

THE BUREAU OF EARLY CHILDHOOD SERVICES

P O L I C Y S T A T E M E N T

ID NUMBER: 06-1 (replaces 97-2) Revised January 13, 2006

TOPIC: Guidelines for approving basements as primary day care space and nonhabitable space for limited use purposes.

MODALITIES IMPACTED: Family Day Care and Group Family Day Care

APPLICABLE REGULATIONS: Title 18 of the New York State Code of rules and Regulations (NYCRR) § 417.3, 417.4, 417.5 , 416.3, 416.4 and 416.5.

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EFFECTIVE: Immediately (Revised January 13, 2006)

The purpose of this policy statement is to clarify the conditions under which:

- Basements may be used as the primary program location for family day care and group family day care; **and**
- Nonhabitable space may be used for limited use purposes.

What is a basement?

A basement is defined in the Residential Code section, R202, as that portion of a building that is partly or completely below the grade plane.

May a day care program operate in a basement?

Day care regulations do not automatically preclude the provision of child care in basements. When an applicant proposes to use a basement, a fire safety representative must inspect and approve the designated space before any basement may be used as a child care space.

What type of assessment is needed?

In order for the basement to be used as the primary location used for family based day care, the basement must be considered “habitable”. Habitable space is defined in the Residential Code of New York State, in section R202, as space in a building which may be used for living, cooking, eating and sleeping activities. The provider may also be able to produce a certificate of occupancy (C of O) for that space, if it is habitable. A C of O, however, is not required.

In order for a basement to be considered habitable (and used as a primary location for day care) the clear space must measure at least 6 feet 8 inches. Clear space is measured from the end of any ceiling beams in the basement to the basement floor

[Habitable space in basements must have a ceiling height that projects to within 7 feet of the finished floor; and beams, girders, ducts or other obstructions may project to within 6 feet, 8 inches of the finished floor. (Residential Code of New York State section R305.1 exception #3).]

The basement must have at least one window that looks out to or faces the outside of the building or a court. The glass or glazed area of the window (the part of the window that allows light to enter) must be measured and that measurement must be at least 8 % of the total floor area of the basement.

[Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room. (Property Maintenance Code, section 402 and 403 and Residential code R303.1)]

Fresh air must be coming into the basement through windows, doors, louvers or other openings into the basement. The provider must be able to access and control these openings. The basement also must have at least one window that opens. The size of the opening to the outside air must measure at least 4% of the total floor area of the basement being used for day care.

[Natural ventilation shall be through windows, doors, louvers or other approved openings to the outside air. Such openings shall be provided with ready access or shall otherwise be readily controllable by the building occupants. Every habitable space shall have at least one openable window. The minimum openable area to the outdoors shall be 4 percent of the floor area being ventilated. (Property Maintenance Code, section 403 and Residential Code section R303.1)]

Furthermore, family and group family day care regulations require that all rooms used by the children must be well-lighted and well-ventilated. Heating, ventilating and lighting equipment must all be adequate for the protection of the health of the children. In addition, when night care is provided, there must be sufficient light in the rooms where children are sleeping to allow proper supervision of and the safe movement and egress (see policy 05-1) for the children. Finally, a temperature of at least 68 degrees Fahrenheit must be maintained in all rooms to be occupied by children. [18 NYCRR § 416.3(b) and § 417.3(b)]

Basements meeting all the criteria of Part 416 or 417 of Office regulations and the New York State Building Codes, as applicable, may be used for a full range of child day care activities.

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

Office Policy Statement 05-1, family day care regulations, 18 NYCRR sections 417.3, 417.4, 417.5 and group family day care regulations, 18 NYCRR sections 416.3, 416.4 and 416.5.

Are local authorities required to inspect the basement space before a registration/license can be approved?

Unlike day care centers and school-age child care programs, which are usually located in sites other than personal residences, there are no requirements for documentation of inspection and approval of family and group family 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. If the Regional Office, or one of the Registrars, is notified that local code officials have notified a provider that (s) he must cease basement day care operations where basement space is considered habitable space in the jurisdiction, the regional manager must consult with Home Office immediately. Such situations will be handled on a case-by-case basis.

May a provider use nonhabitable space such as garages, sunrooms, nonhabitable basements and outdoor structures for day care activities?

A provider may use nonhabitable space under certain conditions and **for limited use purposes only**. The majority of the program time, however, must be spent in habitable space and areas approved for outdoor play.

Limited Use

Limited use purposes include large muscle activities such as throwing, catching, riding bikes, tumbling and running. Limited use purposes also include art activities with materials that are messy or sloppy, such as paint, molding clay, and glue. Generally the activities listed would not take more than an hour and the provider would be required to return to other approved space when the activity ends. Activities such as cooking, eating and sleeping activities may not take place in nonhabitable areas under any circumstances. The majority of the program time must be spent in habitable space and areas approved for outdoor play.

Conditions:

In order to use nonhabitable space for limited use purposes, the provider must first have all of the following on **file and approved** by the fire safety representative and the licensor/registrar:

- A diagram of the nonhabitable space to be used for limited purposes; **and**
- A list of pre-identified activities that will take place in the selected space and a schedule for these activities; **and**
- An inspection that shows the space is well lighted, well ventilated and has two approved means of egress (as described in Office Policy Statement # 05-1); **and**

- The space must be safe for the children and activities planned; **and**
- The temperature must be at least 68 degrees. (Licensors and fire safety representatives may use discretion in assessing temperature requirements based on the nature of the activity and where that activity would normally be conducted. For example, if a provider is selecting an unheated structure for bike riding and the children will be dressed for the weather conditions, then this space may be approved for that purpose. Requesting to paint in an unheated sunroom in the winter dressed in light clothing would be unacceptable but may be fine at other times of the year.)
- The ceiling height must comply with section 404.3 of the Property Maintenance Code of New York State as cited below:
 1. In one- and two- family dwellings, beams or girders spaced not less than 4 feet (1219) on center and projecting not more than 6 inches (152 mm) below the required ceiling height.
 2. Basement rooms in one- and two family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than 6 feet 8 inches (2033 mm) with not less than 6 feet 4 inches (1932 mm) clear height under beams, girders, ducts and similar obstructions.

May a provider use a shared basement space (used by other tenants) as primary day care space?

A provider may not use a shared basement as its primary day care location. A provider may, however, use a shared basement **for limited use purposes only**. The shared space must be in compliance with all conditions listed above for the use of nonhabitable space.

APPROVED BY:



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