



Office of Children and Family Services

Andrew M. Cuomo
Governor

52 WASHINGTON STREET
RENSELAER, NY 12144

Sheila J. Poole
Acting Commissioner

DIVISION OF CHILD CARE SERVICES POLICY STATEMENT

15-2

Home Schooling and Family Day Care Registration or Group Family Day Care Licensure

ID NUMBER: 15-2

TOPIC: Home Schooling and Family Day Care Registration or Group Family Day Care Licensure

MODALITIES IMPACTED: Group Family Day Care and Family Day Care Programs

APPLICABLE REGULATIONS: Title 18 of the New York State Code of Rules & Regulations §§:
413.2(b)(2)(iii) 416.8(a) 417.8(a)
413.2(b)(3)(iii) 416.15(b)(16) 417.15(b)(16)

CONTACT: 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.

This policy statement is issued to clarify the issuance of a family day care registration or group family day care license by the Office of Children and Family Services (the Office) to individuals who are also providing home instruction for their own children in accordance with the requirements of the State Education Department.

Title 18 of the New York State Code of Rules and Regulation (NYCRR) Sections 416.15(b)(16) and 417.15(b)(16) state that "[t]he indoor and outdoor areas of the home where the children are being cared for must not be used for any other business or social purpose or non-daycare activity when children are present such that the attention of the caregivers is diverted from the care of the children." While home instruction is neither a business nor a social activity, it is a regularly scheduled activity that may divert the caregiver's attention from the care of the day care children. Sections 416.8(a) and 417.8(a) of the child day care regulations also require that children cannot be left without competent supervision at any time. A caregiver engaged in home schooling may be unable to fulfill this requirement.

The Regulations of the New York Commissioner of Education do not establish the specific form

home school instruction should take, nor the hours during which instruction may be given. Parents may engage the services of a tutor to provide instruction for all or a portion of the home instruction program.

State law does not prohibit someone from becoming a family or group family day care provider solely because that person also provides home schooling. The home school instruction could be provided by someone other than a caregiver, at times other than when the day care children are present, or might be incorporated into the day care program in such a way that the two complement each other.

To determine whether it would be possible for an individual to provide day care in addition to home schooling, the registrar/licensor must review the curriculum and the hours of instruction for home school instruction. The registrar/licensor also must review the schedule established for the home in accordance with Part 416 or 417 of the Office's regulations, as applicable. This review will allow the registrar/licensor to determine whether the home instruction will interfere with the operation of the family or group family day care home. These factors will be considered when deciding whether to issue or renew registrations or licenses for programs with caregivers who provide home schooling.

The registrar/licensor will determine the ages of the children being instructed at the home and clarify whether it is a caregiver who will be providing the instruction and whether the instruction will coincide with the hours and days of child day care. These are the issues that need to be addressed to determine whether the home instruction will interfere with the provision of day care in the home.

A decision on whether home instruction will interfere with the provision of day care in the home will be made. Situations where home instruction and child day care could co-exist include the home-instructed student being engaged exclusively in research or independent study; receiving instruction from someone other than a caregiver; or participating in activities which mesh with the activities of the child day care program. Examples include such things as specific projects that could occur on different age-appropriate levels, e.g. study of Native American crafts, or physical education activities.

One additional question that arises related to the issue of home schooling and the operation of a family or group family day care home is:

Are the home-schooled children residing in the family or group family day care home excluded from the capacity?

Parts 413.2(b)(2)(iii) and 413.2(b)(3)(iii) of the Office's regulations require that all children present be counted in determining capacity, with the exception of children in the legal custody of, or boarded out with (i.e., in foster care placement with), the caregiver, only when those children are enrolled in kindergarten or a higher grade. The Office defines the term *enrolled* to mean that the child is registered and participating in a school program outside the home. The intent of this regulation is to exclude from being counted toward maximum capacity the children who do not require the supervision of the caregiver during the hours when day care children are present. Since children being educated at home do not leave the residence to attend school, they are not only present while day care children are present, but could require a great deal of attention. Therefore, these children are not subject to the exclusion, but must be included in the home's capacity and ratio during home school hours until their 13th birthday.

An exception to this is a situation where the caregiver has hired a tutor to provide instruction to the home-schooled children. If the hours during which the tutor provides instruction coincide with the hours of child day care and approximate the length of a typical school day, then the educational program does not involve the caregiver and is, in essence, a separate program. These children may be excluded from ratio and capacity.

Summary:

Each situation must be evaluated individually. The capacity of the home may never exceed that specified on the registration or license. The caregiver's first priority must be the day care children. At no time during the hours of care may the caregiver's attention be diverted from the provision of child day care.

Approved By:

A handwritten signature in black ink, appearing to read "Janice Molnar". The signature is written in a cursive style with a long, sweeping underline.

Date: May 6, 2015

Janice M. Molnar, Ph.D.
Deputy Commissioner