

**New York State Office of Children and Family Services  
Division of Child Care Services**

**Policy Statement**

**ID Number: 08-4**

**Topic:** Community Based Organizations Operating Programs in School Buildings

**Modalities Impacted:** Day Care Centers and School-Age Child Care Programs

**Applicable Law and Regulations:** Social Services Law § 390(1)(a)(ii)(D); Title 18 of the New York State Codes of Rules and Regulations § 413.2(a)(2)(v)

**Contact:** Regional Office: <http://www.ocfs.state.ny.us/main/beccs/regionaloffices.asp>

**Effective:** Immediately: December 17, 2008

**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 when, or if, a community based organization (CBO), located in a public or private school, is required by New York State Social Services Law and New York State day care regulation to be licensed or registered with the Office of Children and Family Services (OCFS) as a day care program.

Section 390(1)(a)(ii)(D) of the Social Services Law and Title 18 of the New York State Codes of Rules and Regulations § 413.2(a)(2)(v) exempt from the definition of day care:

*...a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided.*

Based on the statute and regulation above, licensors/registrars who are evaluating a program against the definition of day care and its exemptions will need to know the:

- Ages of the children in care;
- The identity of the operator (school administrators or CBO);
- The location of the program; and
- The number of hours the program is in session.

The ages of the children in care, hours of operation, and the location of the program must be verified but are generally the more clear-cut characteristics of a program. Identifying which agency (school or CBO) is acting as the program's operator may prove to be the harder task, especially if oversight between the CBO and school is shared. The presumption in all

situations must be that, absent any verification that the school is acting as the operator (the entity with responsibility for oversight and direction of the program), the CBO is the legal entity or operator responsible for the oversight of the day care program. As such, the CBO, as the operator of the program, must be licensed or registered, as appropriate.

In the situations where the school is legally responsible for the operation of the program, the program is exempt from licensure or registration. In these situations, OCFS will require verification from the school that the school is legally responsible for the operation of the program. A letter from a school official, such as a principal or superintendent, which stipulates that the school has responsibility for the oversight and direction of the program, would be sufficient verification that the school is the operator of the program. The school's role as program operator does not mean that school officials must be performing in any day care roles, such as director or teacher; it means that the school personnel have authority over the CBO and may direct the day care program's policies and procedures.

**Decision-Making Examples:**

<b>Location of the program- school grounds* or off school grounds</b>	<b>Hours of operation</b>	<b>Who is the operator?</b>	<b>Ages- of- children</b>	<b>Required to be Licensed / Registered?</b>
On school grounds or off school grounds	9 AM -11 AM	CBO or school program	2-, 3- and 4- year-old children	Not required to be licensed or registered based on the hours of operation (under 3 hours).
On school grounds	9 AM – 5 PM	School district	3- and 4- year- olds	Not required to be licensed or registered based on the location of the program, school verified as the operator and all children over the age of three.
On school grounds	9 AM – 5 PM	CBO	3- and 4- year-olds	Required to be licensed or registered based on identification of the CBO as the operator and the hours of operation (3 or more hours).
On school grounds	9 AM – 3 PM	CBO or school program	A 2- year -old and 3- and 4- year- olds	Must be licensed or registered based on the age of the one child (one child under three-years-old) and the hours of the program (over three hours)
Off school grounds	9 AM – 3 PM	School or CBO	3- and 4- year-olds	Must be licensed or registered based on the program location.
On school grounds	2:30 PM to 5:30	School	5-, 6-, 7- and 8-year-olds	Not required to be licensed based on the school as operator, the location and ages of the children (all over 3).
On school grounds	2:30 PM- 5:30 PM	CBO	5-,6-,7- and 8- year-olds etc.	Must be licensed or registered based on CBO as operator.

*\* located on the same campus or premises where the elementary or secondary education is provided*

Licensing a Toddler Classroom Operating at a Site with Other Non-regulated Classrooms

***Occasionally, an applicant may apply for a license to operate a toddler classroom only, at a site that also serves older preschool children in other classrooms not regulated by OCFS.*** In evaluating this application, licensors/registrars must first verify that the classroom(s) for the *preschool children* in the program would not have to be licensed based on the following criteria:

- The preschool classrooms are located on the same campus or premises where the elementary or secondary education is provided; and
- The preschool classrooms are operated by the school; and
- All children enrolled in the preschool classrooms not seeking a license are three years of age or older.

If the above criteria are met for the preschool classrooms, the licensor/registrar must then determine whether the toddler classroom that is applying for a license is a separate program, or part of the larger program. If it's part of the larger program, then the entire program must be licensed. If the toddler classroom is operated as a separate and discrete program, then OCFS may license just the one classroom for the toddler children.

To determine if the toddler classroom is a separate program, the following criteria must be met:

- Staff are not shared between the preschool and toddler classrooms during their work schedules. Although a staff member may be employed by both programs, the hours scheduled in each classroom must be distinct. For example, if a staff person's scheduled hours are 8:00 AM to 4:00 PM in the toddler classroom, he/she may not be deployed to a preschool classroom during those hours for any reason; and
- Preschool and toddler children are not mixed at any time, nor do the toddlers share activities with preschool children in classrooms, recreation, outdoor play areas or dining rooms; and
- The toddler classroom must be administered by a person who has the minimal qualifications set in day care regulation to perform the functions of a day care director. If the director of the toddler room is also acting as an administrator to the unregulated preschool program, she/he must be available to attend to the toddler program functions as they arise. If directing the toddler program is less than a half-time position for the director, a designated substitute, who has a director's qualifications, must assume the director's responsibilities in his/her absence.

If any of the above criteria are not met, the programs are not considered separate and distinct and the entire program must be licensed as a child day care program.

If additional concerns are noted or questions arise concerning matters discussed in this policy statement, licensors/registrars must seek advice from their supervisor, manager, or home office support staff.

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Approved [ X ]

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