



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of Amendments to Chapter 3 in Title 24 of the Rules of the City of New York Concerning Child Day Care Performance Summary Cards

A Notice of Public Hearing and Opportunity to Comment on a proposal by the Department of Health and Mental Hygiene (“Department”) to amend Chapter 3 in Title 24 of the Rules of the City of New York concerning the Child Day Care Performance Summary Cards was published in the City Record on October 7, 2021. A virtual public hearing was held on November 8, 2021. Two people testified at the hearing and 10 written comments were received.

After consideration of the testimony and written comments, the Department is lowering the penalty for operating without a performance summary card to \$500 from \$1,000.

Statement of Basis and Purpose

Background

Pursuant to Social Services Law Section 390-j enacted by Chapter 513 of the Laws of 2016, the Department is required to issue performance summary cards to child care programs and to adopt related regulations. The Department enacted such regulations in a new Chapter 3 (“Performance Summary Cards and Penalties for Child Care Programs”) of Title 24 of the Rules of the City of New York, effective Jan. 28, 2018.

The Amendments

The Department is amending Chapter 3 of Title 24 of the Rules of the City of New York to modify the contents of the performance summary card. The revised performance summary card will more effectively communicate important information summarizing the child care program’s performance. Numerous fields that were part of the initial card are being redesigned to improve clarity. The data that is displayed will be available on the Department’s website, and the revised card will provide information on how to access the website.

Facility and Program Violations

To more clearly inform parents and caregivers about the type of violations that a child care program has received, the revised performance summary card will present violations in two categories: facility maintenance violations and program operations violations. The amended rule adds definitions for both categories of violations.

Lower and Higher Risk Violations

The Department will distinguish violations within each category based on risk level. “Lower risk violations” would be all violations of the Health Code or a Department rule with a fixed penalty of \$200, which is the minimum penalty set forth in the Health Code. “Higher risk violations” would be all violations that have a fixed penalty over \$200. The majority of the Department’s relevant penalties for this proposal are set forth in Chapter 7 (“Adjudicatory Hearings and Violation Fines and Penalties”) of the Department rules.

Excellent, Satisfactory, or Needs Improvement Rating

In order to clarify and make more meaningful the information to be presented to the public, the performance summary cards displays ratings of Excellent, Satisfactory, or Needs Improvement for each category of violations, based on the number of violations a program received in that

category, and the risk level of those violations. The thresholds for these ratings are specified in the amended rule.

The amendments are as follows:

Underlined language is new.

[Language in brackets is to be deleted.]

Asterisks (***) indicate unamended text.

Section 1. Chapter 3 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 3-01 Scope and applicability.

This Chapter applies to any child care program holding a permit to operate in New York City pursuant to Article 47 of the Health Code (“Health Code”) located in Title 24 of the Rules of the City of New York.

§ 3-02 Definitions.

When used in this Chapter, the following terms have the following meanings:

[Adjudicated violations.] “Adjudicated violation[s]” means a cited violation[s] of the Health Code or Department rules sustained following a hearing or default, pursuant to a decision by a hearing officer at the Office of Administrative Trials and Hearings (“OATH”)[,] or pursuant to a settlement agreement between the Department and a child care program, to the extent that such decision or settlement agreement remains in effect. “Adjudicated violation[s]” also [means] includes any cited violation[s] for which a hearing has not been held but for which the hearing date has been rescheduled at the request of the child care program more than one time.

“Facility maintenance violation” means a violation of the Health Code or Department rules related to the physical space of the child care, reflecting an environmental hazard or other physical deficiency in the real property covered by the permit, including but not limited to a violation of requirements related to internal and external spaces, physical plant, equipment and structural maintenance, sanitation, egress, fire and general safety, lighting, ventilation, plumbing, food safety or pest control.

“Higher risk violation” means a violation, other than a violation of this Chapter, with a penalty amount fixed by the Health Code or Department rules at over \$200.

[Initial inspection.] “Initial inspection” means an inspection conducted other than for the purpose of ascertaining whether a prior violation has been abated, or [of responding] in response to [the receipt of] a complaint.

“Lower risk violation” means a violation with a penalty amount fixed by the Health Code or Department rules at \$200, or a violation of this Chapter.

[Permit.] “Permit” means a permit issued by the Department[,], pursuant to Article 47 of the [24 RCNY] Health Code [Article 47].

[Permit suspension.] “Permit suspension” means a suspension of a child care program’s permit to operate due to a violation of the Health Code or any rule promulgated by the Department, other than a suspension [based on a cited violation] that is subsequently [dismissed] vacated.

“Program operations violation” means a violation of the Health Code or Department rules related to permitting, written safety plan, staff qualifications, clearances, training, child supervision, child and staff health requirements, personal hygiene, child development policies, performance summary cards, records or documentation, Department inspections, or any other violation of the Health Code or Department rules that does not constitute a facility maintenance violation.

[Public health hazard. “Public health hazard” has the same meaning as “imminent or public health hazard,” as such term is defined in 24 RCNY Health Code Article 47.]

[Site.] "Site" means the location, specified in a permit, where child care services are provided.
[Teaching staff.] "Teaching staff" means the education[al] directors, group teachers,[and] assistant teachers, and teacher aides of a child care program.

§ 3-03 Performance summary cards.

(a) ***

(b) A performance summary card issued [in 2018, or issued at any time] to a child care program [that has held a permit to operate at a site for less than one year] shall include the following information, as known as of the date such card is issued:

(1) the number of full years the child care program has been permitted to operate at the site, except that [for a child care program that has been permitted to operate at a site for] more than 10 years of operation[, such number] shall be indicated by "10+" and less than one year of operation shall be indicated by "<1";

(2) ***

(3) ***

(4) ***

(5) ***

(6) ***

(c) A performance summary card issued [after 2018] to a child care program that has held a permit to operate at a site for at least one year shall also include[, as of the date such card is issued,] the following information[, as known as of the date such card is issued] for the prior calendar year:

(1) ***

(2) ***

(3) ***

(4) ***

(5) the total number of [public health hazard] facility maintenance violations based on the prior calendar year's initial inspection(s) at the site and adjudicated [in the previous year] by OATH, to be reflected by the following ratings:

(A) "Excellent" means having no such violations;

(B) "Satisfactory" means having no more than two lower risk violations and no higher risk violations; and

(C) "Needs improvement" means having more than two lower risk level violations or one or more higher risk level violation; and

(6) [the average number of public health hazard violations per inspection at the site adjudicated in the previous year] the total number of program operations violations based on the prior calendar year's initial inspection(s) at the site and adjudicated by OATH, to be reflected by the following ratings:

(A) "Excellent" means having no such violations;

(B) "Satisfactory" means having no more than two lower risk violations and no higher risk violations; and

(C) "Needs improvement" means having more than two lower risk level violations or one or more higher risk level violations.

(7) [the average number of violations of the Health Code or rules of the Department, other than public health hazard violations, at the site adjudicated in the previous year;

(8) the Citywide averages for the numbers of violations specified in paragraphs (6) and (7) of this subdivision for all child care programs, as calculated by the Department for the prior calendar year; and

(9)] information on how to find the child care program's inspection record for the site online.

§ 3-04 Posting.

- (a) ***
- (b) ***
- (c) ***
- (d) A child care program shall immediately [remove] surrender to the Department a posted performance summary card upon a permit suspension.
- (e) ***
- (f) [A child care program site that is permitted to reopen following a permit suspension shall post the applicable performance summary card in accordance with subdivision (a) of this section before reopening.
- (g) If a child care program's performance summary card is damaged or stolen, the child care program shall immediately contact the Department to request a replacement card.

§ 3-05 Updated performance summary cards.

Upon request from a child care program based on a change to the number of adjudicated violations for the prior calendar year that would change either of the program's ratings, the Department shall provide such program with an updated performance summary card. The Department may also provide an updated performance summary card to reflect a new permit suspension. Updated performance summary cards shall reflect a child care program's adjudicated violations that were cited by the Department in the prior calendar year [adjudicated in the 12 months prior to the date of issuance] and permit suspensions imposed in the 36 months prior to the date of issuance. [The issuance of an updated performance summary card shall not require the Department to provide revised Citywide averages for the numbers of violations specified in §§ 3-03(c)(5) and (6).] Upon receipt of an updated performance summary card, the child care program shall post the updated card and dispose of the prior performance summary card in a manner that prevents its reuse.

§ 3-06 Penalties.

- (a) ***
 - (1) ***
 - (2) For a violation of [§§] Section 3-04(a) of this Chapter for operating without posting [the required] a performance summary card issued to the program: [\$1,000] \$500; and
 - (3) For a violation of any other requirement of [§ 3-04] this Chapter [not listed in paragraph (2) of this subdivision]: \$500.
- (b) ***