



Office of Children and Family Services

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Informational Letter

Transmittal:	20-OCFS-INF-02
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Child Care Providers
Issuing Division/Office:	Division of Child Care Services
Date:	January 13, 2020
Subject:	Safety related background checks for persons providing services to children in a child day care setting
Suggested Distribution:	Directors of Social Services Child Care Providers Child Care Resource and Referral Centers
Contact Person(s):	Regional Offices https://ocfs.ny.gov/main/childcare/regionaloffices.asp
Attachments:	OCFS-5014, <i>Parental Consent Form</i>

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		Article 18 §414, §415, §416, §417, §418.1 §418.2			

I. Purpose

The purpose of this Informational Letter (INF) is to provide options for licensed, registered and enrolled child care providers to continue to allow persons to provide uninterrupted services to children in a child day care setting. Covered by this policy are services provided by non-day care employees (outside service providers) pursuant to the federal Individuals with Disabilities Education Improvement Act (IDEA) Part B, IDEA Part C, Section 504 of the federal Rehabilitation Act of 1973, or Article 89 of the New York Education Law.

II. Background

Recent regulatory changes to licensing, registration or enrollment rules for child care providers have highlighted background check requirements for child care programs and exposed a concern regarding background checks for these outside service providers. Child care programs have felt conflicted between the privacy rights of the children receiving services and the need to keep all children in the child care program in sight at all times.

III. Program Implications

In order to facilitate access to outside service providers, and alleviate concerns regarding requirements of Health Insurance Portability and Accountability (HIPAA), Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA), OCFS authorizes the following options for child care providers to address the outside service provider needs:

1) Parent/Provider/Program Authorization Form (please see attached)

A parent or guardian (or local social services district if the child is in foster care) may grant permission for a child to receive services pursuant to the federal Individuals with Disabilities Education Improvement Act (IDEA) Part B, IDEA Part C, or Section 504 of the federal Rehabilitation Act of 1973, or Article 89 of the New York Education Law by the service provider while the child is attending the child care program. With a signed form, the service provider will not be required to be in the direct range of vision by program staff. The form must be signed first by the itinerant service provider, then by the parent or guardian, and lastly by the program director. Such signed forms must be submitted to the program, maintained on file, and available for inspection so long as the child continues to receive such services. Any change in the provision of services or service provider will require a new completed form. A parent or guardian may revoke such permission at any time. While considering such cases, programs should consider whether the child's services can be provided in a push-in classroom before exercising this option, as aligned with the Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

2) Categorization of Separate Space

Pursuant to the New York State Office of Children and Family Services' (OCFS) policy for subsidy considerations, when a child is removed from the classroom to receive special education itinerant services, he/she is removed from the child care program. The service provider may use available, separate space in the child care program to provide the pull-out services if the child care program is agreeable to the use of the space.

Under current OCFS regulations §414.15(b)(16), §415.13(b)(10)(ii), §416.15(b)(16), §417.15(b)(16), §418-1.15(b)(16), and §418-2.15(b)(16), the indoor and outdoor areas of the program where the children are being cared for must not be used for any non-child care activity or other business or social purpose when children are present such that the attention of staff is diverted from the care of the children.

In order to provide such services, in these limited cases, the physical space utilized by the service provider may be considered as separate from the child care program during the time such space is being used for the provision of special education services, without direct supervision from employees of the program, if the program is issued an approved waiver of the regulation for this sole purpose. Programs should submit to OCFS a waiver request using form OCFS-4887, *Request for Waiver*. Such requests should detail specifically which spaces will not be considered child care space for the provision of such services and attach to the waiver a detailed log of when such space is being utilized for the provision of outside services. Such log must be maintained on file with the waiver and available for inspection so long as the child continues to receive such services. Waivers shall be valid for up to three months. In addition, programs exercising option two shall make a documented effort to obtain a signed parental authorization form OCFS-5014.

For example: The multipurpose room in a child day care center will be utilized from 11 a.m. until 1 p.m. on Tuesdays and Thursdays for the provision of speech therapy as aligned with a child's IEP. The program would complete form OCFS-4887 requesting a waiver from social service regulation §418-1.15(b)(16), which would authorize the multipurpose room to be used for this purpose and would not be considered part of the child care program during 11 a.m. until 1 p.m. on Tuesdays and Thursdays. If the services are to be provided at any other time, or in any other rooms/spaces, the waiver request should identify all possible spaces that could be used, and the log shall contain a detailed reporting of when the space was utilized, including the duration of time the alternate space was used.

Should you have any questions or concerns, including questions about the possibility of an alternate arrangement in extraordinary and limited circumstances, please contact your regional office for assistance or consideration.

IV. Contacts

Regional Offices

<https://ocfs.ny.gov/main/childcare/regionaloffices.asp>

/s/ Janice M. Molnar, Ph.D.

Issued by:

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Deputy Commissioner

Division of Child Care Services