

Chapter 170-06 WAC

DEL BACKGROUND CHECK RULES

WAC

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WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL or department). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are certified by DEL. Background checks are conducted to find and evaluate any history of criminal convictions, pending charges, negative actions, or other information that raises concerns about an individual's character, suitability and competence to care for or have unsupervised access to children in child care.

(2) This chapter applies to all individuals who are applying for a new or renewal license or certification, applying for authorization to care for or have unsupervised access to children in child care and to persons who are licensed, certified by DEL or authorized to care for or have unsupervised access to children in child care.

(3) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215, 43.43.830, and 43.43.832.

(5) Effective date: These rules are initially effective July 3, 2006, and apply prospectively.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0010, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

(1) "**Agency**" has the same meaning as "agency" in RCW 43.215.020(2).

(2) "**Appellant**" means only those with the right of appeal under this chapter.

(3) "**Applicant**" means an individual who is seeking a DEL background check authorization as part of an application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care.

(4) "**Authorized**" or "**authorization**" means approval by DEL to care for or have unsupervised access to children in child care or to work in or reside on the premises of a child care agency or certified facility.

(5) "**Certification**" or "**certified by DEL**" means an agency that is legally exempt from licensing that has been certified by DEL as meeting minimum licensing requirements.

(6) "**DEL**" or "**department**" means the department of early learning.

(7) "**Director's list**" means a list of crimes, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care, WAC 170-06-0120.

(8) "**Disqualified**" means DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children in child care.

(9) "**Negative action**" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability and competence to care for or have unsupervised access to children in child care. This may include but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

(10) "**Unsupervised access**" means:

(a) An individual will or may have the opportunity to be alone with a child in child care at any time for any length of time; and

(b) Access that is not within constant visual or auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0020, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0030 Reason for background checks.

The department does background checks to reduce the risk of harm to children from caregivers or others who have been convicted of certain crimes or who pose a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability

ity and competence of persons who will care for or have unsupervised access to children in child care.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0030, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0040 Background clearance requirements. (1) At the time of application for a license or certification or for authorization to care for or have unsupervised access to children in child care, the applicant shall submit to the department a completed background check form and fingerprint card, if required. A fingerprint card is required for a Federal Bureau of Investigation check if the applicant has resided in the state of Washington for less than three years. This requirement applies to:

- (a) Each individual applicant for a license or certification;
- (b) All staff of the licensed child care agency or certified facility, whether they provide child care or not, including but not limited to:
 - (i) Primary staff persons;
 - (ii) Assistants;
 - (iii) Volunteers;
 - (iv) Interns;
 - (v) Contracted providers;
 - (vi) Each person residing on the premises of a licensed facility who is sixteen years of age or older; and
 - (vii) All individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care.

(2) Each person identified in this section must complete a DEL background check form, disclosing:

- (a) Whether he or she has been convicted of any crime;
- (b) All pending criminal charges; and
- (c) Negative actions, to which he or she has been subject, as defined by WAC 170-06-0020(9).

(3) An agency, licensee, or certified facility shall require an applicant to submit to the licensee or facility a completed background check form:

- (a) By the date of hire of new staff, assistants, volunteers, interns or contracted providers;
- (b) By the date a person age sixteen or older moves onto the premises; or
- (c) By the date a person who resides on the premises turns sixteen years old.

(4) The licensee or certified facility must submit the background check form to the department within seven days of the staff, assistant, volunteer, intern or contracted provider's first day of employment, date the person moves on the premises or turns sixteen years old, as applicable.

(5) An individual shall not have unsupervised access to children in child care unless he or she has obtained a DEL authorization under this chapter.

(6) Agencies, licensees and facilities shall not permit any individual to care for or have unsupervised access to children in child care, unless the individual has been authorized by DEL to care for or have unsupervised access to children in child care.

(7) An individual who has been disqualified by DEL shall not be present on the premises of a licensed or certified facility.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0050 Department action following completion of background inquiry. After the department receives the background information it will conduct a character, suitability and competence assessment as follows:

(1) Compare the background information with the DEL director's list, WAC 170-06-0120, to determine whether the applicant must be disqualified under WAC 170-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the defendant's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) The crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(2) Evaluate any negative action information to determine whether the applicant has any negative actions requiring disqualification under WAC 170-06-0070(3).

(3) If the applicant is not disqualified under WAC 170-06-0070 (1), (2) or (3), evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 170-06-0070 (4), (5) or (7).

(4) Notify the child care agency, licensee, or certified facility whether or not the department is able to authorize the applicant to care for or have unsupervised access to children in child care.

(5) The department will discuss the result of the criminal history and background check information with the licensee or management staff of a licensed or certified facility, when applicable.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0050, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0060 Additional information the department may consider. (1) If DEL has reason to believe that additional information is needed to determine the character, suitability and competence of the applicant to care for or have unsupervised access to children in child care, additional information will be requested. Upon request, the applicant must provide to the department any additional reports or information requested. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

(2) Any evaluation requested under this section must be conducted by an evaluator who is licensed or certified under RCW 18.130.040. The evaluation will be at the expense of the person being evaluated.

(3) The applicant must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to evaluation, to establish the need for and scope of the evaluation, and after the evaluation to discuss the results.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0060, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0070 Disqualification and reconsideration.

Background information that will disqualify an applicant.

(1) An applicant who has a background containing any of the permanent convictions on the director's list, WAC 170-06-0120(1), shall be permanently disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care.

(2) An applicant who has a background containing any of the nonpermanent convictions on the director's list, WAC 170-06-0120(2), shall be disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care for five years after the conviction date.

(3) An applicant shall be disqualified when their background contains a negative action, as defined in WAC 170-06-0020(9) that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

Background information that may disqualify an applicant.

(4) An applicant may be disqualified for other negative action(s), as defined in WAC 170-06-0020(9) which reasonably relate to the applicant's character, suitability and competence to care for or have unsupervised access to children in child care.

(5) An applicant may be disqualified from caring for or having unsupervised access to children if the individual is the

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subject of a pending child protective services (CPS) investigation.

(6) An applicant who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(7) The department may also disqualify an applicant if the applicant has other nonconviction background information that renders the applicant unsuitable to care for or have unsupervised access to children in child care. Among the factors the department may consider are:

(a) The applicant attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The applicant used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child in child care.

(c) The applicant attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, an applicant attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.

(d) The applicant lacks sufficient physical or mental health to meet the needs of children in child care.

(e) The applicant had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

Reconsideration of disqualification.

(8) If an applicant who has been disqualified can demonstrate by clear and convincing evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in child care, the department may consider authorizing the applicant to care for or have unsupervised access to children in child care.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0070, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0080 Notification of disqualification.

(1) The department will notify the applicant in writing if the applicant is disqualified by the background check.

(2) If the department sends a notice of disqualification, the applicant will not be authorized to care for or have unsupervised access to children in child care.

(3) Any decision by the department disqualifying an applicant under this chapter is effective immediately upon receipt of notice by the applicant.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0080, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0090 Administrative hearing to contest disqualification. (1) An applicant may request an administrative hearing to contest the department's disqualification decision.

(2) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

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(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter 170-03 WAC.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0090, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0100 Request for administrative hearing. (1) Any person who has a right to contest the disqualification under this chapter must request a hearing within twenty-eight days of receipt of the decision.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department disqualifying a person under this chapter shall remain in effect pending the outcome of the administrative hearing or review under chapter 170-03 WAC, notwithstanding any provision of chapter 170-03 WAC to the contrary.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0100, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0110 Limitations on challenges to disqualifications. (1) If the disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the appellant cannot contest the finding if:

(a) The appellant was notified of the finding by the department of social and health services (DSHS) and failed to request a hearing to contest the finding; or

(b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the applicant's child to be dependent as defined in chapter 13.34 RCW, the applicant cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based upon a negative action as defined in WAC 170-06-0020(9) the appellant cannot contest the underlying negative action in the administrative hearing if the appellant was previously afforded the right of review or hearing right and a final decision or finding has been issued.

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0110, filed 4/30/08, effective 5/31/08.]

WAC 170-06-0120 Director's list. (1) An applicant's conviction for any crimes listed in column (a) in the table below shall permanently disqualify the applicant from authorization to care for or have unsupervised access to children in child care.

(2) An applicant's conviction for any crime listed in column (b) in the table below shall disqualify the applicant from authorization to care for or have unsupervised access to children in child care for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify an applicant	(b) Crimes that disqualify an applicant for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
Carnal knowledge	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)

(a) Crimes that permanently disqualify an applicant	(b) Crimes that disqualify an applicant for five years from date of conviction
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

[Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]