna Johnson Bullock, Esq.
Staff Attorney
Community Legal Services Inc.

⁶ 28 C.F.R. §§ 36.102, 36.104 (2003); 42 U.S.C.A. §12181(7)K (1994).

⁷The Rehabilitation Act of 1973, 29 U.S.C. §§ 790-794 (2003).

ORIGINAL: 2549

Kathy Cooper

From: Donna Marie Johnson [DJohnson@clsphila.org]
Sent: Wednesday, June 28, 2006 8:30 AM
To: jlau@state.pa.us
Cc: IRRC
Subject: comment on Child Care Regulations

Ms Lau,

Please accept this electronic copy of Community Legal Service's comments on the proposed child care facilities regulations. A hard copy was also sent to your office.

Thank you for the opportunity to comment on these regulations.

Donna Johnson Bullock
Child Care Law Project, CED Unit
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
phone: 215-981-3774
fax: 215-981-0436

RECEIVED
2006 JUN 28 PM 2:13
INDEPENDENT REGULATORY
REVIEW COMMISSION