

Below is some background information on section 245A.14, subdivision 4, and on the exception to municipal liability under section 466.06, subdivision 6d.

Section 245A.14, subdivision 4

The variances for special family day care homes under section 245A.14, subdivision 4, paragraph (e) were added in 2006 (Laws 2006, chapter 207), and are limited – the county may only grant a variance to a certain type of provider, for a limited capacity increase, and with specific additional requirements.

- **Eligible providers.** Under paragraph (e), a county may only grant a variance to a license holder that:
 1. Is a not-for-profit agency;
 2. provides child care in a dwelling on a residential lot; and
 3. has at least 2 contracts with community employers or community organizations to provide child care.

- **Type of variance.** The variance under paragraph (e) is related to capacity, and allows the licensed provider to exceed the 14 child limit by up to 5 children, during transition periods related to parent work schedules. This means for no more than a cumulative total for four hours per day.

- **Additional requirements** for a license holder to receive a variance are:
 1. A 1:7 staff-to-child ratio during the periods when there are more than 14 children in care;
 2. Four hours of extra training per year for all employees;
 3. Adequate facility space for each child under Minnesota Rules, part 9502.0425;
 4. Compliance with local zoning regulations;
 5. Compliance with applicable fire code (as detailed in statute); and
 6. Printing age and capacity fire code limitations and square footage determinations on the license.

In addition, paragraph (h) of this subdivision allows the *commissioner* to grant variances to certain types of providers, if other statutory requirements are met. This paragraph was added in 2019.

Section 466.03, subdivision 6d

This subdivision was added in 1986 (Laws 1986, chapter 395), and may have been in response to a court case around that time that addressed the issue of liability for injuries occurring in a day care home (*Andrade v. Ellefson*, 391 N.W.2d 836, 840 (Minn.1986)). The section creates an **exception** to municipal tort liability, so that a municipality is not liable for a child care provider's failure to meet licensing standards unless:

1. the municipality had actual knowledge of the provider's failure to meet licensing standards; and
2. that failure resulted in a dangerous condition that foreseeably threatened the plaintiff.

My own reading of this (which should not be taken as legal advice in any way), is that if the county licenser grants a variance that fully complies with the criteria listed in section 245A.14, subdivision 4, paragraph (e), this immunity from liability would likely apply, since the conditions resulting from a

variance that complies with statutory criteria would not be considered dangerous or foreseeably threatening.

Our HRD experts on local government and civil law happen to be out of the office today, so I can't provide a more in-depth legal or historical analysis of this municipal immunity. I'd recommend that county licensors seek advice from their county attorney if they have concerns about granting a variance in a specific situation.