

BUREAU OF EARLY CHILDHOOD SERVICES POLICY STATEMENT

ID NUMBER: 06-4

TOPIC: Regulatory Compliance Standards as it Relates To a Family and Group Family Day Care Provider's Own Child in the Provider's Day Care Program.

MODALITIES IMPACTED: Family Day Care and Group Family Day Care

APPLICABLE REGULATIONS: New York State Social Services Law (SSL) 390 (1) (a)(i), 390 (2-a) (a) and 18 New York Codes, Rules and Regulations (NYCRR), Sections 413.2(i)(2)(i) and 413.2(j)(2)(i), 416.11(e)(5) and 417.11(e)(5) and 416.10(a) and 417.10(a)

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EFFECTIVE: Immediately May 10, 2006

THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY

The purpose of this policy statement is to clarify if and when the Office of Children and Family Services (OCFS) may apply day care regulatory standards to the care of a provider's own child(ren) that attend the provider's day care program.

Differences between a day care provider's own children and enrolled day care children.

In order to assess if it is appropriate to apply and when to apply day care regulatory standards to a day care providers' children that attend the provider's day care program, a review of New York State Social Services Law (SSL) 390 1 (a)(i), 390 2-a (a) and Title 18 New York Codes, Rules and Regulations (NYCRR), § 413.2(i)(2)(i), 413.2(j)(2)(i), 416.11(e)(5) and 417.11(e)(5) and 416.10(a) and 417.10(a) is needed.

According to New York State Social Services Law (SSL) 390 1 (a)(i), "*Child day care*" shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child. Since the provider's own children do not fit this description, they are technically not considered "day care children".

18 NYCRR § 413.2(i)(2)(i) and 413.1(j)(2)(i) state that *Except for children in the legal custody of or boarded out with the provider who attend school in kindergarten or a grade level higher than kindergarten, all children present must be counted in determining maximum capacity even if they are relatives or are present three hours per day or less.* As a result, a providers' children are to be counted in determining maximum capacity of the day care program.

18 NYCRR § 417.11(e)(5) and 416.11(e)(5) includes the following requirement: *The caregivers' children receiving care in the home must meet the health and immunization requirements specified in this section.*

18 NYCRR § 416.10(a) and 417.10(a) prohibits a day care provider from abusing or maltreating day care children and any children residing in the home.

Conclusion:

In assessing the mandates contained in Social Service Law and the day care regulations referred to above, it must be concluded that while the provider's own children *are not* technically considered "day care children" they must:

- Be counted as part of the maximum number of children the provider may have in care, § 413.2(j)(2)(i) **and** 413.2(i)(2)(i); and
- Receive an appropriate health exam and immunizations, § 416.11(e)(5) and 417.11(e)(5). (Documentation that a provider's child has received a health exam and appropriate immunizations is required to be on file for a provider's child.); **and**
- Not be abused or maltreated by the provider, § 416.10(a) and 417.10(a).

When, if ever, must the provider adhere to the standards set in regulation in caring for their own child?

All parents in New York State must provide at least a minimal degree of care to their child. A provider of day care services must provide to all enrolled day care children a higher standard of care, as stipulated in the New York State day care regulations. However, a provider's own child is not considered a day care child, and as such a provider can not be required to meet the day care regulatory standard of care for their own child, except as it pertains to counting their own child in capacity, receiving immunizations for their child, and not abusing or maltreating their own child.

Examples of standards that do not apply to the day care provider's children while in the provider's care?

- A provider would not have to have on file *most* paperwork for their own child—such as a Day Care Registration (**blue cards**), administration of medication record keeping documents etc. (Documentation of immunizations is required for all children including a provider's child unless the parent of the child presents a written statement asserting that they have religious objections to immunizations.)
- A provider's newborn child (under 6 weeks old) may be cared for in the program after a consultation with a regional office licensor/registrar. The consultation should include a discussion of the provider's abilities to meet the needs of a very young infant and the other children in care.
- A provider may administer medications to their own child even if the provider has not taken the Medication Administration Training (MAT), CPR, First Aid training and has not hired a health care consultant.

- A provider may choose to divert from the regulatory standards for nap supervision in regard to their own child as long as his/her methods of supervising their child do not put the day care children in a situation where they are left without direct supervision and is not less than a minimum degree of care for their own child.
- A provider may leave his or her own child without direct visual supervision for short periods of time (within what is a reasonable degree of care for the child's age).
- A provider could leave his or her own young child in the care of an older sibling, or a relative or non-relative babysitter. However, this child is still counted in capacity as long as the child is residing in the provider's home.

May a provider use corporal punishment as a method of discipline for their own child, in the presence of day care children?

Corporal punishment is prohibited by day care regulations because it is not an acceptable method of guiding behavior. A day care provider who uses corporal punishment in dealing with enrolled day care children is violating the regulations. A provider who uses corporal punishment as a method of discipline with their own child may be in violation of the regulations if their actions negatively effect the enrolled day care children, such as frightening them. In addition, this information may also be used in assessing the provider's character, habits and personal qualifications to be a family day care provider. A consultation with a regional office supervisor, manager, home office enforcement staff and the Bureau of Day Care Enforcement is required.

If a provider uses *excessive* corporal punishment (leaves bruises, scrapes, lacerations or puts the child's emotional or physical health at risk of harm) in dealing with their own child or a day care child, both actions are in violation of child abuse and maltreatment laws and the day care regulations. The licensor or registrar and all persons mandated to report child abuse and maltreatment must report the incident to the New York State Child Abuse and Maltreatment Register (SCR).

Additional topics related to the care of a provider's child can be found in the following policy statements:

Policy Statement number *04-1 Supervision Issues as they relate to Family based Programs* addresses the issue of a provider's child who invites friends to the home during day care hours.

Policy Statement number *97-6 Home Schooling and Family Day Care Registration or Group Family Day Care Licensure* addresses issues concerning a provider's child who is in the home being home schooled during day care hours.

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Approved [X] Suzanne Zafonte Sennett

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