

March 23, 2020 - NYSED Memo – Essential Personnel for Child Care

Executive Order 202.4 required “local governments and political subdivisions” to reduce their “non-essential” workforce. NYSED has issued a memo that provides that this workforce restriction does not apply to the extent that school districts are providing child care services.

March 19, 2020 – NYSED Guidance re: Child Care Plans

Given that child care plans must place an emphasis on serving parents who are first responders or work in health care, NYSED has released a non-exhaustive list of professions/occupations that are eligible for prioritized childcare. The non-exhaustive list can be found [here](#).

March 19, 2020 – OCFS – Emergency Care Guidance

This emergency guidance allows school districts to utilize three pathways:

- (1) Work with child care resource and referral agencies.
- (2) Schools with existing child care facilities could attempt to expand its license (i.e. adding capacity, longer hours, additional age groups).
- (3) Pursuant to executive order 202.5, schools can host child care facilities without OCFS licensure, registration or oversight.

If districts decide to utilize prong three, OCFS’ guidance sets forth various staffing options. These include:

- Obtaining staff through OCFS’ substitute pool (i.e. displaced child care workers, teacher’s aides, student teachers);
- Assign non-essential staff (i.e. teacher’s assistants, teacher aides, etc.);
- Assign additional staff if necessary.
 - Although additional staff need not have child care experience or background checks, it is recommended that they complete a criminal history attestation and their name be put through the NYS sex offender registry

Executive Order 202.5 and OCFS’ Emergency Guidance provides school districts with great flexibility in providing child care services. However, if a district wishes to host a child care facility, there are various issues that it should consider prior to doing so. For instance, the district must assess the staff that it will assign to the child care facility. If non-essential staff is assigned this work, it may be a mandatory subject of bargaining. Given that these are unprecedented circumstances, districts should also consult with its liability insurance carrier regarding the nature of coverage should it open a child care facility.

March 18, 2020 – Executive Order 202.5 – Suspension of Social Service Law §§ 390 and 390-b

The March 17, 2020 guidance noted that one of the benefits of partnering with a community-based organization is that they are aware of the Office of Children and Family Services (OCFS) requirements. However, this Executive Order provides that a school aged child care program (located in a K-12 school) “with experience providing child care” is exempt from complying with OCFS regulations. Background check requirements were also suspended. The OCFS Emergency Care Guidance referenced above provided clarity regarding the affect of this executive order.

March 17, 2020 – NYSED Guidance – Child Care Plans

In response to Executive Order No. 202.4, NYSED promulgated guidance which included information related to child care plans. The guidance provided that county-wide plans were submitted for school districts in NYC, Nassau County, Suffolk County and Westchester County. Thus, only school districts located outside of the aforementioned counties were required to submit individual child care plans. For those school districts operating under a county-wide plan, it would be prudent to review such plans and consult with your local officials to determine how to provide child care services to your community.

As for districts that implement individual child care plans, the guidance lays out the following options:

- Partner with existing community-based organizations that are licensed through the Office of Children and Family Services;
 - Consider afterschool programs or child care providers, as well as the possible expansion of school aged child care programs located in the District.
- Work collaboratively with other school districts or the county;
- Contact Child Care Resource and Referral agencies for potential placements/programs.

The child care plan must also address the following:

- Gathering emergency, dietary and medical information;
- Establishing a maximum group size of 10 children.

In addition, the guidance provides a list of useful resources, which includes a list of daycares, home-based day care centers, and afterschool centers by district.

March 16, 2020 – Executive Order No. 202.4 (School Closure)

Upon the closure of schools through March 31, 2020, Governor Cuomo required school districts to develop plans for child care “with an emphasis on serving children of parents in the health care profession or first responders who are critical to the response effort.”