DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 47 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of said Charter, notices of intention to amend Article 47 (Child Care Services) of the New York City Health Code (the "Health Code") were published in the City Record on March 27, 2009, and public hearings were held on April 28, 2009. Comments were received in support of the proposal and no changes were made to the proposal. At its meeting on June 24, 2009 the Board of Health adopted the resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City.

The Board of Health at its meeting on March 6, 2008 adopted a resolution repealing and reenacting Article 47 of the New York City Health Code (Child Care Services). The Department of Health and Mental Hygiene (the Department) has requested that the Board amend various provisions of subdivision (e) and repeal subdivision (f) of §47.31 (Health; medication administration) of the Health Code to enable child care services regulated under Article 47 to administer medications to children with disabilities.

After adoption of the resolution the American Diabetes Association brought to the Departments attention omission of a provision that would have made it possible for Article 47 permittees operating child care services to administer necessary medications including injectable insulin to diabetic children where the Americans with Disabilities Act may require the child care service to administer such medication in order to reasonably accommodate the child's attendance in the child care service.

Article 47's current provisions allow health care professionals and certified non-professional staff to administer certain medications, and are based on nearly identical provisions in regulations of the New York State Office of Children and Family Services (OCFS). Through an oversight, however, Article 47 omits provisions that would enable New York City child care services providers to accommodate children with disabilities who may require medication to be administered by injection, vaginally or rectally.

Accordingly, the Board is amending Article 47. The amendment is essentially the same as the applicable OCFS regulation, 18 NYCRR §418-1.11 and is consistent with guidance issued by OCFS regarding compliance with the Americans with Disabilities Act and OCFS regulations on the administration of medications in child care programs. Two favorable comments were received, including one from the American Diabetes Association. No changes have been made to the proposal.

ARTICLE 47

CHILD CARE SERVICES

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Introductory Notes: Article 47 was repealed and reenacted, effective September 1, 2008, by resolution adopted on March 6, 2008.

§47.01 **Definitions**.

(a) *Abuse* shall mean any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including, but not limited to:

(1) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(2) an unlawful act, a threat or menacing conduct directed toward a child that results and/or might be expected to result in fear or emotional or mental distress to a child.

(b) *Assistant teacher* shall mean a person who is part of the teaching staff, works under the supervision of an educational director, group teacher or infant/toddler teacher, and whose assignment to a group of children may be considered in calculating compliance with required staff to child ratios.

(c) *Child care* s*ervice.*

(1) Child care service means any program providing child care for five (5) or more hours per week, for more than 30 days in a 12-month period, to three (3) or more children under six (6) years of age.

(2) Child care service shall not mean:

(A) Any State-regulated informal child care program, a group family or family day care home, or school age child care program, or a foster care program;

(B) A kindergarten or pre-kindergarten class operated as part of or located within any elementary school; except that school programs that provide care to children younger than three years of age shall be deemed child care services subject to this Code. “Operated as part of an elementary school” shall mean that there is identical ownership, operation, management and control of kindergarten or pre-kindergarten classes and elementary school classes.

(C) “Mommy and me” or equivalent programs where each child is accompanied by a parent or another adult escorting the child, who is not employed by the child care program; or

(D) Children's camps operating seasonally at any time between June and September that are required to have a permit pursuant to Article 48 of this Code; or

(E) Adult physical fitness, spa or other recreational facilities, or retail establishments, or other businesses providing supervision for children of patrons or employees of the facility, establishment or business while parents are on the premises, unless children are registered or enrolled and individual children are spending more than eight hours/week in care.

(F) Churches or religious organizations where congregants' children are supervised by employees or members of the congregation while parents attend services.

(d) *Corrective action plan* shall mean a written safety assessment required to be prepared pursuant to §47.21 of this Article, that shall be submitted to and approved by the Department when a permittee hires, plans to hire, or plans to utilize the services of, certain persons, or in such circumstances as are specified in this Article, or as may otherwise be required by the Department to show that a particular person at, or the continuing operation of, a child care service shall not pose a danger to children.

(e) *Educational director* shall mean a person whose responsibilities shall include, but not be limited to, coordination and development of an age appropriate curriculum and program, teaching and other staff training, and supervision of teachers.

(f) *Facility* shall mean interiors and exteriors of buildings, structures and areas of premises under the control of a child care permittee where child care services are provided and that are subject to the permit.

(g) *Fill and draw pool* shall mean a pool that is not equipped with a recirculation system, but is cleaned by complete removal and disposal of used water and replacement with water at periodic intervals, whose use at any facility regulated by this Article is prohibited.

(h) *Group size* shall mean the maximum number of children that may be cared for as a unit. Group size shall be used to determine the minimum staff/child ratio based upon the age of the children in the group.

(i) *Group teacher* shall mean a person who, under the supervision of an educational director, is responsible for planning and supervising age appropriate activities for a given group of children.

(j) *Health care provider* shall mean a New York State licensed physician, physician's assistant, nurse practitioner or registered nurse, as defined in the State Education Law.

(k) *Imminent health hazard* shall mean any violation, combination of violations, conditions or combination of conditions occurring in a child care service making it probable that illness, physical injury or death could occur or the continued operation of the child care service could result in injury or be otherwise detrimental to the health and safety of a child. Any of the following shall be imminent health hazards which require the Commissioner or designee to order its immediate correction or to order the child care service to cease operations immediately and institute such corrective action as may be required by the Department or provided by this Code. Imminent health hazards shall include, but not be limited to:

(1) Supervision of children that is not in accordance with the supervisory ratios required by this Article;

(2) Use of corporal punishments or of frightening or humiliating methods of discipline;

(3) Failure to report instances of alleged child abuse or maltreatment to the Department and the Statewide Central Register of Child Abuse and Maltreatment and to take appropriate corrective action to protect children when allegations of such abuse or maltreatment have been reported to or observed by the permittee;

(4) Refusal or failure to provide access to the child care facility to an authorized employee or agent of the Department;

(5) Uncontained sewage in any part of the child care facility;

(6) Transporting children in the bed of a truck or trailer or in any other part of any motor vehicle that is not designed for passenger occupancy; or transporting children without adequate supervision; or failing to use appropriate child restraints in vehicles;

(7) Failure to provide two approved means of egress or obstructing any means of egress or a required fire exit;

(8) Failure to properly store flammable liquids or other toxic substances;

(9) Failure to maintain firefighting or fire detection equipment in working order;

(10) Allowing pillows to be used for children who are not disabled or when not recommended by a health care provider;

(11) Contamination of the potable water supply by cross connection or other faults in the water distribution or plumbing systems;

(12) Serving food to children from an unknown or unapproved source; serving food that is adulterated, contaminated or otherwise unfit for human consumption, or re-serving food that was previously served;

(13) Holding potentially hazardous foods for periods longer than that necessary for preparation or service at temperatures greater than 41°F or less than 140°F;

(14) Failing to exclude from work at the child care service a person with a communicable disease who is required to be excluded pursuant to Article 11 of this Code;

(15) Failure to implement the child care service's written safety plan resulting in a child not being protected from any unreasonable risk to his or her safety;

(16) Conducting construction, demolition, painting, scraping, or any repairs other than emergency repairs while children are present in the child care service; failing to remove children from areas and rooms while such activities are in progress;

(17) Failure to screen any person who has, or will have the potential for, unsupervised contact with children in accordance with §47.19 of this Article; or

(18) Any other condition(s), violations, or combination of conditions or violations, deemed to be an imminent health hazard by the Commissioner or his or her designee.

(l) *Infant* means a child younger than 12 months of age.

(m) *Infant/toddler care service* shall mean a program of child care that, during all or part of the day or night, provides care to children younger than 24 months of age.

(n) *Infant-toddler teacher* shall mean a person who, under the supervision of an educational director or group teacher, is responsible for a group of children younger than 24 months.

(o) *Night care* service shall mean any child care service, as defined in this section, that accepts children for care starting at 5 P.M., provides child care between the hours of 5 PM and 8 AM, and operates more than one (1) night per week, for more than 30 days in a 12 month period.

(p) *Parent* shall mean a natural or adoptive parent, guardian or other person lawfully charged with a minor child's care or custody.

(q) *Permittee or other person in control of a child care service* shall mean a person, organization or other entity that has been issued a permit to operate a child care service pursuant to this Article.

(r) *Semester hour* shall mean a credit, point, or other unit granted for the satisfactory completion of a college or university course which requires at least 15 clock hours (of 50 minutes each) of instruction and at least 30 hours of supplementary assignments, as defined in 8 NYCRR §50.1.This basic measure shall be adjusted proportionately to translate the value of other academic calendars and formats of study in relation to the credits granted for study during the two semesters that comprise an academic year.

(s) *Serious injury* shall mean a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(t) *Spa pool*, "hydrotherapy pool," "whirlpool," "hot spa," or "hot tub." shall mean a pool primarily designed for therapeutic use or relaxation that is generally not drained, cleaned or refilled for individual use. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral bath, air induction, bubbles or any combination thereof. Spa pools shall have a maximum water depth of 4 feet at any point and may be equipped with aquatic seats within the perimeter of the pool. Spa pools shall not be used for swimming, wading or diving activities at any facility regulated by this Article.

(u) *Staff/child ratio* shall mean the maximum number of children in a group authorized pursuant to this Article to be supervised by individual group and assistant teachers and teacher aides.

(v) *Supervision* shall mean the presence of qualified teaching staff, within line of sight and hearing of children at all times so that such staff can act to protect the health and safety of such children. Supervision shall not mean mechanical audio or video devices.

(w) *Toddler* shall mean a child between 12 and 24 months of age.

(x) *Volunteer* shall mean a person who is an unpaid member of the staff or who otherwise donates any services to a facility regulated by this Article.

§47.03 **Permit required**.

(a) *Permit required*. No person shall operate a child care service as defined in this Article without a permit issued by the Commissioner, provided, however, that a pre-kindergarten or kindergarten program that is part of or located in and operated by an elementary school may voluntarily apply for and hold a permit as a child care service.

(b) *Term of permit*. The term of a permit shall be determined by the Department, but in no case shall exceed two (2) years.

(c) *Permits not transferable*. A permit shall be issued to a person, as defined in §1.03 of this Code, to conduct a child care service at a specific facility and location. Permits shall specify the number of children that may be cared for in each type of child care service operated at the facility by the permittee. Permits shall not be transferable or assignable by a permittee to any other person or entity; and shall not be applicable to any other facility or location. Separate permits shall be required for services providing infant/toddler care, services providing care for children aged two through five, and night care services. Any change in building address or location, capacity or permittee not authorized or approved by the Department shall void a permit, and may result in the closure of the service.

§47.05 **Program capacity**.

(a) *Maximum number of children on premises.* Each permit shall specify the maximum number of children to be allowed in each specific type of child care service at any time. The Department shall determine the maximum number of children allowed based upon the number of children for which adequate facilities and teachers are provided, in accordance with the supervision and space requirements of this Code. The total number of children under six (6) years of age receiving care pursuant to each permit shall be counted for all purposes, including calculating qualified staff to child ratios, and shall include children or foster children of the individual permittee or other staff or volunteers.

(b) *Capacity not to be exceeded.* A child care service shall not have children in attendance in excess of the number(s) prescribed in each permit issued for each type of child care service provided.

§47.07 **Permit: required approvals and clearances**. No permit shall be issued unless the permit applicant has obtained and submitted to the Department:

(a) *Certificate of Occupancy.* A Certificate of Occupancy, or a statement of approval from the Department of Buildings that the premises comply with all applicable building laws and codes and may be used as a

child care facility. Where a Certificate of Occupancy is not required by law, the permit applicant shall submit a current inspection report from the Department of Buildings showing that there are no outstanding uncorrected violations of the City's Building Code.

(b) *Fire safety statement.* A statement or report from the Fire Department that the premises have been inspected and currently comply with all applicable laws and regulations pertaining to fire control and prevention. A permit shall not be issued or renewed, unless a statement or report is submitted demonstrating compliance with such laws, based upon the Fire Department's determination on an inspection made within 12 months of the date of submitting the permit renewal application.

(c) *Criminal justice and child abuse screening.* Documentation satisfactory to the Department that the permit applicant has submitted all necessary forms and requests for all persons requiring criminal justice and State Registry of Child Abuse and Maltreatment screening in accordance with §47.19 of this Code.

§47.09 **Applications for permits.** A person or entity that has never held a permit issued by the Commissioner to operate a child care service and that proposes to operate a child care service subject to such permit, shall attend a pre-permit orientation session held by the Department and shall thereafter submit an application for a permit to the Department.

(a) *New application.* An application for a new permit shall be submitted on forms approved or provided by the Department and shall include:

(1) Facility pre-permit technical plan. Each plan, consisting of blueprints, architectural or engineering drawings, shall be drawn to scale, and labeled to show floor layout, all indoor rooms and outdoor areas to be occupied or used by the child care service, dimensions of such rooms and areas, and intended use of each area; outdoor spaces location in relation to actual distance and location from indoor spaces; and all toilets, sinks and kitchen(s) to be used by children and staff.

(2) A copy of a current certificate of occupancy issued by the Department of Buildings, or if no certificate of occupancy is required by applicable law, a statement from the Department of Buildings that the premises and facility to be used for child care comply with all applicable building laws and codes.

(3) A report of an inspection or a statement issued by the Fire Department finding that the premises comply with all laws and regulations pertaining to fire prevention and control in a child care service.

(4) Written safety plan required by this Code.

(5) Certifications and other documentation required by this Code for teaching staff health training; qualifications, health examinations.

(6) Permit fee set forth in Article 5 of this Code

(7) Proof of workers' compensation and disability benefits insurance covering all employees.

(8) Proof of the Services ability to receive electronic communications. An e-mail address shall be provided for the education director and one or more other persons designated by the permitee or other

person in control of a child care service as persons to receive electronic communication from the Department. The department shall be notified of changes in e-mail addresses for the education director or other designees when such changes become effective.

(b) *Notifications of deaths, serious injuries and civil and criminal actions*. Permittees and applicants for new permits shall submit, on forms provided by the Department, such information as may be required by the Department concerning all staff misdemeanor or felony arrests, deaths or serious injuries of children that have occurred, or are alleged to have occurred while such children were in the care of the applicant or permittee, or in the care of any owner, director, employee, or volunteer of the applicant or permittee, or while in the care of any agent of the permittee or applicant; and shall identify, in such detail as may be required by the Department, any related civil or criminal action already adjudicated or currently pending in any jurisdiction related to such serious injuries, deaths, or felony or misdemeanor arrests.

(c) *Renewal application*. An application for renewal of a permit shall be submitted on forms provided by the Department no later than 90 days before the expiration date of the current permit, and shall include the permit fee, and a full description of any changes in teaching staff, written safety plan, e-mail communication information, written health plan, physical facilities, required staff training or program which occurred after submission of the previous permit application.

(d) *Pre-renewal inspection.* A renewal permit shall not be issued unless the Department has conducted an inspection of the service while it is in operation and has found the service to be in substantial compliance with this Code and other applicable law.

(e) *Renovations and modifications.* A permittee shall submit for approval to the Department a request for modification of an existing permit prior to undertaking renovations affecting the size, configuration, or location of rooms or areas used by children.

(f) *Applications to be complete.* No permit shall be issued until the Department has received and has approved all documentation, records, reports, or other information required by this Code.

§47.11 **Written safety plan**.

(a) *Safety plan required.* Every current permittee and every applicant for a new permit shall develop, review annually and update, in accordance with changed circumstances, conditions or activities, or as required by the Department, a written safety plan. The written safety plan shall be approved by the Department if it includes all the information required in this Article. Upon permit renewal, if no changed circumstances require changes to a previously approved written safety plan, the permittee shall state in writing that no changes were needed or made to the plan. The safety plan shall be implemented by the permittee, used in training staff and volunteers, provided to parents on request, kept in an accessible location at the child care service where it may be used by staff for reference and be available for Department inspection.

(b) *Scope and content.* The written safety plan shall establish policies and procedures for safe operation, including teaching and other staff duties, facility operation and maintenance, fire safety, general and activity-specific safety, emergency management, staff and child health and medical requirements, staff training and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

(1) *Staff:* organization chart, job descriptions, responsibilities and supervisory responsibilities.

(2) *Program operation and maintenance:* including, but not limited to, schedules and designated staff for facility inspection, cleaning and maintenance, schedule for boiler/furnace and HVAC system maintenance, maintenance of adequate water pressure, protection of the potable water supply from submerged inlets and cross-connections in the plumbing system, schedule for the annual lead paint survey, inspection of window guards, indoor and outdoor equipment inspection and replacement schedule, evaluation of injury prevention procedures, equipment and structures, identification of procedures for transportation vehicle maintenance, food protection procedures during receipt, storage and preparation, identity of individuals certified in food protection, schedule for sanitization procedures of food prep areas and identification of approved food sources.

(3) *Fire safety:* evacuation of buildings and property, assembly, supervision, and accounting for children and staff; fire prevention; coordination with local fire officials; fire alarm and detection systems and their operation, maintenance, and routine testing; type, location and maintenance of fire extinguishers; inspection and maintenance of exits; required fire drills and log; electrical safety; and reporting to the Department within 24 hours fires which destroy or damage any facilities, or which result in notification of the fire department, or are life or health threatening.

(4) *Health care plan:* statement of policies and procedures to show how the health and medical requirements of this Code shall be implemented for maintaining children's medical histories; addressing individual children's restrictions on activities, policies for medication administration and special needs, if any; initial health screening for children and staff; daily health surveillance of children; procedures for providing basic first aid, handling and reporting medical emergencies and outbreaks; procedures for response to allegations of child abuse; identification of and provisions for medical, nursing and emergency medical services addressing special individual needs; names, qualifications and duties of staff certified in first aid and CPR; description of separation facilities, supervision and other procedures for ill children to be provided by the child care service until parent arrives; storage of medications; location and use of first aid and CPR supplies; maintenance of a medical log; description of universal precautions for blood borne pathogens; reporting of child and staff illness and injuries; and sanitary practices. When the permittee has a medication administration policy, the permittee shall immediately notify the Department of any changes in designated exempt or certified staff.

(5) *Corrective action plans*: actions to be taken to protect children on receipt of reports of alleged and confirmed teaching and other staff criminal justice or child abuse histories.

(6) *General and activity specific safety:* description of child supervision and staff schedules, including arrangements for general supervision; supervision during and between on-site activities; recreational and trip supervision for specific outdoor and off-site activities; supervision during sleeping and rest hours; transportation; and in emergencies.

(7) *Staff training:* new employee orientation; training curricula; procedures for child supervision and discipline; child abuse recognition and reporting; provision of first aid and emergency medical assistance; reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; and process to document attendance at staff training.

(8) *Emergency evacuation:* age-specific plans for removal of children from the premises for each shift and program where care is provided. Primary emphasis shall be placed on the immediate evacuation of children in premises which are not fireproof. Emergency evacuation procedures, implementing Fire Department recommendations, shall be posted in conspicuous places throughout the facility. The emergency evacuation plan shall include the following:

(A) how children and staff will be made aware of the emergency;

(B) primary and secondary routes of egress;

(C) methods of evacuation, including where children and staff will meet after evacuating the building, and how attendance will be taken;

(D) roles of the staff and chain of command;

(E) notification of authorities and the children's parents.

(9) *Parent/child orientation:* orientation curriculum outline; tour of premises; reporting and management of illnesses, injuries and other incidents; evacuation plan; lost child plan; lightning plan; fire safety and fire drills; evacuation procedures; activity specific training for assigned activities; trips (if provided).

§47.13 **Teaching staff qualifications in child care services for children ages two to six.**

(a) *Accreditation.* In determining teacher and educational director qualifications, the Department may accept documentation from schools, colleges and universities approved by the State Education Department or other teacher accreditation organizations acceptable to the Department certifying that such persons have met the specific Code requirements.

(b) *Pending certifications.* A permittee may temporarily employ an educational director or individual group teachers pending certification by the State Education Department or other accreditation organization or while a teacher's study plan for obtaining certification is pending approval by the

Department, provided that the permittee has complied with criminal justice and State Registry of Child Abuse and Maltreatment screening requirements for staff set forth in this Article.

(c) *Educational director.* Every child care service shall designate a qualified teacher as the educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care service.

(1) *Coverage for educational director.* When an educational director is not present to supervise a child care service, the permittee shall designate a group teacher to act as educational director.

(2) *Teaching duties.* The educational director shall have no teaching duties when more than 40 children are enrolled in the child care service. If the child care service holding a permit is part of an elementary school offering classes from grades one through six, and has either child care programs for children under three years of age or has voluntarily applied for a permit pursuant to this Article, and such school also has a principal with no teaching duties, the educational director shall not have any teaching duties when more than 60 children are enrolled in the child care service.

(3) *Qualifications.* The education director shall have:

(A) A baccalaureate degree in early childhood education or related field of study and State Education Department teacher certification in early childhood education or equivalent certification pursuant to paragraph (2) of subdivision (d) of this section, and

(B) At least two years of experience as a group teacher in a program for children under six years of age.

(d) *Group teacher.* No person shall be placed in charge of a group of children in a child care service unless s/he is certified or qualified pursuant to paragraph (1), (2), (3) or (4) of this subdivision.

(1) *Baccalaureate degree and State certification.* A baccalaureate degree in early childhood education or related field of study and current valid certification issued by the State Education Department pursuant to 8 NYCRR §80 or successor rule or equivalent certification from another jurisdiction, as a teacher in the field of early childhood education; or

(2) *Equivalent certification*. Certification from a public or private certifying or teacher accrediting organization or agency granted reciprocity by the New York State Department of Education; or

(3) *Baccalaureate degree.* A baccalaureate degree in early childhood education or related field and five years of supervised experience in a pre-school program if currently employed in a permitted child care service; or

(4) *Study plan eligibility*. The person has proposed a plan for meeting the requirements of paragraph (1), (2) or (3) of this subdivision within seven years, and has obtained approval of this plan by an accredited college. A person who is study plan eligible shall submit documentation to the Department indicating proof of enrollment in such college and specifying the time required for completion of training.

(A) The course of study may include the following study areas:

(i) Sociological, Historical, Philosophical Foundations of Education or

(ii) Sociology of Education or History of Education or Philosophy of Education

(iii) Child Development or Child Psychology

(iv) Educational Developmental Psychology or Psychological Foundations of Education

(v) Instructional Materials and Methods Courses – three (3) courses required, including one on the pre-kindergarten or kindergarten level including, but not limited to, such courses as:

(aa)Teaching of Reading, Teaching of Math, Teaching Science to Young Children

(bb)Teaching of Music, Teaching of Art, Methods of Teaching of Language Arts

(cc)Teaching of Computer Technology to Young Children

(vi) Parent Education and Community Relations or Urban Education or Sociology of the Family or Parent, Child, School.

(B) To be study plan eligible, a person shall have:

(i) Associate's (AA or AS) degree in early children education, practicum included; or

(ii) Ninety or more undergraduate college credits and one year classroom experience teaching children in pre-kindergarten, kindergarten or grades 1-2; or

(iii) Baccalaureate in any other academic subject and one year classroom experience teaching children up to third grade.

(e) *Group teacher for children with special needs.* A group teacher for children with special needs shall be certified in special education, or early childhood education, with additional appropriate training in working with special needs children, in accordance with applicable law.

(f) *Assistant teacher* An assistant teacher shall be at least 18 years of age and have a high school diploma or equivalent (GED).

§47.15. **Teaching staff qualifications for infant-toddler child care services**. A child care service authorized to provide care for children under 24 months of age may employ staff with either the qualifications listed in §47.13 of this Code for each title or the following alternative qualifications:

(a)*Educational director*. Every infant-toddler child care service shall have an educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted infant-toddler child care service.

(1) Qualifications:

(A) Baccalaureate degree in early childhood education or related field of study, and

(B) At least one year of experience as a group teacher or child care provider in a child care service for children under 24 months of age, or six college credits in infant-toddler coursework, or a study plan leading to six college credits in infant-toddler coursework

(b) *Infant/Toddler teacher*. A teacher for an infant-toddler program shall be at least 21 years of age and have the following qualifications:

(1) Associate's (AA or AS) degree in early childhood education; or

(2) Child Development Associate (CDA) certification and a study plan leading to an associate's degree in early childhood education within 7 years; or

(3) High school diploma or equivalent (GED); nine college credits in early childhood education or child development; two years experience caring for children, and a study plan leading to an associate's degree in early childhood education within seven years; or

(4) High school diploma or equivalent (GED) and five years of supervised experience in an infant-toddler classroom if currently employed in a permitted child care service; or

(5) High school diploma or equivalent (GED); and a study plan that is acceptable to the Department leading to nine credits in early childhood education or childhood development within two years; and a study plan leading to an associate's degree in early childhood education within seven years, if currently employed in a permitted child care service.

§47.17 **Teaching staff qualifications for night child care services**.

(a) Permittees offering night care services shall comply with all requirements of this Article except when such requirements are inconsistent with the provisions of this section, in which case the provisions of this section shall control.

(b) *Educational director*. The educational director shall be qualified in accordance with §47.13 of this Code; or hold a baccalaureate degree, including 12 college credits in early childhood education, and have two years experience in a licensed program with children younger than six years of age. When the educational director is not present to supervise the teachers in a night care service, the permittee shall designate a group teacher qualified pursuant to §47.13 (d) of this Article to act as educational director.

(c) *Assistant teacher*. An assistant teacher in a night care service shall be at least 18 years of age and have the following qualifications:

(1) High school diploma or equivalent (GED); nine college credits in early childhood education or child development; and two years experience caring for children; or

(2) High school diploma or equivalent (GED) and five years of supervised experience in a permitted child care service; or

(3) High school diploma or equivalent (GED); and a study plan that is acceptable to the Department leading to completion of nine credits in early childhood education or childhood development within two years.

§47.19 **Criminal justice and child abuse screening of current and prospective personnel.**

(a) *Applicability*. These requirements for child abuse and criminal justice screening shall apply to any person who has, will have, or has the potential for unsupervised contact with children in a child care service, and shall include, but not be limited to: individual owners, permittees, partners, members and shareholders of small or membership corporations who are the owners or operators of the service; educational, administrative and maintenance employees; school bus drivers; volunteers, including parent volunteers and student teachers, trainees or observers; and consultants and other persons employed by persons, corporations, partnerships, associations or other entities providing services to the child care service. Employees of independent contractors providing maintenance, construction, food or other services to a child care service shall be screened in accordance with this section, or shall be prohibited from working in any area or facility occupied by the child care service unless such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.

(b) *Pre-employment verification*. A permittee shall obtain and verify credentials, including certificates and educational transcripts, as applicable, and references prior to employment of all persons listed in subdivision (a) of this section.

(c) *Screening*. A permittee shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the Statewide Central Register of Child Abuse and Maltreatment (hereinafter "SCR") for all prospective employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.

(d) *Individual consent*. A permittee shall obtain written consent from each such person for fingerprinting and criminal record review, and shall provide written notice to such persons that there will be an inquiry submitted to the SCR, pursuant to Social Services Law §424-a (1), or successor law, and that copies of the reports received by the permittee as a result of such review and screening shall be provided to the Department.

(e) *Refusal to consent*. A permittee shall not hire or retain as an employee, or otherwise allow on its premises any person who is required to have, but refuses to consent to, fingerprinting and criminal record review. The permittee shall not hire or retain any person who has a record of criminal convictions or arrests, subject to and consistent with Article 23-A of the New York State Correction Law, except as provided in subdivision (h) of this section.

(f) *Employee to notify permittee* . Employees required to have criminal justice and child abuse screening shall notify the permittee within 24 hours when such employees are arrested, or when such employees receive a notice that an allegation of child abuse or maltreatment has been filed concerning such employees.

(g) *Reports to the Department.* Permittees shall notify the Department within 24 hours when they have received an indicated report from the SCR; an employee report that an allegation has been filed against the employee; and a record or report of criminal conviction(s), pending criminal action, or arrest or

criminal charge for any misdemeanor or felony for any person required to have a criminal record review or SCR screening.

(h) *Actions required*. Consistent with Article 23-A of the New York State Correction Law, and except where the permittee has submitted and obtained Department approval of a corrective action plan in accordance with §47.21 of this Code:

(1) A permittee shall not hire, retain, utilize or contract for the services of a person who:

(A) Has been convicted for commission of a felony at any time, or who has been convicted for commission of a misdemeanor within the preceding ten years; or

(B) Has been arrested and charged with commission of any felony or misdemeanor, and where there has been no disposition of the criminal matter; or

(C) Is the subject of an indicated child abuse and maltreatment report, in accordance with a determination made after a fair hearing pursuant to §422(8) of the Social Services Law .

(2) A permittee shall not dismiss or permanently deny employment to current and prospective staff solely because they are defendants in pending criminal actions, but may suspend current employees or defer employment decisions on prospective employees until disposition of the pending criminal action.

(3) A permittee shall prohibit unsupervised contact with children by any person who has not received screening clearance for criminal convictions or by the SCR, or as specified in paragraph (1) of this subdivision.

(i) *References*. For all prospective staff, the permittee shall make a written inquiry to an applicant's three most recent employers and shall obtain three references prior to hiring. If prospective staff have not had three prior employers, references may be accepted from persons who are not family members and who state, in writing, that the applicant is well-known to them as a student, volunteer, or other stated capacity, and that the applicant is suited by character, fitness, and ability to work with children.

§ 47.21. **Corrective action plan.**

(a) *Approved corrective action plan required*. A corrective action plan shall be submitted by the permittee and approved by the Department

(1) Prior to the permittee hiring, retaining or utilizing the services of persons listed in subdivision (a) of §47.19 of this Code when such persons are reported as having:

(A) A history of criminal convictions as specified in §47.19 (h); or

(B) Pending criminal charges as specified in §47.19(h); or

(C) SCR reported incidents of child abuse or maltreatment which have been indicated or which are under investigation.

(2) When a death or serious injury of a child has occurred while in the care of an applicant for a permit or permittee, or in the care of any owner, director, employee, or volunteer of the applicant or permittee or

while in the care of any agent of the permittee, or if a related criminal or civil action has already been adjudicated or adjudication is pending in any jurisdiction with respect to such death or serious injury.

(3) When required by the Department, after the permittee has been cited for violations or conditions deemed imminent health hazards, to demonstrate the permittee's willingness and ability to continue in operation in accordance with applicable law.

(b) *Contents of corrective action plan*. A corrective action plan shall assess the risk to children in the child care service, and shall clearly and convincingly demonstrate that such person presents no danger to any child, or other persons. The plan shall include, but not be limited to, consideration of the following factors:

(1) Seriousness of the incident(s) or crimes cited in the report(s);

(2) Seriousness and extent of injuries, if any, sustained by the child(ren) named or referred to in the indicated report(s) or disclosed upon investigation of the criminal charge;

(3) Any detrimental or harmful effect on child(ren) as a result of the person's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to any report(s);

(4) The age of the person and child at the time of the incident(s);

(5) Time elapsed since the most recent incident(s);

(6) Number of indicated incident(s) or crimes; where more than one incident or crime, an evaluation of each separately, and an assessment of the total effect of all indicated incidents on risks to children currently under care;

(7) Duties of the person under consideration; degree of supervision, interaction, opportunity to be with children on regular, substantial basis and if position may involve being alone with children or will always involve presence of other adults;

(8) Information provided by person, re: rehabilitation, i.e., showing positive, successful efforts to correct the problems resulting in the indicated child abuse or criminal report so that children in care will not be in danger, demonstrated by no repeated incidents or showing that the person has undergone successful professional treatment;

(9) Employment or practice in a child care field without incident involving injuries to children;

(10) Extra weight and scrutiny shall be accorded child abuse and maltreatment reports involving fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive; and crimes involving homicides, sexual offenses (misconduct, rape, sodomy, abuse); kidnapping; felony possession or sale of a controlled substance; felony promotion of prostitution; obscenity offenses; disseminating indecent material involving, or to, minors; incest; abandonment of a child; endangering welfare of a child; promoting sexual performance by a child; felony weapon possession; assault; reckless endangerment; coercion; burglary; arson and robbery; driving while

intoxicated or under the influence of alcohol if the person will have responsibilities for unsupervised contact or driving motor vehicles at the child care service.

(c) *Implementing the plan*. If the Department determines that such plan adequately safeguards the health and safety of children, the permittee shall be responsible for implementation of the plan, subject to periodic monitoring by the Department.

(d) *Rejection of plan*. If the Department determines that such plan fails to provide adequate safeguards, a permittee that intends to hire or retain the employee shall resubmit the plan until it is acceptable to Department and shall not allow such employee to have unsupervised contact with any children until the plan is approved by the Department.

(e) *Remedies*. Any person aggrieved by the action of the Department in enforcing this section may request that the Department provide him or her with an opportunity to be heard in accordance with §7-02 (a)(1) of the Rules of the Department (24 RCNY Chapter 7).The decision of the Department after such opportunity to be heard shall be a final agency determination.

§47.23 **Supervision; staff to child ratios and group size**.

(a) *Constant supervision required.* Staff included in the staff/child ratios set forth below shall maintain direct line of sight, visual supervision of children at all times. Children shall be supervised by qualified staff at all times in each type of child care service for which a permit is issued. In the event of breaks, lunch periods, and short term absence, no more than three (3) days, the required staff to child ratio may be maintained with assistant teaching staff.

(1) When any child care service is in operation, the number of qualified staff required by this Code shall be assigned and on duty to protect the health and safety of the children in care.

(2) No child or group of children shall be unsupervised at any time.

(b) *Group teacher*. Except in night care, a group teacher shall be in charge of each group of children ages two to six years.

(c) *Infant/toddler service supervision.* An educational director or a group teacher with equivalent qualifications shall be present at all times of operation to supervise an infant/toddler service.

(d) *Infant/Toddler teacher.* An infant/toddler teacher, under the supervision of the educational director, may be in charge of individual groups of infants and toddlers, or children in night care.

(e) *CPR and first aid certifications.* At least one staff member certified in cardiopulmonary resuscitation and first aid shall be on the premises of a child care service during all hours when children are present.

(f) *Minimum staff to children ratios.* The minimum ratios of staff to children shall be as follows:

(1)When toddlers are cared for in mixed age groups, the staff/child ratio and maximum group size shall be the ratio and group size applicable to children aged 12 to 24 months.

(2)When children older than 24 months of age are in a group of mixed but contiguous ages, the

minimum staff/child ratios and group size shall be based on the predominant age of the children in the group.

AGE OF CHILDREN	STAFF/CHILD RATIO	MAXIMUM GROUP SIZE
under 12 months	1:4 or 1:3	8 per room/area
12 to 24 months	1:5	10
2 years to under 3	1:6	12
3 years to under 4	1:10	15
4 years to under 5	1:12	20
5 years to under 6	1:15	25

(3) Programs that maintain a ratio of teachers to children of 1:4 for children under 12 months of age shall demonstrate through their Written Safety Plan that they have sufficient staff in the program at all times to provide a staff to child ratio of 1:3 for the safe evacuation of children younger than 12 months of age during emergency situations.

(f) *Mixed groups.* Infants shall not be placed in older age groups.

(g) *Night care services supervision.*

(1) Staff included in the staff/child ratios set forth above shall be awake at all times, and shall maintain direct line of sight, visual supervision of children.

(2) An educational director or a staff teacher with equivalent qualifications shall be present at all times to supervise the night care service and may not have a specific classroom assignment if more than 40 children are receiving night care.

§47.25 **Health; child admission criteria**.

(a) *Admission requirements.*

(1) *Physical examinations and screening.* All children shall receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) *Immunizations.* All children shall be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B and haemophilus influenzae type b (Hib), in accordance with New York Public Health Law §2164, or successor law, and shall have such additional immunizations as the Department may require. Exemption from specific immunizations may be permitted for medical contraindications or on religious grounds, in accordance with Public Health Law §2164.

(b) *Form with results of examination.* Health care providers examining children pursuant to this section shall furnish permittees with a signed statement, in a form provided or approved by the Department,

containing a summary of the results of examination, past medical history, and, if a disease or condition which affects the child's ability to participate in program activities is found, a summary of the evaluation and findings associated with that condition. The examination form shall include the health care provider's recommendations for exclusion or treatment of the child, modifications of activities, and plans for any necessary health supervision.

(c) *Periodic examinations.* Each child shall have periodic medical examinations at 2, 4, 6, 9, 12, 15, 18 and 24 months and 3, 4, 5 and 6 years of age.

(d) *Medical records to be maintained.* A permittee shall maintain an individual medical record file for each child. This file shall include:

(1) A cumulative record consisting of a form provided or approved by the department, including: child's name, address, date of admission and date of birth: parents' names, home and business addresses and telephone numbers; names and telephone contact information of person(s) to contact in case of emergency, including name, address and telephone number of the child's primary health care provider; pertinent family medical history, and child's history of allergies, medical illnesses, special health problems and medications, immunization records; and parental consent for emergency treatment.

(2) Copies of all individual health records required by this Code, including new admission and periodic medical examination forms, parents' and health care provider notes regarding episodic illnesses, and a history of all illnesses, accidents, and other health data.

(e) *Records to be confidential.* All records required by this section shall be maintained as confidential records and shall not be made available for inspection or copying by any persons other than parents, other persons who present a written authorization from a parent, or authorized staff of the Department.

§47.27. **Health; daily requirements; communicable diseases.**

(a) *Daily attendance record.* A daily attendance record shall be kept in a form provided or approved by the Department.

(b) *Daily health inspections.* A health inspection of each child shall be made daily by the educational director or designated teachers who are familiar with such child and trained to recognize signs or symptoms of illnesses in accordance with guidelines or training provided or approved by the Department.

(c) *Management of ill children and reporting.*

(1) An area shall be provided for separating ill children under direct adult supervision until parents remove children from the child care service.

(2) All health care provider diagnoses pursuant to Article 11 of this Code shall be reported to the Department by the permittee.

(3) The Department shall be notified by the permittee within 24 hours of the occurrence of a death or serious injury to a child while in the care of the child care service.

(4) When any child is unexpectedly absent from the child care service for three consecutive days, the permittee shall telephone the child's parent to determine the cause of absence and shall maintain a record of the telephone call and the information obtained in the log required by §47.29 (d) of this Code.

(d) *Parent reports of absences.* At the beginning of each school year, the permittee shall notify parents that they are required to report absences in accordance with this subdivision. Parents shall report to the permittee within 24 hours any absence for: chicken pox, conjunctivitis, diarrhea, diphtheria, food poisoning, hepatitis, haemophilus influenza type b infection, impetigo, measles, meningitis (all types), meningococcal disease, Methicillin resistant staphylococcus aureau (MRSA), mumps, pertussis (whooping cough), poliomyelitis, rubella (German measles), salmonella, scarlet fever, tuberculosis, or any other disease or condition which may be a danger to the health of other children. Such disease or condition shall not include acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

(e) *Reports of vaccine preventable illnesses.* The permittee shall report to the Department by telephone, within 24 hours, any child who has any vaccine preventable illness, or meningitis or tuberculosis, or if there is any outbreak or unusual occurrence of any disease or condition at the facility.

(f) *Exclusions pursuant to Article 11 of this Code.* The permittee shall exclude a child who is a case, contact, or carrier of a communicable disease if the child is required to be isolated or excluded by Article 11 of this Code. Such child shall not be permitted to return to the child care service without a written statement of recovery from a health care provider if the child was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the child was a case, carrier, or contact of any other communicable disease reportable pursuant to Article 11 of this Code. The statement shall indicate that the child is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended.

§47.29. **Health; emergencies**.

(a) *Emergency procedures and notices.* Written policies and procedures for managing health and other emergencies shall be included in the written health and safety plans and approved by the Department prior to the issuance of a permit. Permittees shall provide notice of the location and contact telephone numbers of the child care service to local hospitals, police precincts, fire houses and emergency transport services and information about emergency policies and procedures shall be provided to parents. Emergency procedures and emergency telephone contact numbers (for Police, Fire Department, Poison Control Center, Child Abuse Hotline, and the Department of Health and Mental Hygiene) shall be conspicuously posted in each classroom or area used by children.

(b) *Necessary emergency medical care.* When a child is injured, or becomes ill under such circumstances that immediate care is needed, the permittee or designee shall obtain necessary medical care and immediately notify the child's parent.

(c) *First aid supplies.* A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided by the permittee and shall be easily accessible for use. The first aid kit shall be kept out of reach of children and inspected periodically.

(d) *Log of children's illnesses and accidents.* The permittee shall maintain a log of illnesses, accidents, and injuries sustained by children in the service, in a form provided or approved by the Department. The permittee shall provide a child's parent with information concerning such incidents pertaining to the child, and shall report serious injuries to the Department. Logged entries shall include the name and date of birth of the child, the place, date and time of the accident or injury, names and positions of staff and other adults present, a brief statement as to how the accident or injury occurred, emergency treatment obtained, if any, and parental notification made or attempted.

§ 47.31. **Health; medication administration**

(a) *Medication policy required.* Each permitee shall establish a policy as to whether the permitee will or will not administer medication, and incorporate such policy in the service's health care plan component of the written safety plan required by §47.11of this Article. Notwithstanding any child care services general policy not to administer medication, such policy shall indicate that the child care service may be required to administer medication to a child with a disability pursuant to the Americans With Disability Act.

(b) *Exempt staff.* A service that employs staff who are also currently State licensed physicians, physicians assistants, registered nurses, nurse practitioners, licensed practical nurses, or emergency medical technicians may administer medications without such staff obtaining additional qualifications or certification.

(c) *Health care consultant and duties*. All permittees that choose to administer medications to children shall designate a health care consultant of record, who shall be a health care provider as defined in this Article. The permittee shall confer with the health care consultant and shall obtain approval of the consultant for the portion of the health care plan regarding policies and procedures related to the administration of medications. The consultant shall review documentation of all staff authorized to administer medications and determine if staff have required professional licenses or certificates of completion of required training. A health care plan shall be valid for two years and shall be updated when designated staff has changed. The health care consultant shall visit the child care service at least once every two years and shall review the permittee's health care policies, procedures, documentation, practice and compliance with its health care plan for administering medications. If the consultant determines that the approved health care plan is not being reasonably followed by the permittee, the consultant may

revoke his or her approval of the plan. If the consultant revokes his or her approval of the health care plan, the health care consultant shall immediately notify the permittee and the Department.

(d) *Staff members certified to administer medications*. Only a trained, designated staff person may administer medications to children, except where the only administration of medications will be over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellant. The staff person administering medications to children shall be at least 18 years of age, possess current certifications in first aid, cardio-pulmonary resuscitation (CPR), and medication administration training (MAT) in a course approved or administered by the Department or the State Office of Children and Family Services. MAT certificates shall be made available for inspection by the Department on request.

MAT certifications shall be effective for a period of three years from the date of issuance. Recertification training shall extend certification for additional three-year periods. If a designated staff person ceases to work in a child care service for a continuous period of one year, certification shall automatically lapse. Where certification lapses, the person may be recertified after repeating initial MAT or recertification training, as required by the Department. Where a permittee has failed to comply with requirements for the administration of medications set forth in this section, the Department may require retraining or may prohibit the permittee from administering medications.

(e) *Medication administration procedures*. Permittees and designated staff may administer prescription and nonprescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments and medications, and inhaled medications in accordance with the provisions of this section.

(1) A copy of written policies regarding the administration of medications shall be reviewed and explained to parents at the time of enrollment, and provided to parents.

(2) The permittee shall obtain from a child's parent and health care provider a statement in writing that indicates medicine to be administered and schedule of administration.

(3) A parent, or other adult authorized in writing by the parent may administer medications to a child while the child is attending a child care service at any time.

(4) The permittee shall maintain a medication administration log to document name of child, date, time and name of staff, parent, or other adult authorized by a parent to administer medications.

(5) Permittees and designated staff may not administer medications by injection, vaginally or rectally except as follows

(A) Epinephrine auto- injector devices when necessary to prevent anaphylaxis for an individual child when the parent and the child's healthcare provider have indicated such treatment is appropriate; or

(B) For a child with special health care needs where the parent, child care service and the child's health care provider have agreed on a plan pursuant to which the permitee or designated staff may administer medication by injection, vaginally or rectally; or

(C) Where the permitee or designated staff hold a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse, or advanced emergency medical technician.

(6) Nothing in this section shall be deemed to require any permitee at administer any medication, treatment or other remedy except to the extent that such medication, treatment or remedy is required under the provisions of the Americans With Disabilities Act.

(7) Permittees who agree to administer medications shall do so, unless they observe circumstances specified by a child's health care provider, if any, under which medication shall not be administered. In such instances, the permittee shall contact the parent immediately.

(8) Medication may only be administered with written consent of the parent in accordance with written instructions from the child's health care provider including, but not limited to circumstances, if any, under which the medication or prescription shall not be administered. Medication shall be returned to the parent when no longer required by the child.

(9) When the permittee has written parental consent and written instructions from a health care provider authorizing administration of a specified medication if the permittee observes a specific condition or change of condition in the child while the child is in care, the permittee may administer the medication without obtaining additional authorization from the child's parent or health care provider.

(10) To the extent that such information is not included on the medication label, written instructions by the health care provider shall include:

(A) child's name;

(B) health care provider's name, telephone number, and signature;

(C) date authorized;

(D) name of medication and dosage;

(E) frequency the medication is to be administered;

(F) method of administration;

(G) date the medication shall be discontinued or length of time, in days, the medication is to be given;

(H) reason for medication (unless this information shall remain confidential pursuant to law);

(I) most common side effects or reactions; and

(J) special instructions or considerations, including but not limited to possible interactions with other medications the child is receiving or concerns regarding the use of the medication as it relates to a child's age, allergies, or any pre-existing conditions.

(11) Medications shall be kept in the original labeled bottle or container. Over-the-counter medication shall be kept in the originally labeled container and shall be labeled with the child's first and last name. Prescription medications shall contain the original pharmacy label.

(12) If medication is to be given on an ongoing, long-term basis, the parent's consent and health care provider's written instructions shall be renewed in writing at least once every six months. Any changes in the original medication shall require a permittee to obtain new written instructions from the health care provider.

(13) A permittee may administer over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellant, upon the written instructions of the parent. Such administration shall be consistent with any directions for use noted on the original container, including but not limited to precautions related to age and special health conditions, and no additional certifications to administer medications are required by the permitee or designated staff. If the only administration of Medication offered by the service will be the administration of over the counter topical ointment including sunscreen lotion and topically applied insect repellant a designated health care consultant is not required. The permitee or designated staff shall record in the medication log applications of such topically applied ointments, sunscreen lotions and topically applied insect repellants with the name of the child, date and time administered, and staff signature.

(14) For all children for whom the permittee administers over-the-counter medications pursuant to this paragraph, copies of parental written consent and instructions shall be maintained in the child's medical record file.

(15) Medications shall be kept in a clean area that is inaccessible to children. If refrigeration is required, medications shall be stored in either a separate refrigerator or a leak-proof container in a designated area of a food storage refrigerator, separated from food and inaccessible to children. Permittees shall comply with all applicable law for secure storage of all medications.

(16) Staff shall document dosages and times that medications are given, observable side effects, reasons for not giving medication and medication administration errors, and shall report to the parent and to the child's health care provider, in accordance with the provider's written instructions; medication errors shall be immediately reported to the Department.

(17) No children shall independently self administer medications or assist in the administration of their own medications except under direct supervision of designated staff.

(18) Nothing in this section shall prevent a parent, guardian or other legally authorized individual in relation to a child from administering medication to a child while such child is in a child care service. In these circumstances the permitee shall document the dosages and time that the medications were administered to the child by such individual. If the only administration of medication in such service is done by such individual no certification to administer medication are required by the permitee or staff.

§47.33. **Health; staff**.

(a) *Staff to be excluded.* The permittee shall exclude any staff person from work in accordance with Article 11 of this Code, if such staff person reports having an illness or symptoms of a communicable

disease reportable pursuant to Article 11 of this Code. Such staff person shall not be permitted to return to the child care service without a written statement of recovery from a health care provider if the staff person was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the staff person was a case of any other communicable disease reportable pursuant to Article 11.

(b) *Physical examination certificates.* No educational director, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other staff member who regularly associates with children shall be permitted to work in a service unless such person is healthy and capable of carrying out the responsibilities of the job. Prior to commencing work, all such staff and volunteers shall present a certificate from a licensed health care provider certifying that, on the basis of medical history and physical examination, such staff member or volunteer is physically and mentally able to perform assigned duties. Such certificate shall be submitted every two (2) years thereafter as a condition of employment. Certificates of required physical examinations and other medical or personal health information about staff shall be kept on file at the place of employment, shall be confidential, and shall be kept separate from all other personnel or employment records.

(c) *Staff immunizations.* Health care providers shall certify that each staff or volunteer has been immunized against measles; mumps; rubella; varicella (chicken pox); and tetanus and diphtheria (Td) or tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices. Persons born on or before December 31, 1956 who have a history of measles or mumps disease shall not require such vaccines. A history of having health care provider documented varicella, measles or mumps disease shall be accepted in lieu of varicella, measles or mumps vaccines. A history of having rubella disease shall not be substituted for the rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for medical contraindications upon submission of appropriate documentation from a licensed physician.

(d) *Test for tuberculosis infection.* The Department may require testing for tuberculosis at any time of any persons in a child care service when such testing is deemed necessary for epidemiological investigation.

§47.35 **Personal hygiene practices; staff and child.**

(a) *Hand washing*. Staff and children shall wash hands before and after toileting or diaper changes, after contact with a child in ill health, and prior to handling or preparing any food and after playing outdoors.

(b) *Signs.* Hand washing signs provided by or approved by the Department shall be prominently posted in each lavatory and by each sink.

(c) *Individual personal care*. Hair brushes or cloth towels shall not be provided for use. If toothbrushes, combs, or washcloths are provided, each child shall have items for his/her exclusive use and they shall be stored in an individually labeled container.

(d) *Changes of clothing*. At least one change of weather-appropriate clothing shall be available so that any child who soils clothing may receive a change. Soiled clothing and cloth diapers shall be handled in a manner that protects occupants from exposure to wastes and maintains an appropriately sanitary environment.

(e) *Bathing*. Children shall not be regularly bathed on premises; but shall be washed in case of accidents.

(f) *Self-care/hygiene routines for night care services*. Permittees shall establish procedures and policies that require children to brush teeth at bedtime and after meals; comb hair upon awakening, and follow a routine for toileting, dressing and undressing.

(g) *Safety precautions relating to blood*. Permittees shall implement the following safety precautions for all staff having any exposure to, or contact with blood:

(1) Disposable gloves shall be immediately available and worn whenever there is a possibility for contact with blood, including but not limited to:

(A) Changing diapers where there is blood in the stool;

(B) Touching blood or blood-contaminated body fluids;

(C) Treating cuts that bleed; and

(D) Wiping surfaces stained with blood.

(2) In an emergency, a child's safety and well-being shall take priority. A bleeding child shall not be denied care because gloves are not immediately available.

(3) Disposable gloves shall be discarded after each use.

(4) If blood is touched accidentally, exposed skin shall be thoroughly washed with soap and running water.

(5) Clothes contaminated with blood shall be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(6) Surfaces that have been blood stained shall be cleaned and disinfected with a germicidal solution.

(h) *Smoking prohibited*. There shall be no smoking of tobacco or other substances in any indoor or outdoor area of any premises on which a child care service is located.

§47.37 **Training**

(a) *Educational Director*: The educational director shall arrange for and verify continuing in-service training of all employees, teaching staff and others, as required by this Article. The educational director may be certified to conduct such training or may designate other teaching staff to obtain such certification and conduct such training.

(1) *All employees*. All employees, and any volunteers, or other persons who have, will have, or have the potential for, unsupervised contact with children in a child care service, shall receive two hours of training in child abuse and maltreatment identification, reporting and prevention and requirements of applicable statutes and regulations. Such training shall be provided by a New York State Office of Children and Family Services certified trainer. New employees shall receive such training within six (6) months of hire. All employees shall receive such training every 24 months. In addition, all teachers shall receive training in infection control and reporting infectious diseases. The Educational Director shall maintain copies of certificates verifying completion of such training.

(2) *Infant/toddler and night care service staff.* In addition to the training requirements in paragraph (1) above, infant/toddler and night care services staff shall complete sudden infant death syndrome ("SIDS") and "shaken baby" identification and prevention training.

(3) *Assistant teachers*. Assistant teachers shall complete 15 hours of training every 24 months, including the mandatory child abuse prevention and identification training in paragraph (1), and other subjects related to child health and safety, and early childhood development. The Educational Director shall develop a training curriculum based on assessment of the professional development needs of individual assistant teachers. The curriculum shall include, but not be limited to, the following topics:

(A) Preventing, recognizing signs of, and reporting injuries, infectious diseases, other illnesses and medical conditions.

(B) First aid and CPR

(C) Lead poisoning prevention.

(D) Physical activities, scheduling and conducting guided and structured physical activity.

(E) Asthma prevention and management.

(F) Setting up and maintaining staff and child health records including immunizations

(G) Growth and child development

(i) Early intervention

(ii)Early childhood education curriculum development and appropriate activity planning.

(iii)Appropriate supervision of children

(iv) Meeting the needs of children with physical or emotional challenges

(v) Behavior management and discipline.

(vi) Meeting nutritional needs of young children

(vii)Parent, staff, and volunteer, communication and orientation: roles and responsibility.

(viii) The selection of appropriate equipment and classroom arrangement.

(ix) Safety and security procedures for fire safety, emergency evacuation, playgrounds, trips and transportation.

(c) The Department may provide such training or any part thereof or accept training provided by others found satisfactory to the department. Persons who enroll in workshops conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for workshop registration materials, training testing, and certificate issuance.

§47.39. **Space allowance; reservation for children's use**

(a) *Space for children's exclusive use.* Rooms, areas and other spaces utilized by children in a child care service shall be reserved for their exclusive use and shall not be shared with other children or adults while the service is in operation.

(b) *Minimum square footage/child.* The minimum allowance of space for each child in a classroom shall be 30 square feet of wall to wall space.

§47.41. **Indoor physical facilities**

(a) *Egress.* All child care services receiving a first permit after January 1, 1989 shall have two means of egress. Fire escapes shall not be counted as a second means of egress.

(b) *No child care provided above third floor.* No child care services receiving a first permit after January 1, 1989 shall allow children to utilize any rooms, areas or other spaces above the third floor of a building, except that the Department may allow child care services to occupy spaces above the third floor where the Department of Buildings and Fire Department have approved such use and the Department has approved the applicant or permittee's evacuation plan.

(c) *Infant/toddler services limited to first floor.* No infant/toddler service receiving a first permit on or after September 1, 2008 shall provide child care services in any room, area or other space above the first floor or below the ground level floor of a building, except that the Department may allow infant/toddler child care services to occupy spaces above the first floor or one level below the ground level floor of a building, where the Department of Buildings and Fire Department have approved such use and the Department has approved the applicant or permittee's evacuation plan.

(d) *Basements.* A child care service receiving a first permit on or after September 1, 2008 shall not allow children to utilize any rooms, areas or other spaces lower than one level below the ground level floor of a building.

(e) *Window guards.* Windows guards shall be installed in accordance with specifications provided or approved by the Department on all windows in all rooms, hallways, and stairwells, except windows giving access to fire escapes.

(f) *Passageways free of obstruction.* All corridors, doorways, stairs, and exits shall be kept unobstructed at all times.

(g) *Protective barriers in stairways.* Protective barriers shall be provided in all stairways used by children. Stairways shall be equipped with low banisters or handrails for use of children. Protective barriers providing visual access shall be installed in lofts used by children.

(h) *Shielding required.* Columns, radiators, pipes, poles, and any other free-standing or attached structures in classrooms and play areas shall have protective guards.

(i) *Door locks.* No door to a bathroom, closet or other enclosed space shall be equipped with a lock that allows the door to be locked from inside the space, except that devices may be used to secure privacy if they can be overridden from the outside in an emergency.

(j) *Finishes and maintenance.* Walls, ceilings and floors shall be finished with non-toxic finishes, constructed of materials enabling thorough cleaning, and maintained in good repair, with no holes, missing tiles, peeling plaster, or other defects.

§47.43 **Plumbing; toilets, hand wash, and diaper changing facilities.**

(a) *Plumbing installation*. Plumbing shall be installed only by a licensed plumber and shall be free of cross-connections and other hazards to health. Drinking water from faucets and fountains shall be tested for lead content and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected.

(b) *Adequate toilets and sinks to be provided*. One toilet and one hand wash sink shall be provided for every 15 children ages 24 months and older, or fraction thereof, based on permit capacity. When an extended hand wash facility is equipped with several faucets supplying tempered water, each faucet shall be considered the equivalent of one hand wash sink.

(c) *Located near children's rooms*. Toilets and hand wash sinks shall be located as close as practicable to children's playrooms and classrooms.

(d) *Staff toilets*. Separate adult toilets shall be provided for staff.

(e) *Sink water supply*. Hand wash sinks with an adequate supply of hot and cold running water shall be provided in or adjacent to toilets. Water temperature in hand wash sinks used by children shall not exceed 115 degrees Fahrenheit (46.11 degrees Celsius).

(f) *Accessibility to children*. Toilets and hand wash sinks shall be installed at a height that allows unassisted use by children. If adult-size toilets or hand wash sinks are in place, platforms with easily cleaned surfaces shall be provided for use by children. Such platforms shall be permanently installed and free of hazards.

(g) *Soaps and drying devices*. All sinks shall be equipped with liquid soap dispensers, individual paper towels or sanitary driers, located within easy reach of the children.

(h) *Diaper changing*.

(1) A firm, non-absorbent, easily cleanable, counter height surface directly adjacent to a sink with running hot and cold water shall be provided in or adjacent to the classroom for diaper changing when needed.

(2) A disposable covering shall be provided on diaper changing counters and shall be changed after each use. The counter surface shall be disinfected after each use.

(3) A readily accessible receptacle with secure lid and removable plastic liner shall be provided for the disposal of diapers; separate equipment shall be provided for cloth diapers, if used. A properly labeled spray bottle of approved disinfectant shall be provided.

(4) Staff changing diapers shall wear disposable rubber or other barrier gloves.

(5) Potties shall be used only in bathroom or toilet facilities, and shall be washed and disinfected after each use in a designated utility sink that is not used by staff or children as a hand wash sink.

§47.45 **Ventilation and lighting**

(a) *Ventilation.* Ventilation, by natural or artificial means, shall be provided in each room used by children. Internal temperature and humidity shall be regulated so the facility is free of nuisance conditions, including, but not limited to excessive heat, dust, fumes, vapors, gases, odors or condensate. The windows, inlets, outlets and artificial ventilation shall be located and the rate of air flow shall be controlled so as not to subject the children to drafts.

(b) *Lighting.* All parts of a building used for the care of children shall be adequately lighted by natural or artificial means. All lighting shall be evenly distributed and diffused, free from glare, flickering or shadows. The following lighting levels shall be provided and maintained at children's activity level:

(1) Fifty footcandles of light in all classrooms used for partially sighted children;

(2) Thirty footcandles of light in all other classrooms, study halls or libraries;

(3) Twenty footcandles of light in recreation rooms;

(4) Ten footcandles of light in auditoriums, cafeterias, locker rooms, washrooms, corridors containing lockers;

(5) Five footcandles of light in open corridors and store rooms; and

(6) Five footcandles of light shall be provided during sleeping hours in bathrooms, sleeping areas and exit paths.

§47.47 **Outdoor play areas**

(a) Adequate, easily accessible outdoor play areas shall be provided, shall be kept clean and safe, and shall be suitable for children’s use. .

(b) Outdoor play areas located on the premises of the child care program shall be enclosed by climb-proof fencing that is a minimum of five (5) feet in height. No razor or barbed wire shall be used at the top of a fence, unless the fence is more than six and one half (6½) feet in height.

(c) Rooftop play areas may be provided in fireproof buildings, when such use is approved by the Department, the Department of Buildings and the Fire Department. Rooftop play areas shall be enclosed by a climb-proof fence, at least 10 feet in height with an additional 45° inwardly angled panel.

(d) Outdoor equipment, including, but not limited to, swings, slides, and climbing apparatus, shall be age and developmentally appropriate, shall be installed, maintained and used in accordance with manufacturers' specifications and instructions, approved by the US Consumer Product Safety Commission, and maintained in good repair.

(e) Outdoor play areas shall be maintained free of broken glass or other debris, poison ivy or other poisonous vegetation, pest harborages, or other hazards.

(f) Resilient surfaces, approved by the US Consumer Product Safety Commission, that do not contain asphalt or cement, shall be provided under and surrounding climbing and other elevated equipment.

(g) Play equipment shall be in good repair, and free from hazards such as sharp edges or pointed parts, or toxic or poisonous finishes or materials, including but not limited to, lead and arsenic.

§47.49 **General sanitation and maintenance**.

(a) *Maintenance.* Indoor and outdoor rooms, play areas, and other spaces, including cellars, basements, and adjoining yards and courts, and all furnishings and equipment shall be kept clean of food and debris and maintained in good condition. Interior rooms used by children shall not be cleaned by dry sweeping.

(b) *Trash and garbage*. Trash and garbage shall be stored in rodent proof containers with tightly fitted lids. Trash, garbage, and combustible materials shall not be stored in the furnace or boiler rooms or in rooms or outdoor areas adjacent to the facility that are ordinary occupied by or accessible to children.

(c) *Toxic and poisonous materials to be contained*. All matches, lighters, medicines, drugs, cleaning materials, detergents, aerosol cans and other poisonous or toxic materials shall be stored in their original containers. Such materials shall be used in such a way that they will not contaminate play surfaces, equipment, food or food preparation areas or constitute a hazard to children. Such materials shall be kept in places that are inaccessible to children, and that can be securely locked.

(d) *Environmentally sensitive cleaning products.* Whenever feasible, child care services shall utilize environmentally sensitive cleaning products, as defined in State Education Law §409-i, or successor statute.

§47.51 **Rodents, insects and other pests prohibited; pesticide application notice**.

(a) *Pest free premises.* Premises shall be kept free of rodents, insects and other pests and free of any condition conducive to rodent, insect and other pest life.

(b)*Pest control.* Pest control methods shall emphasize prevention of pest infestation by preventing the free movement of pests into, and within the premises and by eliminating the conditions conducive to pests such as clutter and the availability of food and water. Such methods shall include, but not be limited to: closing and filling holes, cracks, and gaps at baseboards, where plumbing, radiator and other pipes and conduits enter the premises, where food storage cabinets join walls, and where shelves meet food storage cabinet interiors, using plaster, spackle, caulk or other appropriate sealants: storing all food products in sealed insect and rodent proof containers; installing door sweeps to prevent pest movement between rooms and areas. When necessary to control pests, permittees shall utilize pest control services provided by exterminators certified to apply pesticides by the New York State Department of Environmental Conservation (NYSDEC). Extermination logs shall be maintained for inspection by the NYSDEC. Permittees shall request that exterminators utilize the least toxic methods and substances to control infestations, including but not limited to the use of: boric acid, diatomaceous earth, silica gel, insecticidal baits and gels for cockroaches; and shall utilize glue traps and rodenticidal bait only if inserted in tamper-resistant containers and placed in locations inaccessible to children. Routine extermination shall not include the use of insecticidal aerosol sprays or foggers. Exterminators' logs of pesticide applications equivalent in content to NYSDEC Form 44-15-26 (Applicator/Technician Pesticide Report) shall be maintained for inspection by the Department for three years.

(c) *Notice of pesticide applications.* Notice of pesticide applications shall be provided to parents not less than 48 hours before such application and shall include: (1) location and specific dates of applications; (2) pesticide product name and U.S. EPA registration number; (3) the name and telephone number of a child care service staff person to contact for more information; and (4) the following statement: "This notice is to inform you of a pending pesticide application at this child care service. You may wish to discuss with a representative of the child care service what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals, or the environment, can be obtained by calling the National Pesticide Telecommunication Network Information line at 1-800-858-7378 or the NYS Department of Health Center for Environmental Health Info Line at 1-800-458-1158."

§47.53 **Pet animals**.

No reptiles, dogs, cats, and any other animals whose possession is prohibited by §161.01 of this Code, or successor rule, shall be harbored in a child care service. Any animals that are harbored in a child care service shall be in good health, show no evidence of carrying any disease, and shall pose no threat to

children. Pets shall be kept in cages, and waste material within cages shall be cleaned daily or more often, if needed.

§47.55 **Equipment and furnishings**.

(a) *Furnishings.* Tables, chairs, furniture and equipment shall be age and size appropriate, finished with non-toxic surface coverings, easily cleanable, and cleaned and sanitized as needed.

(b) *Naps*.

(1)A separate firm sanitary cot, crib, mat, playpen or other sleeping arrangement specifically approved by the Department shall be provided for each child who spends more than four hours a day in the service.

(2) Stackable cribs shall be prohibited.

(3) Cots or other sleep equipment shall be placed at least two feet apart unless separated by a screen or partition.

(4) Pillows shall not be used except when recommended by a child's health care provider.

(5) A clean sheet shall be provided for the exclusive use of each child.

(6) Blankets that are sufficient to maintain adequate warmth shall be made available for each child and shall be used when necessary.

(7) Sheets and blankets shall be stored separately for each child to avoid cross-contamination, and shall be washed at least weekly.

(c) *Space for clothing*. Space shall be provided and arranged so that each child's outer garments may be hung separately, safely and within each child's reach.

§47.57 **Safety; general requirements**.

(a) *Telephone service.* The permittee shall provide and maintain at least one dedicated land line listed telephone for emergency use, and shall conspicuously post adjacent to the telephone current telephone numbers and instructions for obtaining fire, police and emergency medical assistance, contacting the Department's poison control hotline and Bureau of Child Care, or successor program, and the SCR child abuse hotline.

(b) *Eliminate safety hazards.* Precautions shall be taken to eliminate all conditions in areas accessible to children that pose a safety or health hazard.

(c) *Choking hazards*. Handbags, backpacks, briefcases, or other personal items belonging to adults or children, plastic bags, toys and objects small enough for children to swallow shall be stored in manner that they are not accessible to children.

(d) *Cold weather*. When outdoor temperatures are below 55°F, and children are on premises, permittees shall maintain indoor air temperatures between 68°F and 72°F in all rooms, areas and other spaces used by children.

(e) *Heat advisories.* On designated heat advisory, excessive heat warnings or watches, or ozone or other air pollution advisory days, the permittee shall maintain physical comfort levels of children and staff by providing adequate facility ventilation and/or air conditioning. The permittee shall implement policies to increase children's fluid intake and facilitate adequate hydration. Activities shall be modified to protect children from heat associated disorders and conditions, including but not limited to heat stress and heat strain, and scheduled activities shall be otherwise restricted or cancelled in response to restrictions or recommendations of the New York City Office of Emergency Management or the National Weather Service. During severe weather or other advisories, the permittee shall take appropriate action to protect the safety and health of children, including but not limited to, early dismissal, closing of the child care service, and employing appropriate precautions during transportation. Such precautions shall be described in the written safety plan.

(f) *Approved areas to be used.* Children shall not be kept for any period of time in any areas of a building or other premises not previously approved by the Department and the New York City Fire Department and Department of Buildings for such use. Such approval shall not be granted unless the premises and the area surrounding the premises are free from fire, traffic and other safety or health hazards.

(g) *Environmental hazards.* Child care services obtaining a first permit after September 1, 2008 shall not be co-located in any building or other premises containing commercial or manufacturing establishments associated with environmental hazards including, but not limited to those associated with dry cleaners, gas stations and petrochemical storage and distributors, automotive dealerships/maintenance or repair facilities, commercial printing, industrial/manufacturing plants and machine/equipment servicing, nuclear laboratories or power plants, or on premises identified as a federal or state superfund or other cleanup site, or any property with known contaminated ground or water supplies. No child care permit shall be issued or renewed for any child care service located in any building or other premises unless such building or premises are free of environmental hazards including but not limited to those identified above, or any other condition dangerous to life and health. When the permittee or the operators or other persons in control of any premises occupied by any child care service learn of a current or prior commercial activity or condition that may result in potential exposure to environmental hazards, such persons shall submit written notification on a form provided by or satisfactory to the Department of the existence of such activity or condition. When the Department determines that a condition may expose children or other persons to environmental hazards at the premises occupied by any child care service, it may order the abatement or remediation of such condition. In such cases as it deems necessary the Department may conduct and/or order the owner or other persons in control of the premises occupied by the child care

service to conduct an environmental assessment consisting of but not limited to environmental sampling and to take such other action as it deems essential to protect the public health.

(h) *Adults restricted*. Adults allowed on the premises occupied by a child care service shall be limited to staff, parents and/or guardians and other authorized relatives and volunteers, student teacher trainees or observers, credentialed Department and other public inspectors, and persons providing services to the center.

(i) *Instructional swimming and aquatic activities.* Child care services shall obtain written approval of the Department prior to offering any swimming or other aquatic activities. Aquatic activities for group child care services are limited to learn to swim or water safety programs that use a supervision protocol approved by the State Commissioner of Health to protect children from injury or drowning. When authorized by the Department, such activities shall be conducted in accordance with the child care service's written safety plan and the following requirements:

(1) Facilities and equipment.

(A) Child care services may utilize only swimming pools operating pursuant to a permit issued by the Department, or other State permit issuing official, in accordance with Article 165 of this Code and Subpart 6-1 of the New York State Sanitary Code, or successor regulations.

(B) Swimming at bathing beaches, spa pools and in "fill and draw" pools is prohibited.

(C) Swimming pools or other bodies of water within the grounds of a child care center shall be surrounded by a barrier sufficient to form an obstruction to children having access to such body of water in accordance with Article 165 of this Code.

(D) Barrier walls, fences and gates shall be at least six (6) feet high, except for wading pools, which shall be enclosed by barriers at lease four (4) feet high, and shall be firmly attached to the adjacent ground, and shall completely enclose the pool or body of water.

(E) Pathways, walkways, decks, or other connecting entrance to the pool or body of water shall be obstructed by barriers that prevent children from having access to the pool or body of water.

(2) Supervision: aquatic staff responsibilities and qualifications.

(A) At least one qualified lifeguard shall be provided by the pool or the child care service for every 25 children or portion thereof and for every 3,400 square feet of pool surface area. Qualified lifeguards, as defined in Article 165 of this Code, shall actively supervise children participating in swimming and aquatic activities, as detailed in the written safety plan, and shall not be engaged in any other duties or activities that distract them from direct supervision of children in the pool.

(B) The permittee shall identify an employee to act as an aquatics director responsible for direct supervision of all swimming and aquatic activities. The aquatics director shall be present during all swimming and aquatic activities; shall establish and oversee all such activities on and off-site; and shall supervise all staff, volunteers, and children participating in these activities.

(C) During all swimming and aquatics activities, the aquatics director or designee shall have in his or her possession the approved written safety plan; and shall maintain for each swimming session an accountability system detailed in the written safety plan and approved by the Department for recording the name of each child, , the swimming area to which the child is assigned, the adult to whom the child is assigned in the swimming area, and the dates and times of initiation and cessation of aquatic and swimming activities.

(D) The aquatics director shall:

(i) be at least 18 years of age;

(ii) possess either: a current cardiopulmonary resuscitation (CPR) certificate, not exceeding one year in duration, in CPR for the Professional Rescuer issued by the American Red Cross (ARC); or a current CPR certificate, not exceeding one year in duration, issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of CPR training; and

(iii) be either:

(aa) a progressive swimming instructor who is a currently certified ARC water safety instructor or possesses a current certificate issued by certifying agency determined by the State Commissioner of Health to provide an adequate level of similar training ; or

(bb) a qualified lifeguard, as specified in the New York State Sanitary Code [10 N.Y.C.R.R.] §7-2.5(g), or successor regulation, who meets lifeguarding, first aid and CPR certification requirements detailed in Part 6 of the State Sanitary Code including minimum lifeguard supervision level IIa.

(E) The permittee shall restrict swimming and aquatic activities to group sizes per 47.23(e) of this Code.

(F) At least one progressive swimming instructor (PSI) shall be provided by the pool or child care service during all learn-to-swim programs, and shall provide instruction to no more than 10 children in the water at one time. A PSI shall be in the water at all times with the children and shall not be engaged in any other duties or activities that distract from direct instruction of children in the pool. The PSI shall be:

(i) at least eighteen (18) years of age; and

(ii) be a water safety instructor currently certified by the American Red Cross, or possess a current certificate issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of similar training; and

(iii) possess either: a current cardiopulmonary resuscitation (CPR) certificate, not exceeding one year in duration, in CPR for the Professional Rescuer issued by the American Red Cross (ARC); or a current CPR certificate, not exceeding one year in duration, issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of CPR training.

(G) In addition to the required PSI, there shall be at least one staff member, parent, or volunteer located in the water in close proximity to children in the water, so as to provide immediate assistance to children in distress, with direct visual surveillance of:

(i) every two children in water that is less than chest deep as measured on the children; or

(ii) every one child in water that is greater than chest deep as measured on the children; or

(iii) every three children in the water if children are wearing non-inflatable, properly fitted flotation devices that are secured to their bodies.

(H) Staff members, parents, or volunteers in the water shall not be engaged in any other duties or activities that distract from direct supervision and support of children in the pool, and shall:

(i) be at least eighteen (18) years of age.

(ii) have their ability to swim established by the PSI prior to supervising children in the water. The PSI must assess their swimming capability, record the results, and incorporate them in the written safety plan which is maintained on file by the permittee.

(I) Learn-to-swim programs shall operate in water less than chest deep for all PSI, staff members, parents, and volunteers in the water.

(J) At least one staff member certified in infant, child or pediatric CPR shall be present during all swimming and aquatic activities.

(3) Child safety.

(A) Children under 3 years of age are prohibited from participating in all swimming and aquatic activities.

(B) The written safety plan shall incorporate the safety requirements and supervision procedures applicable to swimming activities.

(C) An accountability system detailed in the written safety plan approved by the Department shall be established for supervising and accounting for children, that shall include, but not be limited to:

(i) an accountability system which identifies each child by name, the swimming area to which the child is assigned, the adult to whom the child is assigned in the pool, and a record of the dates and times of initiation and cessation of aquatic and swimming activities.

(ii) accountability checks of the children are made at least every 15 minutes and results recorded in an accountability log or in accordance with the accountability system detailed in the program's written safety plan approved by the Department.

(D) The child care service's written safety plan shall specify duties of all staff in case of swimming and aquatic activity emergencies, including but not limited to emergency procedures for "lost swimmers."

(E) Prior to each swimming and aquatic activity, the aquatics director shall meet with all staff and volunteers assigned to the activity and review their roles and duties at the area, including the children to whom each adult is assigned, and emergency procedures for "lost swimmers."

(F) Prior to every trip to an off-site swimming facility not owned by the child care service, permittee shall obtain and maintain on file for each child a written consent from a parent or guardian. A consent form approved by the Department shall be incorporated in the written safety plan and shall include the child's name and age, the destination and type of activities authorized during the field trip, and the date of the trip.

§47.59 **Fire Safety**

(a) All exits shall have clear and legible exit signs when required by Department of Buildings.

(b) Services shall have approved fire extinguishers in good working order and have them inspected as required by the Fire Department.

(c) In a child care service holding a permit for more than 30 children, an approved interior fire alarm system shall be provided.

(d) Fire drills shall be conducted monthly and logged for Fire Department inspection.

(e) Heating apparatus shall be equipped with adequate protective guards. Space heaters shall not be used.

(f) Premises shall be free of electrical, chemical, mechanical and all other types of hazards.

(g) Smoke and carbon monoxide detectors with audible alarms shall be provided in accordance with applicable law or as required by the Department or the Fire Department.

§47.61 **Food and food safety.**

(a)Food shall be stored, served to, and prepared for children in accordance with Article 81 of this Code, except that no additional permit to operate a food service establishment shall be required. The permittee shall designate as a supervisor of food service operations a person who has a certificate in food protection issued pursuant to §81.15 (a)(1) or (2) of this Code, or successor rule. Such person shall be on premises to supervise all food storage, preparation, cooking, holding, and cleaning activities, whenever such activities are in progress.

(b) Food supplied to children shall be wholesome, of good quality, properly prepared in accordance with nutritional guidelines provided or approved by the Department, age-appropriate in portion size and variety, and served at regular hours at appropriate intervals.

(1) Beverages with added sweeteners, whether artificial or natural, shall not be provided to children.

(2) Juice shall only be provided to children over eight (8) months of age, and only 100% juice shall be permitted. Children shall receive no more than six (6) ounces of 100% juice per day.

(3) When milk is provided, children ages two and older shall only be served milk with 1% or less milk-fat unless milk with a higher fat content is medically required for an individual child, as documented by the child's medical provider.

(4) Water shall be made available and shall be easily accessible to children throughout the day, including at all meals. Potable drinking water supplies shall be located in or near classrooms and playrooms. Except when bubbler fountains are used, individual disposable drinking cups shall be provided within reach of children. If bubbler fountains are used, they shall be of the angle jet type with suitable guards and shall have water pressure sufficient to raise the water high enough above the spout to avoid contamination.

(5) Any special diet shall be provided only in accordance with a note from a physician.

(6) The provisions of this subdivision shall not apply to child care services operated by a religious organization in instances where religious dietary requirements would be inconsistent with such provisions.

(c)When parents or other responsible persons provide meals, such foods shall be properly refrigerated and the operator shall provide such persons with age-appropriate nutritional guidelines approved or provided by the Department.

(d) Milk shall be stored at a temperature below 41 degrees Fahrenheit, may not be kept beyond its expiration date, and may not be dispensed or served by children except under adequate supervision.

(e) Dry food shall be stored in insect and rodent-proof containers.

(f) All utensils, dishes and other materials used in association with food shall be properly cleaned and sanitized as required by the Department or disposed of after each use.

(g) Feeding bottles shall be marked with the child's full name and date of preparation.

(h) Unused portions of formula milk and/or baby food shall be discarded after each feeding or meal.

(i) Bottles shall not be propped or kept by children while sleeping. No styrofoam cups shall be used by children two years or younger.

(j) The food service at a night care program shall be provided as follows:

(1) Evening meals shall be served at the same time daily.

(2) Breakfast shall be provided for all children who have been at the facility through the night and are present between 6 a.m. and 8 a.m.

§47.63 **Lead-based paint restricted**.

(a) *Peeling lead-based paint prohibited.*

(1) There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface in a child care service.

(2) Peeling lead-based paint and peeling paint of unknown lead content shall be immediately abated or remediated upon discovery by the child care service permittee, or the owner of a building in which a child care service is located, regardless of whether there has been an inspection or order issued by the Department, in accordance with §173.14 of this Code.

(3) When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the permittee, or the owner of the building in which the service is located shall use only the methods specified in such order.

(4) When the Department finds a lead-based paint hazard as defined in §173.14(b) of this Code or a lead dust hazard as defined in EPA 40 CFR 745.227 (h) (3) (i), on the interior of the child care service, or concentrations of lead in the paint of the exterior surfaces of the child care facility, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any child care service when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency published in 40 C.F.R. Part 745 or successor regulations and further determines that such concentrations may be dangerous to health.

(5) The work practices of §173.14 of this Code shall not apply to repair and maintenance work in a child care service which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(6) Maintenance staff workers in child care service facilities that contain lead based paint or paint of unknown lead content, and who regularly do repair work that may disturb such paint, shall attend a

HUD/EPA approved 8-hour course on lead safe work practices in accordance with §173.14 (2)(b) of this Code.

(7) Children shall not be present and shall not have access to any room undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(8) The permittee, or the owner of a building in which a child care service is located, in which paint has not been tested by X-ray fluorescent (XRF) analysis by or on behalf of the Department for lead content, may object to an order issued to remediate peeling lead-based paint or peeling paint of unknown lead content, by submitting evidence satisfactory to the Department that the surface of any component cited in the order as requiring remediation does not contain lead-based paint, as follows:

(A) Such evidence shall consist of a sworn written statement by the person who performed the testing on behalf of the permittee, or building owner supported by: lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling; a copy of the certificate of training of the certified lead-based paint inspector or risk assessor; a copy of the inspection report of the inspector or risk assessor, including a description of the surfaces in each room where such testing or sampling was performed; and a copy of the results of XRF testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(B) Such written statement and all supporting documentation shall be submitted to the department not later than thirty (30) days before the date set for compliance with an order to remediate, and shall only be submitted where the Department has not performed an XRF test prior to issuing such order. Receipt by the Department of a complete application in accordance with this paragraph including such written statement and such supporting documentation shall toll the time period to comply with the order. Receipt of an incomplete application shall not toll the time period for compliance with the order.

(C) The Department shall notify the applicant of its determination in writing, and, if the Department rejects the application, such notice shall set a date for compliance.

(D) The performance of lead-based paint testing shall be in accordance with the definition of lead-based paint established in §173.14 of the Code. Laboratory analysis of paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm^2, unless the surface area of a paint chip sample cannot be accurately measured, or if an accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has

been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provision.

(E) Testing for lead-based paint may only be conducted by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

(b) *Child care services in operation prior to May 1, 1997.* No child care service permit shall be issued or renewed, unless all interior window sills and window wells accessible to children, chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces, and such other surfaces in such child care service as may be determined by the Department, containing or covered with lead-based paint or paint of unknown lead content shall have been abated or remediated in accordance with §173.14 of this Code or as otherwise directed by the Department.

(c) *Child care services commencing operation on or after May 1, 1997.* No child care service which received its first permit or which, if no permit was previously required, commenced operation after May 1, 1997, shall be issued a permit where there is lead-based paint on any interior surface in such child care service.

(d) *All paint or other similar surface coating material on furniture and equipment shall be lead-free.*

(e) *Annual survey.* Each year the permittee operating a child care service in which any surfaces are covered with lead-based paint or paint of unknown origin shall conduct a survey of the condition of all such surfaces, note the results of the survey on a form provided by or satisfactory to the Department, and shall provide to the Department a copy of the results of such survey. Submission of such survey shall be on or before the permit issuance date, or the anniversary thereof. Copies of such survey results may be submitted by mail, fax or electronically.

(f) *Declaration pursuant to Administrative Code §17-145.* The existence of a lead-based paint hazard in a child care service, or failure to comply with this section or §173.14 of this Code in correcting such hazard, is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to comply with the provisions of this section of this Code is hereby ordered to abate or remediate such nuisance by complying with any order or direction issued by the Department.

(g) *Failure to comply with Department orders.* In the event that the Department determines that a child care service permittee, or the owner of a building in which a child care service is located has failed to substantially comply with an order issued pursuant to this section within forty-five (45) days after service thereof, the Department shall, in accordance with §17-911(d) of the Administrative Code, request an agency of the City to execute such order pursuant to the provisions of §17-147 of the Administrative Code.

(h) *Definitions.* Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

§47.65 **Transportation.**

(a) Motor vehicles used to transport children to or from a child care service shall comply with all requirements of the New York State Department of Transportation specified in 17 NYCRR Part 720 or successor rule, and shall prominently display a current certificate of inspection issued by or on behalf of the State Department of Transportation, and shall be operated in accordance with all applicable law.

(b) A service that provides transportation facilities shall supervise the transportation so as to preserve the health, safety and comfort of the children.

(c) All children shall be secured in safety seats or by safety belts as appropriate for the age of the child in accordance with the requirements of the Vehicle and Traffic Law before any child may be transported in a motor vehicle where such transportation is provided for or arranged for by the operator.

(d) When transportation is provided by or on behalf of the child care service, the driver of the vehicle may not be included in the staff/child ratios.

(e) A transportation schedule shall be arranged so that no child will regularly travel more than one hour between his or her home and the place where the service is operated.

(f) The operator shall obtain and maintain on file written consent from the parent or guardian for any transportation of children in care at the service provided or arranged for by the permittee. The consent shall include the child's name and age, the destination and duration of travel time.

§47.67 **Child development policies, program, rest periods and clothing**.

(a) *Program.,* The program shall be varied in order to promote the physical, intellectual, and emotional well-being of the children. Corporal punishment and humiliating or frightening methods of control and discipline shall be prohibited. Food, rest or isolation shall not be used as a means of punishment. Punitive methods of toilet training are prohibited.

(b) *Schedules.* A written daily schedule of program activities and routines which offer reasonable regularity, including snack and meal periods, nap and rest periods, indoor and outdoor activities, and activities which provide children with opportunities for learning and self-expression in small and large groups is required. When night care is provided, this schedule shall include routine personal hygiene, including changing into night clothes, brushing teeth, and washing before bed in the manner to be agreed between the parent and the operator.

(c) *Disciplinary policies.* A written statement on the philosophy of disciplining children shall be distributed to every staff member, posted in a prominent location within the child care service and made available to parents upon request.

(d) *Parents.* Parents shall have unrestricted access to their children at all times.

(1) The parents of all children receiving care in a child care service equipped with video surveillance cameras installed for the purpose of allowing parents to view their children in the child care setting by means of the internet shall be informed in writing that cameras will be used for this purpose. All staff of the child care service also shall be informed in writing if video surveillance cameras will be used for this purpose. The child care service shall make available copies of such notices to the Department upon request.

(2) All parents of children enrolled in the child care service and all staff of the child care service shall be made aware of the locations of all video surveillance cameras used at the child care service.

(3) Child care services opting to install and use video surveillance equipment shall comply with all law applicable to the use of such equipment.

(4) Video surveillance cameras may not be used as a substitute for competent direct supervision of children.

(5) Child care services opting to allow parents to view their children in the child care setting by means of the internet shall use and maintain adequate internet security measures at all times. Such measures include but are not limited to: passwords that are frequently changed that enable parent to access the internet site for viewing children; filtering measures that prohibit public access to or viewing of child care activities via the internet; and immediate corrective action in response to any report of abuse of the system or inappropriate access. Such services shall also advise the parents having access to views of the child care service through the internet of the importance of security in regard to such viewing and of the importance of the privacy rights of other children who may be viewed.

(6) Video surveillance cameras shall be used only to transmit images of children in common rooms, hallways and play areas. Bathrooms and changing areas shall remain private and free of all video surveillance equipment.

(7) Child care services that use video surveillance equipment shall allow inspectors and other representatives of the Department to have access to such equipment and to have viewing privileges as required by the Department.

(e) Children shall be comforted when distressed.

(f) Each child in full time child care shall have a quiet, relaxed period of approximately one hour a day. Shorter, comparable periods of quiet and relaxation shall be provided for each child who spends less time in the service.

§47.69 **Night care.**

(a) *Information required* A night care service shall include in each child's record the arrangements provided for care when the child is not in night care as well as information regarding family bedtime routines and other information which would assist staff in providing a smooth transition for the child.

(b) *Time in night care limited.* No child shall spend more than 12 hours in a night care setting in any 24 hour period.

(c) *Program.* A night care service shall have a program that incorporates the following elements:

(1) When possible, children shall be left for care before and picked up after their normal sleeping period so that there are minimal disturbances of the child during sleep.

(2) The program of the night care service shall facilitate a relaxed atmosphere characterized by informal quiet activities.

(3) Scheduling shall reflect the need for regularity in meeting basic needs such as relaxation, meals, self-care/hygiene and sleep.

§47.71 **Physical activity and limits on television viewing**.

(a) *Physical activity.* Each child care service shall provide a program of age and developmentally appropriate physical activity.

(1) Children ages 12 months or older attending a full-day program shall be scheduled to participate in at least 60 minutes of physical activity per day. Children attending less than a full day program shall be scheduled to participate in a proportionate amount of such activities. For children ages three (3) and older, at least 30 of the 60 minutes shall be structured and guided physical activity. The remainder of the physical activity may be concurrent with other active play, learning and movement activities.

(2)Structured and guided physical activity shall be facilitated by teachers and/or caregivers and shall promote basic movement, creative movement, motor skills development, and general coordination.

(3)Permittees shall document structured and guided physical activities and make such documentation available to the Department upon request. This documentation shall be included in the program daily schedule and program lesson/activity plans.

(4)Children shall not be allowed to remain sedentary or to sit passively for more than 60 minutes continuously, except during scheduled rest or naptime.

(b) *Play equipment.* In the indoor and outdoor play areas, the permittee shall make available sufficient equipment, appropriate to the stage of development of the children, and designed to foster physical and motor development, and that shall enable all children to engage in structured and guided physical activities.

(c) *Outdoor play.*

(1) Adequate periods of outdoor play shall be provided daily for all children, except during inclement weather.

(2) During outdoor play, children shall be dressed appropriately for weather and temperature. In inclement weather, active play shall be encouraged and supported in safe indoor play areas.

(b) *Television viewing.*

(1)Television, video and other visual recordings shall not be used with children under two years of age.

(2) For children ages two (2) and older, viewing of television, videos, and other visual recordings shall be limited to no more than 60 minutes per day of educational programs or programs that actively engage child movement.

(3) Children attending less than a full day program shall be limited to a proportionate amount of such viewing.

§47.73 **Required postings**.

(a) The permittee shall maintain an updated copy of this Code and make it available to all staff.

(b) The permittee shall display the following in a conspicuous place near its public entrance where staff, parents and others may review them:

(1) The current permit, and

(2) A sign provided or approved by the Department stating that the Department's most recent summary inspection report for the child care service may be obtained from the Department's website, or by calling 311, and that complaints about the child care service may be made to, and more information about requirements for operation of child care services may be obtained by calling 311.

§47.75 **Modification of provisions**.

(a) *Modification of provisions.* When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of this Code and upon such conditions as in his/her opinion are necessary to protect the health of the children.

(b) *Fee waiver.* Upon the submission of proof satisfactory to the Commissioner that an applicant for a permit is a child care service which is fully funded by the Agency for Children's Services (ACS) or the New York City Human Resources Administration, or a successor agency, as an ACS Group Child Care Center, Head Start or other child care service program, the permit fee required by Article 5 of this Code shall be waived. Such waiver shall continue in effect provided the applicant child care service remains fully funded.

§47.77 **Closing and enforcement**.

(a) *Imminent health hazards.* When the Department determines that any child care service is being operated in a manner, or maintaining one or more conditions that constitute an imminent health hazard, or that its operation otherwise presents a risk of endangering the health or safety of children or other persons, the Commissioner may order such child care service to close and to discontinue operations,

suspending its permit, without further proceedings, by service of an order upon the permittee, or other person(s) managing or in control of such child care service. An order issued pursuant to this section shall provide the permittee, or other person(s) in control, an opportunity to be heard and to show cause why such child care service should not remain closed until there are changed circumstances, or the correction, removal or abatement of the dangerous or detrimental condition(s).

(b) *Operating without a permit.* Operating any child care service without a currently valid permit shall be deemed to present an imminent health hazard to children in attendance, for which such service shall be ordered closed without further proceedings.

(c) *Additional operating terms and conditions authorized.* If the Department determines that the reopening of a child care service that has been ordered closed and its continuing operation will not present any risk to any person, the Department may authorize such reopening and may impose such additional conditions upon continuing operation that it deems necessary to avoid recurrence of imminent health hazards.

(d) *Service of orders.* Service of any order issued pursuant to this Article may be made upon any person to whom the order is addressed, to a permittee, to a person required to hold a permit or upon any other person of suitable age and discretion who is asserting ownership, management or control of such child care service. Service of any order may be made in any manner provided in §3.07 of this Code, or successor provision, and may be delivered to the home or business address of the permittee listed in the permit issued by the Commissioner, or in the permit application or at the place where the child care service is being operated.

(e) *Posting orders to close; notifying parents.* Upon issuing an order to close a child care service for any reason, the Department shall post a copy of the order at the entrance to the premises subject to such order, and shall notify and provide a copy of the closing order to the parents or other persons who arrive at the child care service to pick up children attending the child care service.

(f) *Padlocking.* Upon finding that any order issued pursuant to this section has not been complied with, the Department may, without further notice, seal or padlock the premises where such child care service is conducted and take any other measures deemed necessary to obtain compliance with the order.

(g) *Operation in violation of order prohibited.* No person shall remove a padlock, seal or an order posted pursuant to this section, or open to the public or operate a child care service in violation of an order issued pursuant to this section.

(h) *Department authority not limited by this section.* Nothing herein shall be construed to limit the authority of the Department to issue notices of violation pursuant to Article 7 of this Code or commence any other proceeding or action provided for by this Code or other applicable law, including actions to deny, suspend or revoke permits.

§47.79 **Construction and severability.** This Article shall be liberally construed for the protection of the health of children attending child care services regulated by this Article. If any provision of this Article is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Article.

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