

**Division of Child Care Services
Policy Statement**

ID NUMBER: 07-1

TOPIC: Egress Issues in Family and Group Family Day Care Programs

MODALITIES IMPACTED: Family Day Care and Group Family Day Care

APPLICABLE REGULATIONS: Title 18 of the New York State Code of Rules & Regulations (NYCRR) § 416.4(f) and 417.4(f)

CONTACT: Regional Offices <http://www.ocfs.state.ny.us/main/beccs/regionaloffices.asp>

EFFECTIVE: Immediately **Revision Date:** February 4, 2009

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 New York State regulations as to what constitutes acceptable types of exits and exiting procedures – also referred to as “egress” – for family day care and group family day care programs.

In the case of a fire or other emergency, when it is necessary to evacuate the premises, people have to be able to get out quickly and safely. The available exits must allow for safe and efficient egress and the occupants of the building must be able to get far enough away from it that they are out of danger.

This policy statement is the result of a collaborative effort between the New York State Office of Children and Family Services and the New York City Fire Department. The New York City Fire Department reviewed the material contained in this policy and provided additional expertise where applicable.

Included in this policy:

- Part 1 General Egress Issues
- Part 2 Windows Permitted as Means of Egress
- Part 3 Use of Fire Escapes in Family and Group Family Day Care Homes
- Part 4 Path of Egress
- Part 5 Exemption Criteria for Existing Providers

Important Note: Although this policy statement will cover the technical aspects of approving fire escapes and other appropriate means of egress, the provider must be able to demonstrate the physical ability to carry out the plan for emergency evacuation that she/he is asking OCFS to approve. The plan is not acceptable if the provider is unable to get the children out of the building in a safe and timely manner, regardless of its technical correctness. When proposing a plan for emergency evacuation, providers must consider the ages of the children, their mobility, special needs considerations, and the provider’s physical abilities and understanding of the plan.

All the information contained in this policy must be taken into consideration when evaluating plans for emergency evacuation. Do not read information in this policy statement in isolation.

Part 1: General Egress Issues in Family and Group Family Residences

According to New York State regulations, family and group family day care providers may only care for children on floors in the home that have readily accessible alternate *means of egress* which are remote from each other. [18 NYCRR 416.4(f) and 417.4(f)]

- According to the Fire Code of New York State, **means of egress components are limited to doors, gates, stairways, ramps or exterior balconies.** [Fire Code of New York State Section 1003.3, and New York City Building Code Title 27, subchapter 2 §200.2]
- The term “remote” **pertains to the space between one means of egress and another.** It is defined in the Fire Code of New York State, Section 1004.2.2. The definition offers a formula for assessing appropriate distance between egress exits when two exit doors are required for non-residential spaces, such as businesses (non-residential), boiler and furnace rooms, and public assembly spaces. Specifically:

The exit doors must be placed at a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the building or “area to be served” measured in a straight line between exit doors. [Fire Code of New York State, Section 1004.2.2.1] Although this formula does not apply to residences, as a matter of policy, OCFS will use it as a guideline for assessing whether a family or group family day care home's exits are remote from one another.

Accordingly, in order to determine whether two exits are remote from each other, the “area to be served,” which must be measured diagonally, is the diagonal measurement of the provider’s entire apartment space or the entire floor or level of the home being used for day care services.

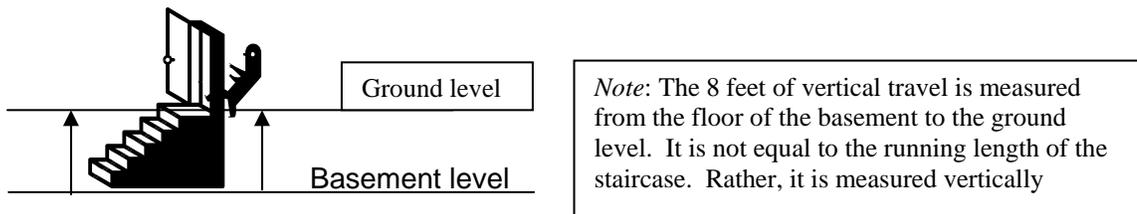
Family and group family day care regulations provide for the following allowances in buildings that are single-family residences, two-family or attached row house construction types:

- a. The **first floor** of a family day care or group family day care must have two means of egress. Family and group family day care providers and applicants who do not have two first-floor remote exit doors may seek approval to operate on the first floor with one means of egress (e.g., exit door) and one emergency escape and rescue opening (e.g., a window). OCFS will permit a first-floor family or group family day care program to use a window as a means of egress if the window is at least 24” by 24” (minimum net clear opening height dimension of at least 24 inches and a minimum net clear width dimension of at least 24 inches).
- b. When care is provided primarily on the **first floor** of a family or group family day care home and the **second floor is used on a limited basis**, such as for napping purposes or bathroom use, one means of egress from the second floor must be either an interior stairway with no intervening rooms or obstructions which leads to an exterior door at ground level, or an exterior stairway which leads directly to the ground. The second exit may be a window which has the minimum net clear opening height dimension of at least 24 inches and a minimum net clear width dimension of at least 24 inches and is an adequate size through which all children and adults can be evacuated. (Windows, as well as window wells, steps, and ladders are types of “emergency escape and rescue openings,” according to the Fire Code of New York State, Section 1009.)
- c. When care is provided primarily on the **second floor** of a family or group family day care home, both means of egress from the second floor must be stairways. One stairway must be an interior stairway with no intervening rooms or obstructions which leads to an exterior door at ground level, and the other stairway must be exterior to the house and lead directly to the ground. Day care regulations, the Residential Code of New York State, and the New York City Building Code do not

require that exterior decks and staircases on detached one- and two-family dwellings and townhouses, which are not more than three stories high and have alternate means of egress, be made of fireproof materials. Therefore, wooden decks and staircases are permitted if they meet construction design standards as required in the residential code.

- d. A **Basement** is the portion of a building that is partly or completely below grade level. [Residential Code of New York State R202 and New York City Building Code Title 27, subchapter 2, § 200.2] This includes, in a **raised ranch**- style home, the area of the building that is partially below grade and is located down a few stairs inside the main entrance of the home. (The first floor in a raised ranch is the floor that is located up a few stairs inside the main entrance.) A **split-level** style home may have multiple levels that are connected by short staircases. The basement in a split-level style home would be the lowest level of the home and the level that has a concrete floor base. **Slab/Levit homes** do not have basements. The first floor of a slab-house sits right on a concrete base.

Where children are located below ground level, one means of egress from the below-ground level area must be either an interior stairway with no intervening rooms or obstructions which leads to an exterior door at ground level, or an exterior stairway which leads directly up to ground level. The "vertical travel" to ground level may not exceed eight feet. "Vertical travel" is NOT equal to the distance that the person travels from the bottom to the top of the staircase. Because this staircase will be at an appropriate angle for ease of climbing, this measurement will be greater than the distance from the floor of the lower level to the floor at ground level. Rather, "vertical travel" is the distance from the floor of the lower level to ground level (see diagram below). The second emergency exit may be a window that has the minimum net clear opening height dimension of at least 24 inches and a minimum net clear width dimension of at least 24 inches, and an adequate size through which all children and adults can be evacuated. Providers must be able to demonstrate the physical ability of themselves and their staff to carry out the proposed plan for emergency evacuation.



- e. **Brownstones** typically do not have a floor directly at grade level. The front of a brownstone includes two short staircases. One of the staircases goes down to a story that is partially below grade level and the other staircase goes up to a story that is slightly above grade level. While it seems logical to assess the floor slightly below grade as the basement, some of these "basements" serve as separate living units. In regards to a brownstone, OCFS considers each of the floors as distinct apartment dwellings requiring two means of egress (doors out). If one party controls the use of both floors and there is unfettered access between these floors within the home, the apartment located down the set of stairs will be considered a basement and the apartment above will be considered the first floor.

Part 2: Windows Permitted as Means of Egress

Current day care regulations require that windows used for emergency escape be at least 24" X 24" (minimum net clear opening height dimension of at least 24 inches and a minimum net clear width dimension of at least 24 inches). This policy statement remains consistent with the current 24" X 24" regulatory requirement both for applicants and existing providers.

a. First-Floor Window Exits

As already noted, family and group family day care providers and applicants who do not have two first-floor remote exit doors may seek approval to operate on the first floor with one means of egress (exit door) and one emergency escape and rescue opening (a window consistent with regulation). Providers or applicants must be able to demonstrate that their plan for emergency evacuation is both physically possible and can be carried out using the staff the program consistently has in its employ. Providers may not include a non-employee (such as a neighbor, relative, friend) in their plan for emergency evacuation because that person may not be available when an emergency occurs.

Family day care providers who run programs alone must be able to demonstrate that they are physically able to get all the children out of the window to safety without help from another adult. In evaluating the ability of providers to evacuate children without assistance, the licensor/registrar or fire safety representative must evaluate the providers' ability to actively supervise all the children in their care during the evacuation. The age, physical abilities, and stress children are under during an emergency are of critical importance in determining the suitability of any plan for emergency evacuation.

Before a licensor/registrar or fire safety representative can approve a plan for emergency evacuation, providers must physically demonstrate their ability to lower day care children from the window to the ground (or hand children to an approved caretaker who has already exited) without help from a non-employee. Of particular concern will be the provider's ability to supervise and maintain control over the location and safety of all the children during this drill. Children may **not** be dropped to the ground; they must be evacuated in such a way that they can be placed on the ground. When the height from the window to the ground outside makes placing the children to the ground difficult or unsafe, a permanent attached stairway from the window to the ground is needed. A similar permanent attached set of steps may be necessary inside if the height from the floor to the window opening cannot be managed by the children in care. Supervision is basic to the prevention of harm. The provider's plan must be one in which an adult caregiver is able to see, direct, and physically assist the children at all times.

If family day care providers stipulate that they need assistance in getting the children out of the building, or they fail to demonstrate that they can do it alone, they must have a second person employed as a permanent staff member to help with this responsibility. This additional person would then be permanently included in ratio and must be present during program operation. Since group family day care providers may also operate their programs on their own when their numbers are below seven, they too are subject to the same test and resulting requirement.

b. Below-Ground Windows and Fire Escape Windows

A window may also be used as an approved escape route when a day care area is located below ground level and the window meets the measurement requirements in the regulations. In addition, windows opening onto fire escapes are permitted to serve as an egress route as long as the window conforms to the standard of the local building code under which it was constructed [New York State Fire Code and Property Maintenance Code Section 1010], and meets the New York State day care regulations as set forth in 18 NYCRR Sections 416.4 and 417.4.

c. Special Circumstance Concerning Occasional-Use Windows

In situations where grade level is a floor difference from one side of a building to another and a provider is using the first floor for the day care program and requests to use the second floor for occasional use (such as bathroom or napping) OCFS will work closely with the provider to designate which window on the top floor would serve as the best escape route. In these situations, the plan for emergency evacuation must include the following:

- Use of a window on the upper floor that is located on the side of the house that is closest to grade; **and**,
- Use of a window that fits the size requirements required by regulation; **and**,
- The plan must be balanced with the ease at which the child can get to the window from the area on the upper floor being used for occasional use.

Providers may not allow children to be located two or more floors above the program location, even for occasional use purposes.

d. Special Circumstances relative to Duplex Houses

Duplex houses are residential structures that are divided into two living units. The living units are either side-by-side or top floor and bottom floor living units. When the living units are divided into top and bottom floors, the top floor may be used for day care if the top unit has two means of egress. Both means of egress must be consistent with regulation. Family and group family day care regulations contain the following directive: ***When care is provided primarily on the second floor of a family day care home, both means of egress from the second floor must be stairways. One stairway must be an interior stairway with no intervening rooms or obstructions which leads to an exterior door at ground level, and the other stairway must be exterior to the house and lead directly to the ground.*** [§ 416.4 (f)(2) and § 417.4(f)(2)]

Exception Criteria for Internal Stairways in Duplex Homes:

OCFS will approve waiver requests in situations where an applicant or existing provider of day care operates on the second floor of a duplex building that has two internal stairways and no external stairway provided that:

- Both means of egress are doors with stairways that are external to the living units and lead down to grade; **and**
- It can be established that the two internal stairways are located in separate fire envelopes, which are constructed of materials designed to restrict the spread of fire into the stairway opening; **and**
- Working smoke detectors are installed at the top of each stair landing; **and**
- First-floor doors are to be kept closed to prevent the spread of fire and smoke.

Part 3: The Use of Fire Escapes in Family and Group Family Day Care Homes

The Division of Child Care Services staff and registrars must consult with their fire safety representative (or a designated agent of OCFS) whenever an applicant or existing family or group family day care provider indicates that the proposed program site or renewal site is located in a multiple dwelling unit and a fire escape will be used as a secondary means of egress. When considering such an application/renewal, the fire safety representative and licenser/registrar will apply the guidelines set forth in this policy statement to evaluate the appropriateness of using the identified fire escape for emergency evacuation.

On-site Inspections: The use of a fire escape as a secondary means of egress from a family or group family day care home which is located in a multiple dwelling may be approved only after an on-site inspection is conducted by a fire safety representative (or designated agent of OCFS). The fire safety representative (or agent) will determine the general safety of the fire escape. Licensed or registered programs that do not meet the specifications of this policy must be given the opportunity to demonstrate an alternate second means of egress prior to recommending a denial of a license or registration.

Fire escape approval: In order for a fire escape to meet approval as one means of egress from a family or group family day care home which is located in a multiple dwelling unit (buildings containing more than three dwelling units), the minimum safety considerations listed below must be met.

- a. The building must be classified as Type I, II or III Construction as per the Building Code of New York State. Types I, II and III are those types of construction in which the building elements are made of noncombustible materials (as rated in the New York State Building code Section 703.4 and the New York City Building Code Title 27 subchapter 3 § C26-313.1) or are of a type of construction in which the exterior walls are of noncombustible materials and the interior building elements are of any materials permitted by NYS Building Code for Type III Construction. Type I construction is what is informally referred to as “fireproof” construction.
- b. The fire escape must be accessible to the fire department through portable, aerial or platform ladders. Fire escapes are not approved for above fourth floor use (fifth floor for existing providers - see Fire Escape Disapprovals on page X.)
- c. No more than one family day care program or group family day care program, per floor, may use the same fire escape landing to exit from the floor during an emergency evacuation.
- d. The fire escape must be constructed with noncombustible materials.
- e. The fire escape must be properly maintained and free of rust. When present, rust must be removed and the fire escape must be painted with lead free paint.
- f. Support members and braces must be checked by a designated agent of OCFS (such as a licensor, registrar, or fire safety representative) for any visible structural problems, such as missing or broken parts. If OCFS identifies a structural problem, repairs must be made before an approval may be issued.
- g. Egress shall not be restricted by anything on the fire escape.
- h. A fire escape that is attached to the side of a building (including the front of the building) where the primary means of egress is located may be considered to be an acceptable secondary means of egress if it is constructed and maintained in accordance with the requirements of this section, specifically (a) through (g).
- i. When a corrective action is needed prior to approval of a fire escape as one means of egress from a family or group family day care home, the provider must maintain documentation of the completion of such action. Acceptable documentation showing that the corrective action has been taken may be a letter from the superintendent, building management, or owners of the building stating that corrections have been made. This documentation must be submitted to the licensor/registrar and will be maintained on file. Where there is no documentation available to the provider, a site visit by a designated agent of OCFS must be conducted to verify that corrections have been made. The agent of OCFS must record the findings or the provider’s submission of documentation in CCFS as part of the corrective action plan.
- j. Entry to an adjacent building or structure, as a plan for emergency evacuation may only be permitted when the entry route is through the use of an architectural sky-bridge that connects the two structures, such as the one pictured below:



Illustration 1. A sky-bridge is an enclosed horizontal passageway spanning from one building to another building that allows persons to walk from one building to a neighboring building without exiting either building.

Fire Escapes: Additional Considerations

a. Type I Structures (Fireproof)

Residents of fireproof buildings are instructed to remain in their apartments when fires occur outside their living unit, due to the refuge offered by the non-combustible construction of each unit. Thus, sheltering in place becomes an alternative to having a second means of egress.

While the majority of fireproof buildings do have two internal staircases to the ground, smaller fireproof structures (six floors) may have been constructed with only one stairway to ground level. OCFS will permit day care programs to operate on any floor in a fireproof building regardless of whether they have one or two staircases to ground level.

b. Two Internal Stairways

Limitations that pertain specifically to the floor on which a provider may operate a day care program **do not apply** to family-based providers living in multiple-dwelling buildings if the building has at least two alternate means of egress comprising two internal stairways which lead down to a bottom floor, and the bottom floor has two remote doors. Providers with homes in these structures may operate day care programs on any floor. This policy should not be interpreted as changing this allowance.

Fire Escape Disapprovals – A family day care or group family day care provider/applicant whose plan for emergency evacuation includes the use of a fire escape as one means of egress from a family or group family day care home located in a multiple dwelling cannot be approved if all of the conditions listed for approval (above) are not met and satisfied. In addition, the unsafe conditions listed below may lead to disapproval if revealed during an inspection.

- a) OCFS will not approve a plan for emergency evacuation that includes a travel route to a rooftop as a means of escape. **Note: Under no circumstances should this be interpreted by a provider to mean that they can't go to a roof if directed to do so by emergency personnel, in an actual emergency.**
- b) No new day care site located above the fourth floor will be approved where a fire escape will be used as a second means of egress. Existing providers who are located on the fifth floor and who use a fire escape as a second means of egress will be permitted to continue operation and plans will be developed on a case-by-case basis to provide for safe evacuation.
- c) Existing providers on the sixth floor or above who currently use a fire escape as a second means of egress will no longer be permitted to use a fire escape as a second means of egress.
- d) Fire escapes where the drop ladder (when fully extended) does not reach the ground are unacceptable.
- e) A wood frame building is not an acceptable residence for which to approve a fire escape as one means of egress. (**Pre-existing providers**, licensed or registered to operate in wood frame houses with fire escapes, will be re-assessed on a case-by-case basis.)

Part 5: Path of Egress

A **Path of Egress** is the safe, continuous and unobstructed route traveled from any point in a building or facility to a public way or an approved distance from the building and its outside structures. A **Public Way** is a street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width of not less than 10 feet and a clear height of not less than 10 feet (3048mm). [The New York State Fire Code and Property

Maintenance Code Section 1002.]

In addition to providing a safe means of egress (fire escape, egress door, or egress window), providers and children must be able to evacuate their residence and get a safe distance away from the site of the emergency. The following are approvable paths of egress:

- Direct access to a public way, or
- Access to a public way through a neighbor's property which includes:
 - Written permission from the neighbor to take the children through the neighboring property that has unfettered access to a public way; **and**,
 - The path of egress to the adjoining property and the public way must be unobstructed by a locked fence or any other structure or physical barrier that is not easily or safely navigated by small children; **and**
 - The provider must have a cell phone which is kept charged and easily gathered in case of an emergency evacuation; **and**,
 - Practice evacuation drills, using this second means of egress, must be held at least three times a year.

In every public dwelling, **Exit Passageways** used as a means of egress shall be kept free and clear of encumbrances at all times in order that free, safe and unobstructed egress to the public way may be maintained at all times of the day and night. Doors and gates at the ends of passageways are prohibited unless that door or gate is readily openable at all times from the side from which egress is to be made and shall not require a key to open. Doors and gates with keys are prohibited. Exit passageways must have a minimum vertical height of seven feet and a minimum width of three feet. [Article 5, New York City Administrative Code Section 27-370, and RCNY Title 28, Section 25-221]

When direct access to a public way is not possible, the following will be permitted:

- Applicants and providers **located in buildings containing more than three dwelling units**, who do not have access to a public way but can get to a safe distance away that is at least the further of fifty (50) feet or the height of the building from the closest point of the provider's residence (including any attached structures) may be approved as having a safe path of egress. If the provider's building is equipped with a full sprinkler system, the 50-foot measurement can be reduced to 25 feet or ½ the height of the building measurement, whichever is further.
- **Applicants and providers located in a one-, two-, or three-family residence**, who do not have direct access to a public way, but can establish that the path of egress extends to a place that is at least the further of thirty (30) feet, or the height of the building, from the closest point of the provider's residence (including any attached structures), may be approved as having a safe path of egress. If the provider's building is equipped with a full sprinkler system, the 30-foot measurement can be reduced to 25 feet or ½ the height of the building measurement, whichever is further.

Measuring the Path of Egress

The distance away from the building must be measured in a straight line -- measured from the provider and children to the closest point of the building. For some providers, the closest point of the building may not be the door exited; it may be the end of the building or an attached porch or structure. Furthermore, all the buildings passed on the route away from the provider's building must be made of noncombustible exterior materials. If the provider is taking a route straight back and will not pass buildings to the right or left, the composition of the neighboring buildings is not an issue.

Licensors/registrars and fire safety representatives must review all plans for emergency /evacuation at the time of application and renewal or at any time a change is made to the emergency evacuation plan. The entire path

of egress, as submitted by the provider, must be examined by the licensor/registrant and fire safety representatives. This includes the layout of the interior space which leads to both exits, the remoteness of the exits, the appropriateness of the egress portal (its size and conformity to this policy), the number of children in care, ages of children, number of staff, the direct supervision needs of children involved in an evacuation and their path to safety once outside the building. Providers are responsible to report to the licensor/registrant any changes that would affect the appropriateness of the plan for emergency evacuation. This would include, but not be limited to, significant changes in the physical needs of the children being served or changes to any of the components of egress or the path of egress such as barriers that could impede evacuation. [416.15(a)(12) and 417.15(a)(12)]

Path of Egress Disapprovals – Family or group family day care applicants and providers will be denied a license/registration if:

- a) One of their two required means of egress leads to an enclosed back yard, courtyard or alleyway that has no access to a public way and does not meet the path of egress approval criteria listed above.
- b) An escape route includes a path where the provider re-enters their residence or any other nearby building or residence.
- c) The path of egress is obstructed by a locked fence or some other structure or physical barrier that is not easily or safely navigated by small children.
- d) A first floor used as the primary location for the day care program does not have two acceptable means of egress.
- e) A second floor, approved for occasional use only (napping or bathroom use), does not have a window that meets the measurement requirements contained in regulation.

Part 5: Exemption Criteria for Existing Providers:

The exemption criteria detailed in this policy can only be applied to those providers who are already licensed or registered. In addition, group family day care providers who are eligible for this exemption status and are applying for a change in modality to become family day care will continue to be covered by this exemption. Family day care providers, however, who wish to expand their programs to group family day care, are not covered by this exemption because increasing the numbers of children increases the risk. Applicants applying to use the same space as a former licensed or registered provider who may have been given the exemption are not eligible to continue using this exemption. All new applicants for family and group family day care must adhere to the basic standards.

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