

CHAPTER 3
PERFORMANCE SUMMARY CARDS AND PENALTIES FOR CHILD
CARE PROGRAMS

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§3-01 Scope and applicability.

This Chapter applies to any child care program holding a permit to operate in New York City pursuant to Article 47 of the Health Code (“Health Code”) located in Title 24 of the Rules of the City of New York.

§3-02 Definitions.

When used in this Chapter, the following terms have the following meanings:

“Adjudicated violation” means a cited violation of the Health Code or Department rules sustained following a hearing or default, pursuant to a decision by a hearing officer at the Office of Administrative Trials and Hearings (“OATH”) or pursuant to a settlement agreement between the Department and a child care program, to the extent that such decision or settlement agreement remains in effect. “Adjudicated violation” also includes cited violation for which a hearing has not been held but for which the hearing date has been rescheduled at the request of the child care program more than one time.

“Facility maintenance violation” means a violation of the Health Code or Department rules related to the physical space of the child care, reflecting an environmental hazard or other physical deficiency in the real property covered by the permit, including but not limited to a violation of requirements related to internal and external spaces, physical plant, equipment and structural maintenance, sanitation, egress, fire and general safety, lighting, ventilation, plumbing, food safety or pest control.

“Higher risk violation” means a violation, other than a violation of this Chapter, with a penalty amount fixed by the Health Code or Department rules at over \$200.

“Initial inspection” means an inspection conducted other than for the purpose of ascertaining whether a prior violation has been abated, or in response to a complaint.

“Lower risk violation” means a violation with a penalty amount fixed by the Health Code or Department rules at \$200, or a violation of this Chapter.

“Permit” means a permit issued by the Department pursuant to Article 47 of the Health Code.
“Permit suspension” means a suspension of a child care program’s permit to operate due to a violation of the Health Code or any rule promulgated by the Department, other than a suspension that is subsequently vacated.

“Program operations violation” means a violation of the Health Code or Department rules related to permitting, written safety plan, staff qualifications, clearances, training, child supervision, child and staff health requirements, personal hygiene, child development policies, performance summary cards, records or documentation, Department inspections, or any other violation of the Health Code or Department rules that does not constitute a facility maintenance violation.

“Site” means the location, specified in a permit, where child care services are provided.

“Teaching staff” means the education directors, group teachers, assistant teachers, and teacher aides of a child care program.

§3-03 Performance summary cards.

- (a) The Department shall issue a performance summary card to each child care program at each site at least once every 12 months.
- (b) A performance summary card issued to a child care program shall include the following information, as known as of the date such card is issued:
 - (1) the number of full years the child care program has been permitted to operate at the site, except that more than 10 years of operation, shall be indicated by “10+” and less than one year of operation shall be indicated by “<1”;
 - (2) the number of children permitted to be cared for by the child care program at the site at any time;
 - (3) the number of teaching staff employed by the child care program at the site;
 - (4) the number of permit suspensions of the child care program’s permit at the site during the previous three years; and
 - (5) information on how to find the child care program’s inspection record for the site online.
- (c) A performance summary card issued to a child care program that has held a permit to operate at a site for at least one year shall also include the following information for the prior calendar year:
 - (1) the number of full years the child care program has held a permit to operate at that site, except that for a child care program that has been permitted to operate at a site for more than 10 years, such number shall be indicated by “10+”;
 - (2) the number of children permitted to be cared for by the child care program at the site at any time;
 - (3) the number of teaching staff employed by the child care program at the site;
 - (4) the number of permit suspensions of the child care program’s permit at the site during the previous three years;
 - (5) the total number of facility maintenance violations based on the prior calendar year’s initial inspection(s) at the site adjudicated by OATH, to be reflected by the following ratings:
 - (A) “Excellent” means having no such violations;
 - (B) “Satisfactory” means having no more than two lower risk violations and no higher risk violations; and

- (C) “Needs improvement” means having more than two lower risk level violations or one or more higher risk level violation;
- and
- (6) the total number of program operations violations based on the prior calendar year’s initial inspection(s) at the site and adjudicated by OATH, to be reflected by the following ratings:
 - (A) “Excellent” means having no such violations;
 - (B) “Satisfactory” means having no more than two lower risk violations and no higher risk violations; and
 - (C) “Needs improvement” means having more than two lower risk level violations or one or more higher risk level violations;
 - (7) information on how to find the child care program’s inspection record for the site online.

§3-04 Posting.

- (a) Upon receipt of a performance summary card, a child care program shall post it in a conspicuous location within two feet of the front door or other main entrance to the site, between four and six feet above the ground or floor. The performance summary card shall not be defaced, marred, camouflaged, or hidden from public view, or posted in a manner that permits it to be damaged by exposure to weather.
- (b) A child care program that has a permit suspension reflected on its posted performance summary card shall also conspicuously post any additional document provided by the Department reflecting the reason for such suspension.
- (c) Upon receipt of a new performance summary card, a child care program shall post the new card and dispose of the prior performance summary card in a manner that prevents its reuse.
- (d) A child care program shall immediately surrender to the Department a posted performance summary card upon a permit suspension.
- (e) Except as provided in subdivision (d), a child care program may not remove or obscure a posted performance summary card except to replace it with an updated card, or as otherwise authorized by the Department.
- (f) If a child care program’s performance summary card is damaged or stolen, the child care program shall immediately contact the Department to request a replacement card.

§3-05 Updated performance summary cards.

Upon request from a child care child care program, based on a change to the number of adjudicated violations for the prior calendar year that would change either of the program’s ratings, the Department shall provide such program with an updated performance summary card. The Department may also provide an updated performance summary card to reflect a new permit suspension. Updated performance summary cards shall reflect a child care program’s adjudicated violations that were cited by the Department in the prior calendar year and permit suspensions imposed in the 36 months prior to the date of issuance. Upon receipt of an updated performance summary card, the child care program shall post the updated card and dispose of the prior performance summary card in a manner that prevents its reuse.

§3-06 Penalties.

- (a) The holder of a permit of a child care program or any other person found to be in violation of any of the following provisions by a hearing officer at OATH or a successor tribunal must pay the following penalties for each such violation sustained:
 - (1) For a violation of any provision of Article 47 of the Health Code for which a fixed penalty is not established by the Health Code or any other rule of the Department: \$200;
 - (2) For a violation of Section 3-04(a) of this Chapter for operating without posting a performance summary card issued to the program: \$500; and
 - (3) For a violation of any other requirement of this Chapter: \$500.
- (b) To the extent permitted by law, if a person is found to be in default, the penalty imposed for a violation of Health Code Article 47 or of this Chapter must be twice the amount set forth in subdivision (a) of this section.