

**THE DIVISION OF CHILD CARE SERVICES
POLICY STATEMENT
ID NUMBER 07-2**

TOPIC: Clearances and File Maintenance for Staff Not Employed by but Working in Day Care Centers. (Preschool Special Education and Early Intervention staff)

MODALITIES IMPACTED: Day Care Centers

APPLICABLE REGULATIONS: Title 18 of the New York State Code of Rules and Regulations (NYCRR) § 413.4, 418-1.2(a)(19), 418-1.10(b)(1), 418-1.10(b)(2), 418-1.14(a), 418-1.15(c)(11).

CONTACT: The Division of Child Care Services

EFFECTIVE: Immediately June 2007

THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY AND CANCELS ALL PREVIOUS MEMOS OR STATEMENTS ON THIS TOPIC.

The Office of Children and Family Services (OCFS) recognizes and supports the collaborative efforts of day care centers that opt to merge services with preschool special education programs and early intervention (EI) programs. Most often these collaborations offer services to preschool children with and without disabilities in integrated classroom settings. *Studies have found the following benefits of inclusive child care: Children with special needs develop increased social skills and self esteem; families of children with special needs gain social support and develop more positive attitudes about their child; children and families without special needs become more understanding and accepting of differences and disabilities; caregivers learn from working with children, families, and service providers and develop skills in individualizing care for all children.* (National Health and Safety Standards: Guidelines for Out-of-Home Child Care Programs p.317)

An emerging strategy used by day care centers to promote maximum inclusion benefits to preschool children with special needs and others is to contract with either preschool special education programs or EI programs to staff day care center classrooms with special education teachers. The goal of inclusion is often accomplished and supported through the use of innovative scheduling, programming and staffing. For clarity, this policy statement will refer to the staffs who are employed by the preschool special education or EI programs as *collaborative staff*. The preschool special education program and EI program will be referred to as the *collaborative agency*. In addition, the term *contract* will refer to a formal contract *or* an informal agreement between the day care center and the preschool special education or an EI program to combine services in a day center. This policy is limited to preschool special education staff and EI staff who work in integrated classrooms and who will count in establishing whether or not a program is in ratio.

In an effort to support the Federal and State goal to promote both inclusive child care and encourage collaboration between agencies serving children, OCFS is announcing through this policy an approved method by which a day care center may staff their classrooms with collaborative employees without duplicating clearance efforts. Recently, OCFS discovered many duplicative efforts on the part of both the collaborative agencies and

day care centers to complete background checks and store employee records. OCFS respects both the role and responsibility of the collaborative agency to hire qualified staff and maintain employee files and the day care center's regulatory obligation to perform SCR database checks and criminal history reviews for **all persons** working in the day care center and to keep personnel files on those employees. The intent of this policy is to satisfy the responsibilities of both agencies without duplicating efforts.

OCFS, collaborative agencies and day care centers share the goal and responsibility of keeping children safe. To this end, SCR database checks and criminal history record checks help to identify persons who should be prohibited from working with children. In meeting this goal, OCFS outlines in this policy the circumstances under which the collaborative agency can conduct both of these clearance processes and maintain the resulting records in their program files while fulfilling the day care center's obligation to conduct these same reviews. OCFS encourages day care centers and the collaborative agencies to follow the recommendations in this policy as it will streamline the background record check process and eliminate duplication.

The following are descriptions of the types of programs that typically collaborate with day care centers to staff integrated classrooms and the definition of a preschool student with a disability.

Descriptions of Terms

[As Defined by the New York State Office of Vocational and Educational Services for Individuals with Disabilities (VESID)]

Preschool special education programs are specially designed individualized or group instruction or special services or programs to meet the unique needs of students with disabilities.

Preschool student with a disability is a preschool child as defined in section 4410(1)(i) of Education Law who is eligible to receive preschool programs and services, is not entitled to attend the public schools of the school district of residence pursuant to section 3202 of the Education Law and who, because of mental, physical, or emotional reasons, has been identified as having a disability and can receive appropriate educational opportunities from special programs and services approved by the department. Eligibility as a preschool student with a disability shall be based on the results of an individual evaluation which is provided in the student's native language, not dependent on a single procedure, and administered by a multidisciplinary team in accordance with all other requirements as described in section 200.4 (b) (1) through (5) of the Regulations of the Commissioner of Education.

The New York State Early Intervention Program (EIP) is part of the national Early Intervention Program for infants and toddlers with disabilities and their families. First created by Congress in 1986 under the Individuals with Disabilities Education Act (IDEA), the EIP is administered by the New York State Department of Health through the Bureau of Early Intervention. In New York State, the Early Intervention Program is established in Article 25 of the Public Health Law and has been in effect since July 1, 1993.

SCR Database Checks

Collaborative agencies may submit, evaluate and retain files of SCR database checks for all their collaborative staff working in day care centers not operated by the collaborative agency. The collaborative agency will use their state assigned ID to conduct the SCR database check. The day care center that contracts with the collaborative agency will not be obligated to submit duplicative SCR database checks for the collaborative employees. OCFS recognizes the collaborative agency's SCR database check as meeting the day care center's obligations to perform this background check pursuant to Social Services Law and day care center regulations. Collaborative agencies must complete a new SCR database check on their collaborative employees once each year.

Any staff member who has not completed the SCR database check process may not be left alone with day care children. The day care center director must be notified by the collaborative agency when that person can be left alone with children or if the person will be terminated as an employee.

Criminal History Reviews/ Fingerprinting and Criminal History Attestations

Social Services Law 390-b requires that criminal history reviews for day care center employees be conducted *by the operator of day care center*. As such, most collaborative agencies (as defined above) will be **unable** to submit fingerprint cards for their collaborative staff working in day care centers because they are not the operator of the day care center. In these circumstances the operator of the day care center at which they work will perform this task and maintain these records. If, however, the collaborative agency is operating its *own* licensed day care center **and the collaborative staff is working (in any role) at the collaborative agency day care center** they may complete a criminal history review for this person. This collaborative staff will complete the fingerprint card and fill in the name the collaborative agency and its CCFS number where indicated. The staff person then attaches a page to the fingerprint card listing the names of all other day care centers for which they will be working. They may, instead, complete a waiver form (OCFS-4659) after the criminal history review is completed. The waiver form alerts OCFS that the collaborative staff must be associated with multiple sites. OCFS will add the names of the collaborative staff on the waiver form to the list of employees working at the other day care center(s). The collaborative staff must remain associated with the day care center operated by the collaborative agency for as long as they hold a position in one of the collaborative agencies day care centers. This is necessary in the event that OCFS needs to contact the collaborative agency when/if the employee is identified through the search and retain services of the NYS Division of Criminal Justice Services. Safety assessments will be set up through the collaborative agency. Whichever agency conducts the employee fingerprinting process should also have the collaborative staff complete the employee criminal history attestation form.

Training Records

The Collaborative agency may collect and store the training records for their collaborative staff. Each collaborative staff person must complete a minimum of thirty

(30) hours of training every two years covering the nine training topics listed in 18 NYCRR § 418-1.14(a) of the day care center regulations. Verification of training (certificates, training rosters, credentials, transcripts, and other acceptable documentation) must be kept with the employee’s personnel file.

Storage of Employee Records

Due to confidentiality restrictions, the collaborative agency must be the storage site for any SCR database checks, criminal history background record checks or medical statements *initiated by the collaborative agency*. The day care center must also store any SCR database checks, criminal history background record checks or medical statements *initiated by the day care center*. All other employee records such as training records, staff qualifications, references, employment history may be kept at either program but it is recommended that whatever records can be stored together be stored together. Records stored with the collaborative agency will not need to be duplicated by the day care center and visa versa. Day care centers, however, must have an agreement in place with the collaborative agency to have these records available for review by OCFS when called upon to do so. The record review may be conducted at either or each site.

The chart below illustrates how a collaborative agency and day care center can streamline their efforts and store documents using this policy.

| Day care center submits and stores: | Collaborative agency submits and stores: |
|--|---|
| Criminal History Reviews (if the collaborative agency operates their own DCC <i>and the collaborative staff has a role in that center</i> , the collaborative agency may choose to obtain, submit and store info on collaborative staff) | SCR database check |
| | Medical statement |
| | Training records |
| | Staff qualifications |
| | Staff references |
| | Employment history |

Confidentiality

SCR documents, criminal history records and medical records are confidential. Agencies such as day care centers and collaborative agencies are not permitted by Law, or through any State policy, to share these records without written agreement from the individual employee who is the subject of the records. This restriction must be observed at all times. Because the two collaborating agencies will not be sharing confidential files, it is crucial that they each commit to the same guidelines that will govern their decisions about the appropriateness of employees. Once the guidelines are agreed to and in place, the day care center and collaborative agencies can be confident that they will be hiring staff using the same guiding principles. These guidelines must be consistent with OCFS day care regulations. OCFS requires that the guidelines for hiring staff be part of a memorandum of understanding between the two agencies, as described below.

Memorandum of Agreement

Collaborative agencies working with day care centers in the collaborative programs must develop a written strategy or memorandum of understanding (MOU) that will outline the tasks and responsibilities assigned to each agency. The MOU must outline how the two organizations will work together to make sure background record checks, attestations, mandatory training and employee files meet regulatory standards and are maintained over time. The MOU must be available to OCFS upon demand. The MOU should include but not be limited to:

- A statement identifying the agency that will initiate background record checks; This includes the SCR database check and any resulting evaluations, and criminal history reviews;
- An agreement for the collaborative agency that conducts the SCR database check on collaborative employees to repeat the database check *once every year*;
- A shared standard and methodology by which SCR histories associated with employees are examined to determine eligibility for employment;
- A statement indicating the procedures followed for criminal history reviews;
- An agreement to insure compliance with day care regulation;
- The location of where personnel records will be stored; and
- A plan to allow OCFS access to day care center employee personnel files

OCFS will continue to monitor for regulatory compliance through its licensed day care programs. Day care centers entering into MOU's with collaborative programs must create adequate controls to monitor for the regulatory compliance of their collaborative partner, much like a day care center would do with food and maintenance contractors.

Final note

The above procedures *are permitted and encouraged* by OCFS for day care centers that have preschool special education and EI program staff working in the day care center; this procedure is not mandated. Any day care center that opts to complete the SCR database check and/or the criminal history review and maintain employee files may continue to do so independently.



Approved Date: 8-28-07

Suzanne Zafonte Sennett