

Administrative Rules Process Proposal

During the September 2017 Early Learning Council retreat, the Council held an exploratory session on the current process and structure for Council and council committee engagement in administrative rule promulgation. From that session, staff was asked to develop a recommendation for restructuring the rules promulgation process and structure for the Council's consideration.

The following brief includes background information on the current process and challenges posed, guiding rulemaking principles identified and adopted by the Council, and recommendations for a revised rulemaking process including the design and format for Council briefing documents.

Background: Since the formation of the Child Care and Education Committee (CCEC) as the Council's standing Rules Advisory Committee, the CCEC has focused almost exclusively on administrative rules. The CCEC, serving as the Council's standing Rules Advisory Committee, holds an average of four hearings on each set of administrative rules. The CCEC discusses and explores the policy implications of the proposed rule based on the guiding principles adopted by the Council in 2015:

- Standards and rules aim to ensure that children are in safe environments that promote healthy physical, social, emotional and cognitive development and support high quality interactions among families and providers.
- Standards and rules support and encourage diversity and equity; promoting equal access, especially for children from targeted populations.
- Standards and rules are based on research, knowledge of child development, and best practices.
- Standards and rules provide a foundation for high quality early learning and licensing rules serve as the first step of Oregon's Quality Rating and Improvement System.
- In conducting its responsibilities for rule promulgation and revision, ELC is moving beyond a culture of compliance to one of continuous improvement.
- ELC believes parents and children are primary stakeholders for all of its rules and will actively engage families and other impacted persons and organizations in rule promulgation and/or revision to ensure community/cultural norms are taken into consideration/reflected in rule.
- ELC will aim for consistency across sets of rules over which it has authority, and will align rules with broader state goals and those of related agencies to the extent possible.

Proposed rule is also analyzed for fiscal impacts as well as equity impacts on our diverse populations of parents, children and providers. In addition to CCEC consideration of equity impacts, draft rule language is reviewed by the Equity Implementation Committee (EIC). The EIC provides feedback to the CCEC.

Concurrently, the Council receives an initial briefing on the need for rulemaking and the activities and focus areas for the CCEC. Subsequent to the briefing, the Council is further engaged in rule promulgation during two subsequently meetings; first through a "1st reading" of proposed rule language and, in a later meeting, final adoption.

The current process is illustrated on the attached diagram (Attachment A).

Reflections from the Retreat

During the retreat, Council members considered existing challenges with the current process and structure:

- Capacity: The volume of rules that must be promulgated by the Council limits the CCEC's ability to address other larger policy issues and fulfill its charter.
- Timeliness: The multiple layers of committee and council review extends the rulemaking timeline by 60 – 90 days.
 - This is particularly problematic when emergency rules are necessary.
- Alignment with the Administrative Procedures Act (APA): The APA has specific notice requirements with associated timelines. The notice requirements and timelines do not align well with the Council's current process.
 - Legislator notices: The Division is required to notify legislators and provide proposed rule language and fiscal impact statement 49 days prior to the rule effective date.
 - Alignment with Secretary of State Administrative Rules: The Division is required to file public notice of rulemaking to individuals on the Division's interested parties mailing list and a Notice of Proposed Rulemaking 28 and 21 days respectively in advance of the effective date of the rule. A 21-day public comment period is required.
- Compressed and condensed committee discussion: Since the CCEC meets for only two hours every month, the committee often times does not get through the agenda, delaying action for an additional month.
- Maintaining momentum with the Child Care and Education Committee: Since the CCEC meets two hours every month and with the volume of rulemaking on the horizon, it is challenging to maintain momentum when the committee must spend time during the meeting revisiting information they were provided in past meetings.
- Maintaining internal staff rulemaking processes and workload is challenged when committee and council agendas and meeting dates change.

Following this discussion, the Council agreed that some form of rules advisory committee is preferred and further articulated the following expectations of the process and structure:

- Affords easy access for stakeholders to be informed and provide feedback
- Should invite and incorporate consumer voice, particularly parent voice
- Should bring individuals with subject expertise into rulemaking
- Reduce timelines

The Council then discussed the principles that guide rulemaking:

- There is a need to revisit the guiding principles to include a principle related to the importance of home-based and family-centered early learning and development programs.
- The Council, and the public expects a robust and principled rule promulgation process
- Wherever possible, achieve alignment and consistency across rules
- At all times, deliberations and final rule meets equity, policy and rule principles adopted by the Council.

Council Engagement:

The Council also discussed the frequency and depth of council engagement necessary to have the appropriate level and amount of information to adequately provide feedback and policy direction and ultimately make an informed decision. It was generally agreed that a briefing, a 1st Reading and a final adoption might be unnecessarily excessive.

Recommendation:

With these principles and expectations in mind, staff presents the following recommendation:

Restructure the Early Learning Council's rules promulgation process by allowing for staff to recommend the creation of individual rules advisory committees (RACs) for different rules promulgation as needed.

Membership: Each RAC would consist of up to 11 members (may vary) with the experience, breadth of knowledge and expertise in the subject matter. Membership could include:

- 5-8 members representing stakeholders impacted by the rule including, whenever possible, providers and parents and representatives of agencies or other entities with knowledge and expertise in the subject matter.
- 1 Council member; Council members would volunteer to serve on a RAC.

The work of the RAC would consist of:

- Reviewing staff explanation of the need for the rule or rule revisions;
- Following the guiding principles adopted by the ELC to ensure alignment, identify objectives of rule revisions and intended outcomes related to the healthy physical, social, emotional and cognitive development of children and quality programming and services;
- Reviewing community engagement activities and feedback received;
- Reviewing and providing written explanation of the impacts, including the fiscal impact of the rule;
- Reviewing and providing written explanation of the equity and policy implications; and
- Informing and seeking feedback from the CCEC, Best Beginnings or EIC as needed and appropriate.

Equity Analysis

The ELD Equity Director will be advised of all upcoming rulemaking reviews to identify potential equity considerations for the RAC to focus on. The Equity Implementation Committee could have a standing agenda item to recommend stakeholder communities to engage or serve on various RACs prior to their formation.

Benefits of establishing individual rules advisory committees:

- Multiple RACs can be working simultaneously.
 - For example, a RAC for the Relief Nursery administrative rules could be meeting and working on proposed rules, while a separate RAC could be meeting and working on proposed rules for Preschool Promise. Each of these separate RACs would be staffed by the relevant program managers with support from policy and administrative staff.
- External members participate as their expertise and/or perspective pertains to the identified rule set.
 - For example, the external members of the RAC for the Preschool Promise program could consist of an early childhood education expert, representatives of Head Start, school districts, home- and center-based child care providers, an Early Learning Hub, and a parent representative.
- Having members of the Council serve on the RACs could:
 - Provide consistency across sets of rules, aligned with guiding principles, policy objectives, broader state goals and those of related agencies.
 - Support and encourage diversity and equity; promoting equal access, especially for children from targeted populations.

- Council members serving on RAC would enhance Council engagement and the advancement of Council policies.
- Reduces the “downtime” between RAC meetings as they could meet weekly rather than monthly. This would significantly reduce the need to bring RAC members back up to speed from the last meeting.
- Will not over burden the Council so that it could more appropriately engage in higher level policy discussions that ultimately guides and informs rule development.
- Allows for a broader net to be cast in the area of stakeholder and public engagement.
- RAC members can be a conduit to their shared communities of interest;
- RAC members representing the communities impacted by rule are in the best position to accurately identify and determine fiscal impact;
- The RAC would be formed such that all voices are at the table.

Upcoming Rule Sets and Anticipated RACs for 2018

October 2017 – February 2018:

RULE for CENTRAL BACKGROUND REGISTRY (CBR)

RULE for LICENSED PROGRAMS (RF, CF, CC & RS)

RULE for TAX CREDIT PROGRAM

RULE FOR RELIEF NURSERY PROGRAMS

Rule work has begun. CCEC will continue to serve as RAC through final adoption expected in January 2018.

January 2018 – May 2018:

RULE FOR QRIS

Rules will cover eligibility and processes for applying for Spark rating. Standards will be adopted in separate Council action. No RAC may be needed.

REPEAL RULE FOR MIGRANT AND SEASONAL FARMWORKER, TEEN PARENT, AND ALCOHOL & DRUG TREATMENT PROGRAMS

No RAC needed, all rules to be repealed.

RULE FOR PRESCHOOL PROMISE

RULE FOR OPK

One RAC could be convened to cover both sets of rules. Alternatively, two separate RACs depending on extent of rule revisions necessary.

June 2018 – November 2018:

RULE FOR HEALTHY FAMILIES OREGON

One RAC for Healthy Families Oregon rules.

RULE FOR EARLY LEARNING HUBS

RULE FOR EARLY LITERACY & KPI

One RAC could be convened to cover both sets of rules.

Total RACs for 2018: 3-4

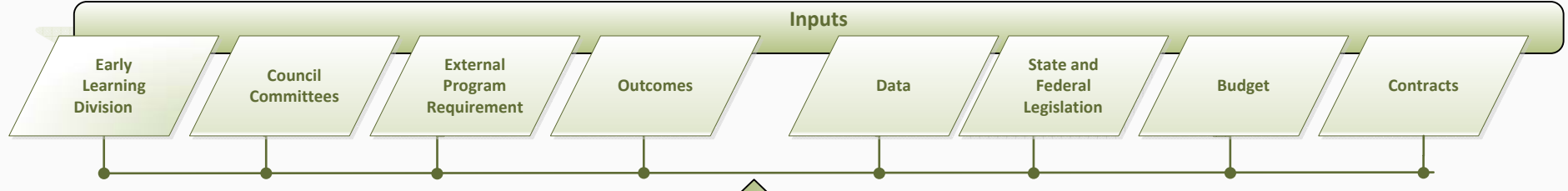
Council Engagement: This recommendation does not substantially change the Council's current structure.

Briefing: Under this recommendation, the Council would be briefed during the Director's report, rather than a separate agenda item and presentation by staff. The Director's report would include notification of pending rulemaking, describe the need for the rule and the formation of a RAC, who or which stakeholders would be represented on the RAC, the process and opportunities for public comment and engagement, and the anticipated timeline.

Feedback received from the Council briefing would be taken to the RAC and incorporated into final proposed rule language for the Council's consideration and adoption.

Adoption: When proposed rule language is ready for adoption, staff will prepare and submit a summary document to report on RAC members and activities, outstanding issues or areas where there was lack of agreement or consensus among RAC members, key issues that emerged from public comments, and who we heard from, particularly from those that are primarily impacted by the rule, what we heard from content experts and stakeholders, EIC feedback, and equity and fiscal impacts. The Council will be presented with specific rule changes in a format that clearly shows how the proposed rule language differs from current rule. (See attached template).

Early Learning Division Rulemaking Process 2015-2017



Rule Advisory Committee (Child Care and Education Committee)

Early Learning Council

Month 1 (30 days)

CCEC Briefing

CCEC BRIEFING DOCUMENT

- Identify need for rule change
- Identify Issues to be addressed in Rule
- General policy discussion

Month 2 (60 days)

CCEC Rule Work

- Stakeholder Engagement
- Policy discussions
- Discuss proposed changes
- Consideration of rule language or revisions

ELC Briefing

ELC BRIEFING DOCUMENT

- Identify need for rule change
- Identify Issues to be addressed in Rule;
- General policy discussion

ELD Staff draft proposed rule revisions and filing documents

Staff Files Legislator Notice w/ Fiscal Impact & Draft Rule Text (49 Days before effective date)

Month 3-4 (90 to 120 days)

CCEC Rule Work

- Stakeholder Engagement
- Policy discussions
- Discuss proposed changes
- Consideration of rule language or revisions based on Council input
- Advance rule recommendations to Council

ELD Staff draft proposed rule revisions and filing documents

Equity Implementation Committee

CCEC RULES SUMMARY DOCUMENT

- Review and Comment on proposed rules as advanced by the CCEC

CCEC Rule Work

- Consideration of rule language or revisions based on Equity Committee input
- Advance rule recommendations to Council for First Reading

Month 4-5 (120-160 days)

Staff Files NPRM with SOS w/ Fiscal Impact Statement & Draft Rule Text (21 Days before Effective Date)

ELC First Reading

CCEC RULES SUMMARY DOCUMENT

- ELC "First Reading" of proposed rules as advanced by the CCEC

Public Comment Period closes

CCEC Rule Work

- Consideration of rule language or revisions based on ELC input
- Advance rule recommendations to Council for Final Adoption

ELC Final Adoption

CCEC RULES SUMMARY DOCUMENT BOARD ACTION SUMMARY

- ELC "Final Adoption of Administrative Rule (49 days after legislator notice; 21 days after Notice of Proposed Rulemaking filing)

Staff Files Permanent Rule with SOS (120 - 150 days)



Early Learning Council – Administrative Rule Summary

NEW PROPOSED TEMPLATE

Title/OAR #:
Date: _____ **Staff/Office:** _____
 Temporary Rule New Rule Amend Existing Rule Repeal Rule
Hearing Date: _____ Hearings Officer Report Attached
Prompted by: State law changes Federal law changes Other
Action Requested:
 Adoption of Temporary Rule
 Adoption of Final Rule

BACKGROUND:

Program Summary
Need for Rule
Policy matters or questions to be addressed

RULES ADVISORY COMMITTEE ACTIONS:

RAC members
RAC discussions
Outstanding issues

PUBLIC ENGAGEMENT AND FEEDBACK SUMMARY:

Who we heard from
What we heard
What we heard from primary beneficiaries of the rule
How it was incorporated or not in rule development (if not, why)

PROPOSED/AMENDED RULE RECOMMENDATION OPTIONS:

Side by side document showing revisions
Comparing current rule with proposed new rule

ALIGNMENT WITH RULES PRINCIPLES:

How the principles informed RAC discussion
How principles informed rule development



ALIGNMENT WITH EQUITY PRINCIPLES:

How the principles informed RAC discussion

How principles informed rule development

FISCAL IMPACT:

Fiscal impacts to those subject to the rule

How it affects a specific population of people

STAFF RECOMMENDATION:

- Adopt Temporary administrative rule
- Adopt Final administrative rule
- Repeal Rule
- No recommendation at this time

