

For discussion purposes only. Once assembled, the members of the NRM team will consider and adopt team protocols.

**Negotiated Rulemaking – Aligned and Weighted Licensing Standards
Negotiation Protocols
May – September 2017**

Vision Statement

We are committed to creating and maintaining high quality learning environments that protect and nurture children and prepare them for kindergarten.

Goals

The goal of negotiated rule making (NRM) is for impacted parties to reach consensus on language for rules that will implement aligned, weighted licensing standards for all licensed child care providers and Early Childhood Education and Assistance Program (ECEAP) providers.

Objectives

- All parties who are impacted by the rules are represented in negotiations and decision making;
- Participants share responsibility for both process and outcome;
- Participants negotiate in good faith;
- Participants make decisions through consensus rather than by voting;
- Participants can support or at least accept the negotiated rules; and
- Negotiated rules are consistent with federal and state laws.

I. PARTICIPANTS AND THEIR ROLES AND RESPONSIBILITIES

Participant Groups are:

1. Family home child care providers;
2. Center child care providers;
3. Families;
4. ECEAP/Head Start providers; and
5. Department of Early Learning (DEL).

A. Participant Groups' Responsibilities

Each participant Group may designate a team of 20: 10 Negotiation Group members/alternates and 10 Expert Group members/alternates. Each participant Group must:

- Select its own members/alternates;
- Define members' roles and expectations;

- Enforce those expectations;
- Ensure members are prepared for and attend scheduled meetings;
- Be responsible for internal Participant Group communications;
- Ensure ongoing communication with stakeholders and public; and
- Support the intent of the NRM process and be respectful of other Participant Groups and the NRM process.

B. NRM Structure

1. Negotiation Group (50 members (up to 10 from each Participant Group)) –

Role: Decision makers responsible for reaching consensus on proposed rule language and weight.

Subgroups: Preparation, Technical Assistance, and Resolution Groups

Each Participant Group is represented by a team of 10 members/alternates who have been assigned these roles and responsibilities:

- Lead**
- “Team captain” and general point of contact;
 - Bring Participant Group members to consensus;
 - Ultimate decision maker for Participant Group;
 - Ensure Participant Group members attend scheduled meetings and are prepared;
 - Attend all Negotiation Group meetings and participates in decision making.

NOTE: Permanent responsibility – cannot be alternated.

- Back-Up Lead**
- Carries out Lead’s responsibilities, whenever necessary; and
 - Attends all Negotiation Group meetings and participates in decision making.

NOTE: Permanent responsibility – cannot be alternated.

- Spokesperson**
- Approves summaries of Negotiation Group meetings that are made available to the public;
 - Point of contact for questions about NRM process; and
 - Attends all Negotiation Group meetings and participates in decision making.

NOTE: Permanent responsibility – cannot be alternated.

a) **Subgroups** –

❖ **Preparation Subgroup (10 members (up to 2 from each Participant Group))** –

Role: Vet draft rules and tee up discussion topics for Negotiation Group

- Member Responsibilities:**
- ❖ Select a leader from subgroup members who will organize and conduct subgroup meetings;
 - ❖ Review and categorize draft rules and weights;
 - ❖ Make research or potential editing assignments to other subgroups;
 - ❖ Recommend to Negotiation Group edits to draft rule language and weights;
 - ❖ Recommend to Negotiation Group additional research that should be done;
 - ❖ Identify for Negotiation Group other issues that it needs to address;
 - ❖ Prepare and deliver to the Negotiation Group a matrix that summarizes its review of the draft rules;
 - ❖ Decide which members will present information to the Negotiation Group;
 - ❖ Ask DEL for needed administrative support; and
 - ❖ Attend Negotiation Group meetings and participate in decision making.

❖ **Technical Assistance Subgroup (15 members (up to 3 from each Participant Group))** –

Role: Technical advisors to the Negotiation Group who focus on racial equity and cultural humility, subject matter, and community perspectives. May be mobilized by Negotiation Group or subgroups to make minor edits to draft rules.

- Member Responsibilities:**
- ❖ Evaluate draft rules through lens of racial equity and cultural humility or other defined perspective and report to Negotiation Group or subgroups;
 - ❖ Make minor edits to draft rules, as assigned by Negotiation Group or subgroups;
 - ❖ Select a leader from subgroup members who report to Negotiation Group or subgroups;
 - ❖ Ask DEL for needed administrative support; and
 - ❖ Attend Negotiation Group meetings and participate in decision making.

❖ **Resolution Subgroup (10 members (up to 3 from each Participant Group))** –

Role: Conflict resolution and editing draft rules, as assigned by Negotiation Group or subgroups.

- Member Responsibilities:**
- ❖ Identify issues with draft rules that must be resolved in order to reach consensus;
 - ❖ Work to resolve conflicts;
 - ❖ Editing draft rule language;

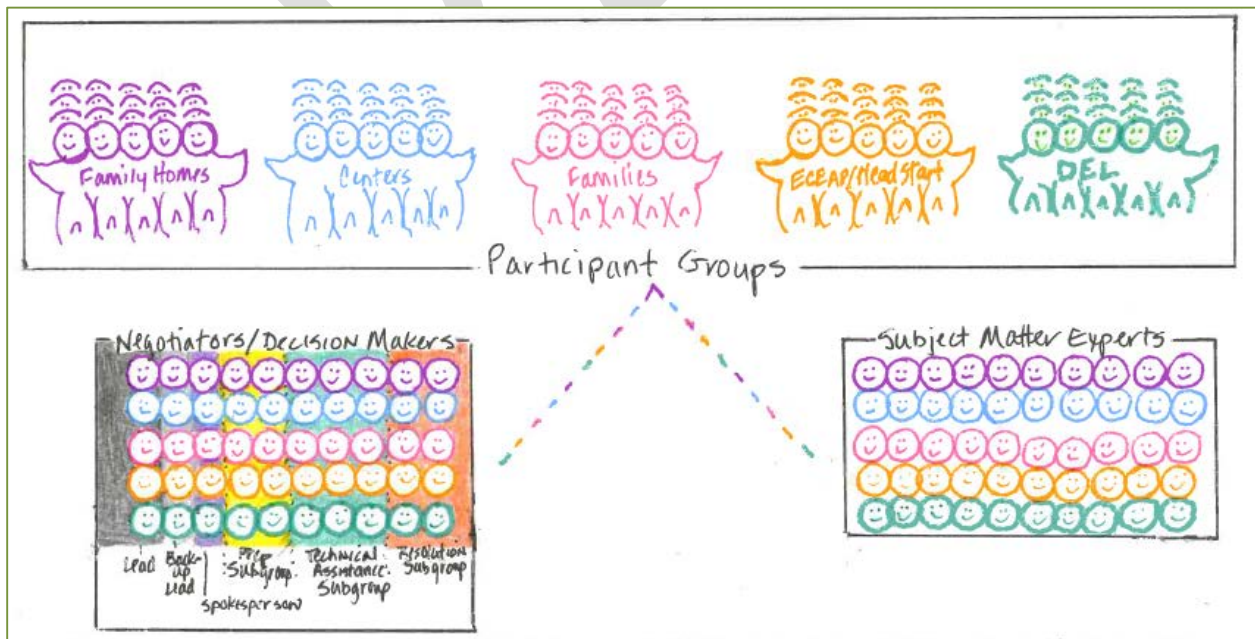
- ❖ Select a leader from subgroup members who will ensure assignments are completed and report back to Negotiation Group;
- ❖ Ask DEL for needed administrative support; and
- ❖ Attend Negotiation Group meetings and participate in decision making.

2. **Expert Group (up to 50 members (up to 10 from each Participant Group)) –**

Role: Provide subject-matter expertise to the Negotiation Group and its subgroups, when needed.

Each participant shall appoint up to 10 representatives and alternates to the Expert Group who have expertise in one or more of the following subjects:

- Child Development
- Early learning program design and business practices
- Family Engagement
- Health and Safety
- Infant Care
- Learning and Teaching
- Learning Environments
- Legal
- Nutrition
- Professional Development
- Racial Equity and Cultural Humility
- School Readiness



C. Code Of Conduct

Participant Groups and their team members pledge to:

- Negotiate in good faith with fidelity to the process;
- Work to find common ground through negotiation;
- Encourage and support an inclusive, public negotiation process;
- Be truthful;
- Respect each other and each other's opinions;
- Tolerate dissent;
- Be courageous;
- Be accountable;
- Attend scheduled meetings and be punctual;
- Prepare for scheduled meetings by reading the draft rules to be discussed before the start of the meeting;
- Turn off cellphones and other distractions during meetings; and
- Follow these protocols.

NRMT members should convey complaints to his/her Lead Negotiator or the Lead Facilitator. An issue that cannot be resolved at the Participant level will be placed on the next Negotiation Group meeting agenda for resolution. All NRMT members agree to be truthful and respectful in these group interactions.

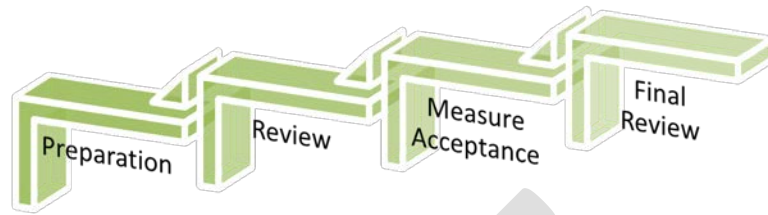
The following sanctions apply to a breach of the protocols by an NRMT member or alternate. These sanctions will also apply to DEL facilitators and staff providing administrative support to the NRMT. An individual who believes an NRMT member or DEL staff member is not following the protocols will share their concerns in writing using the following format:

- Describe the protocol that was breached;
- Describe the action and its impact on you and the NRMT;
- Offer to hear the other's perspective;
- State what you believe should happen so that the NRMT can move forward [apology, explanation to the NRMT, acknowledgement of the impact, etc.];
- If resolution is not reached, inform the mediator, who adds the item to the next meeting agenda.
- If the accused does not change his or her behavior after the NRMT has heard the item, any NRMT member may call for a two-thirds vote of the NRMT members present at that meeting to disqualify the offender from decision making for the next two meetings. If the accused continues to disregard the protocols, a NRMT member may request a two-thirds vote of NRMT members present at that meeting to permanently disqualify the person from participating further.

II. **RULES REVIEW AND PROCESSES**

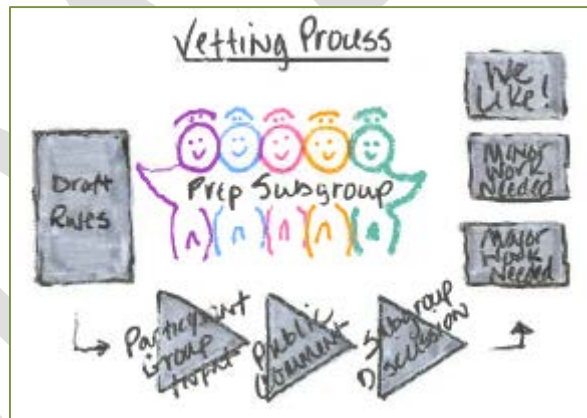
A. Reaching Consensus

Consensus means that all Participant Groups support or at least accept the draft rule language and agree that it should proceed as the proposed rule. Consensus is the goal of negotiation and our process consists of four steps:



Step One: Preparation (Vetting) Process

The Preparation Subgroup reviews each draft rule and weight to determine whether they are satisfactory, almost satisfactory, or not satisfactory. Subgroup members will seek input from their represented Participant Groups, review public comments, and other subgroups:



The Preparation Subgroup summarizes its review of the draft rules in a matrix and delivers the matrix to the rest of the Negotiation Group members at least one week before its scheduled review of those draft rules.

Step Two: Review Process

The Preparation Subgroup presents the draft rules and its matrix to the Negotiation Group. The Negotiation Group decides whether to accept the recommendations. The Negotiation Group decides if additional work is needed and who will perform the work. Assignments to its subgroups or the Expert Group are clearly communicated with scope and a timeline.



Step Three: Measuring Acceptance

The Negotiation Group will use the “Fist of Five” technique to measure acceptance each draft rule. Negotiation Group members will hold up a closed fist or fingers to show his/her level of support.

- **5 fingers** = Enthusiastically accept and support
- **4 fingers** = Accept and support
- **3 fingers** = Accept, but do not support
- **2 fingers** = Not accepting - minor concerns
- **1 finger** = Not accepting - major concerns
- **Closed fist** = Absolutely not accepting (block consensus)

Members holding up a fist or one or two fingers must share their concerns. Consensus is reached when all members hold up three or more fingers. A majority of Negotiation Group need to be present for measuring consensus.

Step Four: Final Review Process

A final review will take place after the Negotiation Group has initially reviewed all draft rules and attempted to reach consensus. During the final review, the Negotiation Group will review and affirm earlier decisions. If necessary, lead negotiators deliver the negotiated rules to their organizers for final approval.

B. **Disagreement**

When consensus cannot be reached for particular rule language, the facilitator will record the areas of disagreement and discussion on the draft rule will be tabled. The Negotiation Group may decide at any time to resume discussion and attempt to reach consensus. Prior to the final review, the lead negotiators will review any draft rules for which consensus was not reached and make a final determination as to whether the Negotiation Group should continue to consider those rules. If the leads concur consensus cannot be reached on a particular draft rule, the draft rule is removed from the negotiated rule package and delivered to DEL's executive director with the areas of disagreement. The executive director will determine the next steps for those rules.

III. **MEETINGS**

A. **Logistics:**

- **Negotiation Group** meetings are held at in person. See Attachment A for locations.
- **Preparation Subgroup** meetings are conducted by telephone or webinar, unless the members decide otherwise.
- **Technical Assistance Subgroup** meetings are conducted as directed by the Negotiation Group.
- **Resolution Subgroup meetings** are conducted as directed by the Negotiation Group.

B. **Attendance:**

Decision makers are expected to attend all scheduled Negotiation Group meetings. The lead or back-up lead negotiator for each Participant Group shall ensure that:

- Participant Group members attend scheduled meetings;
- Expert Group members attend scheduled meetings when requested by Negotiation Group; and
- Any needed administrative support or special needs are communicated to DEL.

C. Facilitation:

The Department of Early Learning will convene Negotiation Group meetings, including:

- Securing meeting locations and lodging accommodations;
- Publishing a tentative meeting agenda two weeks prior to the meeting;
- Providing facilitators for Preparation Subgroup and Negotiation Group meetings;
- Providing interpreters at each meeting location, as requested;
- Providing and distributing meeting materials;
- Establishing participant mailboxes for ongoing communication with stakeholders and community;
- Recording meetings;
- Preparing and making public meeting summaries (one per month, 4 reports total, June – September) and
- Catering food and beverages.

The facilitators are neutral. The facilitator’s role is to ensure conduct is respectful and productive, keep discussion focused on desired outcomes, organize participation so that everyone is heard, and assist with dispute resolution and reaching consensus.

DEL will appoint a central point of contact who will arrange for other administrative support as needed by the NRMT. Requests should be made by the Lead Negotiator for each Participant Group.

D. Schedule:

May 12 – Preparation Subgroup delivers matrix to rest of Negotiation Group

May 19 – Orientation

May 20 – Orientation

May 21 – Orientation

June 10 – Preparation Subgroup meets

June 11 – Preparation Subgroup meets

June 16 - Preparation Subgroup delivers matrix to rest of Negotiation Group

June 23 – Negotiation

June 24 – Negotiation

June 25 – Negotiation

July 15 – Preparation Subgroup meets

July 16 – Preparation Subgroup meets

July 21 - Preparation Subgroup delivers matrix to rest of Negotiation Group

July 28 – Negotiation

July 29 – Negotiation

July 30 – Negotiation

August 12 – Preparation Subgroup meets
August 13 – Preparation Subgroup meets
August 18 - Preparation Subgroup delivers matrix to rest of Negotiation Group
August 25 – Negotiation
August 26 – Negotiation
August 27 – Negotiation

September 21 – Negotiation/Final Review, if needed
September 22 – Negotiation/Final Review, if needed
September 23 – Negotiation/Final Review, if needed

IV. PUBLIC PARTICIPATION

Participants are committed to inclusive negotiations that are open to all stakeholder groups who are directly impacted by the aligned rules. Participants believe that community engagement and comments inform the rule making process. Participants support and encourage comments during negotiation. DEL is facilitating public participation through:

- **Online public comments portal:** A public webpage where individuals and groups may submit comments. Messaging will encourage that comments on particular draft rules precede their negotiation. Comments posted are public and will be available throughout the negotiation process and afterwards;
- **Public meetings:** Negotiation Group meetings are publicized and open to the public with time scheduled for public comments. DEL will ensure that meeting notes are kept and provided online at the end of each month of negotiations. DEL will ensure that meeting locations and agendas and will be posted online two weeks before each meeting. DEL may also record meetings and make transcripts or video available to the public;
- **Alignment Community Café:** Local groups organized by Thrive by Five and Early Learning Coalitions to review draft rules and solicit group comments that are delivered to Group Participants; and
- **Outlook email inboxes for each participant:** Enabling a private email exchange between public and a targeted participant.

All comments will be considered. Decision making is limited to the Negotiation Group.

V. COMMUNICATION

A. Meeting Summaries

DEL will ensure that notes of Negotiation Group meeting are kept and meeting summaries are prepared and made available to the public by the end of each month. Participants may provide note takers who collaborate on the preparation of the meeting summary. Participant Group spokespersons will approve meeting summaries before they are made available to the public.

B. Other Communications

Participant Groups should direct questions from the public about the NRM to their spokespersons. Whenever possible, questions should be answered by pointing to agendas, meetings summaries, or other public information. Each spokesperson agrees to not disclose NRM process details that have not been made public without first telling the other Participant Groups' spokespersons.