

**NYS Office of Children and Family Services  
Division of Child Care Services**

**Policy Statement**

**ID Number: 06-7**

**Topic: Criminal History Reviews and/or State Central Register Database Checks for Individuals Associated With Child Care Programs**

**Modalities Impacted: all modalities of care**

**Regulations: Title 18 of The New York State Codes, Rules and Regulations § 413.4 (a), 413.4(c), 413.4 (d)(3), 414.10(b)(1), 414.10(b)(3)(i), 414.13(b), 416.2(a)(8), 416.13 (c), 416.15(a)(11)(ii), 416.15(a)(19)(i), 417.2(a)(8), 417.13 (4)(b) and (c), 417.15(a)(11)(ii), 417.15(a)(19)(i), 418-1.10(b)(1), 418-1.10(b)(3)(i), 418-1.13(b), 418-2.15(a)(11), 418-2.2(a)(20)**

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**Effective: Immediately—Revised February 4, 2009**

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

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The purpose of this policy statement is to clarify which persons associated with day care programs are required to undergo a criminal history review and/or a database check through the State Central Register of Child Abuse and Maltreatment (SCR). The New York State Social Services Law § 390 and Title 18 of the New York State Codes of Rules and Regulations for day care programs are clear with respect to these issues concerning most individuals. There are, however, some individuals whose roles at a day care program call into question the program's responsibility to check their criminal history backgrounds and conduct an SCR database check. The following chart is intended to help guide decision-making.

<p><b>What is the person's role in the day care program?</b></p>	<p><b>Is the person paid a salary or receiving goods and services from the provider in exchange for their labor at the program?</b></p>	<p><b>Is a criminal history review required?</b></p> <p>[Whenever a criminal history background check is required a <i>Criminal Conviction Statement</i> and a <i>fingerprint card</i> must be completed. ]</p>	<p><b>Is a State Central Register database check required?</b></p>
<p><b>Employees: (any age)</b>            Are any persons who are paid a salary or receive goods and services directly from the day care program in exchange for their labor at the program. Examples: Providers, on-site providers, alternate providers, assistants, alternate assistants, substitutes, teachers, aides, janitors, kitchen staff, secretaries, directors, transportation staff, caretakers, security staff, bookkeepers, receptionists, medication administrators.</p>	<p>Yes</p>	<p>Yes 413.4 (a)</p>	<p>Yes 414.10(b)(1), 416.2(a)(8) 416.15(a)(11), 417.2(a)(8) 417.15(a)(11), 418-1.10(b)(1) 418-2.2(a)(20), 418-2.15(a)(11)</p>
<p><b>Applicants</b> for employment. For examples- see the positions listed above.</p>	<p>Yes, if hired</p>	<p>Yes 413.4 (d)(3)</p>	<p>Yes 414.10(b)(1), 416.15(a)(11) 417.15(a)(11), 418-1.10(b)(1) 418-2.15(a)(11)</p>
<p><b>Umbrella staff:</b>            These are employees who work for larger organizations that run multiple businesses including day care programs.</p>	<p>Yes, they are paid by the same organization that pays the day care staff.</p>	<p>No            Umbrella staff do not have any responsibilities on site at the child care program.</p>	<p>No            Umbrella staff do not have any responsibilities on site at the child care program.</p>
<p><b>Non-parent volunteers in DCC's and SACC's.</b>            (This category includes volunteers who are minors)</p>	<p>No</p>	<p>Only if they have the potential for regular and substantial contact with the day care children. 413.4(c)</p>	<p>Only if they are over the age of 18 and have the potential for regular <b>and</b> substantial contact with the day care children. 414.10(b)(1), 418-1.10(b)(1)</p>
<p><b>Parent volunteers in DCC's and SACC's.</b>            (Parents who may occasionally volunteer to assist in the classroom or on field trips.)</p>	<p>No</p>	<p>Only if they have the potential for regular and substantial contact with the day care children. 413.4(c)</p>	<p>Only if such parent will be counted in determining staff/child ratios and such parent will be left unsupervised with children on a regular basis. 414.13(b), 418-1.13(b)</p>

<b>Volunteer in GFDC or FDC</b> (parent and non-parent volunteer)	No	YES 413.4(a)	NO. Without an SCR data base check a volunteer cannot be left unsupervised with day care children and may not be counted in ratio
<b>Spouse</b> of the family day care provider who is living at a different address than the home where the daycare is operating and <u>does not</u> have any role in the day care operation.	No	No [May not have unsupervised contact with children in care and may not be counted in ratio]	No May not have unsupervised contact with children in care and may not be counted in ratio
<b>Contract Staff in DCC's and SACC's</b> Any person who offers a service to the children in care but is not paid a salary <u>directly</u> by the day care program such as: caterers, non-program transportation staff, non-program janitors, temporary staff (paid and employed through a "temp service"), karate teachers, dance teachers, art teacher, athletic instructor.	No	No [May not have unsupervised contact with children in care and may not be counted in ratio]	Yes, if the contract person provides goods or services to the center, and will have the potential for regular <b>and</b> substantial contact with the children who are cared for by the program. 414.10(b)(3)(i) 418-1.10(b)(3)(i)
<b>Student interns</b> working in DCC's and SACC's when a signed copy of a written agreement between the program and the learning institution is on file with OCFS.	No	No [May not have unsupervised contact with children in care and may not be counted in ratio]	Yes, if the contract person provides goods or services to the center, and will have the potential for regular <b>and</b> substantial contact with the children who are cared for by the program. 414.10(b)(3)(i) 418-1.10(b)(3)(i)
<b>Service providers</b> who have no contractual relationship with the day care center. These are persons working with individual children as part of an Individual Education Plan (IEP), such as speech teachers, occupational therapists, physical therapists, early intervention staff etc.	No	No [This category of service staff is certified by the Department of Health or the State Education Dept. and as such undergoes background checks as a condition of their hire. <u>The program may, however, opt to have the child in their sight during their work with the child.</u> These staff will not count in ratio. ]	No [This category of service staff is certified by the Department of Health or the State Education Department and as such undergoes background checks as a condition of their hire. <u>The program may, however, opt to have the child in their sight during their work with the child.</u> These staff will not count in ratio.]
<b>Family day care and group</b>	No	Yes	Yes

<b>family day care household members</b> (over 18 years of age)		413.4 (a)	416.2(a)(8), 416.15(a)(19)(i) 417.2(a)(8), 417.15(a)(19)(i)
<b>Family day care and group family day care household members</b> (under 18 years of age)	No	No [May not be left unsupervised with day care children.]	No [May not be left unsupervised with day care children.]
<b>Operator</b> (owner of day care)	Some may be paid a salary; some may not receive a salary.	Yes 413.4(a)	Yes 414.10(b)(1), 416.2(a)(8) 416.15(a)(11), 417.2(a)(8) 417.15(a)(11), 418-1.10(b)(1) 418-2.2(a)(20), 418-2.15(a)(11)
<b>A group of individuals that serves as the operator</b> (owners)	Some may be paid a salary, some may not receive a salary.	Yes Only the persons who has responsibility for oversight and direction of the program. 413.4(a)	Yes Only the persons who have the potential for regular <b>and</b> substantial contact with the day care children. 414.10(b)(1), 416.2(a)(8) 416.15(a)(11), 417.2(a)(8) 417.15(a)(11), 418-1.10(b)(1) 418-2.2(a)(20), 418-2.15(a)(11)
<b>Consultants:</b> Health care consultants and program consultants (who are not employees and don't work directly for the program at the program site)	No.	No [May not have unsupervised contact with children in care and may not be counted in ratio.]	Yes, if the consultant provides goods or services to the center, <b>and</b> will have the potential for regular <b>and</b> substantial contact with the children who are cared for by the program. 414.10(b)(3)(i) 418-1.10(b)(3)(i)
<b>Health Care consultants and program consultants</b> (do work for the program as employees)	Yes	Yes 413.4 (a)	Yes 414.10(b)(1), 416.2(a)(8) 416.15(a)(11), 417.2(a)(8) 417.15(a)(11), 418-1.10(b)(1) 418-2.2(a)(20), 418-2.15(a)(11)
<b>Medication Administrant</b> (not employed at the center ,school age child care,or the family based day care home)	No	Yes Only if they have the potential for regular and substantial contact with the day care children 413.4(c)	Yes, if the medication administrant provides goods or services to the center, <b>and</b> will have the potential for regular <b>and</b> substantial contact with the children who are cared for by the program. 414.10(b)(3)(i) 418-1.10(b)(3)(i)

### **Head start staff and Universal PreK Staff**

Head Start programs are licensed day care centers, and as such, the staff working as teachers, aides, transportation staff and in all other roles at the head start programs are included in the list above under employees. Head Start employees are evaluated in exactly the same manner as all other day care program staff. Universal PreK programs that operate within a licensed day care center are for all regulatory purposes considered a classroom in a day care center. The funding source (federal or state dollars) is not important in decision-making; the teachers and aides are paid a salary by the day care program and are employees of the center.

### **Utilization of Interns in Child Care Programs**

Many day care center and school age child care programs have developed working agreements with local Colleges, Universities, BOCES Programs and High Schools, which allow student interns to participate in and observe child care program activities.

Fingerprinting of interns is not required if **ALL** of the following conditions are met:

1. There is a signed copy of a written agreement between the program and the learning institution with a copy to your program licensor.
2. Interns are never left alone with children, and are always with a cleared program staff.
3. Interns are not counted into required staff/child ratios.
4. Interns are not paid or compensated by the provider, nor considered employees.

### **Potential for Regular and Substantial Contact with Day Care Children**

An important component of the phrase *the potential for regular and substantial contact with day care children* is the word “potential”. Its inclusion in this phrase alerts the provider to his or her responsibility to evaluate the anticipated role of every person associated with the day care program.

An evaluation of the person’s potential role should include the following areas:

- How often will the person be at the program and what contact will they have with children?
- Will the person be working directly with the children as a caretaker or performing tasks with no interaction with children?
- Is this person ever likely to be left alone with a child or a group of children?

Based on the answers to these questions a person's expected or *potential* role in the day care program can be assessed. In addition, the regularity and significance of the contact with the children must also be evaluated. The word "regular" means to be "expected as routine". The word substantial means "significant or considerable". The two words are connected by the word **and** which means both conditions must be present, in order to necessitate the SCR data base check or the criminal history review check. Some examples below further attempt to illustrate when none, one or both checks would be necessary:

#### **Example #1**

A delivery person comes to the program every day and delivers milk to the kitchen staff. Is he/she regularly there? Yes, every day. Does he/she have substantial contact with children? No, they have limited or no contact with children. Will they be required to submit fingerprints for a criminal history review and/or an SCR data base check? NO, because while he/she is a regular visitor to the center, he/she will not have substantial contact with children. Both conditions must be met before he/she is required to complete a criminal history review or an SCR database check.

#### **Example #2**

A board member of a day care center is at the program every Tuesday and Thursday and tutors a number of children with their math homework. Is he/she considered to be at the program on a regular basis? Yes, he/she is a regular visitor on all Tuesdays and Thursdays. Does he/she have substantial contact with children? Yes, he works one on one with children completing math problems. Is this person required to submit fingerprints for a criminal history review and be checked through the SCR database? Yes, because this person has both the potential for regular and substantial contact with children in care.

#### **Example # 3**

A child's grandparent is invited to come along and help with the supervision of children on a field trip scheduled for June 3. Is this person considered a regular visitor? No, they will be with the group for one day only. Does he/she have the potential for substantial contact with children? Yes, they will be assisting teachers in supervising the group. Is this person required to have a criminal history review and be checked through the SCR database? No, Both conditions must be present before an SCR database check and a criminal history review are required. **A grandparent who has not had a criminal history review and been checked through the SCR database must never be left unsupervised with day care children or counted in ratio.**

#### **Example # 4**

A family day care provider's neighbor volunteers to watch the children while the provider goes to a doctor's office. The neighbor will not be paid for her services and has only volunteered to supervise the children on this one occasion. The neighbor has not been subject to an SCR data base check and has not had a criminal history review. Is this permitted? This is not permitted. Any person who stands in for the provider, as

described above, is a substitute, not a volunteer. Substitutes must undergo criminal history reviews and SCR database checks. **Any person who has not had a criminal history review and been checked through the SCR database must never be left unsupervised with day care children.**

### **Assessing Roles is Critical**

Assessing a person's role in a day care program is also critical. Incorrectly designating a person as a volunteer (simply because they do not receive a salary or other compensation), cannot hide the fact that they are actually filling the role of an alternate assistant or substitute in a family based program. For example, all group family day care providers must have an assistant, if the provider incorrectly designates their assistant as a volunteer (because they are not paid) the requirements to conduct a criminal history review and SCR database check may not be completed even though the checks are necessary for the assistant position. Therefore, the critical element in decision-making is the accurate assessment of a person's role in the day care operation followed by the correct assignment of that person's role in applications, renewal packets and the Child Care Facility System (CCFS).

Day Care providers have an obligation to continually assess each staff member's role in the child care program. When there are changes to a staff member's job title, responsibilities, or contact with day care children, the provider must reassess the staff member's need to complete a criminal history review and an SCR database check. Providers must submit the appropriate paperwork requesting a criminal history review and an SCR database check to OCFS when determined by the assessment. These forms must be submitted within 5 days of the completed assessment. A provider may count in ratio a staff member whose clearances have been submitted to the Office but staff member may not be left unsupervised with the day care children until those clearances are completed and the staff member is approved to be left unsupervised with the day care children. Any person who has not been cleared for unsupervised contact with day care children after a criminal history review and SCR database check were completed must never be left unsupervised with the day care children.

Licensors/registrars, who in the course of their work, recognize that an individual associated with a day care program is being permitted unsupervised contact and/or counted in ratio when they have not completed the a criminal history review process and been approved and cleared through the SCR database, must bring this to the attention of the provider and take appropriate actions to stop this violation.

### **“Search and Retain” Versus a “Point In Time” Data Base Check**

Criminal history reports are “search and retain” reports. Search and retain means that the caretaker's fingerprints are continuously compared to the Department of Criminal Justice System databases. If an individual is arrested after the initial criminal history has been returned to the Office, the Office will be notified about the new arrest information.

State Central Register database checks are completed as a “point in time” record check. Point in time means that the results are based on whether that person is in the database on the day and time that the database is searched. No subsequent searches are completed unless a new request is submitted. It is possible for a person to receive an SCR clearance and then be reported for abuse or maltreatment that very same day without detection or notification to the requesting agency. While OCFS policy does not recommend routinely running providers names against the SCR database, it is expected under certain conditions. The Office policy is to have licensors/registrar's resubmit a caretaker's information to the SCR for an updated database check under the following conditions:

- A staff member at a day care center is promoted to the position of director.
- A day care center, school age child care program or OCFS's is made aware that a caretaker has been reported to the SCR, or
- A child care complaint indicates that a caretaker is the subject of a report, or
- A criminal history review contains information that the caretaker has been charged with a crime against a child.

If a licensor/registrar is requesting an updated SCR database check for any other reason (not included in the list above) the request must be approved by home office prior to submitting the request to the SCR. A request for a new database search *must* be made when any employee at a day care center (who may have already been cleared) is newly appointed to the position of day care director. When completed, the new director's database search result is mailed back to the regional office rather than the day care center. This allows regional office staff to review the information prior to accepting the employee for the director position. An inquiry regarding any other current employee may be made only once in any six month period.

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Approved [ X ]      Date February 4, 2009



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