



Office of Children and Family Services

Andrew M. Cuomo
Governor

52 WASHINGTON STREET
RENSSELAER, NY 12144

Sheila J. Poole
Acting Commissioner

DIVISION OF CHILD CARE SERVICES POLICY STATEMENT

16-3

Approving Basements as Primary Child Care Space

ID NUMBER: 16-3

TOPIC: Approving Basements as Primary Child Care Space

MODALITIES IMPACTED: Group Family Day Care and Family Day Care Programs

APPLICABLE REGULATIONS: Title 18 of the New York State Code of Rules & Regulations §§
416.3 417.3
416.4 417.4
416.5 417.5

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

EFFECTIVE: IMMEDIATELY

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 the conditions under which basements may be used as the primary program location for group family day care and family day care.

Definition of Basement:

For the purpose of this policy statement, a basement is defined as that portion of a building that is partly or completely below grade.

Approval to Operate a Child Care Program in a Basement:

Child day care regulations do not automatically preclude the provision of child care in basements. When an applicant proposes to use a basement, an Office of Children and Family Services (OCFS) fire safety representative or Department of Health and Mental Hygiene (DOHMH) inspector must inspect and approve the designated space before any basement may be used as a child day care space.

Type of Assessment Needed:

In order for the basement to be used as the primary location for child care, one of the following must be confirmed:

1. The applicant can produce a certificate of occupancy documenting that the proposed basement space is habitable;

OR

2. The basement areas proposed to be used for child day care space must meet all of the following conditions:
 - a. Have a continuous ceiling height of not less than 7 feet (2134 mm). An allowable exception to this is where beams and girders or similar protrusions such as ducts or pipes, spaced not less than 4 feet (1219.2 mm) on center, project not more than 6 inches (152.4 mm) below the required ceiling height. This would allow for a ceiling height of 6 feet 6 inches (1981.2 mm) beneath protrusions. A minimum ceiling height of at least 6 feet 6 inches (1981.2 mm) must be measured from the bottom of any protrusions to the basement floor.
 - b. There are two means of egress which are remote from each other. Where a window is used as a means of egress, window sill height must not be more than 44 inches (1117.6 mm) above floor level. The regulation 416/417.4(h)(3) provides that the window must have a minimum net clear opening height dimension of at least 24 inches (609.6 mm) and a minimum net clear opening width dimension of at least 24 inches (609.6 mm). The window must also have a minimum net clear opening of 5.7 square feet. This means, a window with a net clear opening height of 24 inches (609.6 mm) and a net clear opening width of 24 inches (609.6 mm) would not be acceptable because the net clear opening would not meet the required minimum of at least 5.7 square feet. A window that complies with the emergency escape and rescue requirements established in the Fire and Building Code of New York State (or other applicable code if the Fire and Building Code of New York State is not applicable in that jurisdiction) would meet this requirement.
 - c. The basement area to be used for child care must have at least one window that looks out to or faces the outside of the building or a court. The glass or glazed area of the window (the part of the window that allows light to enter) must be at least eight percent of the total floor area of the basement area to be used for child care. In some situations, artificial light may be an acceptable alternative provided it is capable of producing an average illumination of 6 footcandles (65 lux) over the area of the room at a height of 30 inches (762 mm) above the floor level. Footcandles are a unit of illumination used to measure light intensity per square foot. Light intensity can be measured using a light meter or by consulting with your local code inspector or a professional in either the construction or light industry or a related industry.
 - d. Adequate ventilation is provided in that fresh air enters the basement through windows, doors, louvers or other openings into the basement. Caregivers must be able to access and control these openings. The basement also must have at

least one window that opens. The size of the opening to the outside air must measure at least four percent of the total floor area of the basement area being used for child care. In some situations, an approved mechanical ventilation system capable of producing 0.35 air change per hour in the room in which it is installed, or a whole-house mechanical ventilation system capable of supplying outdoor ventilation air of 15 cubic feet per minute (cfm) (78 L/s), per occupant, may be acceptable.

Additional Considerations:

Basement space, when used as the primary child care program space, must meet all the same criteria as every other area in a home being considered for use as a child care program. These criteria, which address such issues as egress, floor coverings, and toxic materials, are set forth in OCFS policy statements; family day care regulations, 18 NYCRR Part 417; and group family day care regulations, 18 NYCRR Part 416.

OCFS reserves the right to and may, at its discretion, require a certificate of occupancy whenever the space identified calls into question the health and safety of children.

Inspection by Local Authorities:

Unlike day care centers and school-age child care programs, which are located in sites other than personal residences, there are no requirements for documentation of inspection and approval of family and group family homes by local authorities. Local governments may not preclude the use of basements for family or group family day care under local laws or regulations, unless the use of basement space is deemed not fit for habitation in every residence in that jurisdiction. Questions regarding use of basement space for child day care should be directed to your local Regional Office.

Approved By:



Date: August 24, 2016

Janice M. Molnar, Ph.D.
Deputy Commissioner