

March 17, 2014

New York State Office of Children and Family Services
Division of Child Care Services- Child Care Public Comment
52 Washington Street, Room 309 South
Rensselaer, NY 12144

To Whom It May Concern,

In response to the proposed new School Age Child Care Regulations, New York State Afterschool Network (NYSAN) has the following comments on behalf of the afterschool field in New York.

NYSAN has a few overall concerns with the proposed regulations. The proposed regulations have gone even further than previously into detailing minute requirements for programs instead of reviewing the larger picture of whether the program is safe, high-quality, and creating positive outcomes for students. While we share a deep commitment to safety and quality, NYSAN recommends comprehensive review and updates to the regulations to require programs to have their own policies in place that adequately provide for health, safety, enrichment, and learning while making sense for the program specifically, instead of dictating the policies for all programs. For example, section [414.8 (s)] details the bathroom policy that programs must use. Instead, OCFS should allow programs to create their own bathroom policy that makes sense to the specific ages of students that they serve and the space that they use. Similarly, programs should be able to provide at any time a map of the rooms being used by different groups of participants and be able to justify why that space is appropriate, but be able to move groups around and make a new map as circumstances dictate without seeking OCFS approval.

OCFS needs to consider that these regulations apply to programs serving youth ages five through twelve, and that there are very different developmental needs across those years. Furthermore, middle school programs that serve seven or more participants ages twelve and under, despite having tens or even hundreds more participants who are thirteen or older, are also required to be regulated. NYSAN appreciates that OCFS acknowledges that higher ratios can apply for groups of children ages 10 and up, and this same distinction between older and younger students should apply to several other portions of the regulations as appropriate in terms of youth development for specific age ranges of students. In terms of supervision, for instance, the current regulations require that older students must be walked to the restroom, to their locker, etc.—activities which they are allowed to do during the school day with a hall pass. Youth at this age need opportunities to assume responsibility for themselves, and policies that are inappropriate to their developmental stage discourage them from attending and decrease the value of the program for them.

NYSAN recommends that programs that operate within school buildings be held only to the standards that apply to school buildings under state education law. These programs should be exempt from most building requirements set forth in these regulations as the space is deemed

adequate for use by students during the school day. Regulations which hold afterschool programs to a higher standard than the school day regulations for space are a large barrier for programs throughout the state, many of whom are simply borrowing or renting space from the school and have no ability to make capital improvements to the space. For years, these regulations have resulted in unnecessary violations to programs, added tension to programs' relationships with schools, and prevented additional students from having access to afterschool programs.

[414.3 (c)] NYSAN is concerned that seeking OCFS re-designation of a classroom to a different age group of children will be cumbersome, particularly for programs that share space, either with a school or another organization, and are likely to have to move groups of children occasionally to accommodate shared needs for space. NYSAN recommends that programs be required to maintain an accurate map of the rooms being used by different groups of participants and be able to justify why the space is appropriate, but be able to move groups and make a new map as circumstances dictate. If OCFS continues with the approval requirement, the regulations should require OCFS to review and approve re-designations within five business days so that programs can quickly accommodate the changed circumstances leading to the change in arrangements. Programs should also be able to designate secondary options for space for specific age groups during the initial application process that will be approved for use without notification to OCFS, should the program desire to do so. Allowing programs the option to pre-approve a secondary space option will ultimately save time on part of the program and of OCFS.

[414.3 (j)] The requirement of one sanitary toilet and one wash basin for every group of 20 students has proven to be a barrier to serving additional children in many cases. Requiring lower ratios than those allowed during the school day limits school space significantly for afterschool programs. NYSAN recommends that OCFS increase the ratio to align with the number of students allowed for each toilet and wash basin during the school day. As stated above, NYSAN recommends that programs that operate in school buildings be held to the school-day standard for this and other building requirements.

[414.3 (n)] NYSAN appreciates that OCFS is willing to accept 20 square feet per child in rooms used for seated activities and that OCFS will include areas used for large motor activities if they are for the sole use of the program during program hours in the total space calculation. NYSAN recommends that OCFS additionally clarify that rooms are to be measured around the perimeter when determining square footage.

[414.4 (b)(2)] NYSAN recommends clarifying that any room that meets local fire safety standards be classified as having an adequate means of egress, regardless of whether or not the room has a window.

[414.5 (b)] NYSAN recommends clarification that emergency plans will be required to account for the needs of children with disabilities only if programs are serving students with disabilities and only in relation to the disabilities of those students.

[414.5 (b)(4)] NYSAN requests clarification be added into the regulations around how many shelter-in-place drills will be required of programs only operating in the summer and of programs that relocate buildings for their summer program.

[414.5 (b)(7)] NYSAN recommends removing this requirement. The proposed regulation around storing on site emergency supplies will be difficult and expensive for providers, particularly those serving hundreds of children and those in spaces, such as schools, which they only use for part of the day. Providers may not have access to storage for this quantity of supplies, especially if the storage needs to be in a space that is designated for program use only for part of the day. Additional clarification is needed as to how providers are to show that they have permission to use stored food that is already on site. Finally, food vendors for some programs have policies or are subject to health and safety regulations of their own regarding how long food can be stored. This regulation could force programs to find new food vendors if the regulation is contrary to their current food vendor's policies or create conflicts with local sanitation requirements.

[414.5 (m)] As drafted, the regulation is unclear as to whether access to a school or building's landline will be acceptable for this requirement, or whether the program needs a line that is dedicated solely to its use. NYSAN recommends accepting access to the school or building's landline.

[414.6 (c) and (i)] Additional clarification is needed as to the requirement that parents "agree to" the program's plan. Can they make a verbal agreement, do they need to sign and return the document, or is continued participation after notification is sufficient?

[414.7 (a)(1)] Additional clarification is needed around this requirement, including what constitutes physical activity, how long the activity needs to be (NYSAN recommends flexibility and a maximum requirement of 15 minutes to accommodate different program models), and if every child must participate or if the physical activity can be an option that only some participants choose.

[414.7 (d) and (e)] NYSAN recommends removing this requirement. This regulation will require a complete re-thinking of many programs, especially those that are academically focused. NYSAN knows that it is important that students stay healthy and participate in daily physical activity, however many other important program activities, such as homework help and academic enrichment, generally take place in rooms where students may be seated working on one activity or skill. These activities should not be limited to less than half of the program time. Furthermore, there is concern as to how programs will meet these requirements during the registration period as they are not permitted to have children participate in physical activity until the registration is received.

[414.7 (i)] NYSAN appreciates that OCFS is encouraging programs to have parents participate in program evaluation efforts.

[414.8 (a)] Additional clarification is needed around the requirement to have children within a teacher's range of vision. Preferred phrasing would be 'within sight or sound' of a teacher, which clarifies that teachers may walk around the room and occasionally have their back to certain groups of students as long as they can hear them and respond appropriately. Additionally, there should be a separate requirement for participants ages 10 and up who developmentally need more freedom and may not need direct supervision for brief periods of time.

[414.8 (d)(1)] Clarification is needed as to where volunteers fit into supervision. The interpretation of the current regulations and of these proposed regulations is mixed. Can volunteers who have cleared all of their background checks can be left alone with a group of students and/or can they be used to walk one or two participants to the restroom or to a different activity?

[414.8 (l)(1)] NYSAN recommends removing this requirement. Instead, NYSAN recommends that OCFS require programs to have a separate supervision plan for staff members when groups of children will be mixed. OCFS should allow programs to create their own supervision policy for mixed groups that makes sense to the specific ages of students that they serve and the space that they use. The proposed regulation is not developmentally appropriate for children who need the opportunity to interact with children from other age groups. Furthermore, many programs only have access to indoor or outdoor large play space for specific portions during the program hours. In practice, limiting the age groups from mixing may mean that some groups will not be able to access active play space each day.

[414.8 (n)] Wording on this section needs to be updated to say “The use of any type device for social or entertainment purposes, listening to music on headphones, playing screen games, using the internet *for personal use*, or” As written, this blanket prohibition on use of the internet by program staff will be detrimental to many programs that take attendance online, help students with homework online, include exchanges with other programs via Skype, etc., or include one of the many popular technology curricula teaching students computer science or other online skills.

[414.8 (p)(3)] NYSAN has extreme concerns that this proposed regulation will result in programs forgoing providing transportation home for participants, which will in turn prohibit many students from attending programs. Instead NYSAN recommends that OCFS require that during the enrollment process parents of children who will be transported sign off on the time and location that their child will be dropped off after the program.

[414.8 (s)] NYSAN recommends that OCFS, instead of this proposed regulation, require programs to create their own site level policy for restroom use that addresses safety and the developmental needs of their participants. As written, the meaning of “exclusive use” of the restroom and teachers being “mindful of time” are both open to interpretation. Additionally, few buildings are configured to have restrooms within sight of the rooms so this proposed regulation would prohibit most students, even those ages 10 and up, from using the restroom on their own.

[414.9] NYSAN recommends that an additional requirement be added to this section that specifies when and how programs are required to communicate with parents regarding behavior management issues. In many other sections, these proposed regulations are specific around requiring communication with parents, and best practices indicate that programs need to communicate with parents often regarding any behavior issues that arise with their child(ren).

[414.9 (g)] NYSAN recommends that the proposed regulation that interaction between a staff member and the child must take place immediately following the separation be removed. This proposed regulation is often contrary to best practices around behavior management. Best practices indicate that if a staff member is unsuccessful at deescalating conflict before it occurs, children need time to cool down before they will be responsive to reasoning.

[414.11 (a)(1)(ii)] NYSAN recommends clarification that the individual health plan is required only for children with special needs. NYSAN also recommends clarification that program staff are not required to meet directly with the physician unless they deem it necessary, and that only staff responsible for supervising a particular child be required to meet with the parent regarding the individual health plan.

[414.11 (b)(7)] NYSAN appreciates that OCFS has removed the requirement for staff to submit TB tests and medical exams after the initial statement. NYSAN also recommends that there be an exemption to the requirement for volunteers to submit TB tests if they are coming to the program for less than a week or to the program for two hours or less per week.

[414.11 (b)(12)] Clarification is needed around the difference between a “health record” and an “individual health plan.” NYSAN also recommends that OCFS clarify the level of information that program staff members are able to access. NYSAN recommends that all staff members should have access to relevant health information regarding participants that could require attention during program hours such as allergies, asthma, diabetes, sickle cell anemia, seizures, and other special needs, however other health information included in health records that is not relevant to staff should not be shared with all staff.

[414.11 (i)(14)] NYSAN recommends updating the proposed regulation to read “individual drinking cups of disposable drinking cups must be *available* daily.” As written, the proposed regulation requires programs to give out individual or disposable cups daily, which could become a substantial and unnecessary cost to programs. Many programs give out drinks in cartons or other individual packages that do not require additional cups. Updating the regulation as recommended will ensure that all students have access to cups, but they will not need to take one or throw one away when a cup is not needed.

[414.12 (n) through (u)] NYSAN would like to thank OCFS for these positive recommendations around food safety and healthy meals.

[414.13 (b)(5)] NYSAN and the field are in full agreement that programs need to comply with these legal requirements. NYSAN requests confirmation that all information submitted via the website or fax is secure.

[414.13 (g)] NYSAN appreciates that OCFS has added the School-Age Child Care Credential as an acceptable qualification for a Group Teacher. Additionally, NYSAN recommends clarification that certified teachers with teaching experience or program experience are considered qualified as directors regardless of whether or not they have supervised adults previously.

[414.14 (a)] NYSAN is pleased that providers will be attending orientation before opening a new center. NYSAN recommends that OCFS include information in this orientation on what registrars learn during their training and post this information online. NYSAN has learned that other states, such as Texas and Massachusetts, have begun posting their registrar’s training as a tool for sites to use in meeting the registration standards. This information should be a priority as

it is a useful tool for understanding regulations and a way to get programs and registrars on the same page.

[414.14 (b)] NYSAN recommends more specificity around the meaning of “regular and substantial contact” for volunteers. As written, this is open to interpretation and could be considered to have wildly different definitions.

[414.14 (i)] NYSAN recommends that OCFS remove this requirement. Instead, NYSAN recommends that Program Directors have the capacity to approve trainings and trainers. As written, this proposed regulation would have extreme effects on programs, both pragmatically and financially. OCFS would need to turn around approval of trainings and trainers for programs within a matter of two to three days in order for program staff to be able to attend the trainings they need that are often advertised at the last minute. Financially speaking, many trainings in the community have associated fees that programs cannot afford within their limited budgets. Peer-to-peer trainings from Program Directors and other staff members allow programs to leverage the human capital that they already have while staying within their budgets. These trainings need to continue to count towards the required 30 hours. Also, some afterschool funding streams require specific trainings that also need to continue to count towards the required 30 hours, or staff members will need to complete both. Additionally, many programs use conferences as a source of training, and OCFS would have to approve all trainings and trainers at the conferences, some of which take place across the country.

[414.15 (a)(5)-(9)] NYSAN is grateful for the increase to four years for registration renewals.

[414.15 (b)(1)-(5)] NYSAN recommends providing additional clarification around what is meant by “two consecutive shifts” to ensure that staff members are able to consistently work in the program. For example, school day teachers may work in the school age child care program, but NYSAN recommends clarifying that their time during the school day before the school age child care program does count as a shift. Additionally, clarification is needed so that this proposed regulation does not prohibit staff from working more than two consecutive days in the program if the program only includes one shift daily.

[414.15 (b)(10)(v)] NYSAN recommends that OCFS update this section to also include language to protect program staff from intimidation or threats from OCFS representatives, including unwarranted threats of revoking a registration.

[414.15 (b)(14)] NYSAN recommends more specificity around the term “immediately” in this section to clarify that staff members need to assist the participant in need before taking the time to call OCFS.

[414.15 (b)(24)] NYSAN recommends that OCFS clarify that acting directors do not need to meet all qualifications of the director, as programs may not have a second person who meets these requirements (and is familiar enough with the program enough to run it effectively) available immediately.

[414.15 (b)(29)] NYSAN recommends that OCFS specify in this section those areas where programs in schools will be waived from the requirement.

Unaddressed issues from previous NYSAN recommendations
(Section numbers refer to existing SACC regulations)

Fingerprinting. Is there any possibility of reopening the conversation on teachers not having to be re-fingerprinted? We recognize the complexities implicit in this seemingly simple question, but it remains a frustrating duplication of effort for programs. [413.4]

Application. In situations where a program has to close because of a loss of funding or a delay in a government contract being issued (and not due to any violations), but reopens again within the year in the same space with the same applicant and same proposed programming, could the application be treated as a renewal rather than a new application? [414.2]

Inspection. The regulations should provide a maximum period of 30 days for the time between the submission of a complete registration application and the inspection being conducted to help streamline one of the most common sources of delay in the registration process. [414.2(d)]

Temporary relocation. The regulations should provide a time-limited exception from inspection requirements for temporary relocations due to natural disasters so that programs are not prevented from providing needed stability for children and families at an alternate location during extremely difficult times. [414.3(a)(2)]

Space measurements. Space was a key issue in our 2010 suggested revisions and the issues regarding square footage and bathrooms have not been addressed. In addition, programs should be able to request that kitchen space be counted in space per child measures if it is routinely used for healthy eating/cooking or hands-on science activities with students. [414.3(d)]

Health and sanitation. Disposable covers should be an acceptable alternative to washing thermometers. [414.11]

Online submission. Providers responsible for applying for SACC registration have expressed interest in being able to submit their application and relevant documents online. They have specifically mentioned adding the applications to the HHS accelerator process in New York City, but applications should be moved to an online format for the whole state. This would allow faster turnaround on registration for programs, catch incomplete applications far more quickly, allow more effective communications, and minimize requests for duplicate forms.

Waivers. More clarification is needed about which of these areas programs can receive a waiver for.

Operated by. The information provided in the 2008 guidance on how to determine who is operating a program should be incorporated into the regulations to reduce confusion.

There also needs to be an explicit decision on how to treat extended/expanded learning time programs (see below), and an increasing number of 21st CCLC programs, where the CBO and the school are consistently working closely and collaboratively. We strongly recommend a conversation between SED and OCFS on the issues raised by school-community partnerships before the regulations are finalized.

Expanded learning time. Many concerns have been raised around programs that are blending funding streams in order to implement integrated expanded learning time opportunities in schools. These programs strive for joint school-community operational authority over at least some portions of the extended school day. The Governor's Extended Learning Time grant program will likely add to the questions already being raised by Rochester's ELT pilot and expanded learning schools operating in New York City. Specific examples of questions and concerns are as follows:

- When the expanded learning time program is being operated by both a community partner and a school, and each partner is in charge of multiple inconsecutive sections of programming which take place both during and outside of traditional school-time hours, which set of regulations prevails?
- In some expanded day programs all of the funding flows through the school and the school contracts with community partners. More often, however, funding is provided by both the school and community partners. For example, Title I, a 21st Century grant to a CBO and private CBO funds are blended together. Does the source of funding bear upon the analysis of who "operates" the program?
- Which staffing ratio is required, and does that change depending on who is in the room (i.e. certified teachers versus community partner staff), the time of day (i.e. during or outside of traditional school-time hours), or the activity being implemented (i.e. physical activity, enrichment, or academic)?
- Who has ultimate authority over whether these programs are in compliance with regulations in a blended funding and operating authority situation like this?
- When running an ELT programs for some students and a separate grant program that is required to be SACC registered for others in the same building, does the SACC registration have to cover the total number of students? How do they have to demonstrate that the two programs are separate?
- Some programs operating in schools implementing expanded learning time receive one or more of the state/federal grants, which require the CBO recipient to be SACC registered. Do the two programs have to be separate, or can there be a waiver or other process to allow them be combined as long as the grant program's goals are being met during those hours? While we recognize that this is a function of the RFPs of the grant programs to some extent, it also hinges on how the SACC regulations recognize joint operational authority.
- We strongly recommend a conversation between SED and OCFS on the issues raised by school-community partnerships before the regulations are finalized.

We appreciate your attention and thoughtfulness on these matters as the proposed SACC regulations are reviewed. We would be happy to provide additional information or answer any questions you may have. I can be reached at 646-943-8671 or neichner@nysan.org.

Sincerely,



Nora Niedzielski-Eichner
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