



Office of Children and Family Services

KATHY HOCHUL
Governor

SUZANNE MILES-GUSTAVE, ESQ.
Acting Commissioner

September 8, 2023



Dear Enrolled Legally Exempt Group Program Director:

The new school year is an exciting and busy time. The Office of Children and Family Services (OCFS) recognizes that your program's enrollment plays an important role in helping families participating in the Child Care Assistance Program (CCAP) find care in your community. This letter is being sent to help legally exempt group programs understand the rules around serving children younger than age 3.

Generally, child care assistance cannot be authorized for a child under 3 years of age for child care provided in a legally exempt group child care program. However, 18 NYCRR §415.4(f)(5)(ii) and 415.13(h)(4)(ii) make exception for children who are at least 2 years of age at the beginning of the school year and will turn 3 years of age on or before the applicable calendar date for which a child must be at least 5 years of age to be eligible for admission to school.

In practice, this regulation allows a child who is almost 3 years of age at the start of the locally established school year to start care if they will turn 3 by the public school district admission cutoff date. Per the regulation, OCFS only recognizes one start to the school year. The regulation does not allow for programs to enroll children with CCAP funding who are less than 3 years of age at other times of the year. The intent of this regulation is to allow an almost 3-year-old to start preschool with the same group of children that they will enter first grade with.

The OCFS legally exempt enrollment form, the [OCFS-LDSS-4700- Enrollment Form for Legally Exempt Group Child Care Program](#), requires a signed attestation by both parent and provider related to compliance with OCFS regulations. Section 12 of the form, which is the on-site director attestations and agreements, includes the specific language relating to when child care assistance can be authorized for a child under 3 years of age. If you have any questions related to this letter, or the enrollment process in general, please reach out to your enrollment agency.

As always, thank you for taking the time to read this update and your continued support of children and families in New York State.

Sincerely,

Nora Yates
Deputy Commissioner
Division of Child Care Services