

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES
DIVISION OF CHILD CARE SERVICES

POLICY STATEMENT

#17-2

Approving Basements as Primary Child Care Space

ID NUMBER: 17-2

TOPIC: Approving Basements as Primary Child Care Space

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

APPLICABLE REGULATIONS: 18 NYCRR §§: 416.3 417.3
416.4 417.4
416.5 417.5

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

The purpose of this policy statement is to clarify the conditions under which basements may be used as the primary program location for group family day care and family day care.

Definition of Basement:

For the purpose of this policy statement, a basement is defined as that portion of a building that is partly or completely below grade (ground level).

Approval to Operate a Child Care Program in a Basement:

Child day care regulations do not automatically preclude the provision of child care in basements. When an applicant proposes to use a basement, an Office of Children and Family Services (OCFS) fire safety representative or Department of Health and Mental Hygiene (DOHMH) inspector must inspect and approve the designated space before any basement may be used as a child day care space.

Type of Assessment Needed:

In order for the basement to be used as the primary location for child care, one of the following must be confirmed:

1. The applicant will produce a certificate of occupancy, letter of no objection or other official documentation from a municipality that the proposed basement space is habitable, OR:
2. The basement areas proposed to be used for child day care space must meet all of the following conditions:

a. Have a continuous ceiling height of not less than seven feet. An allowable exception to this is where beams and girders or similar protrusions such as ducts or pipes, spaced not less than four feet on center, project not more than six inches below the required ceiling height. This would allow for a ceiling height 6.5 feet beneath protrusions. A minimum ceiling height of 6.5 feet must be measured from the bottom of any protrusions to the basement floor.

b. There are two means of egress which are remote from each other. One means of egress must be either an interior stairway whose pathway is unobstructed and leads directly to an unobstructed egress at ground level, or an exterior stairway which leads directly to the ground. The vertical travel to ground level may not exceed eight feet. Where a window is used as a means of egress, window sill height must not be more than 44 inches above floor level. Regulations 416.4(h)(3) for group family day care, and 417.4(h)(3) for family day care provide that the window must have a minimum net clear opening height dimension of at least 24 inches and a minimum net clear opening width dimension of at least 24 inches, and an adequate size through which all children and adults can be evacuated. An approved alternative to having a 24X 24 window, is a window that complies with the emergency escape and rescue requirements established in the Fire and Building Code of New York State (or other applicable local code). Emergency escape and rescue windows, as defined in code, must have a minimum net clear opening of 5.7 square feet. While the required 5.7 square feet minimum can be met in various heights and widths, there is a restriction that in meeting the 5.7 square feet, the width of the window can be no narrower than 20 inches and the height can be no less than 24 inches. However, these two minimal measurements cannot exist on the same window and still meet a 5.7 square feet requirement.

To illustrate this point, if the window opening were to measure 20 inches in width, in order to have a 5.7 square foot opening the window height would then have to measure at least 28.5 inches. The 5.7 square foot requirement is not met with a window measuring 20 inches wide **and** 24 inches high. If the height or width is at the smallest dimension permitted in code then the other side has to be expanded (height or width) to meet the 5.7 square feet. Many variations in height and width can meet the 5.7 square foot requirement. In addition, the net clear opening of the escape and rescue windows must be met by the normal operation of the window.

For New York City only, the New York City code requires that emergency escape and rescue windows be at least six square feet with a minimum width of 20 inches and minimum height 30 inches. Going forward, OCFS will require this for all new applicants in New York City in cases where emergency escape and rescue windows are identified as egress paths.

c. The basement area to be used for child care must have at least one window that looks out to or faces the outside of the building or a courtyard. The basement must be well lit, either naturally or by glare-free artificial lighting, as specified in the applicable code, which results in at least the brightness of an upstairs living space of a home. Lighting should allow for comfort and safety and meet the needs of child care activities. If basement lighting appears dim or shadowy, or appears to the naked eye that it is not supportive of child care activities, further lighting or adaptations must be made before a license or registration can be granted.

d. Adequate ventilation is provided, as specified in the applicable code, in that fresh air enters the basement through windows, doors, louvers, or other openings into the basement. Caregivers must be able to access and control these openings. The basement also must have at least one window that opens.

Additional Considerations:

Basement space, when used as the primary child care program space, must meet all the same criteria as every other area in a home being considered for use as a child care program. These criteria, which address such issues as egress, floor coverings, and toxic materials, are set forth in OCFS policy statements; family day care regulations, 18 NYCRR Part 417; and group family day care regulations, 18 NYCRR Part 416.

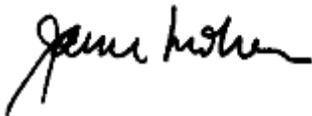
OCFS reserves the right to and may, at its discretion, require a certificate of occupancy whenever the space identified calls into question the health and safety of children.

Inspection by Local Authorities:

Unlike day care centers and school-age child care programs, which are located in sites other than personal residences, there are no requirements for documentation of inspection and approval of family day care and group family day care homes by local authorities. Local governments may not preclude the use of basements for family or group family day care under local laws or regulations, unless the use of basement space is deemed not fit for habitation in every residence in that jurisdiction. Questions regarding use of basement space for child day care should be directed to your local OCFS regional office.

Approved by:

Date: 3-22-2017

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

Janice M. Molnar, Ph.D.
Deputy Commissioner