

BUREAU OF EARLY CHILDHOOD SERVICES

POLICY STATEMENT

ID NUMBER: 02-3

TOPIC: What Constitutes a School Age Child Care Program?

MODALITIES IMPACTED: SACC

APPLICABLE REGULATIONS: 414

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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 assist Bureau of Early Childhood Services (BECS) staff to distinguish between those programs that should be considered School-Age Child Care (SACC) programs and those that should not. In particular, the policy statement will discuss the distinctions between SACC programs and those programs that are not SACC programs, and thus exempt from registration, because they are programs offering recreation, sports, religious education, classes or lessons.

The differences between a SACC program that must be registered with OCFS and those programs that are outside the definition of SACC and thus outside the regulatory jurisdiction of OCFS (most notably recreation programs) have sometimes been difficult to determine. OCFS does not have the authority to regulate programs which are outside our jurisdiction under the law, including recreation programs that do not fall within the definition of SACC or day care.

A SACC program is defined as any program that provides child care for an enrolled group of seven or more children under the age of 13 and which operates outside normal school hours and consistent with the school calendar at a permanent site. The children must be enrolled in kindergarten or a higher grade or be at least six years of age. A SACC program may also

provide care for children over the age of 13 through the end of high school. However, the regulations at 18 NYCRR Section 413.2(a)(2)(ii) provide that programs operating solely for the purpose of religious education, recreation, sports, classes or lessons are outside the definition of day care. Accordingly, such programs are not SACC programs. Because many agencies offer activities to school-age children, it can be difficult to determine when these activities are provided in a program that must be registered as a SACC program, and when the program is exempt from registration.

If a program meets all of the criteria listed below, it is a SACC program. If it fails to meet even one of the criteria below, it is not a SACC program. These criteria are:

- a. The program must serve an enrolled group of children. Drop-in programs are not SACC programs. (See below for a further explanation and discussion of enrollment.)
- b. The program must include seven or more children under the age of 13. If the program has six or fewer children under the age of 13, it is not a SACC program, regardless of how many children over the age of 13 may attend.
- c. The care must be provided on a regular scheduled basis. If the program operates only on an occasional or as-needed basis, it is not a SACC program.
- d. The program cannot have young children who are not yet school-age; the program may serve only school-age children. For this purpose, “school-age children” will include: (1) those enrolled in school, including kindergarten or a higher grade; (2) those at least six years of age; and (3) certain prekindergarten children, in accordance with the guidelines set forth in Policy Statement 00-03. Any program that has children younger than that cannot be a SACC program. (Please note that a program caring for such younger children may be a day care center, however.)
- e. The program must be located at a permanent site other than a residence and operate only during non-school hours (i.e., before and/or after school, during school lunch periods, on school holidays and/or during summer vacations). Programs that operate during school hours are not SACC programs (but may be subject to licensure as day care centers). Programs that fit the definition of a summer day camp program are regulated by the Department of Health and are not SACC programs. However, day camp programs that operate in other seasons and which are not regulated by the Department of Health during other times of the year may fit within the definition of SACC during those periods of the year when they are not regulated by the Department of Health.
- f. The program must be operating for more than one purpose. A program operating for only one of the purposes set forth in the regulations discussed earlier is not a SACC program. (See below for a further explanation and discussion of program purposes.)

Some of the criteria for determining whether a program is a SACC program can be confusing. For this reason, two of those criteria that are the most common source of confusion are further explained below.

Enrollment

Enrollment refers to a policy or practice which provides in substance that a slot for the child will be maintained at all times the program is open or at specified times; that the program is responsible for monitoring the child's attendance, arrival or departure from the program; and/or that the program is responsible for providing care to the child beyond basic supervision. (The policy or practice may address additional topics, but the presence of one or more of the topics mentioned above in the policy or practice will be considered enrollment.) Programs which have such a policy or practice or which have or require agreements with parents reflecting such practices would be programs where the children are considered enrolled.

Enrollment is a factor that distinguishes SACC programs from drop-in programs, which are programs where the children are not enrolled. Drop-in programs are not SACC programs. It is sometimes difficult to determine if a program is actually enrolling children or if it is a drop-in program. Some factors to consider in determining whether a program is a drop-in program or one that enrolls children are:

- a. The maintenance by a program of attendance records, sign-in sheets and/or emergency notification information shall not in and of themselves be considered to be enrollment. These records are not the sort of records that would necessarily imply enrollment. Drop-in programs could legitimately maintain such records for basic safety, security and/or financial reasons.
- b. The fact that school busses transport children to and/or from the program and their school does not automatically classify a program as one requiring registration. However, please note that it is totally appropriate to investigate whether the instructions from parents to the school district regarding dropping off or picking up children from the site imply that the parent expects that this will be the site where the child will be on a regularly scheduled basis, as opposed to on an ad hoc and unpredictable basis. This information is useful for two reasons. First, it will assist in determining whether the program is one in which children are enrolled; if the parent expects that the child will be able to attend, that implies that the program maintains a slot for the child, which in turn suggests enrollment. Second, it will help determine if the program operates regularly (see item c on page 2); if the program operates only on an occasional or as-needed basis, it is not a SACC program regardless of enrollment.

- c. A program whose formal written program policies and procedures are posted in the program and/or provided to parents and guardians and which state that children are served on a first come, first served basis; that the program is not responsible for maintaining a slot on any particular day for any particular child; and that the program has no responsibility for monitoring the child's attendance, arrival and/or departure from the program shall be considered a drop-in program.
- d. A program that appears to operate under procedures similar to those described in paragraph (c) above but which does not have formal written policies and procedures so providing may or may not be a drop-in program. Further contact with such a program will be necessary to determine whether it is a drop-in program or a SACC program that is operating out of compliance with the regulatory requirements applicable to SACC programs. To the extent that such a program willingly develops and issues policies and procedures as outlined in paragraph (c) above and other wise operates accordingly, that program would exempt itself from registration.
- e. A program that is available solely to supervise children on a drop-in basis while their parents or other caretakers are engaged in a short-term activity on the grounds of or near the program would be a drop-in program. Examples include programs at shopping malls, grocery stores and fitness centers that watch children while their parents or caretakers shop or exercise.

Purpose of Program

As noted previously, one of the criteria for being a SACC program is that the program must operate for more than one purpose. Pursuant to the regulations at Section 413.2(a)(2)(ii), a program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation is not a day care program and thus cannot be a SACC program. If a program operates for more than one of these purposes, and meets all of the other criteria for being a SACC program, then it must register as a SACC program.

Single Purpose Programs

Determining whether a program operates for only one or for more than one of the purposes set forth in the regulations can be difficult. What follows is a brief description of what is meant by the five purpose categories set forth in the regulations.

- a. Religious education: This refers to education provided by an organized religious group concerning that group's religion or religious practices.

Religious education would most commonly be provided at a place of worship or a site affiliated with a place of worship. Examples would include bible study, scripture reading, or preparation for first communion, confirmation or Bar Mitzvah.

- b. Sports: There is often confusion between sports programs and recreation programs, and the intent of the statute in making a distinction between the terms is unclear. For purposes of determining whether a program has only one purpose or more than one purpose, we have determined that sports should be considered as a type of recreation. Thus, a program for sports and recreation would still be a single purpose program and exempt from registration as a SACC program. Also, a program that offers multiple types of sports would still be a sports program. Offering more than one sport would not make it a multiple purpose program.
- c. Classes: There is also sometimes confusion between classes and lessons, as the terms are both used in the regulations. “Classes” for this purpose refers to formal, academically oriented activities designed to supplement school classes or academic activity. A homework club or tutoring in some academic subject would be examples of classes.
- d. Lessons: This refers more broadly to instruction in particular topics that are not necessarily related to school-work or academics. Lessons would involve instruction focused on a particular topic rather than instruction on a variety of activities. Examples would be music lessons, martial arts instruction or art lessons. For such programs to be exempt, there would have to be documentation that the children were specifically signed up for a particular sequence of classes, regardless of whether it is for a determinate or indeterminate period (i.e. – it would include a child enrolled in karate class 3 times per week for 10 weeks or a child signed up for ballet lessons for no specified period of time). In these instances, the child and parent are signing up for these classes distinctly, with no requirement or expectation that the child attend other programming in addition to the actual class. This is different than a school age program that has various skill based classes or lessons among its activities that children can choose from during their time in the program.
- e. Recreation: Recreation is the most difficult of the categories to assess, as it potentially covers a broad range of activities. Basically, it addresses the purpose, rather than the actual content of activities. Where the activities are intended to provide entertainment, relaxation or diversion to children, as opposed to activities the purpose of which is to provide care and

supervision of children or education of children, they fall under the category of recreation. However, it must be acknowledged that a well structured SACC program will incorporate into it a broad range of activities, many of which would likely be activities that many youth would name as things they like to participate in as a form of recreation. That is essential if we want the programs to be inviting to youth. The distinguishing factor is whether any of the activities, or the activities in combination, are intended for care and supervision or education rather than entertainment of the children. If any activity is intended for care and supervision or education of children rather than the entertainment of children, then it is no longer solely a recreation program. Determining whether the intent of a program is to provide care and supervision or education rather than just recreation will require careful examination of the policies of the program and discussion with the program director and must be evaluated on a case-by-case basis.

One factor that may assist in analyzing whether a program that may be a recreation program requires registration as a SACC program is enrollment. Although enrollment is a separate factor from the purpose of the program, we must be aware that the issue of enrollment is particularly relevant in attempting to distinguish recreation programs, as many single purpose recreation programs are also drop-in programs. If the program has clear policies or moves to issue clear policies as outlined in paragraphs (c) and (d) under Enrollment, then the program is not one in which children are enrolled. If the children are not enrolled, that takes the program outside the SACC definition and thus resolves the issue of whether the program is subject to registration, regardless of whether it is a recreation program.

Some examples of recreation programs may be instructive:

- A program that offers basketball, volleyball and arts and crafts but no other activities would be a recreation program and thus exempt from registration.
- A program that offers arts and crafts, board games and one or more sports would still be a sports/recreation program and thus exempt from registration.
- A program that offers formal martial arts training, arts and crafts and sports would no longer be a single purpose program, as martial arts training would also fall within the category of lessons.

Multiple Purpose Programs

Having discussed single purpose programs, it is important to examine also what would constitute a multiple purpose program. If a program offers more than one of the

following categories of purposes, it would be considered a multiple purpose program and, thus, potentially a SACC program. The possible multiple purposes would be:

- a. Religious education in combination with any of the other four categories would be a multiple purpose program.
- b. Sports in combination with religious education, lessons or academic classes would be a multiple purpose program. Sports in combination with recreation would not be a multiple purpose program, as discussed earlier.
- c. Classes in combination with any of the other four categories would be a multiple purpose program.
- d. Lessons in combination with any of the other four categories would be a multiple purpose program.
- e. Recreation in combination with religious education, lessons or classes would be a multiple purpose program. Recreation in combination with sports would not be a multiple purpose program.

What constitutes single and multiple purpose programs will have to be assessed on a case-by-case basis using the discussion above as guidance. Some examples of multiple purpose program scenarios would be:

- A program that makes activities from more than one category available to children on a daily basis would be considered a multiple purpose program and thus, potentially, a SACC program.
- A program that provides activities from different categories sequentially (for example, six weeks of religious education, followed by six weeks of recreation, followed by six weeks of academic instruction, etc.) so that more than one category of purposes is included but no more than one category of purposes is available at any one time would be considered a multiple purpose program and thus potentially a SACC program.
- A program that provides activities from different categories rotationally (for example, specific children receive religious instruction Mondays and Wednesdays, engage in recreational activity on Tuesdays and Thursdays, and have classes on Fridays) so that no child has more than one category of purposes available to the child on a given day but the program as a whole offers more than one category of purposes would be considered a multiple purpose program and thus potentially a SACC program.

Conclusion

Where regional office staff have questions about the proper assessment of programs under these guidelines in particular situations, staff should consult with their supervisors on a regional level. Supervisors in turn should consult with Home Office BECS staff if supervisors have questions. Home Office BECS staff will consult with Legal on these issues as needed.

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Approved [X] Suzanne Zafonte Sennette 2002