

# Clearinghouse Rule 97-126

## CERTIFICATE


STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND FAMILY SERVICES )

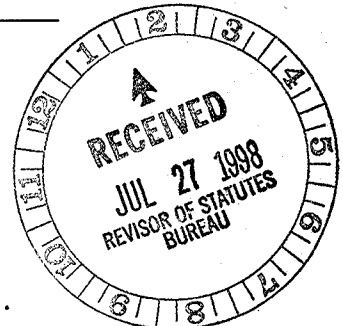
I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to outdoor play space for children attending day care centers were duly approved and adopted by this Department on July 24, 1998.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 24<sup>th</sup> day of July, 1998.

SEAL:

  
\_\_\_\_\_  
Joseph Leean, Secretary  
Department of Health and Family Services



10-1-98  
97-126

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING AND RECREATING RULES

To repeal and recreate HSS 45.05(11) and HFS 46.06(11), relating to outdoor play space for children attending day care centers.

Analysis Prepared by the Department of Health and Family Services

Among requirements for operation of a family or group day care center for children under the Department's rules is that a center in operation more than 3 hours a day (a group center) or where a child is in care for more than 3 hours a day (a family center) must include daily outdoor activities in its program "except during inclement weather or when not advisable for health reasons" (s. HFS 46.07(1)(e)4). The rules now provide that the location of the required outdoor activities be on the premises of the center. This is expressly stated in the group center rules and is implicit in the family center rules where the requirements for outdoor play space are included in the section relating to the home.

Section 5 of 1995 Wisconsin Act 439 directed the Department to promulgate rules that establish a procedure under which an applicant for a license to operate a day care center which would have outdoor play space off the premises of the center may obtain an exemption from the current rules for outdoor play space that include a requirement that the outdoor play space be on the center's premises. The rules for an exemption are to include requirements that the applicant must meet to obtain the exemption. These are the rules.

The rules provide that a request for an exemption include a plan for outdoor play space. That plan is to identify and describe the location of the outdoor play space; provide for adequate supervision of the children; explain the arrangements made to ensure that the toileting and diapering needs of the children will be met; and affirm the center's compliance with requirements for the size and safety of the off-premises outdoor play area. If the off-premises play space is reached by walking, all children under 3 years of age must be transported to it in wheeled vehicles. The plan is subject to approval by the Department.

The Department's authority to create these rules is found in s. 48.67, Stats., and s. 5 of 1995 Wisconsin Act 439. The rules interpret s. 48.65, Stats., and s. 5 of 1995 Wisconsin Act 439.

SECTION 1. HSS 45.05(11) is repealed and recreated to read:

HSS 45.05(11) OUTDOOR PLAY SPACE. (a) Requirement for outdoor play space. A center shall have outdoor play space if any child is receiving care for more than 3 hours a day.

(b) Required features of outdoor play space. Except when an exemption is requested and is approved by the department under par. (c), a center shall comply with all of the following requirements for outdoor play space:

1. The outdoor play space shall be on the premises of the center.
2. There shall be at least 75 square feet of outdoor play space for each child using the space at a given time.
3. The outdoor play space shall be well-drained and shall be free of hazards such as uncovered wells, cisterns and unused appliances.
4. A permanent enclosure not less than 4 feet high shall be provided where there are hazards nearby, including but not limited to traffic or bodies of water, which present a threat to the safety of children in care.
5. Concrete and asphalt are prohibited under climbing equipment, swings and slides.

(c) Exemption for off-premises play space. 1. In this paragraph, "main thoroughfare" means a heavily traveled street or road used by vehicles as a principal route of travel.

2. A center wanting to use an off-premises play space may ask the department for an exemption from the requirements under par. (b) for a center's outdoor play space. The request for an exemption shall be in writing and shall be accompanied by a plan for outdoor play space which does all of the following:

- a. Identifies and describes the location to be used, the travel distance from the center to that location and the means of transporting the children to that location.
- b. Provides for adequate supervision of the children as specified in Table 45.04.
- c. Provides for daily vigorous exercise in the out-of-doors for the children.
- d. Describes the arrangements to meet the toileting and diapering needs of the children.
- e. Affirms the center's compliance with the requirements included in subds. 3. to 6.

Note: Send the request for an exemption and the off-premises outdoor play space plan to the licensing representative at the appropriate field office of the Department's Division of Children and Family Services. See Appendix A for addresses of the field offices.

3. The off-premises outdoor play space shall be free of hazards such as bodies of water, railroad tracks, unfenced in-ground swimming pools, heavily wooded areas and nearby highways and main thoroughfares.

4. There shall be at least 75 square feet of play space for each child using the space at a given time.

5. No climbing equipment, swing or slide in the play space may have concrete or asphalt under it.

6. When the off-premises outdoor play space is reached by walking, the center shall transport children under 3 years of age in wheeled vehicles, such as strollers or wagons, with a seating capacity equal to the number of children under 3 years of age to be transported.

7. A center's plan for use of an off-premises outdoor play space is subject to approval by the department. Within 30 days after receipt of a plan and request for an exemption from the requirements under par. (b), the department shall either approve the plan and grant the exemption or not approve the plan and therefore deny the request for exemption. The department shall notify the center in writing of its decision and, if it does not grant an exemption, shall state its reasons for not granting the exemption.

8. If any circumstance described in an approved plan for use of off-premises outdoor play space changes or if any condition for plan approval is not met or is no longer met, the department may withdraw its approval of the plan and cancel the exemption. A center with an approved plan shall immediately report to the department's licensing representative any significant change in any circumstance described in the plan.

SECTION 2. HFS 46.06(11) is repealed and recreated to read:

HFS 46.06(11) OUTDOOR PLAY SPACE. (a) Requirement for outdoor play space. A center shall have outdoor play space if children are present for more than 3 hours a day or if outdoor play is included in the center program.

(b) Required features of outdoor play space. Except when an exemption is requested and is approved by the department under par. (c), a center shall comply with all of the following requirements for outdoor play space:

1. 'Location.' The outdoor play space shall be on the premises of the center.

2. 'Amount of space.' a. There shall be at least 75 square feet of outdoor play space for each child 2 years of age or older using the space at a given time.

b. There shall be at least 35 square feet of outdoor play space for each child under 2 years of age using the space at a given time except as provided in subd. 2. c.

c. The total outdoor play space of a center shall accommodate not less than 1/3 of the number of children for which the center is licensed or shall be a minimum of 750 square feet, whichever is greater. The number of children under one year of age need not be included for

purposes of computing the minimum required outdoor play space if the center provides spaces in wheeled vehicles such as strollers and wagons equal to the number of children under one year of age.

d. An energy-absorbing surface, such as loose sand, pea gravel or pine or bark mulch, in a depth of at least 9 inches is required under climbing equipment, swings and slides and in a fall zone of 4 feet beyond and whenever play equipment is 4 feet or more in height.

(c) Exemption for off-premises play space. 1. In this paragraph, "main thoroughfare" means a heavily traveled street or road used by vehicles as a principal route of travel.

2. A center wanting to use an off-premises play space may ask the department for an exemption from the requirements under par. (b) for a center's outdoor play space. The request for an exemption shall be in writing and shall be accompanied by a plan for outdoor play space which does all of the following:

a. Identifies and describes the location to be used, the travel distance from the center to that location and the means of transporting the children to that location.

b. Provides for adequate supervision of the children as specified in Table 46.05-D.

c. Provides for daily vigorous exercise in the out-of-doors for the children.

d. Describes the arrangements to meet the toileting and diapering needs of the children.

e. Affirms the center's compliance with the requirements included in subds. 3. to 6.

Note: Send the request for an exemption and the off-premises outdoor play space plan to the licensing representative at the appropriate field office of the Department's Division of Children and Family Services. See Appendix A for addresses of the field offices.

3. The off-premises outdoor play space shall be free of hazards such as bodies of water, railroad tracks, unfenced in-ground swimming pools, heavily wooded areas and nearby highways and main thoroughfares.

4. There shall be at least 75 square feet of outdoor play space for each child 2 years of age or older using the space at a given time, and at least 35 square feet of outdoor play space for each child under 2 years of age using the space at a given time.

5. No climbing equipment, swing or slide in the play space may have concrete or asphalt under it.

6. When the off-premises outdoor play space is reached by walking, the center shall transport children under 3 years of age in wheeled vehicles, such as strollers or wagons, with a seating capacity equal to the number of children under 3 years of age to be transported.


7. A center's plan for use of an off-premises outdoor play space is subject to approval by the department. Within 30 days after receipt of a plan and request for an exemption from the requirements of par. (b), the department shall either approve the plan and grant the exemption or not approve the plan and therefore deny the request for exemption. The department shall notify the center in writing of its decision and, if it does not grant an exemption, shall state its reasons for not granting the exemption.

8. If any circumstance described in an approved plan for use of off-premises outdoor play space changes or if any condition for plan approval is not met or is no longer met, the department may withdraw its approval of the plan and cancel the exemption. A center with an approved plan shall immediately report to the department's licensing representative any significant change in any circumstance described in the plan.

The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in a. 227.22(2), Stats.

Wisconsin Department of Health and  
Family Services

Dated: July 24, 1998

By:   
Joseph Leean  
Secretary

SEAL:

