



Office of Children and Family Services

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DIVISION OF CHILD CARE SERVICES POLICY STATEMENT

ID NUMBER: 20-02

TOPIC: When Does Remote Learning Require a Child Care License or Registration?

MODALITIES IMPACTED: Child Day Care Centers, Small Day Care Centers, School-Age Child Care, Family Day Care Homes, Group Family Day Care Homes

APPLICABLE REGULATIONS: Title 18 of the New York State Code of Rules and Regulations §: 413.2(a)

CONTACT: DCCS Regional Offices
<http://ocfs.ny.gov/main/childcare/regionaloffices.asp>

EFFECTIVE: IMMEDIATELY

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

The purpose of this policy statement is to provide guidance on whether a remote learning configuration is exempt from New York State Office of Children and Family Services child care licensure or registration. As used throughout this Policy, "remote learning" means remote, virtual, or online schoolwork or instruction while in a child care setting.

Background

In accordance with Social Services Law 390(1)(a)(i) and Section 413.2(a) of OCFS regulations, child day care means regular care for a child provided away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child.

Child day care does not refer to care provided in a program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation; or a kindergarten, pre-kindergarten or nursery school for children three years of age or older, or a program for school-age children conducted during non-school hours, 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 such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

On August 19, 2020, OCFS promulgated emergency regulations allowing licensed, registered, and enrolled legally exempt providers to provide child care to school-age children during remote learning, provided the child was not required to be physically present at school. These regulatory changes also permit the use of New York Child Care Block Grant dollars to be used for the cost of child care when school-age children are completing remote learning while in a child care setting.

While traditional child care arrangements are permitted to support remote learning, OCFS acknowledges that parents/guardians and schools are exploring alternatives to providing care during remote learning time.

Remote Learning Configurations that are Exempt from Licensure or Registration

The below scenarios outline remote learning options that are exempt from licensure or registration.

Single-Purpose Program

As explained above, child day care does not include programs for school-age children operating solely for providing religious education, sports, classes, lessons, or recreation. DCCS Policy 16-1 (<https://ocfs.ny.gov/main/childcare/policies/16-1.pdf>) states that classes refer to formal academically oriented activities designed to supplement school classes or academic activity, including homework clubs or tutoring in academic subjects. Thus, if a program operates only to supervise and support remote learning through the child's school, the program will not be considered a child day care program, and thus would not be required to have a license or registration from OCFS. While 16-1 focuses on non-residential programs, this policy extends the single-purpose program exemption to home-based settings for the limited purpose of providing remote learning.

However, if a program is engaging in child care outside of remote learning, or is engaging in any other combination of multiple purposes (e.g., classes **and** sports not associated with the school requirements), it will be required to obtain a license or registration and follow all necessary and applicable requirements for programs or providers offering child day care. Programs that are solely engaging in remote learning will qualify under a single-purpose program exemption even if remote learning includes several different lessons offered by the school (e.g., math classes, physical education, etc.)

Programs serving children under the single-purpose program exemption are expected to comply with all applicable local zoning and fire safety standards commensurate with size of the remote learning program. Further, these programs should be familiar with and adopt best practices for the prevention and management of COVID-19 <https://coronavirus.health.ny.gov/protecting-public-health-all-new-yorkers#child-care-providers>.

Programs intending to serve children under the single-purpose program exemption are requested to notify OCFS of the program including the location, number of children served daily and a point of contact including phone and email address. This information should be entered on the following form: [OCFS Remote Learning Exemption Form](#)

Drop-In Programs

DCCS Policy 16-1 clarifies that drop-in programs do not require a license/registration. A drop-in program is where different children may attend from day to day, and there is no expectation or guarantee of a slot on a given day. A program where a child is always enrolled and guaranteed a spot is not considered a drop-in program. While 16-1 focuses on non-residential programs, the drop-in program exemption extends to home-based settings providing remote learning.

School-Based Programs

Child day care does not include a kindergarten, pre-kindergarten or nursery school for children three years of age or older, or a program for school-age children conducted during non-school hours, 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 such kindergarten, pre-kindergarten, nursery school, or program is located on the premises or campus where the elementary or secondary education is provided. Such programs run by schools on school campuses will not be required to have a license or registration. However, if a program is not run by the school or is run by the school but off campus, a license or registration will be required, unless, consistent with Social Service Law 390(1)(f), there are fewer than six children in care.

Other

If a remote learning configuration does not meet the above exemptions, the program or provider may be required to obtain a child care license or registration. Please contact an OCFS regional office to inquire if your program is required to obtain a child care license or registration.

Families in search of licensed or registered care which is offering remote learning are encouraged to contact their local child care resource and referral agencies available here: <https://ocfs.ny.gov/main/childcare/referralagencies.asp>.

Approved by:



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Date: September 2, 2020