

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

6
7 **ON DECEMBER 18, 2018,** THE TEXAS WORKFORCE COMMISSION ADOPTED THE
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated date of publication in the *Texas Register*: **January 4, 2019**
11 The rules will take effect: **January 7, 2019**

12
13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 809, relating to Child Care Services, *without* changes, as published in the August 17,
15 2018, issue of the *Texas Register* (43 TexReg 5346):

16
17 Subchapter G. Texas Rising Star Program, §§809.131, 809.132, and 809.134

18
19 TWC adopts amendments to the following section of Chapter 809, relating to Child Care
20 Services, *with* changes, as published in the August 17, 2018, issue of the *Texas Register* (43
21 TexReg 5346):

22
23 Subchapter A. General Provisions, §809.2

24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

27
28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

29 The purpose of the adopted Chapter 809 amendments is to clarify the consequences of certain
30 deficiencies cited by Child Care Licensing (CCL) and adjust the time frame for which
31 consequences are applied to a provider's Texas Rising Star (TRS) certification rating. The
32 amendments also will align the professional development and continuing education requirements
33 of TRS assessors and mentors with the minimum annual professional development and
34 continuing education requirements of the child care center directors they assess and mentor.

35
36 Texas Government Code §2308.3155(b)(2), regarding the TRS program, requires TWC's three-
37 member Commission (Commission) to adopt a timeline and process for regularly reviewing and
38 updating the quality standards used to determine the TRS rating system. The statute requires
39 Commission consideration of input from interested parties regarding the quality standards. To
40 meet this requirement, a workgroup composed of workforce system and community stakeholders
41 was convened on February 20, 2018, to discuss TWC's quality initiatives, including a review of
42 the standards and rules of the TRS program. The workgroup input was used to inform the
43 amendments to the rules of the TRS program, which addresses the standards. Additional input
44 received may inform updates to the TRS Guide, which addresses the details of the program
45 operations and the details of the program handbook, and may be updated as the need arises.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
3 therefore, are not discussed in the Explanation of Individual Provisions.)

4
5 **SUBCHAPTER A. GENERAL PROVISIONS**

6 **TWC adopts the following amendments to Subchapter A:**

7
8 **§809.2. Definitions**

9 Terminology is added to define "Child Care Licensing (CCL)" and reflect its transition from the
10 Texas Department of Family and Protective Services (DFPS) to the Texas Health and Human
11 Services Commission. "DFPS" is replaced by "CCL" as appropriate, and the paragraphs are
12 renumbered as necessary.

13
14 Additionally, renumbered §809.2(9)(B) is amended to use the term "Certificate of High School
15 Equivalency" rather than "General Education Development (GED) credential."

16
17 Finally, technical corrections were made to correct the paragraph numbers cited in §809.2(19).

18
19 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

20 **TWC adopts the following amendments to Subchapter G:**

21
22 **§809.131. Eligibility for the TRS Program**

23 Terminology is updated to replace "DFPS" with "CCL" as appropriate.

24
25 **§809.132. Impact of Certain Deficiencies on TRS Certification**

26 Workgroup feedback expressed concern regarding the TRS certification rating loss incurred by
27 certain CCL deficiencies cited. In response, TWC adopts §809.132(b) so that 4-star TRS
28 providers lose only one star level, rather than the currently required two, if a critical deficiency is
29 identified during the provider's most recent CCL 12-month licensing history. Section 809.132(e)
30 is amended to state that providers losing a star level due to licensing deficiencies shall be
31 reinstated at the former star level if no citations described in §809.132(b) - (d) occur within the
32 six-month reduction time frame.

33
34 Additionally, when a provider loses TRS certification due to the number of deficiencies cited, the
35 provider is currently disqualified from eligibility for TRS recertification assessment for at least
36 12 months following the loss of certification. TWC adopts §809.132(f) to align with the six-
37 month disqualification period incurred by a star-level reduction, as outlined in amended
38 §809.132(e), as long as no current deficiencies are re-cited and no additional licensing
39 deficiencies are cited during the disqualification period.

40
41 Furthermore, "DFPS" is replaced by "CCL" as appropriate.

42
43 *Comment: One commenter commented on proposed §809.132 by identifying the impact*
44 *to the business from receiving a critical deficiency. The commenter shared that receiving*
45 *a single critical deficiency changed the business's star ranking from a 4-star to a 2-star*
46 *status, without consideration of the business's 10+ years' history of maintaining a 4-star*

1 rating status, nor of its national accreditation with Education First Steps. The commenter
2 asserted that the star-level reduction, and associated reimbursement rate reduction, has
3 led to an estimated financial loss of \$20,000 in a six-month timeframe. Based on this
4 experience, the commenter recommended changing §809.132 Impact of Certain
5 Deficiencies on TRS certification to include the following:

6
7 *(b) TRS providers with any 2 of the critical licensing deficiencies listed in the TRS*
8 *guidelines during the most recent 12-month CCL history shall have the following*
9 *consequences...*

10
11 Response: In developing the proposed rules with stakeholders, including child care
12 providers, TWC made efforts to limit the financial impact of an initial reduction by
13 identifying the consequences when certain types of deficiencies are cited --critical
14 deficiencies, high-to-medium-high deficiencies, or a certain number of overall
15 deficiencies but leaving the identification of which deficiencies fall into the "critical"
16 category or the "high-to-medium-high" category--to the TRS Guide, where operational
17 details can be developed and modified with stakeholder input.

18
19 However, TWC notes that federal child care regulations, found at 45 CFR §98.42,
20 Enforcement of Licensing and Health and Safety Requirements, and §98.43, Criminal
21 Background Checks, have identified the associated child care licensing requirements as
22 critical to ensure that compliance is maintained with federal legislation. Accordingly,
23 TWC's proposed rule is consistent with federal requirements.

24
25 TWC agrees that maintaining stability in reimbursement rates is important to providing
26 consistent quality early education opportunities to children. TWC has addressed this
27 issue through amending the rule to reduce the financial impact of a critical deficiency by
28 only applying one star-level reduction.

29
30 The proposed change to §809.132(b) reduces the amount of star-level reduction, and
31 therefore the associated reimbursement reduction, from a two-star level drop to a one-star
32 level drop. Although a one-star level drop still results in a reduction in the
33 reimbursement rate, §809.132(e) clarifies that the provider shall be reinstated at the
34 former level after six months if no additional deficiencies as described in §809.132(b) -
35 (d) are cited within the six-month time frame. The two-star level drop experienced by the
36 commenter, therefore, is no longer contemplated under the proposed rule. Based on the
37 foregoing discussion, TWC declines to amend the proposed rule.

38
39 **§809.134. Minimum Qualifications for TRS Assessors and Mentors**

40 TRS assessors and mentors require specific skill sets to assess child care centers for quality in all
41 aspects of operations, as well as to mentor child care directors to achieve a quality designation.
42 Assessors and mentors must stay abreast of professional standards and emerging trends that will
43 benefit child care providers. Currently, the minimum amount of professional development and
44 continuing education required for assessors and mentors is 30 hours annually. However, directors
45 of TRS-certified centers have a requirement of 36 hours of continuing education and professional
46 development annually to maintain TRS certification.

1 Amended §809.134(e) aligns the professional development and continuing education hours for
2 assessors and mentors with that required of TRS-certified child care center directors.
3

4 **COMMENTS WERE RECEIVED FROM:**
5 Brenda Pace, Director, Pace & Ross Learning Center
6

7 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be
8 within TWC's legal authority to adopt.
9

10 The rules are adopted under Texas Government Code §2308.3155(b)(2), relating to the process
11 for regular review and update of the quality standards within the Texas Rising Star Program, and
12 Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt,
13 amend, or repeal such rules as it deems necessary for the effective administration of TWC
14 services and activities.
15

16 The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as
17 Texas Government Code, Chapter 2308.
18

1
2
3 **CHAPTER 809. CHILD CARE SERVICES**

4 **SUBCHAPTER A. GENERAL PROVISIONS**

5 **§809.2. Definitions.**

6
7 The following words and terms, when used in this chapter, shall have the following
8 meanings, unless the context clearly indicates otherwise.

- 9
10 (1) Attending a job training or educational program--An individual is attending a
11 job training or educational program if the individual:
12
13 (A) is considered by the program to be officially enrolled;
14
15 (B) meets all attendance requirements established by the program; and
16
17 (C) is making progress toward successful completion of the program as
18 determined by the Board upon eligibility redetermination as described in
19 §809.42(b).
20
21 (2) Child--An individual who meets the general eligibility requirements contained
22 in this chapter for receiving child care services.
23
24 (3) Child care contractor--The entity or entities under contract with the Board to
25 manage child care services. This includes contractors involved in determining
26 eligibility for child care services, contractors involved in the billing and
27 reimbursement process related to child care subsidies, as well as contractors
28 involved in the funding of quality improvement activities as described in
29 §809.16.
30
31 (4) Child Care Licensing (CCL)--Division responsible for protecting the health,
32 safety, and well-being of children who attend or reside in regulated child care
33 facilities and homes. Previously a division of the Texas Department of Family
34 and Protective Services (DFPS), CCL is now part of the Texas Health and
35 Human Services Commission (HHSC).
36
37 (5) Child care services--Child care subsidies and quality improvement activities
38 funded by the Commission.
39
40 (6) Child care subsidies--Commission-funded child care reimbursements to an
41 eligible child care provider for the direct care of an eligible child.
42
43 (7) Child experiencing homelessness--A child who is homeless, as defined in the
44 McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.
45

- 1 (8) Child with disabilities--A child who has a physical or mental impairment that
2 substantially limits one or more major life activities, has a record of such an
3 impairment, or is regarded as having such an impairment. Major life activities
4 include, but are not limited to, caring for oneself; performing manual tasks;
5 walking; hearing; seeing, speaking, or breathing; learning; and working.
6
- 7 (9) Educational program--A program that leads to:
8
9 (A) a high school diploma;
10
11 (B) a Certificate of High School Equivalency; or
12
13 (C) a postsecondary degree from an institution of higher education.
14
- 15 (10) Excessive unexplained absences--More than 40 unexplained absences within
16 a 12-month eligibility period as described in §809.78(a)(3).
17
- 18 (11) Family--Two or more individuals related by blood, marriage, or decree of
19 court, who are living in a single residence and are included in one or more of
20 the following categories:
21
22 (A) Two individuals, married--including by common-law, and household
23 dependents; or
24
25 (B) A parent and household dependents.
26
- 27 (12) Household dependent--An individual living in the household who is one of the
28 following:
29
30 (A) An adult considered a dependent of the parent for income tax purposes;
31
32 (B) A child of a teen parent; or
33
34 (C) A child or other minor living in the household who is the responsibility
35 of the parent.
36
- 37 (13) Improper payments--Any payment of CCDF grant funds that should not have
38 been made or that was made in an incorrect amount (including overpayments
39 and underpayments) under statutory, contractual, administrative, or other
40 legally applicable requirements governing the administration of CCDF grant
41 funds and includes payments:
42
43 (A) to an ineligible recipient;
44
45 (B) for an ineligible service;
46

- 1 (C) for any duplicate payment; and
2
3 (D) for services not received.
4
5 (14) Job training program--A program that provides training or instruction leading
6 to:
7
8 (A) basic literacy;
9
10 (B) English proficiency;
11
12 (C) an occupational or professional certification or license; or
13
14 (D) the acquisition of technical skills, knowledge, and abilities specific to an
15 occupation.
16
17 (15) Listed family home--A family home, other than the eligible child's own
18 residence, that is listed, but not licensed or registered with, CCL pursuant to
19 Texas Human Resources Code §42.052(c).
20
21 (16) Military deployment--The temporary duty assignment away from the
22 permanent military installation or place of residence for reserve components of
23 the single military parent or the dual military parents. This includes deployed
24 parents in the regular military, military reserves, or National Guard.
25
26 (17) Parent--An individual who is responsible for the care and supervision of a child
27 and is identified as the child's natural parent, adoptive parent, stepparent, legal
28 guardian, or person standing in loco parentis (as determined in accordance with
29 Commission policies and procedures). Unless otherwise indicated, the term
30 applies to a single parent or both parents.
31
32 (18) Protective services--Services provided when:
33
34 (A) a child is at risk of abuse or neglect in the immediate or short-term future
35 and the child's family cannot or will not protect the child without DFPS
36 Child Protective Services (CPS) intervention;
37
38 (B) a child is in the managing conservatorship of DFPS and residing with a
39 relative or a foster parent; or
40
41 (C) a child has been provided with protective services by DFPS within the
42 prior six months and requires services to ensure the stability of the
43 family.
44
45 (19) Provider--A provider is defined as:
46

- 1 (A) a regulated child care provider as defined in §809.2(20);
2
3 (B) a relative child care provider as defined in §809.2(21); or
4
5 (C) a listed family home as defined in §809.2(15), subject to the
6 requirements in §809.91(b).
7
- 8 (20) Regulated child care provider--A provider caring for an eligible child in a
9 location other than the eligible child's own residence that is:
10
11 (A) licensed by CCL;
12
13 (B) registered with CCL; or
14
15 (C) operated and monitored by the United States military services.
16
- 17 (21) Relative child care provider--An individual who is at least 18 years of age, and
18 is, by marriage, blood relationship, or court decree, one of the following:
19
20 (A) The child's grandparent;
21
22 (B) The child's great-grandparent;
23
24 (C) The child's aunt;
25
26 (D) The child's uncle; or
27
28 (E) The child's sibling (if the sibling does not reside in the same household as
29 the eligible child).
30
- 31 (22) Residing with--Unless otherwise stipulated in this chapter, a child is
32 considered to be residing with the parent when the child is living with and
33 physically present with the parent during the time period for which child care
34 services are being requested or received.
35
- 36 (23) Teen parent--A teen parent (teen) is an individual 18 years of age or younger,
37 or 19 years of age and attending high school or the equivalent, who has a child.
38
- 39 (24) Texas Rising Star program--A voluntary, quality-based rating system of child
40 care providers participating in Commission-subsidized child care.
41
- 42 (25) Texas Rising Star Provider--A provider certified as meeting the TRS program
43 standards. TRS providers are certified as one of the following:
44
45 (A) 2-Star Program Provider;
46

1 (B) 3-Star Program Provider; or

2
3 (C) 4-Star Program Provider.

4
5 (26) Working--Working is defined as:

6
7 (A) activities for which one receives monetary compensation such as a
8 salary, wages, tips, and commissions; or

9
10 (B) participation in Choices or Supplemental Nutrition Assistance Program
11 Employment and Training (SNAP E&T) activities.

12
13 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

14
15 **§809.131. Eligibility for the TRS Program.**

16
17 (a) A child care provider is eligible to apply for the TRS program if the provider has a
18 current agreement to serve Commission-subsidized children and:

19
20 (1) has a permanent (nonexpiring) license or registration from CCL;

21
22 (2) has at least 12 months of licensing history with CCL, and is not on:

23
24 (A) corrective action with a Board pursuant to Subchapter F of this chapter;

25
26 (B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the
27 Texas Labor Code (Enforcement of the Texas Unemployment
28 Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of
29 Wages); or

30
31 (C) corrective or adverse action with CCL; or

32
33 (3) is regulated by and in good standing with the US Military.

34
35 (b) A child care facility is not eligible to apply for the TRS program if, during the most
36 recent 12-month CCL licensing history, the provider had:

37
38 (1) any of the critical licensing deficiencies listed in the TRS guidelines;

39
40 (2) five or more of the high or medium-high licensing deficiencies listed in the
41 TRS guidelines; or

42
43 (3) 10 or more total licensing deficiencies of any type.

1 **§809.132. Impact of Certain Deficiencies on TRS Certification.**
2

- 3 (a) A TRS provider shall lose TRS certification if the provider:
4
5 (1) is placed on corrective action with a Board pursuant to Subchapter F of this
6 chapter;
7
8 (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of
9 the Texas Labor Code (Enforcement of the Texas Unemployment
10 Compensation Act) or Chapter 61 of the Texas Labor Code(Payment of
11 Wages);
12
13 (3) is placed on corrective or adverse action by CCL; or
14
15 (4) had 15 or more total licensing deficiencies of any type during the most recent
16 12-month licensing history.
17
18 (b) TRS providers with any of the critical licensing deficiencies listed in the TRS
19 guidelines during the most recent 12-month CCL licensing history shall have the
20 following consequences:
21
22 (1) reduction of one star level, so a 4-Star Program Provider is reduced to a 3-Star
23 Program Provider, a 3-Star Program Provider is reduced to a 2-Star Program
24 Provider; or
25
26 (2) a 2-Star Program Provider loses certification.
27
28 (c) TRS providers with five or more of the high or medium-high deficiencies listed in
29 the TRS guidelines during the most recent 12-month CCL licensing history shall lose
30 a star level with a 2-Star Program Provider losing certification.
31
32 (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most
33 recent 12-month CCL licensing history shall be placed on a six-month TRS program
34 probationary period. Further:
35
36 (1) TRS providers on a six-month probationary period that are re-cited by CCL
37 within the probationary period for any of the same deficiencies shall lose a star
38 level with a 2-Star Program Provider losing certification;
39
40 (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL
41 during the first probationary period, a second six-month probationary period
42 shall be established effective upon the date of final DFPS determination of the
43 deficiencies; and
44

1 (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL
2 during the second six-month probationary period, a provider shall lose TRS
3 certification.

4
5 (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the
6 former star level if no citations described in §809.132(b) - (d) occur within the six-
7 month reduction time frame.

8
9 (f) Providers losing TRS certification shall be eligible to reapply for certification
10 after six months following the loss of the certification, as long as no current
11 deficiencies are re-cited and no additional licensing deficiencies are cited
12 during the disqualification period.

13
14 **§809.134. Minimum Qualifications for TRS Assessors and Mentors.**

15
16 (a) Boards shall ensure that TRS assessors and mentors meet the minimum education
17 requirements as follows:

18
19 (1) Bachelor's degree from an accredited four-year college or university in early
20 childhood education, child development, special education, child psychology,
21 educational psychology, elementary education, or family consumer science;

22
23 (2) Bachelor's degree from an accredited four-year college or university with at
24 least 18 credit hours in early childhood education, child development, special
25 education, child psychology, educational psychology, elementary education, or
26 family consumer science with at least 12 credit hours in child development; or

27
28 (3) Associate's degree in early childhood education, child development, special
29 education, child psychology, educational psychology, elementary education, or
30 family consumer science with two years of experience as a director in an early
31 childhood program, with preference given to experience with a provider that is
32 accredited or TRS certified.

33
34 (b) The Commission may grant a waiver of no more than two years of the minimum
35 education requirements in subsection (a) of this section if a Board can demonstrate
36 that no applicants in its local workforce development area meet the minimum
37 education requirements.

38
39 (c) Boards shall ensure that TRS assessors and mentors meet the minimum work
40 experience requirements of one year of full-time early childhood classroom
41 experience in a child care, Early Head Start, Head Start, or prekindergarten through
42 third-grade school program.

43
44 (d) Boards shall ensure that if an individual performs the duties of both an assessor and
45 a mentor, the individual providing TRS mentoring services to a provider does not act
46 as the assessor of that same provider when determining TRS certification.

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- (e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with the TRS annual minimum training hours requirement for a TRS-certified child care center director.
- (f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with Chapter 745 of this title.
- (g) Boards shall ensure that TRS assessors and mentors demonstrate:
 - (1) knowledge of best practices in early childhood education; and
 - (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.