

*NYS Office of Children and Family Services  
Bureau of Early Childhood Services  
Policy Statement*

**ID Number : 04-1**

**Topic : Supervision Issues as they relate to Family based Programs**

**Modalities Impacted : Group Family Day Care and Family Day Care Programs**

**Applicable Regulations : 416.8 (a), 417.8 (a), 416.15 (a)(16), 417.15 (a)(16), 413.2(i), and 413.2 (j)**

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**Effective :**  
**This policy statement is effective immediately and cancels all previous memos or statements on this topic.**

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**Purpose**

This policy statement addresses frequently asked questions regarding standards of supervision required of providers for day care children in family based day care programs. The policy statement begins with the guidelines for supervision cited in the Family and Group Family child care regulations and then applies those regulations to common situations experienced in most family based programs.

**Regulations**

The Family and Group Family Day Care Regulations, 416.8(a) and 417.8(a) respectively, cite the following supervision requirements:

*Children cannot be left without **competent** supervision at **any** time. The provider must have **direct visual contact** with the children at all times...(emphasis added).*

The regulations go on to describe when exceptions can be made to the direct visual contact standard of supervision:

**Napping/Sleeping**

- [416.8(a)(1), 417.8(a)(1)] With the prior written permission of the parent, children may nap or sleep in an area/room where an adult is not physically present. The door

to the room must be open and the provider must be on the same floor as the sleeping child/ren. A functioning electronic monitor must be used in any room where children are sleeping or napping when an awake adult is not present in that room. Use of electronic monitors is restricted to situations where the children are sleeping or napping and where parental permission for the monitor's use, is obtained in advance.

### **Toileting**

- [416.8(a)(2), 417.8(a)(2)] Children who are old enough to toilet independently may use a bathroom on another floor without direct supervision.

### **School-Age Children**

- [416.8(a)(3), 416.8(a)(3)] With written permission of the parent, school-age children may participate in activities outside the direct supervision of the provider. These activities must be on the premises of the day care and the provider must physically check such children every 15 minutes. Before allowing the children in care to undertake activities outside of the direct supervision of the provider, the provider should always take into consideration the child's developmental level and individual abilities as well as the safety of the neighborhood and surrounding areas.

## **Unique Topics And Issues Concerning Supervision**

### **Surveillance Cameras as a Means of Supervision**

Family and group family day care regulations stipulate that surveillance cameras may not be used as a substitute for competent direct supervision of children. Cameras and/or video equipment, therefore, cannot take the place of direct supervision by an approved adult. **[416.8(g) and 417.8(f)]**

### **Bicycle Riding**

An issue that often provokes questions from providers involves the supervision of school-age children riding bicycles on and off the provider's property.

School-age children (even those riding a bike) **may not** leave the provider's property without adult supervision. In order to include bike riding as an activity that a school-age child can do on their own, a provider would have to have enough safe space on his/her own property to allow for bike-riding. While school-age children may be out of the provider's direct supervision for up to 15 minutes, they may not leave the provider's property unsupervised [416.8(a)(3), 416.8(a)(3)]. This provision in the regulations would prohibit a day care child from riding a bicycle in the street or on the sidewalks in front of the providers home or in the provider's neighborhood without direct visual supervision.

With the direct visual supervision by the provider, a child may ride his/her bike on the sidewalk or on other safe areas outside of the provider's property. The child must remain in the direct sight of the provider and must be capable of hearing the provider's directions at all times during this activity. The child's ability to ride independently and the surface riding conditions should be

considered by the provider before allowing a child in care to undertake this type of bike riding activity.

### **Provider's Privacy Needs**

A provider generally needs a few bathroom breaks throughout the day but at the same time, is still required to maintain direct visual supervision of the children in his/her care. How, then, does the provider answer the need for privacy and the need for direct visual supervision?

Formulating a plan to meet personal needs is essential. The plan should include considerations such as whether the provider has back-up caretakers, the floor plan of the program, the individual needs of the children, and group dynamics.

The following are some supervision options. These options should only be selected when they meet the needs of the group and individuals in the provider's care. A plan that works for one set of children may not work for another; individual needs and group dynamics must be assessed carefully before deciding on what plan works the best for the program. As always, sharing a program's plans with parents is a best practice recommendation.

A group family day care provider should rely on his/her assistant to supervise the group in his/her absence to use the bathroom. A family day care provider may ask another adult member of the home (over 18 years of age) to supervise the children for this short absence from the group, **unless, of course, there is a restriction or limitation preventing the assistant or other person from supervising the group.**

If there are no other adults in the family day care home, the Office recommends that the provider interest the children in an activity in a location close enough to the bathroom that would allow the provider to hear the children. If the children are close enough in location that the provider can temporarily supervise the children through auditory means, this will be considered an acceptable alternative to visual supervision for this single purpose. The children should always be told where the provider will be in case they need her/him immediately.

A provider who is without back-up supervision for his/her absence should never be on a different floor or wing of the house from the children in his/her care and should not be physically absent from the children in his/her care for more than a few minutes.

A provider who is without any back-up supervision must carefully assess the needs and safety of each child in their care in light of the reality of her/his need for short absences during bathroom breaks. If, after careful assessment, the provider concludes that a particular child cannot or should not be left alone during this time, this may indicate that it is in the best interest of this child to be in a setting with multiple caretakers or supervision options. A plan to meet the child's supervision needs should be discussed with the child's parent.

Depending on the floor plan of the home, it may be possible to use the bathroom when the children nap. Use of the bathroom at naptime is less problematic, particularly if the napping/sleeping area is located close enough to the bathroom that the provider would be able to hear the children if they called for her/him or cried. If parents have authorized the use of a monitor at naptime the provider could use this device at naptime for taking a short bathroom break.

The age of children being supervised may also play a role in provider's planning for bathroom breaks. School-age children, who the provider and parent deem to be responsible enough to be out of the caretaker's direct visual supervision for 15 minute intervals, [416.8(a)(3) and 417.8(a)(3)] can be left unsupervised for the few minutes it takes for the provider to use the bathroom. Again, group dynamics and individual needs must play a role in decision-making.

### **Field Trips**

Planning for field trips should include among other things, supervision considerations and staffing needs. Thinking and planning ahead will help providers avoid situations and conditions that are either awkward or unsafe.

The licenser/registrar should keep the following in mind in assessing a provider's field trip plans.

- Has the provider made adequate plans to meet the supervision needs of the group and the individuals in the group? The quality of supervision must not be diminished when taking day care children away from the approved home site, depending on the circumstances of the field trip a provider may want to take addition adults with her/him to help with supervision.
- Has the provider looked into what the field trip experience will offer? New experiences and distractions may cause children to stray from the group or lag behind. Knowing what is offered at the field trip destination and prior planning can help a provider schedule an itinerary that meets both group and individual children's needs
- Has the provider developed rules for behavior on field trips and shared them with the children? Providers must be attentive to the movement of all children and develop methods and/or rules for field trips that keep children safe and supervised. School-age children should be reminded that they may not separate from the group and they are not permitted to explore on their own. School-age children must be supervised directly in all situations that take the children off the provider's property.

### **Bathroom Use on Field Trips**

A crucial part of pre-planning for field trips is inquiring about rest room facilities. Calling ahead to inquire about what rest rooms are available and what the set up is will help a provider to avoid problems later. Providers should inform parents of whatever plan is set up to meet the child's bathroom needs when they are away from the home.

As part of a licensors/registrars role in providing technical assistance he/she should encourage providers to look for more contemporary or newly renovated public bathroom facilities called "family stations". Family stations are restrooms that are designed for both genders and would allow a provider to bring a group of children to the same bathroom regardless of gender.

Most field trip sites, however, will still have restroom facilities that are gender specific; some might consist of a design that has private stalls that offer privacy for each user. This arrangement may work well for providers who have small children, as the stalls will offer the children privacy and the provider will be able to supervise all children using the restroom.

If the field trip site rest rooms are such that they do not allow a provider to supervise young children because they are strictly gender specific or without privacy, then the provider must make plans to bring along a parent or assistant who will be able to bring the same sex child into the appropriate rest room.

School-age children may feel awkward or reluctant to use a bathroom designated for a different gender than themselves. A provider will have to make accommodations for this by either asking a parent of the opposite gender to accompany them on field trips or assess whether the school-age child is old enough, responsible enough and resourceful enough to use the gender appropriate bathroom while the provider waits just outside the main entrance to the bathroom with the group of younger children.

Providers should get the parents' permission for this plan before actually using the plan.

### **Combining Day Care Children from Different Programs**

Each family or group family day care program is a distinct entity and regulations would prohibit these programs from combining services. However, the Office understands that there may be special experiences and activities that are age-appropriate and developmentally beneficial to children in care that would necessitate two groups planning an activity together. An example of this is team sports. Team sports can be fun, positive learning experiences for children but they may also require more team members than one provider would have in his/her program.

A licensor, faced with a situation in which a provider has combined their group with another or is seeking information about combining their group with another, must explore the details of the situation or request. For example: For what purpose is the group being combined? If the purpose is to save on employment hours by combining staff to meet staff/child ratio, this is unacceptable. Where will the activity take place? If this is inside one of the provider's homes, this is unacceptable. Is the activity beneficial to the children involved? If not, this is unacceptable. How long will the groups be together? If the activity is an all day event rather than an activity whose time frame is predictable (such as a set number of innings of baseball or a time period in basketball), this is unacceptable. Are the caretakers assigned to care for their own group? Blending of staff is unacceptable; both groups must operate as separate and distinct entities.

### **Supervision of Day Care Children in Pools 416.8(a)(4) and 417.8(a)(4)**

The Office has issued formal guidelines for supervision of day care children using pools. The following is extracted from those guidelines.

With the prior written permission of the parents and Office approval of the pool, providers may allow children in day care to participate in residential pool activities providing the following supervision criteria are met:

- The provider must develop a plan of supervision to see that there is a person supervising the children in the pool at all times children are using the pool. ***This person must be able to swim and must possess a current American Red Cross Cardiopulmonary Resuscitation Certificate (CPR) or equivalent certificate, as approved by the Office.***

- The plan of supervision must be pre-approved by the appropriate Regional Office.
- Whenever a pool is in use (children are pool side or in the pool area) at a day care program, all day care children of all ages regardless of their swimming abilities, or maturity levels must have *direct* supervision.
- Where some children in care are using the pool and others are not using the pool, the plan of supervision must provide that there will be adequate and appropriate supervision of the children using the pool and those not using the pool. This means either:
  1. Another adult(s) must be available to supervise the children who are not involved in any water activities or have individual needs unrelated to pool safety.

**OR**

  2. A plan for supervisory coverage of the children in the pool and those outside the pool must be in force whenever a conflict occurs.
- While the pool is in use, a provider must continue to meet the supervision ratio requirements in regulation and remain within the capacity limits defined on his/her license/registration.
- No person under 18 years of age can be left in sole charge of the children at any time.

### **Pool Supervision as it Pertains to Provider's Own Children and Guests to the Home**

The guiding standard in addressing this issue is the following regulatory citation: 416.15(a)(16) and 417.15(a)(16). *The indoor and outdoor areas of the home where the children are being cared for must not be used for any other business or **social purpose** when children are present such that the attention of the caregivers is diverted from the care of the children* (emphasis added).

A number of licensed and registered providers have opted to prohibit children attending the day care program from using the family pool. Keeping the day care children out of the pool would not necessarily mean that a provider's own children could not use the pool. This decision must be made by the provider/parent, not the Office licensor/registrar. The Office does not have the authority to impose guidelines for the supervision of a provider's children when they are not counted in the program's capacity and their actions do not violate the above regulatory standard.

While it remains the Office's position that all children regardless of age, swimming abilities, or maturity levels require vigilant supervision while swimming, we do not have authority to set this standard for those children who are not enrolled or not counted in capacity in a licensed or registered program. The licensor/registrar, however, does have the authority to evaluate a provider's ability and actions in maintaining direct supervision of all day care children while in attendance at the program.

It is the Office's policy and position that a provider cannot adequately supervise a group of day care children, who are not in the pool, while supervising his/her own children and/or guest children who are swimming in the pool. The licensor/registrar must then assess whether or not the provider is indeed attempting to supervise both groups.

If the children are at least 13 years old and the provider is claiming she/he is allowing his/her own children to swim unsupervised, or another person is supervising the children in the water and the provider is not diverting her attention from the supervision of children enrolled in day care, then

the licensor/registrar does not have a role in dictating pool use for the non-day care children using the pool.

Often, the issue may seem more complicated by the presence of friends of the provider's children, however, the evaluation process for the licensor/registrar remains the same. Are the children at least 13 years old? Is there someone else providing supervision for the children in the pool and is the provider's attention focused on the care of the day care children rather than the swimmers? If the licensor can answer yes to these questions than no violation exists. Otherwise, those children under the age of thirteen may be counted as attending the day care program and all standards related to pool use, capacity and ALL other aspects of family and group family day care registration/license must be applied.

## **Provider's Who Invite Guests to the Home During Business Hours**

### **Guest Children**

Providers have a responsibility to supervise and care for the children enrolled in their program. All other activities and distractions including visiting children cannot interfere with the level of supervision and attention day care children receive. The issues a licensor/registrar must consider, in assessing whether guest children are an interference in caring for enrolled children, are as follows:

- Is the provider able to supervise the number of children in the home?
- Are the children in two separate areas of the home causing the provider to be distracted from the day care children's needs and safety?
- Does the number of visiting children put the provider over capacity?
- If the provider claims that he/she is not caring for the visiting children, who is responsible for their supervision?
- Are the visiting children over the age of 13? If so they may not impact the programs maximum capacity but they may have to sign into the visitor's log.

If the licensor/registrar assesses the above issues and finds no negative impact on the provision of care and supervision to day care children, the provider is not in violation of the day care regulations.

### **Guest Adults**

Visiting adults may also cause a sufficient distraction to the provider that their presence at the child care program interferes with the level of supervision the provider is able to give to the children in care. Regulations 416.15(a)(16) and 417.15(a)(16) are intended to set the level of social activity, permitted during business hours, at a minimum such that a provider maintains his/her main focus on the supervision and safety of the children in his/her care.

416.15(a)(16) and 417.15(a)(16)

*The indoor and outdoor areas of the home where the children are being cared for must not be used for any other business or **social purpose** when children are present such that the attention of the caregivers is diverted from the care of the children (emphasis added).*

Providers must be in compliance with regulations that prohibit persons, who have not been fingerprinted or checked through the State Central Register, from being alone or unsupervised with day care children. Visitors may not be left alone to supervision children nor may they participate in any care-giving activities entrusted to the provider. Visitors may also be expected to sign in on the visitor log.

Supervising a group of children and keeping them all within your sight while trying to direct, teach, comfort, feed and assist other children can be challenging. Providers are charged with this responsibility on an everyday, all day, basis. Providers must comply with regulatory standards which are based on common sense and professional judgment in setting limits and guidelines for the children in their care. There is no substitute for vigilant supervision.

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**APPROVED BY:**

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