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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED

08/31/2022 12:23 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Early Childhood Suspension & Expulsion Prevention Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/23/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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700 Summer St. NE
Salem, OR 97301

Filed By:
Remember Watts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/20/2022

TIME: 5:30 PM - 6:30 PM

OFFICER: Remy Watts

ADDRESS: Virtual access only

700 Summer St NE

Salem, OR 97310

SPECIAL INSTRUCTIONS:

Please arrive no later than 15 minutes past start time. Find out more about registering for the hearing on the ELD calendar: <https://oregonearlylearning.com/meeting/se-hearing>

NEED FOR THE RULE(S)

In 2021, the legislature enacted HB 2166, which directs the Early Learning Division to develop an Early Childhood Suspension and Expulsion Prevention program. The intent of the program is to reduce the incidence of suspension and expulsion in early learning and care settings and reduce disparities in their utilization. The Division is in the process of designing the program, and the rules in this notice are intended to support the Division's initial implementation efforts to make resources available to families, early learning and care providers, and other entities within the early learning system.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 2166 (2021): <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2166/Enrolled>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The legislature directed ELD to create a program that "reduces disparities in the use of suspension and expulsion in early childhood care and education programs based on race, ethnicity, language, ability or any other protected class

identified by the Early Learning Council by rule." The program, and the proposed rules, are intended to advance an early learning system that provides access equitably to every child and their family.

FISCAL AND ECONOMIC IMPACT:

Funds were appropriated for this program in HB 2166 to expand the types of services available in the early care and education market, resulting in growth for the industry. Families who need the support of this program may see additional benefits through increased continuity of care by avoiding the need to spend time or resources finding another early childhood and care setting for their child.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) Any new Regional Service Provider must comply with requirements; early care & education providers and families of young children enrolled in the program will receive additional benefits.

2) a) Any early care and education provider is required to report if the Early Learning Division asks for it; the Regional Service Providers must cooperate with program monitoring, evaluation, and reporting.

b) At this time, ELD does not anticipate increased reporting, recordkeeping or administrative activities that would create a fiscal impact to early care and education providers.

c) At this time, the ELD does not anticipate increased professional services or administration that would create a financial impact to early care and education providers.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A Rule Advisory Committee will be convened for a total of seven times to inform the rulemaking process, which included early care and education providers and other organizations interested in the program. As ELD designs and implements the program, community engagement will continue.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-580-0000, 414-580-0005, 414-580-0010, 414-580-0030

ADOPT: 414-580-0000

RULE SUMMARY: Definitions for the Early Childhood Suspension & Expulsion Prevention Program ruleset.

CHANGES TO RULE:

414-580-0000

Definitions

The following definitions apply to Division 580 of Chapter 414:¶

(1) "Anti-bias education" means intentional teaching and learning activities designed to increase understanding of differences and their value to society and to actively challenge bias, stereotyping, and all forms of discrimination. It incorporates curriculum that reflects diverse experiences and perspectives, instructional methods that advance all children's learning, and strategies to create and sustain safe, inclusive, and respectful learning communities.¶

(2) "Anti-bias practices" means providing services in a manner that actively prevents and opposes the unfair treatment of people based on, but not limited to, race, ethnicity, age, appearance, language, socioeconomic status, ability, religion, immigration status, gender or gender identity, and any other identity or intersectionality.¶

(3) "Culturally responsive" means a policy or approach that recognizes, respects, and is relevant to, the beliefs,

practices, culture and linguistic needs of diverse populations and communities whose members identify as having particular cultural or linguistic affiliations by virtue of their place of birth, ancestry or ethnic origin, religion, gender or gender identity, preferred language, language spoken at home, or any other identity or characteristic. Cultural responsiveness describes the capacity to respond to the specific needs of diverse communities at the individual, professional, organizational, and systemic levels.

(4) "Culturally specific" means a program, intervention, or service that is designed by, adapted for, and provided by members of the community served, reflecting the values, beliefs, practices, and worldviews of the community served; and in the preferred language of the community served.

(5) "Division" means the Early Learning Division of the Oregon Department of Education.

(6) "Early care and education provider" means any of the following entities and their staff:

(a) All registered and certified family and center-based child care types described in ORS 329A.600;

(b) Any program receiving state public funding for early childhood care and education services;

(c) Preschool Promise Providers subject to ORS 329.172;

(d) Oregon Prenatal to Kindergarten Providers subject to ORS 329.172;

(e) Baby Promise Providers subject to ORS 417.784; and

(f) Relief Nurseries subject to ORS 329.172.

(7) "Exclusionary practices" means any action taken by an early care and education program that limits the enrollment, participation, or attendance of a child due to the child's ability, specialized needs, or behavior.

(8) "Expulsion" means permanently dismissing a Young child from the early care and education program.

(9) "Implicit bias" means the unconscious internal processes resulting in feelings and attitudes about people based on race, ethnicity, age, appearance, language, socioeconomic status, ability, religion, immigration status, gender or gender identity, and any other identity or intersectionality. These feelings and beliefs are expressed automatically, without conscious awareness, and have an impact on other people and groups of people.

(10) "Inclusion" means the values, policies, and practices that create opportunities for all Young children and their families to participate in a broad range of activities and be supported to engage as full members of families, communities, and society. The desired result of inclusion is that children and their families of all race, ethnicity, age, appearance, language, socioeconomic status, ability, religion, immigration status, gender or gender identity, and any other identity or intersectionality, feel a sense of belonging and membership, develop positive social relationships and friendships, and experience learning that engages the individual child's development. The defining features of inclusion that can be used to identify high quality early childhood programs and services are access, participation, and supports.

(11) "Inclusive practices" means the strategies and practices that are implemented to intentionally and authentically promote Inclusion.

(12) "Infant and Early Childhood Mental Health Consultation" or "IECMHC" means a prevention-based approach that pairs a mental health consultant with adults who work with infants and Young children in the different settings where they learn and grow, such as child care, preschool, home visiting, and early intervention. It employs a culturally responsive and trauma-informed lens and involves providing training and coaching to child care and early care and education providers that helps promote healthy social-emotional development, and which builds on child, family and provider strengths to ensure inclusive, supportive care for all children.

(13) "Regional Service provider" means an entity that provides IECMHC services to Early care and education providers and coordinates IECMHC services with other early childhood technical assistance providers, to promote early care and education provider access to resources, training, and other technical assistance opportunities.

(14) "Soft expulsion" means actions taken by an Early care and education provider that make the program an unviable arrangement for the family or Young child and leaves the family with little choice but to withdraw the child from the program.

(15) "Supported break" means a brief, time-limited period that a child spends apart from the early care and education environment, or from a specific activity within the environment, for the purpose of a supportive co-regulation or sensory break. A Supported break occurs with the active engagement of an Early care and education provider.

(16) "Suspension" means temporarily dismissing a Young child from the early care and education environment, through In-program suspension or Out-of-program suspension.

(a) "In-program suspension" means temporarily prohibiting the child from engaging in the classroom or group setting by sending the child to a different location within the program or building. In-program suspension does not include a Supported break.

(b) "Out-of-program suspension" means dismissing or sending the child home early, prohibiting them from returning to the program for one (1) or more days, or otherwise reducing the hours the child spends per week in the program.

(17) "Technical Assistance provider" means a person or entity who provides training, consultation, coaching, or

other professional development supports to Early care and education programs and providers.¶

(18) "Trauma-informed" means principles, practices, or services grounded in the recognition and understanding of the impact of trauma on individuals and groups. Trauma-informed services and classroom practices are designed and planned to promote healing and safety and to avoid re-traumatization. To be genuinely trauma-informed, practices must also be culturally responsive and reflect the active process of anti-racism.¶

(19) "Young child" means a child who is not yet eligible to attend kindergarten in a public school.

Statutory/Other Authority: 329A.600

Statutes/Other Implemented: 329A.600

ADOPT: 414-580-0005

RULE SUMMARY: Outlining the purpose of the Early Childhood Suspension & Expulsion Prevention Program.

CHANGES TO RULE:

414-580-0005

Purpose

The purposes of the Early Childhood Suspension and Expulsion Prevention Program are to reduce the use of Suspension, Expulsion, and other forms of Exclusionary practices in early childhood care and education programs and to eliminate disparities in the use of Suspension, Expulsion, and other forms of Exclusionary practices in early childhood care and education programs based on race, ethnicity, age, appearance, language, socioeconomic status, ability, religion, immigration status, gender or gender identity, and any other identity or intersectionality, by:

(1) Providing and enhancing professional development of the early childhood education workforce with a focus on ensuring early childhood educators have the knowledge and skills to support children's social, emotional, and positive racial identity development through the use of Anti-bias, Culturally-responsive, and Inclusive practices in the early education environment.

(2) Ensuring that all Regional Service and Technical Assistance providers have the knowledge and skills to offer supports that include, but are not limited to, training, coaching, technical assistance, and consultation to Early care and education providers and programs to implement foundational Anti-bias, Culturally responsive, and Inclusive practices to ensure the stability of children's placements within the early education environment.

(3) Developing and implementing Culturally-responsive, Trauma-informed Infant and Early Childhood Mental Health Consultation (IECMHC) services to support Early care and education providers and programs to effectively meet the needs of all children.

(4) Providing a coordinated system for Early care and education programs across the state to seek support, technical assistance and/or IECMHC services in maintaining the placement of specific children who present with persistent challenging behaviors.

Statutory/Other Authority: 329A.600

Statutes/Other Implemented: 329A.600

ADOPT: 414-580-0010

RULE SUMMARY: Requirements of Regional Service Providers that provide the Early Childhood Suspension & Expulsion Prevention Program.

CHANGES TO RULE:

414-580-0010

Regional Service Provider Requirements

Regional Service providers must:

(1) Ensure that Infant and Early Childhood Mental Health Consultation services are accessible to all populations, especially those most disproportionately impacted by Suspension and Expulsion; and

(2) Collaborate with and coordinate services with Technical Assistance providers and other cross-system partners to determine which person or program is best suited to respond to the request for services from an Early care and education provider.

Statutory/Other Authority: 329A.600

Statutes/Other Implemented: 329A.600

ADOPT: 414-580-0030

RULE SUMMARY: Reporting requirements of early care and education providers and regional service providers to the Early Learning Division.

CHANGES TO RULE:

414-580-0030

Reporting

(1) Upon request by the Division, any Early care and education provider receiving technical assistance from the Regional Service providers must make available to the ELD any information and data that the Division determines is necessary to monitor and evaluate the Early Childhood Suspension and Expulsion Prevention program.¶

(2) Regional Service providers must cooperate and participate in the Division's program monitoring, program evaluation, and reporting requirements.

Statutory/Other Authority: 329A.600

Statutes/Other Implemented: 329A.600