

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

**ID Number:** 04-3

**Topic:** Substitute caregivers and prorated training hours (Replaces Policy Number 02-03)

**Modalities Impacted:** All modalities

**Applicable Regulations:** 413.2(ad), 413.2(o), 413.2(ag), 413.2(af), 418-1.14, 414.14(a), 417.13, 416.13, 413.6 (b), 416.8 (c)(1), 417.8 (c) (1), 416.8(c)(1), 417.8(c)(1), 416.14(b)(1), 417.14(b)(1) and 418-2.8 (c)(1)

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**Effective:** Immediately **11-16-04**

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

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This policy statement is intended to clarify the role of substitutes in day care programs. It will cover the following pertinent topics:

- The definition of a substitute
- The definition of staff
- Any differences between substitutes working in family based programs and substitutes employed by day care centers
- The circumstances in which a substitute may be called in to take the place of a permanent caregiver
- Training requirements and approved prorating formulas for training hours
- Medical statements and references
- Background checks
- The role of alternates and assistants

**Substitutes In Family Based Programs And Small Registered Day Care Centers**

New York Code of Rules and Regulations (NYCRR), Day Care Regulation, 413.2(ad) defines a substitute as follows:

413.2(ad) Substitute means any person who has been selected by the provider to provide child day care to children in a family or group family day care home or small day care center during short-term, non-recurring absences of the day care provider or assistant.

As defined in the regulations, substitute means a position found in family day care (FDC), group family day care (GFDC) and registered small day care centers. We often hear the term substitute used to refer to persons who fills in for teachers and aides in day care centers (DCC) and school-age child care programs (SACC). There are differences between the requirements for substitutes used in family based day care programs/small day care centers and substitute staff used in large day care centers and school-age child care programs.

Another issue raised by the wording in the definition of substitute is the length of time a substitute is permitted to fill in for the permanent caregiver. The regulation states that a substitute can fill-in during short-term, non-recurring absences of the day care provider or assistant. What would the Office consider short-term or non-recurring absences?

The Office considers it reasonable for a provider to ask a substitute to fill-in for them for up to 15 days in each year of the 2-year licensing period (15 days may also be converted to hours if necessary). The Office will consider 15 days of absence to be short-term, and so long as the days were not used for more than 3 days **consecutively**, the Office would consider the 15 days to be non-recurring. A waiver request is required if the provider is planning to have his/her substitute fill-in for more than three days of consecutive absences.

After the 15-day substitution milestone is met, the Office will deem this person to be working as an assistant, alternate assistant or alternate provider. As such, the provider would then be required to have the person complete the additional regulatory requirements needed to fill the position or stop using the substitute for coverage for the remainder of that year in the 2 year licensing period.

In order to meet the requirements as an alternate assistant or alternate provider the former substitute would need to be a person who already meets the qualifications set forth in Title 18 of the NYCRR § 416.13(a) and 417.13(a) and then they must submit: a medical statement, formal references and begin to attend training sessions. Alternate assistants, and alternate providers are permitted to prorate their training hours based on the number of hours they participate in the program. To calculate the prorating of training hours, use the formula introduced below:

The new alternate assistant or alternate provider will need to complete one hour of training for every 140 hours (or part there of) that they work in the program. This clock begins after the substitute-now alternate assistant or alternate provider completes the 15-day substitution limit. For each and every additional 140 hours (or part there of) that this individual works in the family or group family day care program he/she will need to take yet another hour of training in a topic specified in regulation. [Please see 18 NYCRR 416.14(b)(1) and 417.14(b)(1)] Using this formula, the alternate assistant or alternate provider can always be sure that they will have enough training hours credited to at least meet the minimum 30-hour requirement. The alternate assistant or alternate provider does not need to exceed the 30 hour requirement for the two-year period.

All Group Family Day Care providers must employ an assistant; this is a condition of their license. The provider and their assistant are required to attend 30 hours of training every licensing period. The assistant's training hours may only be prorated if they are hired after the start of the licensing period. In this case, the assistant is permitted to prorate their training hours to match the percentage of time they were employed during the licensing period.

Some GFDC providers employ more than one assistant, this position is defined in regulation as an alternate assistant [18 NYCRR 413.(af)] Alternate assistants are employed to fill-in as needed for the provider or assistant. The provider is permitted to prorate the training hours of the alternate assistant as per this policy.

While it is understood that formal training of a substitute is not required by regulation, a provider is required by regulation to maintain a safe environment and plan for the direct, competent supervision of the children enrolled in his/her program no matter who is acting as the caretaker. With this responsibility in mind, a provider may want to introduce the substitute to the program curriculum and to the children in care, so that in the event the substitute is needed he/she could fill-in on short notice or in the case of an emergency and continue the provider's policies and practices.

If the provider documented that he/she conducted a general program introduction (introductory training) for his/her alternate assistant or alternate provider during the time he/she was officially a substitute, they may use the time period spent at that introductory session towards the required training hours, if the training occurred within 6 months of the substitute becoming an alternate assistant or alternate provider. In order to be accepted, the introductory session must have included topics such as: program routine, specific or special needs of individual children in care, discipline policy, evacuation plans, emergency numbers, location of first aid kit and/or an understanding of the role of licensing representatives and his/her right to conduct unannounced inspections of day care programs. Introductory training must be at least one hour in length to be considered for approval by the regional office licensor and to count toward the required number of training hours. The licensor/registrar will review the provider's documentation relative to the introductory training and decide whether the training meets the above criteria and if it does, the hour of training will be accepted.

The provider (employer) is responsible to track the number of days (or hours) a caretaker works and trains. The provider (employer) must keep these records and submit them with his/her renewal documents, if they intend to justify the prorated number of training hours his/her employees received during the two- year licensing/registration period. Without these records a provider may not claim the prorating of training hours. The provider must also be able to supply the licensor with business records that document the number of hours or days that a substitute works and for which they were paid. We recommend a good practice standard of checking these records quarterly, perhaps at the same time that an employer is filing his/her quarterly tax returns.

In addition to the training requirement, references and a medical statement are also required as a condition of employment of an assistant, alternate assistant or alternate provider. Some providers may have already elected to check a substitute's references and medical statements, even though it is not specifically required in regulation, but as part of his/her responsibility for maintaining a safe environment. If the provider has these documents in his/her files, they may forward them to their licensing representative to meet the requirements for this person becoming an assistant. If they have not formally obtained these for their files, he/she will now be required to do so and send copies to their licensing agent. The licensing agent will be responsible for updating the changing roles in CCFS.

It is also important to point out that the regulations do not mandate that a provider have a substitute. A FDC and GFDC provider may operate without actually naming/hiring a substitute. A provider, who elects not to name/hire a substitute, must inform parents that they will close on occasions when they are not able to care for children. [18 NYCRR § 416.8(c)(1) and 417.8(c)(1)]

### **The Role Of Assistant, Alternate Assistants, And Alternate Providers**

Providers in FDC and registered (small) day care centers who intend to keep their programs open for absences exceeding those times for which substitutes can cover, must employ an alternate provider. Alternate providers per Title 18 of NYCRR 413.2(ag), must meet the same qualifications as the provider. The alternate provider is the only person who can fill-in when long-term or recurring absences (more than 3 consecutive days) need to be covered in FDC programs .

A provider in a GFDC can be temporarily replaced for recurring absences by either their assistant or their alternate assistant, depending on the number of children they have in care. When a GFDC provider is caring for six or less children they may use their assistant to cover in their absence. However, only two children under the age of two may be cared for when there is only one caretaker on site at a GFDC. If the GFDC has more than six children in care, then they must enlist the aid of an alternate assistant, when either a provider's or their assistant's absence exceeds the definition of what the substitute can fulfill. Since the assistant and alternate assistant must meet the same qualifications, they are interchangeable for coverage needs, per Title 18 NYCRR 413.2(af).

**Substitute staff used in Day Care Centers And School-Age Programs**

Persons commonly referred to as substitutes in day care centers and school age child care programs are identified as “staff” in the regulations. The term staff in the regulations is defined as follows:

**413.2 (o) Staff means all personnel, including temporary staff or substitutes, para-professionals, volunteers and any other person(s) employed by a child day care center or school-age child care program.**

There are significant differences in the qualifications needed to perform the role of substitute in DCC and SACC as compared to GFDC, FDC and small day care centers.

The chart below depicts the differences in the requirements.

	<b>References</b>	<b>30 -hour training requirement</b>	<b>SCR data base check and criminal history</b>	<b>Medical statement requirement</b>
<b>Substitutes in FDC,GFDC and registered small day care centers</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>Substitute staff in day care centers and school-age programs</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>

The chart above clearly illustrates the different requirements expected of the substitutes employed in the different modalities of day care programs. In contrast to substitutes employed by DCCs and SACCs, substitutes filling in for family-based providers or their assistants in GFDC, FDC and registered (small) day care centers are exempt from the 30-hour training standard, the medical statement and reference checks. All substitutes however, are subject to criminal history background screening and State Central Register database checks. As a result of their exemption from training requirements, medical clearances and reference checks, the Bureau restricts the amount of time and the frequency with which substitutes may be used to fill-in for the primary caregiver in a family, group family or registered (small) day care center.

**Day Care Center Staff Substitutes And Part Time Workers**

Substitutes and part-time staff at day care centers (DCC) are generally considered part of the program’s regular workforce and they participate in the operation of the day care program on a regular basis which is far more often than what would be allowed of substitutes filling in for family based caregivers. Many substitutes in day care centers work full- time schedules as floaters and the only difference between them and a teacher or aid, is that they are not necessarily assigned to any one classroom. Substitutes

employed full time in day care centers must attend 30 hours of child care training every two years. (See regulations 418-1.14(a) below.)

**418-1.14 (a) Each person responsible for developing, directing and supervising the daily activity programs for children (director) and each employee must complete a minimum of thirty (30) hours of training every two years. Fifteen (15) hours of such training must be received during the first six months of the program's first year of licensure or during the person's first six months of employment by the program. This initial fifteen (15) hours applies towards the total thirty-hour (30) minimum requirement for each license period. Such training requirements shall also apply to any volunteer in such day care program who has the potential for regular and substantial contact with children.**

### **Day Care Center Pro-rating Formula**

The Office also recognizes that there are some day care centers that employ part-time staff and substitutes on less than a regular or routine basis. If a part-time staff or substitute were only called in once or twice a month, it would be impractical to expect the center to provide 30 hours of training to this employee. Therefore, prorating the 30-hour training requirement to match the hours a part-time staff or substitute is on duty is permitted.

Day Care Centers must adhere to the follow prorating formula in calculating training needs. A DCC must document that a part-time staff or a substitute who works 140 hours or less annually has attended formal introductory training that covers: emergency procedures, basic child development issues for the population(s) with which they will work, responsibilities as mandated reporters of child abuse and maltreatment, agency policies and state day care regulations. Introductory training must be at least one hour in length and attendance is required on a yearly basis for substitutes who continue to work in the day care program. DCC directors must keep a record of introductory training staff receive (amount of time spent on training and topic area) and make this documentation available to the Bureau upon request.

For all DCC part-time staff and substitutes that work over 140 hours a year, the requirement will include the one hour of introductory training as described above plus an additional hour of training for each additional 140 hours (or part there of) that they work in the program. This requirement must be met on a yearly basis as well.

The DCC provider (employer) is responsible to track the number of days (or hours) a caretaker works and trains. The provider (employer) must keep these records for submission with his/her renewal documents if they intend to justify the prorated number of training hours his/her employees received during the two- year licensing/registration period. Without these records a provider may not claim the prorating of training hours. The provider should also be able to supply the licensor with business records that record the number of hours or days that a substitute works and for which they are paid. We recommend a good practice standard of checking these records quarterly, perhaps at the same time that an employer is filing his/her quarterly tax returns.

The practice of prorating training is also permitted when a substitute's start date of employment is less than the full 2 years of the program's licensure/ registration period.

### **School-Age Child Care Pro-rating Training Formula**

School-age child care (SACC) regulations pertaining to required training hours for employees are as follows:

**414.14 (a) Each person responsible for developing, directing and supervising the daily activity programs for children (director) and each employee working an average of twenty (20) or more hours a week must complete a minimum of thirty (30) hours of training every two years. Fifteen hours of such training must be received during the first six months of the program's first year of registration or during the person's first six months of employment by the program. This initial fifteen (15) hours applies toward the total thirty (30) hour minimum requirement for each registration period. Employees working an average of fewer than twenty (20) hours a week must complete a pro-rated portion of training pursuant to guidelines issued by the Office. Such training requirements shall also apply to any volunteer in such school-age child care programs who has the potential for regular and substantial contact with children.**

School-age programs are permitted to follow a prorated schedule described in the following paragraph until or unless school-age employees reach the threshold of working an average of twenty work-hours a week. As per regulation, an employee working an average of twenty or more hours a week must begin to schedule training sessions to meet the 30-hour requirement. The Office recommends that the program schedule training for its part-time /substitute employees as prescribed below, and audit the employee's time records quarterly. If the audit numbers indicate that they are at or exceeding the twenty work-hour week threshold the program should change the training schedule for this employee to meet the required 30 hours. This decision would, of course, reflect the agencies acknowledgement that this person is being utilized more than was anticipated and that no drastic change will be made to limit his/her hours of employment in the near future.

School-age programs must adhere to the follow prorating formula in calculating training needs. A program must document that an employee who works 140 hours or less annually has attended the general introductory training that covers: emergency procedures, basic development issues for the population(s) with which they will work, responsibilities as mandated reporters of child abuse and maltreatment, agency policies and state day care regulations. Introductory training, prepared by the SACC program, must be at least two hours in length and attendance is required on a yearly basis for substitutes who continue to work in the day care program. SACC programs must keep a record of introductory training staff receive and make this documentation available to the Bureau upon request.

For all SACC substitutes/part-time staff who work over 140 hours a year, the requirement will include the two hours of introductory training as described above plus an additional two hours of training for each additional 140 hours (or part there of) that they work in the program. This requirement must be met on a yearly basis as well.

The SACC provider (employer) is responsible to track the number of days (or hours) a caretaker works and trains. The provider (employer) must keep these records for submission with his/her renewal documents if they intend to justify the prorated number of training hours their employees received during the two- year licensing/registration period. Without these records a provider may not claim the prorating of training hours. The provider should also be able to supply the licenser with business records that record the number of hours or days that a substitute works and for which they are paid. We recommend a good practice standard of checking these records quarterly, perhaps at the same time that an employer is filing his/her quarterly tax returns.

The practice of prorating training is also permitted when a substitute's/part-time staff's start date of employment is less than the full 2 years of the program's licensure/ registration period.

The chart below is included to help identify the numerous substitute and alternate positions and to illustrate what requirements and qualifications they must have per regulation. The chart further illustrates when each can be used to substitute for permanent caregivers in day care programs.

<b>Tasks &amp; Requirements</b> →	<b>Assist in short-term, non-recurring supervision</b>	<b>Assist in long-term supervision or recurring absences</b>	<b>Independently supervise a group of children</b>	<b>Medical Statement</b>	<b>30 hours of training every 2 years</b>	<b>SCR data base check, and criminal history check</b>	<b>References</b>	<b>Fill-in for Others on vacation</b>
<b>SUBS IN: ↓</b>								
<b>Substitutes in FDC</b>	YES	NO	YES	NO	NO	YES	NO	Under some circumstances see page 2 for detailed explanation
<b>Substitutes in GFDC</b>	YES	NO	YES	NO	NO	YES	NO	Under some circumstances see page 2 for detailed explanation
<b>Substitutes in family based program who works more than 15 days in year and become an assistant/alternate</b>	YES	YES	YES	YES	YES )may be prorated see page 2)	YES	YES	YES
<b>Alternate Provider (FDC)</b>	YES	YES	YES	YES	YES (may be prorated see page 2 )	YES	YES	YES
<b>Alternate Assistant (GFDC)</b>	YES-may Fill-in for provider or assistant	YES-may Fill-in for provider or assistant	YES	YES	YES (may be prorated see page 2)	YES	YES	YES
<b>Substitutes in Registered (small) DCC</b>	YES	NO	YES	NO	NO (see page 2 for details)	YES	NO	Under some circumstances see page 4 for detailed explanation
<b>Substitute "Staff" in DCC</b>	YES	YES	Only in an emergency *	YES	YES (may be prorated see page 5)	YES	YES	YES
<b>Substitute "Staff" in SACC</b>	YES	YES	Only in an emergency *	YES	YES (may be prorated see page 6)	YES	YES	YES

\*Unless they are at least 18 years of age and have the acceptable staff qualifications for the position in which they are substituting.

**Substitute caregivers and prorated training hours policy.**

**APPROVED BY:**

**[X]**



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11-16-04

Questions should be directed to the regional office in your area of the state:

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<b>Buffalo Regional Office</b>	<b>Carolyn Huffman, Manager</b>	<b>(716) 847-3828</b>
<b>Long Island Regional Office</b>	<b>Robin Beller, Manager</b>	<b>(631) 342-7100</b>
<b>New York City Bureau of Day Care</b>	<b>Joyce Cochran, Manager</b>	<b>(212) 676-2444</b>
<b>Rochester Regional Office</b>	<b>Ella Renckert, Manager</b>	<b>(585) 238-8531</b>
<b>Syracuse Regional Office</b>	<b>Margaret Mck Pavlos, Manager</b>	<b>(315) 423-1202</b>
<b>Yonkers Regional Office</b>	<b>Frances Franco-Montero, Manager</b>	<b>(914) 376-8810</b>