

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 19-09
Date:	June 5, 2009
Keyword:	Child Care
Effective:	June 22, 2009

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Child Care Providers Placed on Corrective or Adverse Action with the Texas Department of Family and Protective Services**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on amendments to the Texas Workforce Commission’s (Commission) Chapter 809, Child Care Services rules, for child care providers (providers) placed on corrective or adverse action by the Texas Department of Family and Protective Services (DFPS).

BACKGROUND:

On June 2, 2009, the Commission adopted amendments to Chapter 809. The rules, effective June 22, 2009, are available at http://www.twc.state.tx.us/twcinfo/rules/20092010/adopch809_060209b.pdf.

New §809.94 sets forth the requirements for Boards when DFPS:

- places a provider on corrective action in either:
 - evaluation status; or
 - probationary status; or
- intends to take adverse action against a provider.

Summary of Requirements of Section 809.94

The following table summarizes the actions to be taken when a child care provider has been placed on corrective or adverse action with DFPS.

Status	Required Notification of Parents	Required to Stop New Enrollments	Required to Remove Currently Enrolled Children	Provider Eligible to Receive Enhanced Rates
Evaluation Status	Yes	No	No	No
Probationary Status	Yes	Yes	No	No
Adverse Action	Yes	Yes	Yes	No

PROCEDURES:

Effective June 22, 2009, Boards must adhere to the requirements and procedures set forth in amended Chapter 809 and in this WD Letter.

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Notification of Providers on Corrective or Adverse Action

Boards must be aware of the following:

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- As of June 22, 2009, the Commission will begin sending Boards a list of providers placed on corrective or adverse action with DFPS.
- DFPS will notify the Commission on a weekly basis of providers placed on corrective or adverse action during the previous week.

Boards must ensure that parents are notified of a provider's status only after receiving official notification from the Commission.

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Children Currently Enrolled with a Provider on Corrective Action

When a provider is placed on corrective action in either evaluation or probationary status by DFPS, Boards must ensure that parents with children enrolled in Commission-funded child care with that provider are notified in writing of the provider's corrective action status no later than five business days after receiving Commission notification of the provider's status.

NLF

Boards must be aware of the following:

NLF

- Parents are allowed to continue a child's enrollment with a provider on corrective action as long as the parent acknowledges in writing that he or she is aware of the provider's status with DFPS, but chooses to continue care with the provider.
- Written acknowledgment of the parent's choice to continue care with the provider must be signed and returned to the Board's child care contractor within 10 business days of the date of the notification.
- Failure to sign and return the written acknowledgement and decision to continue care with the provider within 10 business days will be considered a voluntary withdrawal from child care by the parent.

Parents Requesting a Transfer to Another Eligible Provider

Boards must be aware of the following:

NLF

- A parent requesting a transfer to another eligible provider is not required to submit the request in writing, and can submit the transfer request over the phone.
- Transfer requests, in writing or by telephone, must be made within 10 business days of the date of the notification.

Enrollment of New Children with a Provider on Corrective Action

Boards must ensure that providers on probationary status do not receive new referrals or enrollments.

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Boards must ensure that parents choosing to enroll new children in Commission-funded child care with a provider on evaluation status are notified in writing of the provider's evaluation status prior to enrollment.

NLF

Boards must be aware of the following:

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- Parents are allowed to enroll new children with a provider on evaluation status as long as the parent acknowledges in writing that he or she is aware of the evaluation status with DFPS.
- Written acknowledgment of the parent's choice to enroll the child with the provider must be signed and returned to the Board's child care contractor within 10 business days of the date of the notification.
- Failure to sign and return the written acknowledgement of decision to enroll the child with the provider within 10 business days will be considered a voluntary withdrawal from child care by the parent.

Enhanced Reimbursement Rates

Boards must ensure that providers are not reimbursed at Boards' enhanced reimbursement rates while on evaluation or probationary status with DFPS.

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Providers on Adverse Action

When DFPS is taking adverse action against a provider, Boards must ensure that:

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- parents with children enrolled in Commission-funded child care with the provider are notified, in writing or by telephone, no later than two business days after receiving Commission notification that DFPS intends to take adverse action against the provider;
- children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving Commission notification that DFPS intends to take adverse action against the provider; and
- no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.

Boards must take the above actions for situations in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but a valid court order has overturned DFPS' determination allowing the provider to operate pending administrative review or appeal.

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Written Notification to Parents Regarding Providers Placed on Corrective or Adverse Action

Boards may develop letters to notify parents of a provider's status with DFPS.

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However, Boards must ensure that:

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- Attachment 1, or a locally developed corrective action notification form, is included with the letter to parents; and
- locally developed forms retain the following:
 - Board name
 - Parent name
 - Case number
 - Child care provider
 - Date notification sent
 - Type, purpose, and explanation of corrective action
 - Parent options for responding to the notification
 - Requirement to respond within 10 business days
 - A statement that withdrawal from child care is voluntary and the parent will be responsible for full cost of care if no response is received
 - Signature block as shown on Attachment 1

Transfers Resulting from Corrective or Adverse Action Notices

Boards must be aware that if the parent transfers the child because the provider is on corrective or adverse action, then the transfer must not be counted against the parent under the Board’s transfer policy.

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Written Notification to Providers Regarding New Provider Requirements

Pursuant to §809.92(a), Boards must ensure that providers are given written notice of and agree to the provider requirements found in §809.94 and described in this WD Letter.

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INQUIRIES:

Direct inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

ATTACHMENT:

Attachment 1: Parent Notification of Child Care Provider Placed on Corrective Action

RESCISSIONS:

None

REFERENCE:

Texas Workforce Commission Child Care Services Rules: 40 TAC §809.20 and §809.94

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”