



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION  
P.O. BOX 2120  
RICHMOND, VA 23218-2120

**DATE:** September 18, 2023

**TO:** Licensed Child Day Centers and Child Day Centers Participating in the Child Care Subsidy Program

**FROM:** Jeffrey S. Williams, Director of the Office of Child Care Health and Safety

**SUBJECT:** Staff-to-Child Ratios and Group Size Waiver Request Process for Temporary Increase

The recently approved Virginia Appropriations Act of 2023 authorizes the Superintendent of Public Instruction to temporarily alter staff-to-child ratios and group sizes for licensed child day centers and child day centers that participate in the Child Care Subsidy Program. The Virginia Department of Education (VDOE) Office of Child Care Health and Safety (OCCHS) recognizes that child care programs continue to face significant staffing challenges while serving children and families. VDOE is committed to continuing to support providers while ensuring that children and families continue to have access to safe child care. This memo provides information about the process for requesting a temporary waiver to increase ratios and group size.

The [Virginia Appropriation Act of 2023](#) states:

*“Notwithstanding 8VAC-20-780, or any other requirement in state law or regulation, the Superintendent of Public Instruction shall have the authority to alter staff-to-child ratios and group sizes for licensed child day centers and child day centers that participate in the Child Care Subsidy Program by increasing the number of children per staff by (1) one child for groups of children from birth to the age of eligibility to attend public school, and (2) two children for groups of children from the age of eligibility to attend public school through 12 years. Child day centers that take advantage of this flexibility must notify families in writing of the temporary increase in ratios and group size. This authority and any resultant waiver of state law or regulation shall expire June 30, 2024. The Superintendent of Public Instruction shall ensure that any action taken under this provision is permissible under federal requirements.”*

## ***Eligibility Requirements***

To be eligible for approval of the temporary waiver, the child day center:

- Must be licensed or participate in the Child Care Subsidy Program;
- Must not have received a Notice of Intent or Special Order within the last 12 months;

- Must not have received violations specifically related to staff-to-child ratios or supervision during the past 12 months; and
- Must submit a request for the waiver using the Department provided request form.

### *Important Considerations*

- **All eligible programs must request and be approved for a waiver before implementing any ratio or group size changes.**
- Providers are encouraged to consider multiple factors before submitting a waiver request including: the terms of the license/exemption; physical plant and space limitations; the impact on staff; children's developmental and behavioral needs; increased need for supervision; and provisions for emergencies and evacuation specifically for non-ambulatory children in the groups.
- If granted, the number of children per staff may be increased by (1) one child for groups of children from birth to the age of eligibility to attend public school, and (2) two children for groups of children from the age of eligibility to attend public school through 12 years of age. The maximum group size will reflect the temporary ratio increase and will allow each applicable group size to be expanded by three children.
- The temporary increase in the staff-to-child ratio and group size requirements does not change any regulation or Code requirements, and instead only grants a temporary waiver to these requirements as described in this memo.
- The waiver does not change the Certificate of Occupancy, any space requirements, or any stipulations on the license/exemption regarding occupancy.
- If granted, the waiver is not transferrable if there is a change in location or licensee/sponsor.
- Child day centers that are approved for the temporary waiver must notify families in writing of the temporary increase in ratios and group size by providing a copy of the waiver approval letter from VDOE prior to implementing the change.
- The temporary increase will supersede any requirement in the Code of Virginia or regulations established by the VDOE and will only be in effect **until June 30, 2024**, if there are no changes at the facility that impact the assessment of the OCCHS at the time of approval.
- The OCCHS may rescind the temporary waiver at its discretion if it is determined that the increase in ratios results in or creates significant risk of harm to children or there are other serious supervision risks in the program.
- Child day centers that take advantage of this flexibility are expected to comply with all regulatory and Code requirements once the temporary increase has ended or an approved waiver has been rescinded.

### *Waiver Request Process*

- Complete the attached Staff-to-Child Ratio and Group Size Waiver Request form in its entirety. The request form is a fillable PDF, and it is recommended that applicants type and electronically sign the form.
- Send the completed form to your assigned licensing inspector via email or to

[childcarelicensing@doe.virginia.gov](mailto:childcarelicensing@doe.virginia.gov) if you do not have an assigned inspector.

- Do not increase the staff-to-child ratios or group sizes until you receive written approval from the OCCHS.

Child day centers will be notified by email when the waiver request form has been received and is under review, and once a final decision is made related to your request. All correspondence will be sent to the email provided in the waiver request form.

Licensed child day centers that currently have an allowable variance (AV) in place related to ratios and group size that expires December 31, 2023, are encouraged to submit the ratio waiver request to replace the temporary AV. Failure to do so will require that you resume compliance with the required staff-to-child ratios and group size in [Chapter 780](#) upon expiration of the AV.

We recognize that these continue to be difficult times for child care providers. We thank you for your commitment to children and families in the Commonwealth. Please don't hesitate to reach out to your licensing inspector or the OCCHS licensing team at [childcarelicensing@doe.virginia.gov](mailto:childcarelicensing@doe.virginia.gov) if you have questions or need assistance.