



# Office of Children and Family Services

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## DIVISION OF CHILD CARE SERVICES POLICY STATEMENT

**17-4**

### **Community-Based Organizations Operating Programs in School Buildings**

**ID NUMBER:** 17-4

**TOPIC:** Community-Based Organizations Operating Programs in School Buildings

**MODALITIES IMPACTED:** Day Care Centers, Small Day Care Centers, School-Age Child Care

**APPLICABLE REGULATIONS:** Title 18 of the New York State Code of Rules and Regulations §§: 413.2(a)(2)(v)

**CONTACT:** Regional Offices  
<http://ocfs.ny.gov/main/childcare/regionaloffices.asp>

**EFFECTIVE:** IMMEDIATELY

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### **THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY AND CANCELS ALL PREVIOUS MEMOS OR STATEMENTS ON THIS TOPIC.**

The purpose of this policy statement is to clarify when a community-based organization (CBO) operating a child care program located in a public or private school is required by New York State Social Services Law and New York State child day care regulation to be licensed or registered with the New York State Office of Children and Family Services as a child day care program.

Section 390(1)(a)(ii)(D) of the Social Services Law and Title 18 of the New York State Codes of Rules and Regulations § 413.2(a)(2)(v) exempt from the definition of child day care:

*“...a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided.”*

In determining whether a license or registration is required, the following factors must be considered:

- The ages of the children in care
- The identity of the operator (school administrators or CBO)
- The location of the program
- The number of hours the program is in session (as applicable)

Absent any verification that the school is acting as the operator (the entity with responsibility for oversight and direction of the program), the CBO shall be considered the legal entity responsible for the oversight of the child day care program. As such, the CBO as the operator of the program must be licensed or registered.

In situations when the school is responsible for the operation of the program, the program is exempt from licensure or registration. A letter from a school official such as a principal or superintendent that stipulates the school has responsibility for the oversight and direction of the program would be sufficient verification.

The chart below illustrates examples of programs that would or would not require licensure/registration.

<b>Location of the program</b>	<b>Hours of operation</b>	<b>Who is the operator?</b>	<b>Ages- of- children</b>	<b>Required to be Licensed / Registered?</b>
On or off school grounds	3 hours or less	CBO or school	2-, 3- and 4-year-old children	Not required to be licensed or registered based on the hours of operation (3 hours or less)
On school grounds	More than 3 hours	School	3- and 4-year-olds	Not required to be licensed or registered based on the location of the program, school verified as the operator and no children younger than 3
On school grounds	More than 3 hours	CBO	3- and 4-year-olds	Required to be licensed based on identification of the CBO as the operator and the hours of operation (more than 3 hours)
On school grounds	More than 3 hours	CBO or school	2-, 3-, and 4-year-olds	Required to be licensed because program is caring for children under 3 and the hours of the program exceed 3 hours
Off school grounds	More than 3 hours	CBO or School	3- and 4-year-olds	Required to be licensed or registered based on the program location.
On school grounds	Before and after school	School	3-, 4-, 5-, 6-, 7-year-olds and older	Not required to be licensed or registered based on the school as operator, the location and ages of the children (ages 3 or older)
On school grounds	Before and after school	CBO	3-, 4-, 5-,6-,7-year-olds and older	Required to be licensed or registered based on CBO as operator.

**May there be both an unlicensed/unregistered program and a licensed/registered program operating at the same site?**

- Yes. There are situations in which both an unlicensed/unregistered program and a licensed/registered program may operate at the same site. There may be cases in which the unlicensed/unregistered program is operated by the school, on school grounds and cares for children who are three years of age and older, and the other program (or classroom in some cases) may be a licensed day care center caring for children under three years of age.

**Can these two entities, the unlicensed/unregistered program and the licensed/registered program operate under one umbrella program structure?**

- No. The two programs must operate as separate and distinct entities. For example, if toddler classrooms are operating as part of the unlicensed/unregistered program, then the entire program must be licensed as a day care center. However, if the toddler classrooms are operated as a separate and distinct program, only those toddler classrooms need be licensed.

To determine if the toddler classroom is a separate program, the following conditions must be met:

- Staff are not shared between the preschool and toddler classrooms during their work schedules. Although a staff member may be employed by both programs, the hours scheduled in each classroom must be distinct. For example, if a staff person's scheduled hours are 8 a.m. to 4 p.m. in the toddler classroom, they may not be assigned to a preschool classroom during those hours for any reason; and
- Preschool and toddler children are not mixed at any time, nor do the toddlers share activities with preschool children in classrooms, outdoor play areas or dining rooms; and
- The toddler classroom must be administered by a person who has the minimal qualifications set in child day care regulation to perform the functions of a child day care director. If the director of the toddler room is also an administrator for the preschool program, he/she must be employed by both programs and have separate scheduled hours that are distinct to each program.

If any of the above conditions are not met, the programs are not considered separate and distinct and the entire program must be licensed as a child day care program.

Approved By:



Date: August 21, 2017

Janice M. Molnar, Ph.D.  
Deputy Commissioner