GUIDE
TO
ENROLLMENT
OF
LEGALLY-EXEMPT
CHILD CARE PROVIDERS

(OCTOBER 21, 2015)

(INCLUDES CORRECTION OF PAGE 102)
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Section I. Overview of The Enrollment Process

Federal guidelines governing the use of Child Care and Development Fund (CCDF) require that all states have requirements in place to protect the health and safety of children served by child care providers. CCDF is one of the primary sources for the New York State (NYS) Child Care Block Grant (CCBG) and therefore all child care providers in New York must demonstrate that they meet basic health and safety standards to provide child care services under the NYSCCBG. This occurs through one of the following processes: Licensing, Registration or Enrollment.

New York State Social Services Law (SSL) §390 defines “child day care” and mandates which providers must be licensed or registered to operate a child care program in New York State. Providers and programs not required to be licensed or registered have come to be known as “legally-exempt” and are authorized to provide subsidized child care services through the process of enrollment. In accordance with federal guidelines, enrollment was developed to establish a set of health and safety requirements for the otherwise unregulated “legally-exempt” child care providers (LECCP) and programs to establish their eligibility to provide subsidized child care services.

According to 18 NYCRR §415.1(s), legally-exempt caregiver enrollment agency (EA) means the agency under contract with the Office of Children and Family Services (hereafter, “the Office,” or OCFS) to enroll caregivers of legally-exempt child care to provide subsidized services under the New York State Child Care Block Grant. For each district in New York State except for the City of New York, the legally-exempt caregiver EA will be the applicable child care resource and referral agency under contract with the Office to serve that district. For the City of New York, the legally-exempt caregiver EA will be an entity or entities identified by the Office in consultation with the New York City Human Resources Administration and the New York City Administration for Children's Services.

A. Communication Between The Enrollment Agency And The District

Legally-exempt child care providers are enrolled to provide subsidized child care services. Local districts need to know the enrollment decisions made by the EA in order to start or stop the issuance of subsidy payments and take other appropriate action. Since 2012, The Child Care Facility System (CCFS) has provided automated referrals to districts via the E-Notice process, per 12 OCFS LCM-01, Changes to the Legally-Exempt Child Care Provider Enrollment Process, thereby eliminating, in most situations, the need for EAs to notify the district directly. CCFS E-Notices notify the district of important changes and districts learn the details of referrals by running a corresponding report in CCFS.

Notifications from the district to the EA are not currently supported by CCFS, and must be done manually using OCFS-designated forms.
B. **Enrollment Forms and Attachments**

All requests for enrollment and attached forms must be recorded on the most recently revised version of the appropriate form.

1. **Enrollment Forms**
   - OCFS-LDSS-4699, *Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care*.
   - OCFS-LDSS-4700, *Enrollment Form for Provider of Legally-Exempt Group Child Care*.

2. **Attachments to the Enrollment Form**
   - OCFS-LDSS-4699.1, *Employment of Minors Form*. This form must be completed when the legally-exempt provider is under the age of 18 years.
   - OCFS-LDSS-4699.1A, *Employment of Minors, Information*. This information explains limitations on minors’ employment.
   - OCFS-LDSS-4699.2, *Legally-Exempt In-Home Child Care Provider Agreement Form*. This form must be completed when the provider cares for the child in the child’s home.
   - OCFS-LDSS-4699.2A, *Parental Responsibilities When Employing a Legally-Exempt In-Home Child Care Provider*. This information describes the parents’ responsibilities when employing an in-home child care provider.
   - OCFS-LDSS-4699.3, *Legally-Exempt Provider Training Record Form*. This form must be completed when the provider has completed 10 hours of training in the past year, and wants to receive an enhanced market rate.
   - OCFS-LDSS-4915, *History of Criminal Convictions and Parental Acknowledgment*. This form, or its equivalent, must be completed during the enrollment process when the parent wishes to employ a legally-exempt provider who has a criminal history or a day care enforcement history. It must also be used following a review of extenuating circumstances, when it has been determined that the provider may be considered for enrollment.
   - OCFS-LDSS-4916, *History of Day Care Enforcement And Parental Acknowledgment*. This form must be completed during the enrollment process, if and when an applying provider has a history of day care enforcement, and a parent wishes to employ said provider. A completed form will provide all details related to the enforcement history, and includes attestation from the parent that they are aware of, and understand the history, and further understand they have the choice to either ask the enrollment agency to consider this provider for enrollment,
or seek care elsewhere. It must also be used following a review of extenuating circumstances, when it has been determined that the provider may be considered for enrollment.

- **OCFS-LDSS-4917, History of Termination of Parental Rights and/or Court-ordered Article 10 Removal of a Child and Parental Acknowledgment.** This form must be completed during the enrollment process, if and when an applying provider has a history of termination of parental rights and/or court-ordered removal of a child under Family Court Act Article 10, and, a parent wishes to employ said provider. A completed form must provide all details related to the enforcement history, and includes attestation from the parent that they are aware of, and understand the history, and further understand they have the choice to either ask the enrollment agency to consider this provider for enrollment, or seek care elsewhere. It must also be used following a review of extenuating circumstances, when it has been determined that the provider may be considered for enrollment.

- **OCFS-LDSS-7000, Health Care Plan for Administration of Medication.** To be approved by a Health Care Consultant, this completed packet details the necessity for a child’s medication, and the ways and means by which the child care provider will administer the medication.

- **OCFS-LDSS-7001, Instructions for Completing the Health Care Plan for the Administration of Medication for Legally-Exempt Provider.** This form offers guidance to the legally-exempt provider, on how to complete the OCFS-LDSS-700: Health Care Plan for Administration of Medication.

**C. ENROLLMENT INFORMATIONAL PACKAGE**

The EA must dispense the OCFS-7026, Enrollment Information Package for Legally-Exempt Providers, to all providers upon the initial enrollment determination, either temporary or upon full review, and also at re-enrollment. This informational package contains:

- **Important Information When Caring For My Child** – Have the child’s parent complete this form for you, the provider.

- **Emergency Information Form** – An emergency information form for providers to complete and post by each phone.

- **Exit Drills** – Tips for developing an emergency escape plan.

- **Health and Infection Control:**
  - **Childhood Diseases**
  - **New York State Department of Health Recommended Childhood and Adolescent Immunization Schedule** – A list to help identify by
children’s ages what immunizations the children in you care should receive.

- **County Health Departments**
- **Proper Diapering and Hand Washing Techniques**

- **Preventing Child Abuse and Maltreatment** – Guidance on what to do if you suspect that a child in your care is being abused or maltreated.

- **Training for Legally-Exempt In-Home and Family Child Care Providers Leading to an Enhanced Rate of Reimbursement** – What trainings are available and where to find them.

- **Resources** – A list of community resources available to assist you.

**D. INITIAL ENROLLMENT**

When a child’s parent/caretaker is interested in selecting a legally-exempt child care provider, the district must give the enrollment form and attachments to the child’s parent/caretaker. The district must notify the parent/caretaker that the package must be submitted to the applicable EA. The provider and parent/caretaker must complete the enrollment form and any required attachments in full and return it to the applicable EA.

1. **Jurisdiction for Enrollment**

The jurisdiction for the initial provider enrollment is based on the county/district in which the child care site is located, even if financial responsibility for the child belongs to another social services district. If a parent chooses a legally-exempt child care provider whose site of care is located outside of New York State, that provider’s enrollment must be processed by an Enrollment Agency within NYS. The Enrollment Agency should be one that is geographically located close to the site of care so that inspections and monitoring may most easily take place.

2. **The Child Care Facilities System**

Per 18 NYCRR §415.4(f)(6), “Each legally-exempt caregiver enrollment agency must maintain an automated roster, in the New York State Child Care Facilities System, of the caregivers of informal child care and caregivers of legally-exempt group child care enrolled with such legally-exempt caregiver enrollment agency including the name and address of each such caregiver and information about the caregiver’s compliance with the enrollment requirements at such time and in manner and form required by the Office.”

The Child Care Facilities System (CCFS) is the system of record for tracking and monitoring compliance of legally-exempt as well as registered or licensed child care providers. The EA must enter true and accurate data into CCFS, including, but not limited to descriptions of non-compliance found. CCFS rules support appropriate decision making when proper documentation is recorded.
in CCFS. Any problems with CCFS functionality failing to support proper documentation must be reported to the Help Desk at 1-800-697-1323 and/or to the OCFS Legally-Exempt Child Care Enrollment Specialists.

CCFS jurisdictional rules will only allow an EA to create or update a provider record when the site of care is within the district the EA is contracted to serve. If the provider is currently enrolled to provide legally-exempt child care, the child care site is the same and the modality of care is the same, the EA updates the enrollment record. Note that although family child care and in-home child care are different modalities, if the child care site is the same, one CCFS record for the provider is used, and as the families served change, CCFS can accommodate the transition from one program type to the other.

Provider status changes, certain family decision and certain other determinations in CCFS will not be saved unless the accompanying notice or letter is printed. Whenever a letter is printed through CCFS, the EA is required to mail such letter no later than the following business day. If the EA prints a letter that it does not mail, the EA must record a note in CCFS stating this and provide the explanation.

A) Creating and/or Updating a Provider Record in CCFS

Every enrolled provider and each of their respective locations of care, is assigned a unique enrollment ID number. All subsidized families receiving care from that provider, at that location, must be included in that provider enrollment record.

The EA must conduct searches on CCFS to determine whether the provider is currently enrolled, was previously enrolled, or was denied enrollment. If an enrolling provider has a CCFS record for legally-exempt childcare provided at the same location, their “old” ID number must be re-activated, unless prohibited by an existing CCFS system or data error. Providers/programs that are re-opening with unresolved non-compliance documented in CCFS (for example, the provider was previously denied or terminated) must be placed “under full review” and cannot be enrolled temporarily due to the existing non-compliance and the time needed to verify whether the provider/program is currently in compliance. Before end-dating a non-compliance issue in CCFS, the EA must verify that the non-compliance issue has been resolved through a method other than self-attestation.

3. Intake Phase

The Enrollment Intake Phase begins when an initial enrollment packet is received, and ends when a packet becomes either:

- complete (and the enrollment process moves forward into the Preliminary Review Phase) or
- goes from incomplete to withdrawn
A) Determination of Packet Completeness Performance Milestone

Upstate: ("Upstate"= All districts of NYS, excluding five boroughs of NYC.) Within 5 business days of receipt of an enrollment package, the EA must review the enrollment package, including attachments, for completeness and enter basic enrollment information data into CCFS. Additionally, if the package is received “incomplete,” the EA must, by the next business day after the determination of incomplete status, send the appropriate CCFS-generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent and notice to district, advising of what information is missing.

NYC:

The EA serving NYC must review the enrollment package, including attachments, for completeness and enter basic enrollment information data into CCFS, on the same day that it is received, unless it is received after 4 p.m. If the enrollment package is received after 4 p.m., the EA must make the determination of completion and enter basic enrollment information into CCFS by 12 p.m. the next business day. Additionally, if the package is received “incomplete,” the EA must, on the same day of the determination of incomplete status, send the appropriate CCFS-generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent and notice to district, advising of what information is missing. If the determination is made after 4 p.m., the EA must mail or give the appropriate CCFS-generated letter to the provider and the parent by 12 p.m. on the next business day.

For all enrollment documentation received, the EA must date-stamp or otherwise record the date received on the enrollment form and attachments as the items are received.

The enrollment package’s status of complete or incomplete must be recorded in CCFS. The packet received date is the date that the enrollment package was initially received by the EA.

B) Actions Required for an Incomplete Packet

If the package is received “Incomplete,” the EA must send, by the next business day after the determination of incomplete status, the appropriate CCFS-generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent, advising of what information is missing. The original enrollment package must be retained with the EA, and a photocopy of the incomplete pages sent. If the provider does not return the missing items within 15 days, the EA may send out a second Notice of Incomplete Enrollment Form. A copy of this letter is sent to the parent/caretaker.

In totality, an EA must allow providers no less than 30 days from the date the Notice of Incomplete Form is first issued, to submit any missing
documents or information. However, if the missing items are not received the EA must, within 40 days of receipt of the enrollment package,

- Change the status of the enrollment package to “Withdrawn,” if there are no non-compliance issues noted.

- Change the status of the provider to “Denied”, if there are non-compliance issues that have not been resolved and this is the sole packet in process.

Please note that the date of receipt of the completed package starts the 10-day Preliminary Review Decision clock, and the 40-day Full Review Decision clock.

C) Actions Required for Consent to Applicable Additional Standards
Subsidy-paying districts must, when specified in the approved additional local standard, require a signed consent/release form for enrollment. When a consent/release form is required by the subsidy-paying district for a provider and/or other site person, CCFS will require such form from each applicable individual prior to the EA making a Packet Decision of “complete”.

D) Actions Required for a Packet Showing Non-Compliance
The EA must notify the provider of the non-compliance by generating and printing the applicable CCFS notice:

- Notice of Incomplete Enrollment Request - This notice, sent to providers and parents when the enrollment packet is incomplete, will also identify non-compliance issues when they are accurately recorded in CCFS.

- Notice of Non-compliance - This notice is sent to providers and parents when the enrollment packet is complete, and, non-compliance issues exist and are accurately recorded in CCFS.

E) NYC-Specific Actions during Intake:
The EA will notify HRA of the determination on enrollment packets that are incomplete, withdrawn or denied at Intake by stamping the Child Care Return Appointment notice and sending the original with the parent to Human Resources Administration (HRA).

4. Preliminary Review and Decision
The Preliminary Review Phase begins when an enrollment packet for an initial enrollment (or re-opening) becomes complete. During the Preliminary Review phase, the EA must conduct a review of the completed enrollment form and attachments, and make a Preliminary Review Decision:
A) Preliminary Review Timeframe

**Upstate:**

By the 10th day following the receipt of a completed enrollment packet, the EA must conduct a review of the packet, must enter all appropriate data and information into CCFS, and make a Preliminary Review Decision.

The EA must issue the applicable notice, and if enrolled, issue the OCFS 7026 and make the CACFP referral no later than the following business day.

**NYC:**

The EA serving the NYC district must conduct a review of the enrollment packet, enter all appropriate data and information into CCFS, and make a Preliminary Review Decision, on the same day that the packet is determined complete, unless the determination of completion is made after 4 p.m. If the determination of completion is made after 4 p.m., the EA must make the Preliminary Review Decision by 12 p.m. on the next business day.

The EA must issue the applicable notice, and if enrolled, issue the OCFS 7026 and make the CACFP referral on the same day the Preliminary Review Decision is made. The EA must notify HRA of the determination on enrollment packets that are Enrolled: Temporarily, Enrolled, Withdrawn, Under Full Review or Denied at the Preliminary Review decision by stamping the Child Care Return Appointment notice and sending the original with the parent to HRA.

As part of the Preliminary Review, ALL enrollment agencies must:

- Review the completed enrollment packet and attachments
- Verify whether the provider is legally-exempt from the OCFS day care licensing and registration requirements and, for care provided in NYC, the requirements of the NYC Department of Health and Mental Hygiene. The EA must:
  - Conduct searches on CCFS to determine whether the provider is currently licensed or registered;
  - Conduct searches on CCFS to verify the provider’s attestation as to whether the provider has a history of daycare enforcement;
  - Make a Family Decision in CCFS that includes a determination of whether the provider’s enrollment can be extended to include the
children without losing the provider’s legally-exempt status. This
determination is preceded and supported by completion of the
Child Care Decision information in CCFS, which includes;

- A review of the numbers of children in care, ages of children
  in care and other factors relevant to the provider’s legally-
  exempt status
- Review the schedules of children in care
- Child specific determinations
- Capacity determination

A provider cannot operate a legally-exempt family child care home in a
residence that is operating a registered family day care home. And,
as a rule, a provider cannot operate a legally-exempt family child care
home when another legally-exempt provider is currently operating in
the residence. However, an exception occurs when multiple caregivers
are needed to provide child care services which meet the parent’s or
caretaker’s schedule of employment, or other approved activity, or the
special needs of the child.

- To determine whether multiple caregivers may be enrolled to provide
  child care services operating out of the same residence, the EA must
  look at the hours of operation.

  - There must be distinct, non-overlapping schedules specifying
    the hours each provider will provide care for each day of the
    week.
  - The providers must agree to adhere to the schedules and
    understand it is a requirement of the enrollment.
  - The EA must receive written assurance that the stipulations
    above are understood and agreed to by the parents and
    provider.

- Determine whether the completed home or facility safety checklist, or
  any of the attestations for health and safety requirements, raises any
  concerns,

- When a criminal convictions history exists for the provider or the
  provider’s employee or volunteer, or for family child care, the
  household member(s) residing at the child care site, determine the
  category of crime and take appropriate action in accordance with the
  guidelines detailed in Section III.A., Site Person Level Requirements,
  Criminal History of the Provider and Site People.

- When a history of day care enforcement exists, determine whether the
  history is “low risk” or “high risk” and take appropriate action in
  accordance with Section IV.B., Provider Level Requirements for
  Enrollment, Day Care Enforcement History Enrollment Review.
• Determine if a provider has disclosed a history of Termination of Parental Rights, or Court-ordered Article 10 Removal of a Child. If disclosed, the provider’s enrollment must immediately be denied or terminated in accordance with Section IV.A., Provider Level Requirements for Enrollment, Child Welfare History Enrollment Review.

  o Determine whether there are any non-compliance items which disqualify the provider from enrollment
  o Determine whether any of the other items attested to raise any concerns
  o Take appropriate action to address identified health and safety issues
  o Document the above in CCFS

B) Understanding the Family Decision

Once an enrollment packet becomes complete, the EA can make the Family Decision. The Family Decision is tied to the verification that the provider is “legally-exempt” as the numbers of children being cared for are pertinent to that decision. A child can be “allowed” if the addition of a child will not cause the provider to be over-capacity. If adding a child to the provider’s enrollment will make the provider over-capacity, the child cannot be allowed.

• For informal child care, the EA must review the child care schedules of all the children in the provider’s care (provided on the enrollment form). If there are inconsistencies between the current enrollment form and the data in CCFS, the EA must resolve the inconsistencies through communications with the provider and/or parent.

• The EA must make a child care decision for each child receiving subsidized child care

The Child Care Decision in CCFS

As part of the process of verifying the provider’s legally–exempt status, the EA must document and, as applicable, update in CCFS the Child Care Decisions for each child.

• The EA reviews the enrollment form and compares the information on the children reported to that in CCFS. If the two do not match, the EA must contact the provider to determine which is accurate.

• In addition to documenting details regarding subsidized children in the provider’s care, the EA must also document the number of the provider’s own children in care and the non-subsidized children in care.

• The EA must review the schedules of ALL children in care except
the provider’s own, as they do not count towards the capacity decision, and make a determination regarding whether the provider is operating within capacity or is over capacity.

- A child is “allowed” if the provider’s enrollment can be extended to include that specific child, without the provider becoming “overcapacity”. If the provider would be overcapacity, new children cannot be “allowed” and the EA must document the overcapacity issue.

- The EA updates the CCFS record for each child, as applicable, documents that the EA reviewed the schedule and makes a capacity determination.

These steps and documentation support the Legally-Exempt Verification Decision and the Family Decision.

- The EA makes a Family Decision

The Family Decision in CCFS

Once all the child-specific Child Care Decisions have been made for the family, and all the supporting decision on the Child Care Decision window have been completed/updated, then the EA makes the Family Decision. A Family Decision of “Allowed” means that a complete packet has been received, and the addition of this family will not cause the provider to be over-capacity, and, there is no Local District Rejection for of the provider on behalf of this family. As part of making the Family Decision, the EA must complete the Child Care Decision window in its entirety, to determine whether the provider will remain Legally-exempt if the EA extends the provider’s enrollment to include this child/family.

- If there is any indication that the provider is currently providing child care that may be illegal day care, the EA must make a complaint to the OCFS Regional office for investigation.

While generally not applicable at this phase of the enrollment, the EA may become aware that the results of an additional local standard check in effect for a particular family’s paying county, do not allow the issuance of subsidy funds for care provided by a provider. Such a determination by the district would drive a change of the Family Decision to “not allowed”.

If there are no concerns regarding compliance, the provider is enrolled temporarily, while the full review is completed.

C) Actions Required for Non-Compliance

- All non-compliance must be documented in CCFS in accordance with this guide, other OCFS policy and instructions given at OCFS sponsored CCFS training.
• If the EA has not already notified the provider and parent, the EA must generate and print the Notice of Non-compliance, and send it to providers and parents.

• If the enrollment packet raises immediate concerns, the EA must deny enrollment or complete a full review before determining enrollment as stated below.

• When the completed home or facility safety checklist raises concerns, the EA must work with the legally-exempt provider to resolve the areas of concern.

• When a health and safety issue is identified which disqualifies or presumptively disqualifies the provider from enrollment, the EA must deny enrollment.

  o Health and safety issues which *presumptively disqualify* the provider are:
    ▪ The provider and/or the provider’s employee, volunteer, or, for family child care, a household member residing at the site where child care is provided, is/are convicted of a violent or serious crime(s) as specified in Section III.A.,
    ▪ The provider’s history of termination of parental rights,
    ▪ The provider’s history of court-ordered removal of a child under Family Court Act Article 10,
    ▪ The provider’s history of day care enforcement in the high risk category.

  o Health and safety issues which *absolutely disqualify* the provider from enrollment are:
    ▪ The provider and/or the provider’s employee, volunteer, or, for family child care, a household member residing at the site where child care is provided, has/have been convicted of a crime against a child, as specified in Section III.A. Site Person Level Requirements, Criminal History of the Provider and Site People.
    ▪ The provider or the provider’s employee, volunteer, or, for family child care, a household member residing at the site where child care is provided, is listed on the New York State Sex Offender Registry.

**D) Documentation**
The Preliminary Review decision must be documented in CCFS by the timeframe applicable to the EA (NYC or Upstate). The Preliminary Review Milestone is met when:
For initial enrollments, a provider status change from Preliminary Review to:
  - Enroll: Temporary
  - Under Full Review
  - Deny
  - Withdraw
  - Enroll

For Subsequent Family packets, when the Family Decision is made

For re-enrollments, per packet, when a Family Decision is made

E) Decision and Notification

The decision timeframes for milestone purposes vary depending on whether the EA is serving NYC, or serving a district in the rest of the State, based on timeframes stated previously in the Preliminary Review and Decision section.

For providers who become enrolled temporarily, CCFS will notify the local district through the E-Noticing process of a change in the provider’s eligibility for the applicable families. The CCFS notice, the LE-CCFS LD-007, Legally-Exempt Parent-Provider Eligibility Changes, informs the district that a legally-exempt enrollment agency has made changes to a family decision and/or to the enrollment status of a provider that may impact issuance of subsidy payments, and that action is required. The local district must obtain specific information regarding changes made to a family decision and/or to the enrollment status of a provider by running the LE Parent-Provider Notification of Eligibility Changes (DSS) report in the Child Care Facility System (CCFS). Additionally, per 18 NYCRR 358, the district must provide written notice to the parent/caretaker of any change in benefit.

ALL ENROLLMENT AGENCIES: NYC & UPSTATE:

Notice(s) generated as a result of the Preliminary Review Decision, which may include a Notice of Enrollment, Notice of Family Decision, Notice of Temporary Enrollment, Notice of Withdrawal, etc., must be sent within one business day following the status chance decision in CCFS to both the provider and parent(s).

(1) DECISION OF ENROLL: TEMPORARY

The EA must enroll a provider on a temporary basis if the provider is legally-exempt from the New York State child day care licensing and registration requirements and a review of the completed checklist and the documentation / attestations for the health and safety requirements in the enrollment package do not raise any immediate concerns, and the provider does not have known non-compliance issues.
In addition to documenting the provider’s compliance with enrollment requirements, the following actions must be documented at the decision to enroll:

(a) **PRIOR PERIOD OF INELIGIBILITY**

Prior Period of Ineligibility (PPI) that are known to the EA. A local district may need to issue subsidy payments back to the parent’s child care subsidy start date and prior to the provider’s actual enrollment start date. However, the district must not pay for child care that is provided during a period of provider ineligibility. For this reason, the EA must document any known periods of ineligibility occurring in the prior 12 months. For detail on what constitutes a PPI, refer to Section I.D.5.D. Overview of the Enrollment Process, Initial Enrollment, Full Review and Decision, Enrollment Period, Determining Prior Periods of Ineligibility

The EA must document any known PPI in CCFS prior to the decision to enroll.

(b) **TRAINING STATUS**

If a provider has submitted the OCFS-LDSS-4966.3: Legally-Exempt Child Care Provider Training Record Form, the EA must make a determination on the training concurrently with the enrollment decision. The EA must record such determination in CCFS on the Training window.

(c) **CACFP PARTICIPATION**

The EA must document in CCFS whether the provider is currently participating in CCFS or not. A provider who is participating in CACFP must submit written proof with the enrollment form.

(d) **CACFP REFERRAL**

The EA is required to refer all legally-exempt family child care providers to CACFP upon enrollment. The EA must generate a complete list of all the CACFP sponsors serving the provider’s geographic area and include this with the OCFS 7026. The EA must utilize the county-specific information, available on the NYS Department of Health website: http://www.health.ny.gov/prevention/nutrition/cacfp/county/outreach/funding_to_feed_children/.

The EA must record the CACFP referral date in CCFS in the CACFP window.

(e) **NOTIFICATIONS**

The following notifications are sent by the EA:
a. To the provider:

- 2 copies of the CCFS-generated Notice to Provider of Temporary Enrollment. The 2nd copy is for the provider to give to CACFP.
- OCFS-7026, Enrollment Information Package for Legally-Exempt Providers
- Along with the OCFS-7026, the EA must also distribute a list of all CACFP sponsors serving the area where the child care site is located. The EA must utilize the county-specific information, available on the NYS Department of Health website:
  http://www.health.ny.gov/prevention/nutrition/cacfp/county/outreach/funding_to_feed_children/

b. To the parent:

- The CCFS-generated Verification to Parent of Temporary Enrollment of the Legally-Exempt Child Care Provider.

(f) NYC – SPECIFIC ACTIONS FOR PROVIDER ENROLLED TEMPORARILY

At temporary enrollment, when NYC is the subsidy-paying district, the EA contracted to serve NYC must:

- Send the provider’s W-9 and Terms & Conditions form to the payment vendor, YMS Management Associates, Inc., when NYC is the subsidy paying district.
- Scan and index the enrollment packet and necessary documents into the HRA Viewer.

(2) DECISION TO DENY ENROLLMENT-

The provider’s enrollment request is denied when the provider does not meet one or more requirements for enrollment. Additionally, denial is not an appropriate response to all non-compliance—the EA is required to work with the legally-exempt provider to quickly resolve the areas of concern on the health and safety checklist.

The EA must accurately document all non-compliance issues in CCFS prior to denying the enrollment. Proper documentation in CCFS ensures:

- Accurate language notifications to the provider and/or parent describing non-compliance issues and whether the provider has a right to an extenuating circumstances review
• appropriate CCFS support of future case actions if/when the provider requests a Review of Extenuating Circumstances and/or submits subsequent enrollment requests.

The EA’s action in response to a false statement on the enrollment form will vary on a case-by-case basis. When a false statement is based on a misunderstanding, the EA should work with the provider; whereas if the false statement is a deliberate attempt to deceive, a denial is appropriate.

(a) DISQUALIFICATION

In accordance with this Guide, the provider is **disqualified**, denied enrollment, and cannot be considered for enrollment, when:

- The provider has a criminal history that includes convictions for a crime (or attempt to commit a crime) against children.
- The provider’s employee, volunteer or for family child care, the household member residing at the site where child care is provided, has a criminal history that includes convictions for a crime (or attempt to commit a crime) against children.
- The Provider is listed on the New York State Sex Offender Registry.
- The provider’s employee, volunteer or for family child care, the household member residing at the site where child care is provided is listed on the New York State Sex Offender Registry.

(b) PRESumptIVE DENIAL (PRESumptive DISQUALIFICATION)

The provider must be “presumptively” denied enrollment when the attestations state a history including any of the following risk factors:

- The provider has a history of termination of parental rights,
- The provider has a history of Court-ordered Article 10 removal,
- The provider has a history of criminal history that includes convictions for violent or other serious crimes, not against a child.
- The provider’s employee, volunteer, or, for family child care, household member residing at the site where the childcare is provided, has a history of criminal history that includes convictions

A provider who has been presumptively denied enrollment, and whose sole basis for denial is “presumptive,” has the right to request a review of extenuating circumstances. For additional information on
extenuating circumstances, refer to the section for each topic as well as:

- Section I.E., Review of Extenuating Circumstances Overview
- Section III.A.9, Site Person Level Requirements, Criminal History of the Provider and Site People, Factors to be Considered in Reviews.
- Section IV.B.8., Provider Level Requirements-Enrollment, Day Care Enforcement History Enrollment Review, Review of Extenuating Circumstances - Daycare Enforcement

(c) Notification

The EA must generate in CCFS the appropriate notices to be mailed by the following business day. CCFS will populate the denial notice with the applicable language including the reason for denial and all non-compliance issues currently documented in the system.

The EA sends the provider, with a copy to the parent, the CCFS-generated Notice of Denial. Due to confidentiality issues, the EA must not disclose to the parent that a provider has been denied enrollment specifically due to a history of termination of parental rights or court-ordered removal of a child. In these instances, the parent is instead sent the CCFS-generated, Parent Advisement: Provider Enrollment Status Change. Which informs the parent that a provider is not in compliance with enrollment requirements, and they will have to select another provider.

When the district is notified of the denial of an enrollment, through CCFS E-Notices and reports, the district must issue the OCFS-LDSS 4781, Notice of Intent to Change Child Care Benefits, to inform the parent that the provider’s enrollment package has been denied and to advise the parent that he or she must select another child care provider. When a legally-exempt child care provider is denied by the EA, the legally-exempt child care provider cannot be reimbursed by the district for any care provided.

(3) Decision to Place the Provider Under Full Review-

When health or safety concerns exist at the time of the Preliminary Review Decision, which do not lead to disqualification for the provider, denial or presumptive denial, then the EA cannot temporarily enroll the provider and must place the provider “Under Full Review”.

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• All non-compliance or factors to be reviewed must be accurately documented individually in CCFS
  o Low risk day care enforcement history
  o Category of crime when criminal conviction exists
  o Health and safety checklist items which are not resolved
  o Other non-compliance
• The provider’s enrollment status in CCFS progresses to “Under Full Review.”
• The EA must generate in CCFS the LE001: Notice of Under Full Review and mail this by the following business day to the provider and the parent.

For these providers, the EA must conduct an evaluation of the identified health and safety concern(s) according to this Guide, during the Under Full Review Phase.

5. Local District Enrollment Tasks
Per 12-OCFS-LCM-01, Changes to the Legally-Exempt Child Care Provider Enrollment Process, local districts are now informed of their enrollment-related tasks through the issuance of automated CCFS E-Notices. Each CCFS E-Notice contains a required action and a timeframe for completion of the task, and is sent to a mailbox created by the district for this specific purpose. E-notices refer the district to a specific CCFS report for the confidential, provider-specific information needed to perform the task. Each local district must:

• Create, access, and maintain an E-mail account box solely for the purpose of receiving E-notices from CCFS. The E-mail address must be a single E-mail address that should be structured so that it is not subject to frequent change. It may represent a distribution list or mailbox.

• Designate people who will be responsible for monitoring the mailbox.

• Have a process to ensure that the required actions included on the E-notice are completed within the specified time frame. The local process must include timely review of all E-notices, recommended to be done each business day; completion of the required actions; and timely written response to the designated EA.

The district must utilize the specified CCFS reports to obtain a list of specific LECCPs for whom local district action is required. EAs are not required to make manual referrals to the district except when CCFS does not perform the function.
A) Local District Child Welfare Database

Per 18 NYCRR §415.4(f)(8)(ii), the district must, at initial enrollment and re-enrollment, conduct a check of the local Child Welfare Database to determine whether the LECCP:

- Does or does not have a history of termination of parental rights under SSL 384-b, and
- Does or does not have a history of court-ordered removal/placement of a child under Family Court Act Article 10

(1) Timeframe

The district must, within 15 days of the receipt of the referral to conduct the local Child Welfare Database Check, conduct a check of the district’s local Child Welfare Database, and inform the applicable EA of the results.

(2) Jurisdiction

The district in which the child care provider resides is responsible for conducting the state-required child welfare database check for the LECCP’s history of termination of parental rights and court-ordered removal/placement of a child under Family Court Act Article 10, as well as any review of extenuating circumstances related to the provider’s child welfare history. For districts situated along the New York State border with other states and/or Canada, there will be times when the child care provider does not reside within New York State. In those situations, the EA will identify an otherwise affiliated district within New York State, usually the subsidy-issuing district, to perform the child welfare database check (12-OCFS-LCM-01).

(3) CCFS E-Notice Referral

CCFS will notify the district of necessary action, to conduct the check of the local child, as follows:

- LE-CCFS LD-001, Legally-Exempt Child Welfare Referral List: This notice informs the district that there are one or more legally-exempt child care providers for whom the district must conduct a check of the local child welfare database to determine if the district has a record showing the provider had a child removed from his or her care by court order under Family Court Act Article 10 or had his or her parental rights terminated under Social Services Law 384-b. The notice informs the district to run the LE Child Welfare Database Referral List (DSS).

- LE-CCFS LD-002, Legally-Exempt Child Welfare Database Results Due/Overdue: This notice informs the district that the results of the child welfare database checks which were requested in a previous E-notice, LE-CCFS LD-001, are now overdue. The district must run the report in CCFS to obtain the detailed listing of providers.
The CCFS E-Notice referral to the district is generated by CCFS as follows:

- For initial enrollments or re-opening: following the Preliminary Review Decision
- For renewals: following the documentation in CCFS of the receipt of a complete re-enrollment packet.

(4) DATABASE CHECK

The district must conduct a search of its child welfare database to determine whether the provider has ever had:

- A court-ordered removal under Family Court Act (FCA) Article 10 and/or
- A termination of parental rights under Social Service Law 384-b or equivalent authority.

As part of the check, the district must verify that any such provider is the respondent in the court-ordered Article 10 removal or termination of parental rights proceeding prior to determining that the provider has such a history.

- The search is conducted only on the legally-exempt family or in-home child care provider. Employees, volunteers or household members of the legally-exempt family or in-home child care provider are not subjects of this database check.
- Only one local child welfare database check is done annually, per enrollment. When a provider has a significant change which requires a new enrollment, such as change of modality or location, a separate child welfare database check must be done. The results of each check are limited to the district in which the provider resides. They are not statewide.

If needed to accurately match the child care provider to a database record, the district may request additional information from the EA, such as names of provider’s household members. However, the district has no legal or regulatory authority to conduct the local child welfare database check on individuals other than the legally-exempt family or in-home child care provider.

(a) USE OF COGNOS

OCFS has created three predefined reports in COGNOS which the district may use to meet the requirement for a database check. However, the district is not required to use the predefined COGNOS 10 Reports to conduct the State check if the district conducts an alternate database check which meets the regulatory requirements.
The COGNOS Reports designed for the district to use for searching the child welfare database are:

1. Termination of Parental Rights Report

2. Adoption Reportable Events Report

3. Court-Ordered Article 10 Removal Report

These three predefined reports are based on either legal or adoption codes entered into the Child Care Review Service (CCRS), which tracks children in foster care placements. A detailed explanation of how to use COGNOS is included in Section VI., Using COGNOS Reports for the Local Child Welfare Database Check for Legally-Exempt Family and In-Home Child Care Providers.

(5) INFORMING THE EA OF THE RESULTS

The district must inform the EA of the results of the database checks within 15 days of receiving the CCFS E-Notice referral. The district must use the OCFS-2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, or an OCFS approved equivalent, to inform enrollment agencies of the results of the local child welfare database check required at enrollment and re-enrollment:

- Was found, or, was not found, to have a history of termination of parental rights under SSL 384-b, and

- Was found, or, was not found, to have a history of court-ordered removal/placement of a child under Family Court Act Article 10.

Note that due to the highly confidential nature of the child welfare database, districts must release to the EA only that information which is specifically allowed by regulation and/or law. The district must assign responsibility for searching the database only to employees of the district who understand the confidentiality issues pertaining to foster care and adoption information. Additionally, sharing indicated or unfounded reports in the Statewide Central Register of Child Abuse and Maltreatment with the EA is prohibited.

(6) EA RESPONSIBILITY

The EA must review the results upon receipt. When the results indicate a history of court-ordered Article 10 removal of a child or termination of parental rights, the EA must document the results no later than the next business day and immediately deny or terminate the enrollment¹ of the provider. Otherwise, the EA must document within 7 calendar days.

¹ The exception is when a district has previously conducted a review of extenuating circumstances and granted an exception allowing the provider to be considered for enrollment.
Providers who are denied enrollment for these reasons are allowed to request, within 30 days, a review of extenuating circumstances.

- An overview of the review of extenuating circumstances is found in Section I.E., Review of Extenuating Circumstances Overview.

- Details for the review of Extenuating circumstances that pertain to child welfare history reviews are found in Section IV.A.7., Provider Level Requirements-Enrollment, Child Welfare History Enrollment Review, Review of Extenuating Circumstances–Child Welfare.

(7) OVERDUE RESULTS

The local district where the provider resides is notified each business day when a result for its child welfare database check is “overdue”. The local district where the provider resides is responsible for reviewing the overdue report in CCFS, determining why each result is overdue and taking appropriate action to rectify the situation.

B) OCFS-Approved Additional Local Standards

Upon the written approval by OCFS, a subsidy-paying district may impose additional requirements on child care providers providing subsidized child care services. OCFS-approved additional local standards for enrollments are included in the district’s Child and Family Services Plan. EAs can access OCFS-approved additional local standards for each district at the OCFS website, as part of the district’s Child Care Plan.

Once OCFS approves an additional local standard, OCFS enters the additional standard in CCFS. On the effective date, based on specific triggering events, CCFS applies the additional standard to providers designated in the Child Care Plan.

Evaluation and monitoring of OCFS-approved additional local standards for enrollment is the responsibility of the district. The district may perform the additional local standard or contract with another agency to perform the additional local standard, as stated in the district’s Child Care Plan.
(1) **TIMEFRAME**
Within 25 days of the date of the CCFS E-Notice referral date for review of additional local standards, any district that has State-approved additional local standards must evaluate the provider for compliance with the additional local standards and notify the EA, in writing, using the OCFS 2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, or OCFS-approved local equivalent, whether or not the additional local standards are:

- Met
- Not Met
- Not Applicable.

(2) **JURISDICTION**
The provider must meet the additional local standard(s) for the district that issues the child care subsidy payment. This is usually the parent’s county of residence, but not always. Based on the information recorded in CCFS, the system will determine which district(s) are the subsidy-paying district(s) and whether those districts have additional standards are applicable to the modality of care. CCFS makes referrals to the subsidy-paying districts at the appropriate decision point in the enrollment process. The subsidy-paying districts are identified in CCFS in the facility’s profile window for easy reference.

When multiple districts are issuing a child care subsidy for a legally-exempt child care provider, and each district has an additional local standard, a determination is made by EACH district regarding its own additional local standards. This is true even if multiple districts are conducting a similar process, such as that for a criminal background check.

(3) **APPLICABILITY**
The additional standard is applicable only to the child care provider/program types (modalities) identified in the district’s Child and Family Services plan.

- LE Family Child Care (LE FCC)
- LE In-Home Child Care (LE IH)
- LE Group Programs not operating under the auspices of another government or tribal agency (LE GNUA)
- LE Group Programs Operating Under the auspices of another government or tribal agency (LE GUA)

Furthermore, the additional standard is applicable only to persons in the “roles” specified in the district’s Child and Family Services plan. If the additional standard applies at the person level, not the program level, the
district must also specify for each program type selected, which “roles” the additional standard will apply to:

- Provider/Program Director,
- Employee,
- Volunteer or
- Household Member (applicable only to household members residing at the residence where Family Child Care is provided).

(4) CCFS E-Notice Referral
CCFS will notify the district to conduct the OCFS-approved additional local standard process, a necessary action, using the following E-Notices:

- LE-CCFS LD-003, Legally-Exempt Additional Standard Referral: This notice informs the district that there are one or more legally-exempt child care providers for whom the district must conduct the OCFS-approved additional local standard process specified in the district’s approved Child and Family Services Plan. The district must run the LE Additional Standard Referral List (DSS) report in CCFS to obtain the detailed listing of providers and other persons to whom the standard applies.

- LE-CCFS LD-004, Legally-Exempt Additional Standards Due/Overdue: This notice informs the district that the results of the OCFS–approved, additional local standard, requested in E-notice number three, are overdue. The district must run the LE Additional Standards Due/Overdue (DSS) report in CCFS to obtain the detailed listing of providers

(5) Consent or Release Form
A district may require or request that a consent, release, acknowledgment, or similarly purposed form be completed by the provider, and other persons subject to the additional standard, as part of the enrollment packet. CCFS is programmed to reflect the district’s choice as to whether a consent/release form is “required,” as a condition of packet “completeness.” The Consent/Release Additional Standards window is active only when the subsidy paying district with an additional local standard requires a release/consent. The district’s choice can be seen in the written process included in the CFSP or by navigating in a provider’s CCFS to the Consent/Release Additional standards window. The EA must record a determination for the Consent/Release status for each site person for whom a determination is required.

- When a consent/release is “required,” the enrollment packet is not “complete” unless required consents/releases are received for each
applicable site person. The lack of receipt is documented as part of the completeness decision in CCFS. When the consent/release is received the EA must enter into CCFS the date of each, as appropriate.

- When a district has chosen to make submission of a consent/release “optional,” the additional standard will be applicable to the provider/program/person only when the consent/release is submitted. If the provider/program/person never submits the release, then the enrollment process proceeds and the additional standard does not apply to the provider’s enrollment. If the signed consent/release is submitted at any point, the EA must document its receipt in CCFS and the additional standard process will be initiated.

When a consent/release is required, it is the responsibility of the district to arrange for transfer of the consent/release forms from the EA to the district, with the EA retaining a copy.

(6) INFORMING THE EA OF RESULTS

Within 25 days of the date of the CCFS E-Notice referral for review of additional local standards, any district that has State-approved additional local standards must evaluate the provider for compliance with the additional local standards and notify the EA, in writing, whether or not the additional local standards have been met. The exceptions to the 25-day rule occur when the additional standard is one that cannot be evaluated during the enrollment review period. For example:

- CACFP participation: CACFP will not allow a provider to participate in CACFP until AFTER it is enrolled by the EA. Therefore the local district cannot evaluate the provider’s “participation in CACFP” until the provider is enrolled and CACFP has had time to engage the provider.

- Site visits: Many site visits include the goal of verifying that care is being provided. Some providers will not begin providing care until they are found to be “eligible” to provide subsidized child care and are enrolled.

In these situations where the provider’s compliance cannot be assessed during the full enrollment review, the local district will state in its Child Care Plan when the additional standard will be conducted. The district must return the results to the EA within 10 days of assessing the provider’s compliance with the additional standard.

(7) OVERDUE RESULTS

The subsidy-paying district is notified each business day when a result for its additional local standard is “overdue”. The subsidy-paying district is
responsible for reviewing the overdue report in CCFS, determining why each result is overdue and taking appropriate action to rectify the situation.

(8) IMPACT ON ENROLLMENT

When a provider does not meet the approved additional standards for a district, he or she cannot be an eligible provider for that specific district. Additionally, the EA must determine whether the failure to meet the additional standard means there is a non-compliance issue which affects the provider’s overall eligibility for enrollment. This means it is possible that a provider may be eligible to provide subsidized child care for one district, but not another. For example, a district may have the additional standard of requiring participation in the CACFP. In this instance, a provider that does not participate in the CACFP would be an “ineligible” provider, only for the subsidy-issuing district, with that additional standard. They could still be an eligible provider for other districts, if appropriate.

C) Review of Extenuating Circumstances Pertaining to Court-Ordered Removal Under FCA Article 10 and/or Termination of Parental Rights.

When notified by the EA, the local district is responsible for conducting the Review of Extenuating Circumstances related to the provider’s history of Court-ordered removal of a child under FCA Act Article 10 or termination of parental rights whether the information was learned through the database check, attestation or other means. For additional details, refer to:

- Section I.E., Review of Extenuating Circumstances Overview
- Section IV Section IV.A.7., Provider Level Requirements-Enrollment, Child Welfare History Enrollment Review, Review of Extenuating Circumstances – Child Welfare

D) Other Local District Responsibilities

Per 12-OCFS-LCM-01, the local district must inform the EA in a timely manner of subsidy case decisions which may impact the provider’s eligibility and enrollment status as an LECCP. The district must inform the EA, in writing using the OCFS-2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, or an OCFS-approved equivalent for informing enrollment agencies, of:

1. The district’s determination that the LECCP is not eligible to provide care for a specific family, per 18 NYCRR,
   - 415.1(l), because the provider is an adult member of this family’s Child Care Services Unit who is not a sibling to the child(ren).
   - 415.1 (g)(6) and (7) and 415.4(c)(1)(i), because the recipient may not choose an LECCP when Title XX funding is being used to pay for child care services.
• 415.4(c)(1)(ii), because the district has disapproved a provider chosen by a recipient in a preventive or protective services case because the district has reason to believe it would be contrary to the health, safety or welfare of the child to receive child care services from the provider.

2. In accordance with SSL 410-x (7) and 12-OCFS-LCM-01,

• The district’s suspension of a legally-exempt child care provider’s eligibility to care for all subsidized children, while the provider is under investigation for child abuse or maltreatment; or,

• The end of a district’s suspension of eligibility to provide subsidized child care for an LECCP.

3. If applicable, the district’s disqualification of an enrolled provider from receiving payment under the child care subsidy program per 18 NYCRR §415.4(h). The notification must include the disqualification period start date, and, if applicable, the disqualification period end date.

4. If applicable, the district’s determination that it has reason to believe an enrolled or enrolling LECCP is violating health and safety regulations pertaining to subsidized legally-exempt child care and is making a complaint to the EA.

E) Support for Local Districts
The OCFS Division of Child Care Services, Child Care Subsidy Unit provides guidance and technical assistance directly to local districts. Local districts should direct policy questions to the Child Care Subsidy Unit, not Enrollment Agencies. Enrollment Agencies should direct local districts to the Child Care Subsidy Unit for assistance with program or systems issues.

6. Full Review and Decision
A) Review
The EA must evaluate the risk factors found, and, using this Guide to evaluate risk, make a determination whether the provider may be enrolled.

(1) MILESTONE
Within 40 days of receipt of the completed enrollment package, the EA must complete a full review of the enrollment package, determine whether the provider meets the requirements for enrollment, make an enrollment decision, and notify both the provider and parent(s).

(2) HEALTH AND SAFETY CHECKLIST-
The EA must thoroughly review, in accordance with this Guide, any health and safety concern indicated in the attestations or otherwise known to the agency that does not preclude enrollment. Providers must come into compliance in order to be considered for enrollment.
(3) EVALUATION OF CRIMINAL HISTORY - CATEGORY C
During the Preliminary Review Phase, the EA must determine the Category of Crime for any criminal conviction history for a provider and/or other site persons who have been convicted of a crime.

(4) CCFS DATABASE CHECK TO VERIFY DAYCARE ENFORCEMENT HISTORY
The EA must conduct a review of the CCFS licensing and registration database to determine whether or not a family or in-home provider has applied for and been denied an initial license or registration, or had his or her license or registration to operate a child day care program denied, revoked or suspended. Additionally, if reviewing the provider’s child care history reveals a false statement was made on the LE enrollment packet, the EA must deny enrollment.

(5) EVALUATION OF “LOW RISK” DAYCARE ENFORCEMENT HISTORY
During the Preliminary Review Phase, the EA must determine the risk level, high or low, for a legally-exempt child care provider who has a day care enforcement history. During the Full Review, the EA must conduct a review of the “low risk” daycare enforcement history in accordance with Section IV.B., Provider Level Requirements-Enrollment, Day Care Enforcement History Enrollment Review.

(6) NEW YORK STATE SEX OFFENDER REGISTRY CHECK
The EA must call the New York State Sex Offender Registry at 1-800-262-3257 to determine whether a legally-exempt family or in-home child care provider, the provider’s employee, volunteer and, when care is provided in a home other than the child’s home, household member age 18 years or over, is a registered sex offender. A provider may not be enrolled if the provider or other person named above is listed on the New York State Sex Offender Registry.

(7) CHILD WELFARE DATABASE CHECK RESULTS FROM THE LOCAL DISTRICT
At an initial enrollment, the EA must presumptively deny enrollment to any provider who has had his or her parental rights terminated and/or was the respondent in an Article 10 court-ordered removal or placement of a child.

Districts must share the results of the child welfare database check with the EA using the OCFS-2114: District Notification to Legally-Exempt Caregiver Enrollment Agency, or with an OCFS-approved equivalent. The EA must review, maintain in its files, and record in CCFS, the written results of the child welfare database checks received from the district.

If the provider has been temporarily enrolled when the EA is notified by the local district that a history exists, the EA must document the false statement (attestation) as well as the database result prior to terminating the enrollment.
Upon receiving notification of a denial or termination on this basis, the provider may request, within 30 days of the notice issuance date, a “Review of Extenuating Circumstances” to determine if an exception can be made allowing him or her to provide child care. Such review would be conducted by the local district. For additional information on the review process, please refer to:

- Section I.E., Review of Extenuating Circumstances Overview

(8) ADDITIONAL LOCAL STANDARD REVIEW

Districts must share the results of the additional local standard review with the EA using the OCFS-2114: District Notification to Legally-Exempt Caregiver Enrollment Agency, or with an OCFS-approved equivalent. The EA must review, maintain in its files, and record in CCFS, the written results of the additional local standard review.

The documentation in CCFS of the additional local standards results must include:

- Results of the additional standard are: met, not met, or are not applicable
- If “not met,” the district must not issue subsidy for care provided by that provider. Therefore the Family Decision must be changed to Not Allowed for all families within that subsidy-paying district. If there are no remaining families who are allowed, the enrollment is terminated.
- The EA must then evaluate whether the lack of compliance makes the provider out of compliance with any State requirement. When a State requirement is also violated, the non-compliance must be appropriately documented in CCFS and the enrollment terminated.
  - Examples of additional local standards “not met” which may be indicative of non-compliance with a State requirement include: Child Abuse and Maltreatment Attestation, Site Visit
  - An example of additional local standards “not met” which may impact only the families in the subsidy-paying district: CACFP participation

When an additional standard is “not met,” the Family Decision value for that family must be changed to “not allowed.” The EA must evaluate whether the impact of the failure to meet the additional local standard indicates non-compliance with any State requirement for enrollment, and if the state requirements are not met, the provider’s enrollment is denied or terminated.
Questions should be directed to the Legally-Exempt Enrollment Specialists at OCFS.

EA staff must not rerelease any information it receives pertaining to Family Court Actions and/or CPS. Confidentiality of CPS Information is governed under Social Services Law 422 – (4)(A).

- All child protective service information is confidential.
- CPS information includes all reports of child abuse and maltreatment including the initial oral report, preliminary report of investigation, determination report, and any follow-up report(s) as well as any other information obtained, reports written or photographs taken concerning those reports in the possession of the department or local departments.
- The law treats indicated reports, and reports currently under investigation differently from unfounded reports. Section 422(4)(A) of the SSL controls access to indicated reports and reports currently under investigation. Section 422(5) of the SSL controls access to unfounded reports.
- Section 422(4)(A) explicitly lists those persons or entities allowed access to information of pending or indicated child protective services reports, and the circumstances in which access is permitted.

B) Enrollment Agency: Documentation, Full Decision and Notification

Within 40 days of receiving the complete enrollment package the EA must determine whether the provider is eligible for enrollment, document the decision in CCFS, and generate the necessary notifications. Such notifications must be mailed to the provider and parent by the next business day after the notices are generated.

(1) DOCUMENTATION OF ENROLLMENT REQUIREMENTS

Document the EA’s determinations of the provider’s compliance and/or noncompliance with all enrollment requirements, including those previously mentioned for temporary enrollment and the following:

- Day Care Enforcement History database check result
- Termination of Parental Rights database check result
- Court-Ordered Article 10 Removal database check result
- New York State Sex Offender Registry Check
- County Requirements met or not met (OCFS approved additional local standards)
- “Low Risk” Day Care Enforcement History Evaluation
- Category C criminal conviction review
All other applicable regulatory factors

If denying enrollment, each known instance of non-compliance must be documented in CCFS, to support the EA’s decision and future risk assessment.

(2) Other Documentation

- CACFP participation must be entered, if applicable. The EA must also document that they have referred each provider to the CACFP.

- 10 Hours of Training status must be entered, if applicable. When the child care provider submits the OCFS-4699.3, Legally-Exempt Child Care Provider Training Record Form, the EA must verify if the provider has completed 10 or more hours of approvable training in the topics areas set forth in section 390-a of the Social Services Law in accordance with OCFS guidelines and policy.

C) Enrollment Decisions and Notification

Within 40 days of receiving the complete enrollment package, the EA makes an enrollment decision and appropriate notifications are generated in CCFS.

The risk factors found in reviewing the enrollment package or results of database checks must be evaluated according to the details specified in Part 2 of this Guide. The EA must not enroll any provider who does not meet the enrollment requirements. At any point in the process when the EA becomes aware that a health and safety issue exists that precludes enrollment, the EA must promptly proceed with making the decision to deny enrollment.

There may be situations where a legally-exempt child care provider had been temporarily enrolled and there is indication that the legally-exempt child care provider provided a false attestation or inaccurate or incomplete information on the enrollment package. The response by the EA will depend on whether the provider is found to be in violation of other regulations, if the false statement was knowingly made, and on how much time remains to make a determination. For example, the legally-exempt child care provider may not have indicated that there had been a termination of parental rights or a court-ordered removal of a child under Article 10 of the Family Court Act when in fact the database check revealed that there was a termination of parental rights or court-ordered removal of a child. Regulations preclude enrollment of this provider, and in this situation, the EA will terminate enrollment and send the appropriate notice to the legally-exempt child care provider, parent and district. The district must provide notice to the parent/caretaker that payment for child care services rendered by the legally-exempt child care provider is suspended and the parent/caretaker must select another child care provider. Additionally, if payments were made, the district must determine the amount of
overpayment, take necessary action to determine if fraud exists and collect such overpayment as detailed in 05-OCFS ADM-03. Additionally, local districts may also refer to 14-OCFS-LCM-04: Child Care Subsidy Fraud Regulations.

The district is notified of any changes to the provider’s eligibility for families through the E-Noticing Process. The CCFS Notice, LE-CCFS LD-007, Legally-Exempt Parent-Provider Eligibility Changes, informs the district that a legally-exempt enrollment agency has made changes to a family decision and/or to the enrollment status of a provider that may impact issuance of subsidy payments and that action is required. The local district must obtain specific information regarding changes made to a family decision and/or to the enrollment status of a provider by running the LE Parent-Provider Notification of Eligibility Changes (DSS) report in CCFS. Additionally, per 18 NYCRR 358, the district must provide written notice to the parent/caretaker of any change in benefit.

(1) DENIAL OR TERMINATION

If the provider does not meet one or more of the enrollment requirements, the enrollment is denied (if not enrolled) or terminated (if enrolled temporarily).

► Health, safety or welfare issues which presumptively disqualify the provider are:

i. The provider and/or the provider’s employee, volunteer, or for family child care, a household member residing at the site where child care is provided, is/are convicted of a violent or serious crime(s).

ii. The provider’s history of termination of parental rights,

iii. The provider’s history of court-ordered removal of a child under Family Court Act Article 10,

iv. The provider’s history of day care enforcement in the high risk category.

► Health, safety or welfare issues which absolutely disqualify the provider from enrollment are:

i. The provider and/or the provider’s employee, volunteer, or for family child care, a household member residing at the site where child care is provided, has/have been convicted of a crime against a child.

ii. The provider and/or the provider’s employee, volunteer, or for family child care, a household member residing at the site where child care is provided, is listed on the New York State Sex Offender Registry.
Please note, due to confidentiality issues, the EA must not disclose to the parent that a provider has been denied enrollment specifically due to a history of termination of parental rights or court-ordered removal of a child. If a provider is denied for these reasons, the parent will be issued the CCFS-generated, Provider Enrollment Status Change, which does NOT inform the parent of the provider’s history specific to the termination of parental rights or court-ordered removal of a child under Family Court Act Article 10.

When the denial determination is based on a “presumptive denial,” the provider may request the EA conduct a review of extenuating circumstances. The provider must send the written request for a review of extenuating circumstances to the EA. The EA will determine whether the provider may be given a review.

- Additional general information on the review of extenuating circumstances is found in Section I.E., Review of Extenuating Circumstances Overview.

- For child welfare histories, the EA will forward all relevant documentation to the district for review. Refer to Section IV.A.7., Provider Level Requirements-Enrollment, Child Welfare History Enrollment Review, Review of Extenuating Circumstances –Child Welfare

- For day care enforcement issues, refer to Section IV.B.8., Provider Level Requirements-Enrollment, Day Care Enforcement History Enrollment Review, Review of Extenuating Circumstances- Daycare Enforcement

- For criminal history issues, refer to Section III.A.9, Site Person Level Requirements, Criminal History of the Provider and Site People, Factors to be Considered in Reviews.

(a) Notifications

- If “Denied,” the EA sends the provider the CCFS-generated LE006: Notice of Denial. Depending on the reason for denial, the parent will be informed by either the “Notice of Denial” or a “Parent Advisement.”

- If “Closed: Terminated,” the EA sends the provider the CCFS-generated LE010: Notice of Termination. Depending on the reason for termination, the parent will be informed by either a copy of the termination notice or a “Parent Advisement.”

(2) Closed

When a provider is temporarily enrolled, and cannot be fully enrolled because the associated parent/caretaker has been determined ineligible for a child care subsidy, the enrollment status becomes
“Closed.” The EA sends the provider and parent/caretaker the CCFS-generated LE011: Notice of Enrollment Closed.

(3) WITHDRAWN

When a provider has submitted an enrollment package, has not been temporarily enrolled, and cannot be enrolled because the parent/caretaker is not eligible for a child care subsidy, the enrollment status becomes “Withdrawn.” The EA sends the provider the CCFS-generated LE007: Notice of Withdrawal, with a copy to the parent/caretaker.

(4) ENROLLED

If the provider meets all enrollment requirements, the EA enrolls a provider only if the provider meets all health and safety requirements. The EA sends the provider two copies of the CCFS-generated LE008: Notice of Enrollment. The second copy is for the provider to give to CACFP.

If the provider was not temporarily enrolled prior to the full enrollment decision, or was temporarily enrolled but was never sent the OCFS-7026, the EA must also send the OCFS-7026, Enrollment Information Package for Legally-Exempt Providers.

(a) Conditional Enrollment:

If the local district’s results for the Child Welfare Database Check and/or any applicable additional local standard are not received by day 35 of the enrollment process, the EA must still make a full review decision, based on the information that it does have, no later than day 40. If at such time, the decision is to enroll the provider, the enrollment is considered “Conditional Enrollment.” While there is no status of “Conditional Enrollment” available in CCFS, the notice created at this time will state “Notice of Conditional Enrollment,” and the provider will be informed that this decision may change upon receipt of the missing results.

D) Enrollment Period

The provider’s enrollment continues for 12 months from the enrollment period start date, unless the enrollment closes prior to that point. The end date of the Enrollment Period is calculated by CCFS to occur 12 months from the period start date.

The EA notifies the provider and parent using the appropriate CCFS-generated notice. CCFS will generate an E-notice to notify the local district of a provider’s eligibility status and enrollment period.
(1) DETERMINING PRIOR PERIODS OF INELIGIBILITY

Prior to granting a provider enrollment, temporary or otherwise, the EA must determine if any prior periods of ineligibility are known to exist within the previous 12 months, and document such in CCFS. A Prior Period of Ineligibility occurs when the enrolled provider has a history that includes a time period when there was a known disqualifying safety factor that would have absolutely precluded the provider’s enrollment. Eligible providers with known Prior Periods of Ineligibility are not eligible to receive subsidies for care provided during known Prior Periods of Ineligibility.

One of the following factors must exist to establish a Prior Period of Ineligibility for the provider. These factors, which cause provider ineligibility, may be eliminated. Elimination of the risk factor removes the prohibition against enrollment and allows the provider to be considered for enrollment, however; does not eliminate the period of ineligibility.

- A convicted sex offender resided in the home where family child care was being provided.

- A convicted sex offender was an employee or volunteer in the legally-exempt family, in-home, or group program.

- A person convicted of a crime against a child, or a sexual offense, resided in the home where family child care was provided.

- A person convicted of a crime against a child, or a sexual offense, was an employee or volunteer in the legally-exempt family, in-home, or group program.

- The provider’s previous legally-exempt enrollment was terminated based on a determination of imminent danger.

- The provider was presumptively denied based on a violent or serious crime (not against a child), and did NOT subsequently have an exception granted as a result of an extenuating circumstances review.

- An employee or volunteer in the legally-exempt family, in-home, or group program was convicted of a violent or other serious crime, not against a child, and did not subsequently have an exception granted as a result of an extenuating circumstances review.

- The provider was presumptively denied enrollment, based on a day care enforcement, where such provider held a role of Director, Provider, or was otherwise specifically named as the subject of a day care enforcement action, and, the provider did not subsequently have an exception granted as a result of an extenuating circumstances review.
• In accordance with 18 NYCRR §415.4(h), following a determination of fraud against the provider, the provider was disqualified by a local district from receiving subsidy payment for child care services provided under the child care subsidy program.

• In accordance with Social Services Law §410-x(7), the provider’s eligibility was suspended by a social services local district during a Child Protective Investigation.

Most disqualifying safety factors will always preclude the provider from becoming eligible; however, if a disqualifying safety factor is eliminated; the provider may possibly become eligible to provide subsidized child care after the resolution.

E) Provider Training and Enhanced Market Rate

The enhanced market rate is available for a provider of legally-exempt family child care and in-home child care that has submitted appropriate documentation and been approved by the EA. The documentation must show the provider has completed ten or more hours of verifiable training annually in the areas set forth in section 390(a)(3)(b) of the Social Services Law. To receive the enhanced market rate beyond the 12-month period, the provider must complete an additional ten or more hours of training annually and submit documentation to the EA.

The EA must verify and determine whether to approve the additional training and document the decision in CCFS. For enrolling or re-enrolling providers, the decision is made as part of the enrollment review. For providers who submit documentation after the enrollment or re-enrollment decision, the decision regarding approval of the training must be made within ten days of receiving the request from the provider.

CCFS will issue the E-Notice, LE-CCFS LD-006, Legally-Exempt Family Child Care & In-Home Training Approvals By Approval Date, when a legally-exempt caregiver enrollment agency has approved training submitted for a legally-exempt child care family or in-home provider. The notice informs the district that it is required to run the LE FCC & IH Training Approvals by Approval Date (DSS) report in CCFS. The district runs the report to retrieve the list of legally-exempt provider(s) who are eligible to receive the enhanced market rate for care provided, beginning as early as the approval period start date(s) listed in the report.

The district must apply the enhanced market rate for a 12 consecutive month period, starting no later than the beginning of the first full month following the date of the notice. The district may make the enhanced market rate effective as early as the Training Approval Period Start date. In any event, the district must always apply the enhanced market rate no later than the beginning of the first full month following the approval by the EA of the enhanced rate. The district must send the required notice, OCFS/LDSS-4781 Notice of Intent to Change Child Care Benefits, to the
In order to receive the enhanced market rate beyond the 12 month period, the provider must complete an additional ten or more hours of training, submit documentation to the enrollment agency and receive approval from the enrollment agency. Per 18 NYCRR 358, the district must provide written notice to the parent/caretaker of any change in benefit.

For those cases in which the district has not been notified by CCFS that a legally-exempt family child care or in-home child care provider has completed ten or more hours of verified training, districts must apply the standard market rate.

E. REVIEW OF EXTENUATING CIRCUMSTANCES OVERVIEW

1. The Provider’s Right to a Review of Extenuating Circumstances

A provider is entitled to request a review of extenuating circumstances only when a provider is presumptively disqualified from enrollment and therefore has his or her enrollment denied or terminated, due to a history of:

► Court-ordered removal under Family Court Act Article 10,
► Termination of parental rights,
► High-risk day care enforcement action, or
► Criminal convictions which are designated as Violent or Other Serious Crimes-not against a child (Category B) in this Guide.

Note that providers are not entitled to a review of extenuating circumstances when the reason for denial or termination includes an absolute disqualifier, such as a “site person” who was:

1. listed on the New York State Sex Offender Registry, or,
2. Convicted of a crime against a child.

2. Criteria for Accepting a Request for Review of Extenuating Circumstances

Upon receipt of the request for a review of extenuating circumstances, the EA determines if the criteria to initiate an extenuating circumstances review have been met:

• The written request for a review of extenuating circumstances is received by the EA within 30 days of the issuance of LE010, Notice of Termination or, LE006, Notice of Denial.

• The reason for Denial/Termination coincides with one or more of the following grounds for an extenuating circumstances review:
Termination of Parental Rights,

- Article 10 court-ordered removal of a child,

- High Risk Day Care Enforcement history.

- Violent or other serious crime—*not against a child*

- There is no compliance issue that *absolutely disqualifies* the provider from enrollment, such as a site person:
  - Has a conviction for a Category A crime,
  - Is listed on the NYS Sex Offender Registry.

- There is at least one parent associated with the provider for the current period.

The EA must properly document in CCFS whether the criteria to *initiate the review* are met or not met. When the criteria are met, a review is conducted. If the criteria to initiate a review have not been met, the EA must deny/decline the review.

When a review is to be conducted, then the EA must assign responsibility for the review or parts of the review in CCFS. When multiple grounds for review exist, each of the grounds for review is documented separately and assigned in CCFS to the responsible reviewing agency, EA or local district. When the local district is responsible for reviewing Child Welfare related requests, CCFS will then notify the applicable local district.

The EA must issue the applicable CCFS notice and notify the provider whether a review will or will not be conducted and, if a review is to be conducted, which agency(ies) is(are) conducting the review.

There must be a parental acknowledgement, applicable to the grounds for the review, on file or received with the request. The parental acknowledgement must be on one of the following forms:

- For reviews of criminal convictions history, use the OCFS-4915, History of Criminal Convictions and Parental Acknowledgment form

- For reviews of day care enforcement history, use the OCFS 4916, History of Day Care Enforcement and Parental Acknowledgment.

- For reviews of termination of parental rights and/or court-ordered removal of a child under Family Court Act Article
3. Timeframe for Review

The reviewing agency must conduct the review of extenuating circumstances and make a determination within 60 days of the date the criteria were met.

4. Agency Responsible for the Review

Responsibility for the review depends on the nature of the health and safety factor:

► The EA conducts the review of extenuating circumstances for a presumptive denial pertaining to:

   i. a criminal conviction for a violent or other serious crime-not against a child and/or

   ii. the denial, revocation or suspension of a day care program’s license or registration,

► The LD conducts the review when there has been a presumptive denial based on the provider’s history of a termination of parental rights or a court-ordered removal of a child under Family Court Act Article 10.

A) Referral to Local District

When properly documented in CCFS at the time a request for Review of Extenuating Circumstances pertaining to a Termination of Parental Rights and/or Article 10 court-ordered removal of a child is “accepted,” an E-Notice, LE-CCFS LD-005, Legally-Exempt Child Welfare Extenuating Circumstances Review Referrals, is sent to the LD which is responsible for conducting the review. By this means, the LD is notified of its responsibility to complete the review within 60 days.

The EA must send the district a copy of the relevant documentation in the EA’s file, including but not limited to the following: the request for extenuating circumstances review; a copy of the enrollment form, all attachments, and written summaries; the explanation of the extenuating circumstances, if available; and any other relevant information.

The district must conduct the review according to Section IV.A.7., Provider Level Requirements-Enrollment, Child Welfare History Enrollment Review, Review of Extenuating Circumstances –Child Welfare, and notify the EA whether an exception will be granted allowing the provider to be considered for enrollment.
5. Extenuating Circumstances Review Processes

The reviewing agency must determine whether an exception can be made to the presumption against enrollment with regards to the specific requirement it is reviewing. Extenuating circumstances may include unusual circumstances surrounding the original incident, and/or factors that successfully resolve the underlying causes and tend to eliminate risk. If an exception is granted, then the provider may be considered for enrollment. **An exception may only be granted by the reviewing agency when the provider demonstrates to the satisfaction of the reviewing agency that the provider’s enrollment will not jeopardize the health or safety of children in the provider’s care.**

The reviewing agency must make its decision in accordance with this section and the additional guidance found in:

- For Day Care Enforcement, Section IV.B.8., Provider Level Requirements-Enrollment, Day Care Enforcement History Enrollment Review, Review of Extenuating Circumstances - Daycare Enforcement
- For Criminal Convictions, Section III.A.9, Site Person Level Requirements, Criminal History of the Provider and Site People, Factors to be Considered in Reviews.

6. Parental Acknowledgement When Exception Granted

When a reviewing agency intends to grant an exception allowing enrollment, the reviewing agency must review the completed and signed parental acknowledgement form and verify that the provider has given true and accurate information to the parent sufficient that the parent can make an informed decision. The parental acknowledgement forms applicable to the type of reviews are:

- For reviews of criminal convictions history, use the OCFS-4915, History of Criminal Convictions and Parental Acknowledgment form
- For reviews of day care enforcement history, use the OCFS 4916, History of Day Care Enforcement and Parental Acknowledgment.
- For reviews of termination of parental rights and/or court-ordered removal of a child under Family Court Act Article 10, use the OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form.
7. Documenting the Results of the Review of Extenuating Circumstances

The EA is responsible for documenting the results of the review in CCFS within 7 days of the EA’s determination, and/or within 7 days of the receipt of the results from the DSS, as applicable. CCFS will update the provider enrollment status decision as appropriate, based on the result of the review.

- When an exception to the presumption against enrollment has been made, the provider’s enrollment will be returned to the status it was in at the time of denial or termination, and the enrollment process will continue. If the EA has not conducted a complete enrollment review process, a full review must be done at this time. The EA may only enroll a provider who meets ALL enrollment requirements.

- When an exception is not granted, then the provider cannot be considered for enrollment. The provider’s status will return to denied or terminated, as applicable.

8. Enrollment after an exception has been granted

When a provider is enrolled subsequent to a review of extenuating circumstances and the granting of an exception, the provider’s enrollment period start date in CCFS changes to the packet-received date when care has been provided.

9. Process at Re-enrollment

When a provider has been enrolled following a review of extenuating circumstances and such provider re-enrolls, the district will need to determine whether to continue or discontinue the exception granted during the previous review. The exception may be discontinued when new information has been received.

Until such time as CCFS provides an automated referral to the district, the EA must request the district make this determination.

F. RE-OPENING

If an enrolling provider/program has a CCFS record for legally-exempt childcare provided at the same location and type of program, their “old” ID number must be re-activated, unless prohibited by an existing CCFS system or data error.

1. Re-opening a Provider with Unresolved Compliance Issues

A provider/program whose enrollment was denied or terminated will have one or more issues of non-compliance documented in CCFS. The EA must pay particular attention to these areas of concern when reviewing the enrollment form. In contrast with “initial” enrollment, when an enrollment form is received for a provider whose last enrollment status was Denied or
Closed: Terminated, and the provider's/program's CCFS record indicates the provider/program is out of compliance on a specific issue, the EA must not accept the provider’s attestations of compliance at face value. Attestations of compliance on a newly received enrollment form do not take precedence over the EA’s documentation of non-compliance. Therefore, the EA must NOT “end-date” the non-compliance issues documented in CCFS based on current attestations of compliance in the enrollment form.

Instead, the EA must evaluate each documented non-compliance issue and, on a case-by-case basis, determine what steps need to be taken to verify the provider’s current compliance. Such steps may include, but are not limited to, conducting an inspection of the site and supervisory consultations. Before end-dating the issue in CCFS, the EA must verify that the non-compliance issue has been resolved through a method other than self-attestation.

Providers/programs that are re-opening with unresolved non-compliance documented in CCFS must be placed “under full review” and cannot be enrolled temporarily due to the existing non-compliance and the time needed to verify whether the provider/program is currently in compliance. Before end-dating a non-compliance issue in CCFS, the EA must verify that the non-compliance issue has been resolved through a method other than self-attestation.

G. LOCAL DISTRICT PAYMENT ISSUES

1. Parent-Provider Eligibility Changes
The district is notified of any changes to the provider’s eligibility for families through the E-Noticing Process. The CCFS Notice, LE-CCFS LD-007, Legally-Exempt Parent-Provider Eligibility Changes, informs the district that a legally-exempt enrollment agency has made changes to a family decision and/or to the enrollment status of a provider that may impact issuance of subsidy payments, and that action is required. The local district must obtain specific information regarding changes made to a family decision and/or to the enrollment status of a provider by running the LE Parent-Provider Notification of Eligibility Changes (DSS) report in CCFS. Additionally, per 18 NYCRR 358, the district must provide written notice to the parent/caretaker of any change in benefit.

The district makes the child care subsidy case eligibility decisions and promptly informs the EA of its decision. Payment must not be issued unless the district has established the family’s eligibility for child care subsidy AND the EA has approved the provider for temporary or full enrollment.

2. Child Care Subsidy Start Date
The child care subsidy start date for the parent’s subsidy case is determined by the district as follows:
a. For low income families eligible for a transitional child care guarantee, payment can begin the month after the family’s TA case closed or, for those who chose child care in lieu of TA, the month after the family is no longer financially eligible for TA.

b. For low income families not eligible for the transitional child care guarantee and when the determination of eligibility for a child care subsidy was made within 30 days of the date of application, payment can commence the date of application.

c. For TA applicants and recipients eligible for a child care guarantee, payment may commence the date the parent was required by the district to participate in a required activity.

d. For TA recipients eligible for a child care guarantee, payment may commence the date the parent was engaged in work as defined by the district.

e. For TA recipients not eligible for a child care guarantee, payment may commence the date the parent was participating in an activity approved by the district.

f. For families for whom a court has ordered the district to pay for child care services, payment can commence the date ordered.

3. Provider-Child Specific Subsidy Start Date

For the purpose of starting the issuance of subsidy payments for care provided by a specific legally-exempt provider, the local district must determine a provider-child specific Child Care Subsidy Start Date. The provider-child specific Child Care Subsidy Start Date takes into account:

- The subsidy recipient’s (parent) Child Care Subsidy Start Date for subsidy,
- The date the provider started providing child care services to the child,
- The provider’s eligibility as denoted by the enrollment period,
- The Child Affiliation Date which is a CCFS generated date documenting the affiliation of the provider with the specific child, and
- The existence of any Prior Period of Ineligibility negatively impacting the provider’s eligibility during a specific time period.

Notwithstanding the Enrollment Period Start Date, a SSD may determine that child care services were provided and the provider was eligible to provide subsidized child care prior to the Enrollment Period Start Date and Child Affiliation Date.
When the SSD intends to issue subsidy payments for child care services provided prior to the Enrollment Period Start Date, the SSD establishes a Child Care Subsidy Start Date for the provider that is prior to the Enrollment Period Start Date but not earlier that the Child Care Subsidy Start Date for the parent’s subsidy case. However, the SSD must first review CCFS to determine if any Prior Periods Of Ineligibility (PPI) exist and the SSD must not issue payments for child care services provided during any Prior Periods Of Ineligibility documented in CCFS.

4. Enhanced Rate

A. The Local District must review CCFS E-Notices daily to obtain notice of referrals from CCFS and direction to run the LE IH & FCC Training Approvals by Approval Date-DSS report, and/or, routinely runs the applicable report in CCFS every business day. The LE IH & FCC Training Approvals by Approval Date-DSS report retrieves a list of enrolled LECCP, whose training has been approved, and who are eligible for the enhanced rate of reimbursement.

B. The district must begin issuing the enhanced rate of reimbursement to LECCP no later than the beginning of the first full month following the date the district was notified by CCFS E-Notice of the approval of the enhanced rate. The enhanced rate may be issued for care provided as early as the Training Approval Period Start Date in CCFS. The district applies the enhanced rate for 12 continuous months of child care services.

C. The district:

1. Must determine the Enhanced Rate Period Start Date, which is the earliest care date for which the district will pay the enhanced rate.

2. Must determine the Enhanced Rate Period End Date, (start date+ 12 months), which is the last day in the 12 consecutive-month period for which the district will pay the enhanced rate for care. The provider must obtain additional training and have the training approved by the Enrollment Agency in CCFS, in order for the provider to have an extension of his or her eligibility for the enhanced rate for another 12 months.

3. Must notify the parent of the change in rate of reimbursement, by issuing the Notice of Intent to Change Benefit.

4. May notify the provider of the change in rate of reimbursement.

5. Must review claims and issue payments at the enhanced rate.

5. Training Approval Renewal or Expiration

A. At 60 days prior to the Training Approval Period End Date, CCFS issues a “To Do” to the Enrollment Agency case manager, that the Training Approval Period for the provider is expiring and instructing the Enrollment Agency to print and send the OCFS-CCSF-LE026, Notice of Training Approval Period Ending. The Enrollment Agency must print and mails the OCFS-CCSF-LE026, Notice of Training
Approval Period Ending to the LECCP, informing the provider that he/she must complete approvable training and submit documentation to the Enrollment Agency to remain eligible for the enhanced rate.

1. If the provider submits a complete request and receives approval for training, a new training approval period will be added in CCFS. The training renewal process follows the steps previously described.

2. If the provider does not submit and receive approval for training, the Training Approval Period expires in CCFS.

B. On the night that a training approval expires in CCFS, CCFS notifies the Local District, by issuance of an E-notice instructing the district to run the LE FCC & IH Training Approval Expiration-DSS report in CCFS to retrieve the provider-specific information. The LE FCC & IH Training Expiration-DSS report lists providers whose Training Approval Period has ended. **However, since CCFS does not track the actual 12 month period during which the enhanced rate was issued, this report cannot identify the district-determined Enhanced Rate Period End Date.**

6. **Ending the Issuance of the Enhanced Rate**

The district must review the CCFS E-Notice and the LE FCC & IH Training Expiration-DSS report to obtain list of providers whose training approval has expired. For these providers whose training approval has expired, the district must:

- Identify the End Date for the 12 month Enhanced Rate Period,
- Send the OCFS-LDSS 4781-Notice of Intent to Change Child Care Benefits to the parent/caretaker informing them of the reduction in the enhanced rate on the Enhanced Rate Period End Date
- Cease reimbursement for care at the enhanced rate on the district-determined Enhanced Rate Period End Date.

H. **DISTRICT NOTIFICATIONS TO EA OF RELEVANT CASE ACTIVITY**

The OCFS-2114, District Notification To Legally-Exempt Caregiver EA, provides a standard form for districts to use in informing enrollment agencies of subsidy case decisions which may impact the provider's eligibility and enrollment status as a LECCP.

The district must inform the EA, in writing using the OCFS 2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, or OCFS-approved local equivalent, of the following determinations or results pertaining to a legally-exempt child care provider and relevant changes to the affiliated child care subsidy case:

1. The results of the local child welfare database check required at enrollment and re-enrollment. Per 18 NYCRR §415.4(f)(8)(ii), the district where the legally-exempt in-home or family child care provider resides must, within 15 days of the receipt of the request for a check of the local Child Welfare Database at initial enrollment and re-enrollment, conduct a
check of the district’s local Child Welfare Database, and inform the EA whether the LECCP:

- Does or does not have a history of termination of parental rights under SSL 384-b, and

- Does or does not have a history of court-ordered removal/placement of a child under Family Court Act Article 10.

Note that due to the highly confidential nature of the child welfare database, districts must release to the EA only that information which is specifically allowed by regulation and/or law. The district must assign responsibility for searching the database only to employees of the district who understand the confidentiality issues pertaining to foster care and adoption information.

Additionally, sharing indicated or unfounded reports in the Statewide Central Register of Child Abuse and Maltreatment with the EA is prohibited.

2. The results of the district’s determination of compliance with any OCFS-approved additional local standard for legally-exempt child care enrollment. Per 18 NYCRR §415.4(g), to the extent that any district has established additional standards for LECCPs, the local district must evaluate the LECCPs’ compliance with state-approved additional local standard(s) for enrollment set forth in the district’s Child and Family Services Plan. For all additional standards that are evaluated during the initial enrollment or annual re-enrollment process, the district must inform the EA whether the requirement(s) has (have) been met or has (have) not been met within 25 days of the receipt of the notification. For additional standards determined outside of the enrollment review period, including but not limited to CACFP participation, the district must notify the EA of its determination at the time of its determination.

3. The results of the district’s review of extenuating circumstances pertaining to child welfare history, within 60 days of the receipt of the request for the review. The results must include whether the district has:

- Granted an exception to the presumption against enrollment, because the provider has demonstrated to the district’s satisfaction that enrollment will not jeopardize the health, safety or welfare of children in the provider’s care, thus allowing the provider to be considered for enrollment; or,

- Denied an exception to the presumption against enrollment, thus precluding the provider from enrollment.

4. The district’s determination that the LECCP is not eligible to provide care for a specific family, per 18 NYCRR,

- 415.1(l), because the provider is an adult member of this family’s Child Care Services Unit who is not a sibling to the child(ren).
• 415.1 (g)(6) and (7) and 415.4(c)(1)(i), because the recipient may not choose an LECCP when Title XX funding is being used to pay for child care services.

• 415.4(c)(1)(ii), because the district has disapproved a provider chosen by recipient in a preventive or protective services case because the district has reason to believe it would be contrary to the health, safety or welfare of the child to receive child care services from the provider.

5. In accordance with SSL 410-x (7),

• The district’s suspension of eligibility to provide subsidized child care for an LECCP: subsidized children, while the provider is under investigation for child abuse or maltreatment, or

• The end of a district’s suspension of eligibility to provide subsidized child care for an LECCP while the provider was under investigation for child abuse or maltreatment.

6. If applicable, that the district has disqualified an enrolled provider from receiving payment under the child care subsidy program per 18 NYCRR415.4(h). The notification must include the disqualification period start date, and, if applicable, the disqualification period end date.

7. If applicable, that the district has reason to believe an enrolled or enrolling LECCP is violating health and safety regulations pertaining to subsidized legally-exempt child care and is making a complaint to the EA.

8. A child care subsidy case decision or change which impacts the provider’s enrollment:

• The approval date and child care subsidy start date for a parent’s subsidy case,

• Disapproval or closing of the parent’s case,

• When a parent with subsidy stops or begins using the provider, and/or

• When a parent reports a change in the location where child care is given.

I. COORDINATION WITH THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The Child and Adult Care Food Program (CACFP) allows enrolled legally-exempt family child care providers to participate in CACFP. CCFS tracks the provider’s participation in CACFP for multiple reasons. The EA is responsible for keeping CCFS updated with information pertaining to CACFP participation and referrals to CACFP for family child care providers.
1. Referral to CACFP and Verification of Participation

Per 18 NYCRR §415.4 (f)(8)(i), a legally-exempt caregiver EA must refer a caregiver of family child care to the child and adult care food program at initial enrollment of any caregiver not currently enrolled, or at the annual re-enrollment of any currently enrolled caregiver. If the caregiver is or becomes a participant in the child and adult care food program, the caregiver must provide the legally-exempt caregiver EA with a copy of documentation of participation in the program. A legally-exempt caregiver EA must verify the caregiver’s documentation to determine whether the caregiver is a participant in the child and adult care food program.

- The EA must update in CCFS, at least annually concurrent with the enrollment review, the family child care provider’s CACFP participation status. Acceptable proof of participation is listed on the provider’s enrollment form. Additionally, proof or participation, received directly from CACFP, may also establish participation.

- At enrollment and annually at re-enrollment, the EA must document its referral of the family child care provider to CACFP in CCFS.

2. Additional Local Standard for CACFP Participation

Per 18 NYCRR §415.4(g)(1), where a social services district is subsidizing child care services pursuant to any of the provisions of this Part, the district may submit to the Office justification for a need to impose additional requirements on child care providers providing subsidized child care services and a plan to monitor compliance with such additional requirements. A social services district may make participation in the child and adult care food program a condition of enrollment for each caregiver of informal child care who will be providing an average in excess of thirty hours of care per week to one or more subsidized children provided the district sets forth this requirement in the district’s consolidated services plan or integrated county plan. No such additional requirements or monitoring may be imposed without the written approval of the Office.

3. Action Upon Receiving CACFP Inspections Forms

Periodically, the EA will receive from CACFP, the DOH 4118, Monitoring Checklist for Day Care Homes for enrolled family child care providers. When these are received, the EA must update the CACFP “participation date” in CCFS, based on the date of the last CACFP visit as recorded on the DOH 4118, Monitoring Checklist for Day Care Homes. Additionally, the EA must forward to the district, on a monthly basis, any copies it receives of the DOH 4118, Monitoring Checklist for Day Care Homes, for the district’s records.
J. CHANGES DURING PROVIDER’S ENROLLMENT

1. Changes to Provider’s Enrollment Information

Per the enrollment form certifications, legally-exempt providers are required to report changes to the EA. For all enrollment forms and documentation received, the EA must date-stamp or otherwise record the Date Received on the enrollment form and attachments as the items are received. The EA must evaluate the information and take appropriate action.

A) The enrolled provider/program

The enrollment approval is specific to the provider/program, the location of care, and the type of care. If any of these three things changes, the current enrollment ends and a new enrollment package must be submitted, and a new CCFS ID is assigned. The exception to this rule is: If the modality of care changes from Family Child Care to In-home, or vice versa, but the site of care does not change, a new CCFS record does not need to be created. CCFS will apply the rules for the change in modality.

B) Regulatory Requirement or Informational

The EA can document verbal receipt of information such as a new phone number, or new married name, by making a written note to the CCFS file and updating the applicable data field in CCFS. Changes to a provider’s enrollment information in CCFS are either “corrections” or “updates.” If all information at initial enrollment was correct, but changes afterwards, this is considered an “update.” If the information entered at initial enrollment was incorrect, and now needs to be changed, this is classified as a “correction.”

When the change may impact on the provider’s attestations to comply with enrollment regulations, it may also impact the provider’s status as an eligible provider. The provider must inform the parent/caretaker and resubmit the applicable section of the enrollment package as an update. The parent/caretaker signature must be included if required. For example, when a change to a health or safety item occurs, a parent’s signature is required, attesting to their knowledge of said change. Note that new information may require new safety assessments, evaluations and/or reviews.

C) Assess for Additional Action

Some changes will necessitate additional action by the EA. For example, if a new employee is reported for a legally-exempt family child care provider, the EA must conduct the check of the New York State Sex Offender Registry for that individual. If the new employee is found on the New York State Sex Offender Registry, the EA must document that information in CCFS and terminate the provider’s enrollment. Regulations bar the enrollment of a provider with any employee registered as a sex offender. The presence of a sex offender as an employee in a FCC home where care is provided must lead to a status change to “Closed: Terminated.”
2. New Family Is Added To Existing Enrolled Provider

If a subsequent family selects a provider who is already enrolled at the same site of care, the parent/caretaker of the new family must complete the initial enrollment package (including any required attachments) with the provider and submit it to the EA.

A) Packet Completeness Determination
The EA must determine if the packet is complete, within the same timeframe(s) as at Intake:

Upstate:
Within 5 business days of receipt of an enrollment package, the EA must review the enrollment package, including attachments, for completeness and enter basic enrollment information data in CCFS. Additionally, if the package is received “incomplete,” the EA must, by the next business day after the determination of incomplete status, send the appropriate CCFS-generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent and notice to district, advising of what information is missing.

NYC:
The EA serving NYC must review the enrollment package, including attachments, for completeness and enter basic enrollment information data in CCFS on the same day it is received, unless received after 4 p.m. If the enrollment package is received after 4 p.m., the EA must make the determination of completion and enter basic enrollment information into CCFS by 12 p.m. the next business day. Additionally, if the package is received “incomplete,” the EA must, on the same day as the determination of incomplete status, send the appropriate CCFS-generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent and notice to district, advising of what information is missing. If the determination is made after 4 p.m., the EA must mail or give the appropriate CCFS-generated letter to the provider and the parent by 12 p.m. on the next business day.

As delineated in the “Intake” section, the EA must allow providers no less than 30 days from the date the Notice of Incomplete Form is first issued, to submit any missing documents or information. However, if the missing items are not received within 40 days of receipt of the enrollment package, the EA must change the status of the enrollment package to “Withdrawn.”

B) Family Decision
For subsequent packets, the Family Decision is the measure of the Preliminary Review Milestone.
Once a complete package is received, it must be reviewed to determine if there are any changes from the approved package. The new family information and any changes must be entered into CCFS, and a decision made regarding adding the child and the family to the approved enrollment, including, but not limited to: the child care decision, and the family decision.

Once the child and family are allowed, child care subsidy payment may begin for the family. The EA must notify the provider and parent of the result using the CCFS-generated, Notice of Family Decision.

When a subsequent family is added to a provider’s enrollment, CCFS will notify any applicable subsidy-paying district, to review a provider for compliance with any applicable additional standards. Upon receiving the results from the subsidy-paying district, the EA must document in CCFS whether the provider has met the additional local standard.

**C) Non-compliance**

Any health and safety concerns brought to the EA’s attention by the enrollment form must be addressed by the EA.

When a provider appears to be providing illegal care, the EA must make a complaint to the regional office of OCFS’s Division of Child Care Services.

If the enrollment form would add a new family to an actively non-compliant provider, an attestation of compliance on the new enrollment packet, does not over-rule the documented non-compliance issue. When the EA receives attestations of compliance on the enrollment that are inconsistent with CCFS documented compliance values, the EA must evaluate each documented non-compliance issue and determine on a case-by-case basis what steps need to be taken to verify the provider’s current compliance. Such steps may include, but are not limited to, conducting an inspection of the site and supervisory consultations.

In that the compliance/non-compliance values recorded in CCFS represent the *determinations, or conclusions*, of the Enrollment Agency, they must always be the *current* determinations of compliance *made by the enrollment agency*. Therefore, the Enrollment Agency must not change a value from non-compliant to compliant based solely on the attestations of compliance on the newly received enrollment form.

**D) Verification of Training**

When the child care provider submits the OCFS-4699.3, *Legally-Exempt Child Care Provider Training Record Form*, the EA must verify if the provider has completed ten or more hours of approvable training in the topics areas set forth in section 390-a of the Social Services Law in accordance with OCFS guidelines and policy. Within ten days of receipt of the completed request, the EA must make a determination, update CCFS and notify the provider of the outcome.
3. Inactive Providers

The district must notify the EA when an enrolled provider stops caring for a subsidized child or the family loses subsidy. The parent’s loss of subsidy, and/or, the provider no longer caring for the subsidy child, means the child/family is “inactive” for the provider. The EA documents this change in CCFS and, when there are no active families served by the provider, the EA changes the provider’s enrollment status to “Enrolled: Inactive.” The EA must issue the appropriate CCFS generated letter, either the Notice of Family Decision or the Notice of Inactive, to notify the provider and parent. The change to “inactive” benefits the provider, parents, children, the EA and the district.

- The same subsidy parent may again choose to use the provider. When the provider remains enrolled “inactive” and notifies the EA 65 days or more days prior to the enrollment period end date, that the same parent is using the provider, the family may be reactivated. The EA must promptly update the child, family and provider statuses. At 60 days prior to the enrollment period end date, the parent may only be “reactivated” by submission of a new enrollment packet, which will also trigger the change of the provider status to “In renewal”.

- For the time the provider is enrolled, the provider remains eligible to participate in CACFP. If the provider is caring for non-subsidized children, the provider can continue to participate in CACFP while the provider’s enrollment is “inactive”.

- If a new family chooses to use the provider, the timeframe the provider must wait to be eligible for payment is lessened because the provider is already enrolled. In this case, when an “Inactive” provider is selected by a new parent to provide care, the new parent and the provider must submit an enrollment form. The provider’s CCFS record is reactivated by entering the new parent information in CCFS.

If, at the end of the 12 month enrollment period, a provider is in an inactive status, the status will be system-changed to “Closed.” These providers do not change to an “expired” status.

K. RE-ENROLLMENT AND EXPIRATION

Only providers actively caring for a subsidized child may be re-enrolled. Inactive providers are system-closed at the enrollment period end date, and re-enrollment packets are not sent to inactive providers. The EA determines which active providers have re-enrollments coming due within 60 days using the CCFS report, LE Re-enrollment Coming Due. The EA must issue the Notice of Re-enrollment Coming Due and the re-enrollment package at least 55 days prior to the expiration of the provider’s enrollment, with the instructions that the package be completed and returned to the EA.
Refer to Section I. D, Overview of the Enrollment Process, Initial Enrollment, for more detailed information on each of the phases of enrollment.

1. CCFS

A) Expiration

An “active” provider’s enrollment expires on the day following the period end date. CCFS changes the provider’s enrollment status as follows.

- Enrolled > Enrolled: Expired---Occurs when no re-enrollment packet has been received.
- Enrolled: In Renewal > Expired Enrolled: Expired: (In Renewal)—Occurs when one or more re-enrollment packets have been received.

When the provider’s enrollment becomes Enrolled: Expired, a To Do is issued and the EA must notify both the provider and parent by issuing the Notice of Expiration.

The EA may run the CCFS report, LE Re-Enrollment Overdue, to compile an actionable list of expired providers who are eligible to go into renewal but show no renewal packet received.

B) In Renewal

Once the receipt of a re-enrollment packet is documented in CCFS, the provider enters the “renewal” process which is reflected in the provider’s status of:

- Enrolled: In Renewal
- Enrolled: Expired: (In Renewal)

Note that if the provider’s current enrollment period expires prior to the completion of the renewal process, the provider status will be system-changed to Enrolled: Expired (in Renewal).

2. Re-enrollment Intake

The re-enrollment package must be completed by the parent/caretaker and provider, and submitted to the EA.
**Upstate:**

When a re-enrollment package is received, the EA must review it for completeness, determine whether the re-enrollment package raises any immediate concerns, and enter appropriate information into CCFS within 5 business days of receipt of the re-enrollment package. If the package is incomplete, the EA must issue notification by the fifth business day following receipt of the incomplete packet. The EA must mail the notice to the provider, with a copy to the parent/caretaker, by the next business day after the notice is generated.

**NYC:**

When a re-enrollment package is received, the EA must review it for completeness, determine whether the re-enrollment package raises any immediate concerns, and enter appropriate information into CCFS on the same day the package is received, unless received after 4 p.m. If the enrollment package is received after 4 p.m., the EA must make the determination of completion and enter basic enrollment information into CCFS by 12 p.m. the next business day. If the package is incomplete, the EA must issue notification by the next business day following receipt of the incomplete packet.

The provider’s status is automatically changed to Enrolled: In Renewal or Enrolled: Expired (In Renewal) upon documentation in CCFS of the receipt of the re-enrollment packet. If the re-enrollment package raises any immediate concerns which absolutely preclude re-enrollment according to guidelines issued by OCFS, the EA must terminate the enrollment.

When providers/programs have unresolved non-compliance documented in CCFS at the time of renewal and the EA receives attestations of compliance on the enrollment that are inconsistent with CCFS documented compliance values, the EA must evaluate each documented non-compliance issue and determine on a case-by-case basis what steps need to be taken to verify the provider’s current compliance. Such steps may include, but are not limited to, conducting an inspection of the site and supervisory consultations. Before end-dating a non-compliance issue in CCFS, the EA must verify, through a method other than self-attestation on the enrollment form, that the non-compliance issue has been resolved.

As delineated in the “Intake” section, the EA must allow providers no less than 30 days from the date the Notice of Incomplete Form is first issued, to submit any missing documents or information. However, if the missing items are not received within 40 days of receipt of the enrollment
A legally-exempt child care provider whose enrollment period has expired and who has not submitted a re-enrollment package is allowed to submit a completed re-enrollment package within 30 days after the enrollment expiration date. A provider whose enrollment is “expired” and who has submitted an enrollment packet, is eligible for payment while under review. A legally-exempt child care provider that does not submit a re-enrollment package within 30 days after the enrollment expiration date will be system-closed. However, the legally-exempt child care provider may submit a new enrollment package as an initial enrollee and would be eligible for payment if it is determined that the legally-exempt child care provider can be enrolled.

3. Preliminary Re-enrollment Review, Decision, Documentation and Notification

**Upstate:** Within ten calendar days of receiving a completed re-enrollment package, the EA must complete the preliminary review.

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<tr>
<th>NYC:</th>
<th>The EA serving the NYC district must conduct a review of the enrollment packet, enter all appropriate data and information into CCFS, and make a Preliminary Re-enrollment Review Decision, on the same day that the packet is determined complete, unless the determination is made after 4 p.m. For determinations made after 4 p.m., the EA must make the Preliminary Re-enrollment Review Decision by 12 p.m. on the next business day.</th>
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A) As part of the preliminary review, the EA must:

- Verify whether the provider is legally-exempt from OCFS day care licensing and registration requirements, and, for care provided in NYC, the requirements of the NYC Department of Health and Mental Hygiene. The EA must:
  - Conduct searches on CCFS to determine whether the provider is currently licensed or registered;
  - Make the Child Care Decision and Family Decision in CCFS that includes, but is not limited to:
    - A review of the numbers and ages of children in care and other factors relevant to the provider’s legally-exempt status
Review the schedules of children in care,

- Individual determinations on each subsidized child and family

- Review and evaluate any changes to the re-enrollment package and conduct follow up activities as appropriate.

- Assess for compliance with enrollment regulations; if current health or safety factors exist, the EA must assess and determine whether to terminate the enrollment or take other corrective action.

- Continue or discontinue the determinations on previous Category C criminal convictions. The EA may choose to discontinue the decision when appropriate, given new information.

- Continue or discontinue the determinations on previous low-risk day care enforcement history. The EA may choose to discontinue the decision when appropriate, given new information.

- Continue or discontinue any previous “exception granted” decisions on review of extenuating circumstances determinations. The reviewing agency may choose to discontinue the exception granted when warranted by new information. If the exception is discontinued, the provider has the right to a review of extenuating circumstances.

  - When a child welfare issue requires a decision to continue or discontinue the exception granted, until such time as the process is automated through CCFS E-notices, the EA must refer the issue to the district for a determination.

  - For daycare enforcement and criminal history, the EA makes the determination.

- Document new information, changes and decisions in CCFS

B) CCFS will generate E-notices to the applicable district, to conduct the local child welfare database check, to determine whether the provider has had either a termination of parental rights or a child removed from his or her care by court order under Family Court Article 10.

C) When applicable, CCFS will also generate E-notices to the district(s) to conduct the local process for evaluating compliance with additional standards for enrollment.

D) The EA may run the CCFS report: LE In Renewal Missing Packets to identify providers with multiple families that are re-enrolling or have re-enrolled with active families for whom packets have not been received for the renewal period
4. Full Re-enrollment Review, Decision, Documentation and Notification

Within 40 days of receipt of a completed re-enrollment package, the EA must conduct a full review to determine whether the provider meets the requirements for re-enrollment. The full review includes:

A) A check by the EA of the CCFS database to determine whether the provider has applied for and been denied a child day care license or registration or had a child day care license or registration suspended or revoked.

B) A check by the EA of each provider of legally-exempt family child care or legally-exempt in-home child care, any employee, any volunteer who has the potential for regular and substantial contact with children in care, and for providers of legally-exempt family child care, each household member age 18 or older, against the New York State Sex Offender Registry, using the Registry’s toll free telephone number.

C) A determination to continue or discontinue any previous “exception granted” decisions on review of extenuating circumstances determinations.

1. When a child welfare issue requires a decision to continue or discontinue the exception granted, the EA must refer the issue to the district for a determination, until such time as the process is automated through CCFS,

2. The reviewing agency may choose to discontinue the exception granted based on new information. If the exception is discontinued, the provider has the right to a review of extenuating circumstances.

D) The EA should receive the results of the local child welfare database check back from the district within 15 days from the date of request.

E) Where applicable, any additional local standards established in the district’s Child and Family Services Plan must also be met. The EA should receive the results of the review of additional local standards back from the district within 25 days from the date of the request.

F) The updated provider information, final re-enrollment decision and provider compliance with all re-enrollment requirements must be updated in CCFS.

G) Within 40 days of receipt of the provider’s completed re-enrollment package, the EA must update the information in CCFS, including the results of the database check, the additional standards checks and any existing non-compliance, and generate in CCFS the appropriate notices of its determination of re-enrollment. The EA must mail the
notices to the provider and parent by the next business day after the date the notice is generated in CCFS.

H) CONDITIONAL ENROLLMENT: If the local district’s results for the Child Welfare Database Check and/or any applicable additional local standard are not received by day 35 of the enrollment review process (35 days from receipt of the complete packet), the EA must make a full review decision based on the information that it does have, no later than day 40. If at such time the decision is to enroll the provider, the enrollment is considered “Conditional Enrollment.” While no “Conditional Enrollment” status is available in CCFS, the notice created at this juncture will state “Notice of Conditional Enrollment,” and the provider will be informed that this decision may change upon receipt of the missing results.

5. When No Re-enrollment Packet is received for an Expiring Provider

If the EA does not receive a completed re-enrollment packet by the active provider’s enrollment period end date, the enrollment expires. CCFS issues a “To do” to issue the Notice of Expiration. Whenever prompted by CCFS (see previous), the EA must print and send the Notice of Expiration to the provider with a copy to the parent.

If no re-enrollment package is documented in CCFS as received, within 30 days of the enrollment period end-date, and the EA has not terminated the enrollment, CCFS will change the status to “Closed.” Thereafter, however, the provider may submit a new enrollment package as an initial enrollee and the provider would be eligible for payment if a favorable enrollment determination is made.

L. NOTIFICATIONS

The EA must use the appropriate CCFS-generated notifications/verifications to inform the provider and the parent/caretaker of all determinations regarding a provider’s enrollment and family-level decisions.

Prior to any denial, the EA must document any non-compliance issues in CCFS. Accurate documentation of non-compliance issues in CCFS triggers the appropriate notice of denial, which in turn indicates if the provider could be enrolled if corrective action is taken. If the circumstances cannot be rectified (such as a provider with a conviction for a crime against children), the district must inform the parent/caretaker that he or she has to find another provider. The district should offer assistance in locating another provider.

Each LE008: Notice of Enrollment must be sent in duplicate to the provider. The extra copy may be given by the provider to CACFP as proof of the provider’s enrollment. The provider must be given the OCFS-7026, Enrollment Information Package for Legally-Exempt Providers, concurrently, with notification of enrollment.
CCFS’s automated e-notices and reports process notifies a district of provider and parent status changes affecting eligibility.

NOTE: Due to confidentiality issues, the EA must not disclose to the parent that a provider’s enrollment has been denied or terminated specifically due to a history of termination of parental rights or court-ordered removal of a child. For this reason, separate notifications are issued to the provider and parent:

Provider: Notice of Denial or Notice of Termination

Parent: Parent Advisement: Provider Enrollment Status Change

Legally-exempt providers do not have a right to a hearing on the denial or termination of enrollment. Unlike licensed or registered providers denied a permit to operate, legally-exempt providers not meeting health and safety standards are not denied the ability to operate. Although they are denied payment of child care subsidy funds, they are not prohibited from caring for children of private pay parent/caretakers.
Section II. Evaluating Regulatory Compliance during the Enrollment Review

The EA assesses whether the child care provider is compliant with legally-exempt enrollment requirements using a variety of tools including, but not limited to:

- The enrollment forms submitted
- Supportive documentation
- Verbal and written communication
- Database checks
- Inspection, site visits and observations
- Complaint investigations

A. Documenting Compliance and Non-compliance in CCFS

The compliance/non-compliance values recorded in CCFS represent the determinations, or conclusions, of the Enrollment Agency. These values must always be the current determinations of compliance made by the enrollment agency. While at initial enrollment, it is appropriate for the Enrollment Agency to use the attestations of compliance on the enrollment form as the basis of the Enrollment Agency’s determination of “Current Compliance”, for the Health and Safety Checklist, and other areas, this is not an appropriate practice when the Enrollment Agency has previously documented one or more non-compliance issues that have not been resolved. Once non-compliance has been documented, the Enrollment Agency must verify that the non-compliance has been corrected prior to modifying CCFS in a manner that would “end-date” the non-compliance issue.

Enrollment Agencies must have processes in place to ensure staff who are processing enrollment forms and/or updating CCFS do not change a provider’s/program’s compliance determination(s) from non-compliant to compliant without appropriate verification. When the EA receives attestations of compliance on the enrollment that are inconsistent with CCFS documented compliance values, the EA must evaluate each documented non-compliance issue and determine on a case-by-case basis what steps need to be taken to verify the provider’s current compliance. Such steps may include, but are not limited to, conducting an inspection of the site and supervisory consultations.

B. Provider and Program Information

1. Site and Contact Information

The provider must complete all the applicable fields on the enrollment form. Providers’ addresses for site of care, residential address, and mailing address, if different, must all be given.
• Jurisdiction for enrollment is based on the child care site address.

• Jurisdiction for the State requirement for a local Child Welfare Database Check is based on the provider/director’s residential address.

• Mailing address is required for correspondence with the provider/director.

Additional site rules:

The provider’s enrollment is specific to the provider and to the site. When changes to either occur, the enrollment ends and a new enrollment package must be submitted.

A provider cannot operate a legally-exempt family child care home in a home that is a registered family day care home or a licensed group family day care home. A building with multiple apartments, or units, has multiple sites.

• Only one legally-exempt child care provider may operate out of a residence. An exception occurs when multiple caregivers are needed to provide child care services which meet the parent’s or caretaker’s schedule of employment, or other approved activity, or the special needs of the child. To determine whether multiple caregivers may be enrolled to provide child care services operating out of the same residence, the EA must look at the hours of operation.
  o There must be distinct, non-overlapping schedules specifying the hours each provider will provide care for each day of the week.
  o The providers must agree to adhere to the schedules and understand it is a requirement of the enrollment.
  o The EA must receive written assurance that the stipulations above are understood and agreed to by the parents and provider.

The provider’s social security number (SSN) cannot be required unless the district is issuing payment to the provider. For group programs, the Federal Identification Number (FIN), rather than the SSN, is used for payment purposes.

If a provider does not have a telephone, the provider must have consistent and immediate access to a phone whose telephone number must be provided. When the provider does not speak English as his or her primary language, the EA must send enrollment forms in the provider’s primary language, if available, or should make every attempt to obtain translation/interpreter services to assist the provider in completing the enrollment forms.

2. Local District Information
The parent must identify the county that is issuing child care subsidy payments. This information is required by CCFS. If the provider receives
child care subsidy payments directly from a district, he or she is assigned a “vendor number” by the district. If known, such number should be recorded on the enrollment form and in CCFS. However, vendor numbers are not required.

C. TYPE OF LEGALLY-EXEMPT CARE PROVIDED

The provider must be legally-exempt from OCFS’s licensing and registration requirements. The provider cannot be enrolled as a legally-exempt provider if the provider is currently a licensed or registered child care provider, which must be determined by conducting a routine CCFS search of licensed/registered providers. A provider whose license or registration record indicates a currently active appeal of a revocation or suspension of a license or registration to operate a day care program, is considered to be operating under the license or registration. New York State Regulations do not allow a child care provider to simultaneously have a licensed or registered status AND a legally-exempt status for care provided at the same site.

Additionally, any concerns about the provider operating illegally must be resolved before a provider may be considered legally-exempt.

1. Informal Legally-Exempt Care

A) Applicable regulations

18 NYCRR §415.1(h)

(h) Informal child care includes legally-exempt family child care and legally-exempt in-home child care. Members of the child’s or the caretaker’s public assistance unit, and other adult members of the child care service unit except the child’s siblings, are not eligible to provide subsidized child care.

(1) Legally-exempt family child care means:

(i) child care for one or two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, and who is chosen and whose services are monitored by the child's caretaker; or

(ii) child care for more than two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's caretaker; or
(iii) child care provided by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child or children except where such relative is a person legally responsible for, or the caretaker relative of, such child or children. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

(2) Legally-exempt in-home child care means:
(i) child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's caretaker and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law; provided, however, that the child's caretaker must provide the caregiver with all employment benefits required by State and/or Federal law, and must pay the caregiver at least the minimum wage, if required.

B) Verifying the Legally-Exempt Program Type of Family or In-Home Child Care.

On the OCFS 4699, Enrollment Form for Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care, the provider must check the appropriate program type description to indicate what type of care arrangement exists. The EA must verify the legally-exempt status of the provider using the information on the enrollment form, including, but not limited to: where care is being given, how many children are in the care of the provider, the hours the children are in care, the overlap of hours, and, if any familial relationship exists between the provider and those children. The EA must review the child-specific information and the child care schedule to determine whether the care being provided is legally-exempt.

The EA must review the schedule information to verify that the provider is not caring for more children than allowed for a legally-exempt provider. The provider must provide the schedules of all children in his or her care, including non-subsidized children, with the exception of the provider’s own children. A separate chart should be used for each family.

(1) IN-HOME CARE

In-home care is care provided in the child’s own home. For in-home care, the number of children that can be in care is not limited as long as all the children reside in the household where care is provided. The OCFS-LDSS 4699.2, Legally-Exempt In-Home Child Care Provider Agreement Form, must be signed by the parent for whom care is provided in-home.
(2) FAMILY CHILD CARE

Family child care is care provided in the home of the provider or in another person's home. The provider must meet one of the requirements in statement (1), (2), or (3) below in order to be enrolled as a family child care provider. Care is limited to a total of two children or if more than two children are in care, care must be for three hours or less per day. The provider cannot care for more than two children who are not legally related to the provider for more than three hours per day and still meet the definition of legally-exempt. In determining the number of children, the provider's own children and any children age 13 years and over are not included in the count.

(a) FAMILY CHILD CARE WITH AN IN-HOME COMPONENT

When care is being provided in the home of a child, and another child who does not reside in the household is brought to the site for child care, the child care modality is Family Child Care with an In-home component.

- The restrictions on the number of children in care for a legally-exempt family child care provider apply. The requirements pertaining to household members, such as attestations for criminal history and the check of the NYS Sex Offender Registry, also apply to the household members residing at the child care site.
- The OCFS-LDSS 4699.2, Legally-Exempt In-Home Child Care Provider Agreement Form, must be signed by the parent for whom care is provided in-home.

(b) FAMILY CHILD CARE FOR NO MORE THAN 2 CHILDREN:

When care is being provided for more than three hours per day, a provider of legally-exempt family child care may only care for one or two children. These hours need not be consecutive.

(c) FAMILY CHILD CARE FOR 3 OR MORE CHILDREN, BUT NEVER MORE THAN 2 AT ANY ONE TIME FOR MORE THAN 3 HOURS PER DAY:

When care is provided for three hours or less per day a provider can care for any number of children. A provider of legally-exempt family child care may care for more than two children for some portion of the day as long as there are never more than 2 children in care at the same time for a period in excess of 3 hours a day.

An example of care which is not legally-exempt: Three or more children go to a neighbor's home for one hour before school starts in the morning and for 2½ hours after school in the afternoon; the provider cannot be considered legally-exempt and is required to be registered as a family day care provider or licensed as a group family day care provider.

(d) RELATIVE CARE:

As per regulation, there is no limit to the number of children in care, as long as all the children are related to the provider within the third degree of
consanguinity. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins. However, as soon as one non-relative child is in care, the care is NOT considered “relative” care and the maximum number of children cannot exceed eight, and there can be no more than two non-related children, among those eight

(3) **OTHER CARE**

When this statement is checked, the provider should attach an explanation of the care arrangement. The provider may be caring for children in a situation that does not clearly fit the in-home care or family child care categories as described. Such situations must be evaluated and the EA must consult with OCFS DCCS if the type of care cannot be determined.

**C) Minor Status of Provider**

*Informal legally-exempt providers who are under 18 years of age* may provide subsidized child care when they are working in accordance with the labor standards for minors. Providers must be at least 14 years of age in order to comply with New York State Labor Law. The minor provider must be given the OCFS-LDSS-4699.1, Employment of Minors Form and the OCFS-LDSS-4699.1A, Employment of Minors, Information, a summary of the New York State Labor Laws. The provider must then submit the completed Employment of Minors Form. If providing Family Child Care, a minor must also submit a copy of his or her working papers. The EA must verify that the minor provider is working within the parameters defined on his or her working papers.

2. **Legally-Exempt Group Child Care**

**A) Applicable Regulations**

18 NYCRR §415.1(i)

*Legally-exempt group child care means care provided by those caregivers, other than caregivers of informal child care as defined in 18 NYCRR §415.1(c), which are not required to be licensed by or registered with the department or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs. Caregivers of legally-exempt group child care include, but are not limited to:*

- pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide elementary or secondary education or both in accordance with the compulsory education requirements of the
Education Law, provided that such pre-kindergarten, nursery school or school-age programs are located on the premises or campus where the elementary or secondary education is provided;

- nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;

- summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;

- day care centers, family day care homes and other child care programs located on Federal property which are operated in compliance with the applicable Federal laws and regulations for such child care programs; and

- day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs.

B) Legally-Exempt Status

To be enrolled to provide child care services, group programs must attest and certify in writing that:

The program is legally operating under the auspices of another Federal, State or local government agency; OR, if the program is not required to operate under the auspice of another Federal, Tribal, State or local government agency, then the program must meet additional health and safety requirements required in 18 NYCRR §415.4(f)(7)(iv) and(v).

(1) LEGALLY-EXEMPT GROUPS OPERATING UNDER THE AUSPICES

Legally-exempt group providers operating under the auspices of another federal, State or local government agency (LEGUA) are required to adhere to the standards and requirements of the program’s lead agency. Such programs are required to adhere to the standards and requirements of the program’s lead agency, similar to those of 18 NYCRR §415.4, and per regulation are not required to meet all the same requirements as informal child care or LEGUA. Therefore, they do not have to complete certain sections of the enrollment form. Additionally, please note that LEGUA programs cannot receive authorization to administer medication through OCFS.

(2) LEGALLY-EXEMPT GROUPS NOT OPERATING UNDER THE AUSPICES (LEGNUA)

These legally-exempt group providers are not operating under the auspices of another State or local government agency with similar health and safety standards to those set forth in 18 NYCRR 415.4.
C) Program Subtype

In addition to attesting whether the program is legally operating under the auspices of another government program, the legally-exempt group child care program must self-identify the “program subtype” they are operating, and provide applicable documentation as indicated.

D) Multiple Families Using the Same Legally-Exempt Group Provider

Some legally-exempt group child care providers may be caring for a number of children subsidized by the district. Rather than have the provider submit multiple enrollment forms, the EA has the discretion to use some of the information on the enrollment form recently submitted by the provider. The provider section may be completed once and copied for each subsidized parent, however, the provider signature and date must be original and current for each parent submitting an enrollment form. The provider must also sign the parent sections. Each family who has a subsidized child in care must complete the parent section, and sign the provider section.

D. PROGRAM CHARACTERISTICS

1. Training

Informal providers may be eligible to receive an enhanced market rate. To be eligible, informal providers must submit to the EA the OCFS-LDSS-4699.3, Legally-Exempt Provider Training Record Form, showing they have completed ten hours of training during the past 12 months in areas specified in Social Services Law 390-a(3)(b), and have satisfactory documentation of the training.

The training areas that may be considered are:

- Principles of childhood development: the developmental stages of the age groups for which the program provides care;
- Child care program development;
- Nutrition and health needs of infants and children; may include the administration of medication;
- Shaken baby syndrome: identification, diagnosis and prevention;
- Child abuse and maltreatment: identification and prevention;
- Child abuse and maltreatment: statutes and regulations;
- Safety and security procedures;
- Business record maintenance and management; or
- Statutes and regulations pertaining to child care.

Providers must complete and submit the OCFS-LDSS-4699.3, Legally-Exempt Provider Training Record Form with copies of training certificates to the EA. The EA must verify that the training was received within the
designated timeframe and that the topics fall within the categories listed above in accordance with this guide and OCFS policy. Once approved, the legally-exempt family or in-home child care provider is eligible for the enhanced market rate for a period of 12 months.

The EA must verify and determine whether to approve the additional training, document the decision in CCFS, and promptly notify the district. For enrolling or re-enrolling providers, the decision is made as part of the enrollment review. For providers who submit documentation after the enrollment or re-enrollment decision, the decision regarding the training must be made within ten days of receiving the request from the provider.

The district must apply the enhanced market rate to subsidy payments issued, for a period of 12 consecutive months, starting no later than the beginning of the first full month following the date the district was notified by CCFS E-Notice of the approval of the provider’s training, and continuing for consecutive 12 months following the date the district was notified by the EA of the approval of the enhanced market rate.

For those cases in which the district has not been notified by the EA that a legally-exempt family child care or in-home child care provider is eligible for the enhanced market rate, districts must apply the standard market rate.

2. Participation in the Child and Adult Care Food Program (CACFP)
Regulations require that all FCC enrollees be referred to CACFP, a federal program administered by the New York State Department of Health that assists providers with meeting the cost of providing nutritious meals and snacks.

If the provider is already participating in CACFP, the EA must obtain documentation of participation, which may include the CACFP agreement DOH-3821; the most recent monitoring checklist, DOH-4118; or the claim reimbursement stub. The documentation must be dated within the past 12 months to establish participation. The EA enters the most recent date establishing participation into CCFS. The EA must update the participation date in CCFS whenever new proof of participation is received from CACFP or the provider. Once entered into CCFS, the CACFP participation date can be used to exclude CACFP providers from the 20% annual inspection list.

3. Amount Charged for Subsidized Care
Regulations specify that child care subsidy payments for eligible families/children cannot exceed the amount the provider charges to the general public for equal care in the providing home. In this question, the provider indicates whether he or she is charging the subsidized parent the same amount or less than the amount charged for other children of the same age and similar care. If a provider is charging a subsidized family more than the amount charged a non-subsidized family for similar care, the provider cannot be enrolled.
1. Background

Under the Nurse Practice Act (NPA) of 1972, which regulates the profession of nursing in New York State, the administration of medication is considered part of the practice of nursing. As a general rule, only a nurse or other medical professional may administer medication. There are some exceptions to this requirement which are set out in NYSED, Title 8, Article 139, Section 6908, which allow for the care of the sick, disabled or injured to be provided by individuals who are not licensed to administer medication but are exempted based on their relationship to the child, family, or household, are permitted to give medication without special training and qualifications. These exempted individuals include:

- A parent, step-parent, legal guardian, legal custodian;
- A member of the child’s household;
- A “person employed primarily in a domestic capacity,” such as a child care provider employed by the parent to provide child care in the child’s home;
- A person who is related to the parent or step-parent of the child within the 3rd degree of consanguinity.

In addition to the above mentioned categories of exempted individuals and authorized medical professionals specified in New York State Education Law (NYSED), certain legally-exempt child care providers may become qualified to legally administer medication based on an OCFS authorization process within child care regulations.

The OCFS authorization process, requires an approved Health Care Plan for the Administration of Medication, allows for enrolled legally-exempt family, in-home, and, group programs not operating under the auspices of another government agency child care, to receive training and become authorized to administer medication to children in subsidized care. Under regulation, legally-exempt group child care programs that operate under the auspices of another government agency cannot become authorized though OCFS to administer medications in this regard, but instead must operate under the regulations of their primary oversight agency.

Under the OCFS regulations legally-exempt child care providers who are certified in medications administration training, cardio-pulmonary resuscitation, and first aid; and authorized by OCFS under a health care plan approved by a qualified health care consultant may administer medication when such child care providers are:

- Operating in compliance with NYS regulations
• Authorized by the child’s parent, step-parent, legal guardian, or legal 
custodian to administer medication;

• Following appropriate instructions for administration of the medication; 
and

• Administering medication to a subsidized child.

Any child care provider who is not authorized under NYS Law or included 
under an exemption stated in NYS Law, may not administer medication other 
than over-the-counter topical ointment, sunscreen, topically applied insect 
repellent, epinephrine auto injectors, diphenhydramine in combination with 
the auto injector, asthma inhalers and nebulizers, to children in the 
provider’s care.

2. Legally Permitted or Allowed to Administer Medication

Enrolled legally-exempt family, in-home, and group child care programs that 
do not operate under the auspices of another government agency must 
identify on the enrollment form whether the provider or any employee or 
volunteer is “legally permitted” to administer medication, other than over-the-
counter topical ointment, sunscreen, and topically applied insect repellent, 
and/or epinephrine auto injectors, diphenhydramine in combination with 
the auto injector, asthma inhalers and nebulizers, to children in the provider’s 
care.

“Legally permitted” or allowed to administer medication includes providers 
who are:

• licensed medical professionals currently authorized under NYS 
  Education Law to administer medication, and

• Authorized by OCFS through a Health Care Plan to Administer 
  Medication approved by a Health Care Consultant.

• for informal child care only, those who are “exempt” by NYS Education 
  Law, Title 8, Article 139, Section 6908.

  o An in-home provider who is employed by the parent/caretaker, 
    providing child care in the home of the child, is exempt because 
    he or she is considered to be a “person employed primarily in a 
    domestic capacity.”

  o A relative family child care provider is permitted to administer 
    medication to related children. The provider must be related to 
    the parent or step-parent of the child within the third degree of 
    consanguinity. The EA shall refer to the definition for relative 
    within the third degree of consanguinity found in 18 NYCRR, 
    section 413.2 (a)(1) before ruling any relative out. The 
    definition follows: A relative within the third degree of 
    consanguinity of the parent or step-parent includes: the
grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

3. Providers who have no Authorization or Exemption

Legally-exempt informal providers who are not authorized to administer medication by NYSED or OCFS, or legally permitted, as described previously, may only administer to subsidized children in their care: over-the-counter topical ointment, sunscreen, topically applied insect repellent, and, with training from the parent or health care provider, epinephrine auto injectors, diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers.

4. NYSED Exemption Applicable to Informal Child Care Providers

An important exemption exists under Education Law, Title 8, Article 139, Section 6908, exempting several categories of individuals from the NPA, based on their relationship to the child, family or household; under this provision, individuals permitted to give medication without obtaining special training and qualification include:

- The child’s parent, step-parent, legal custodian, legal guardian,
- A household member of the child,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home, and
- Family members who are related within the 3rd degree of consanguinity to the child’s parent or step-parent.

5. NYSED Authorized - No Health Care Plan Required

A currently licensed medical professional who is ALSO the legally-exempt child care provider or program director does not require a Health Care Plan to Administer Medication if the child care provider/program director holds a current NYS license in one of the following professions:

- physician,
- physician’s assistant,
- nurse practitioner, and
- Registered nurse.
The above-noted medical professionals are authorized to administer medication under the NYS Education Law AND also meet the definition of a Health Care Consultant.

To establish the provider/program director’s qualifications with the EA, in this limited instance, the provider or program director must give the EA a copy of his or her current professional NYS license.

The EA must verify the license to insure it is current and issued in one of the above professions. If the license is not current, the EA must determine whether the provider has a current license, and if so, request a copy. If the provider does not produce a current medical license or other acceptable documentation showing the license is still current, the EA must inform the parent/caretaker that the provider/program director is not permitted to administer medication to children in subsidized care under the medical license. Additionally, the EA must report any concerns regarding the validity of the license or the professional behavior of the health care provider to the **NYS Education Department, Office of the Professions:**

**Telephone:** (518) 474-3817  
**Internet Site:** http://www.op.nysed.gov/opsearches.htm  
**Mailing Address:**  
New York State Education Department, Office of Professions  
State Education Building - 2nd floor  
89 Washington Avenue  
Albany, NY 12234

6. OCFS Authorization through an Approved Health Care Plan to Administer Medication

A legally-exempt provider who is the ONLY person designated to administer medication AND the child care provider is also a physician, physician’s assistant, nurse practitioner or registered nurse, currently licensed under NYSED is not required to administer medication to children in subsidized care under an Approved Health Care Plan to Administer Medication. All other legally-exempt in-home and family child care providers, and group programs not operating under the auspices of another government agency, must have a Health Care Plan to Administer Medication if the provider intends to administer medication other than over-the-counter topical ointment, sunscreen, topically applied insect repellent, and, with training from the parent or health care provider, epinephrine auto injectors, diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers, to children in subsidized child care.

Legally-exempt child care programs whose medication administrant meets OCFS training requirements and whose program is “authorized” by the Office of Children and Family Services through a Health Care Plan for the
Administration of Medication approved by a qualified health care consultant, are permitted to administer medication when such programs are operating in compliance with the NYS regulations, authorized by the child’s parent/caretaker, step-parent, legal guardian, or legal custodian to administer medication, and administering medication to subsidized children in care.

7. The Health Care Plan to Administer Medication

The Health Care Plan for the Administration of Medication shows the program’s policies and procedures for giving medicine that follow the OCFS regulations. The Health Care Plan to Administer Medication must be approved by a qualified Health Care Consultant. The OCFS/LDSS-7001, Instructions for the Health Care Plan for the Administration of Medication for Legally-Exempt Provider, provides the detailed instructions needed to for the program to complete the plan.

- The program must have a designated medications administrant, who may be the provider or the provider’s employee/volunteer.

- The medication administrant must meet basic literacy and age requirements in addition to training requirements in three areas: medication administration, cardio-pulmonary resuscitation, and first aid.

- After the medication administrant meets the training requirements, the program can develop a plan for the administration of medication and obtain approval from a qualified Health Care Consultant.

- Once the program completes a written OCFS-LDSS 7000, Health Care Plan for the Administration of Medication, an approved Health Care Consultant must visit the child care site, review the plan, and approve the plan. The approval is recorded on the approval page of the plan.

- A program that wishes to administer medications under OCFS authorization must submit a copy of the plan’s cover page and approval page to the EA. The EA must review the cover page and the approval page for the Health Care Plan for the Administration of Medication for completeness and to verify the current qualifications of the Medication Administrant and the Health Care Consultant, in accordance with this guide.

For additional information, refer to OCFS/LDSS 7001, Instructions for Completing the Health Care Plan for the Administration of Medication.

A) OCFS Certified Medication Administrant

The Health Care Plan for the Administration of Medication must name the Medication Administrant and establish such person’s qualifications.
1. The Medication Administrant must be:
   - at least 18 years of age,
   - literate in the language in which the parental permissions and health care provider's instructions will be given.

   These criteria will be verified by the Medication Administration Training (MAT) trainer, prior to issuing a certificate, and by the health care consultant prior to approving the Health Care Plan for the Administration of Medication.

2. The Medication Administrant, the provider or the employee designated by the provider to administer medication, must be OCFS Certified or have professional medical license described below:

   • OCFS-Certified: the Medication Administrant must meet OCFS training requirements, and have a current certification for the three required trainings:
     - Medication Administration Training (MAT),
     - Cardio-pulmonary Resuscitation (CPR), and
     - First Aid.

   • Professional Medical Training -- The following trained medical professions also satisfy the OCFS requirement for medication administration training, by virtue of their professional medical training, when the medications administrant is currently a:
     - licensed physician,
     - licensed physician’s assistant,
     - licensed nurse practitioner,
     - registered nurse,
     - licensed practical nurse, or
     - Certified advanced emergency medical technician under the NYS Public Health Law.

   A Medication Administrant who is a medical professional described above must submit a current copy of his or her license or certificate as proof of training. Whenever administering medication, such medical professionals must adhere to both the requirements of their license or certification and OCFS regulations.

   The EA must verify the license or certification to insure it is current and issued in one of the above professions. If the license or certification is not current, the EA must determine whether the caregiver has a valid license or certification and request a current copy if one exists. If the caregiver does not produce a current medical license or certification, the EA must
inform the parent/caretaker that the caregiver is not permitted to administer medication.

B) Health Care Consultant

The program must have a qualified Health Care Consultant of record. Prior to approval of a plan, the health care consultant will review the policies and procedures for the administration of medication to any children in the child care program that are receiving child care subsidy, as set forth in the Health Care Plan for the Administration of Medication. This review process includes a site visit and the verification of staff qualifications for all staff designated to give medicine, including: review of documentation showing individuals have the necessary professional license or have completed the required training, review of proofs of age (showing persons giving medicine at least 18 years of age), and a determination that any person giving medicine is literate in the language in which the health care provider’s instructions and the parent’s/caretaker’s permissions are provided. When the consultant determines that the Health Care Plan for the Administration of Medication meets the requirements set forth in regulation, 18 NYCRR §415.4(f)(7)(iv)(z), the consultant may sign and approve the plan.

The definition of Health Care Consultant may be found in Title 18 of the NYS Code of Rules and Regulations (NYCRR) section 413.2(c)(7) and is as follows: “Health care consultant means a physician, physician’s assistant, nurse practitioner, or registered nurse who possesses a valid NYS license in his or her field. Such consultant may include a health care professional who is an employee of a local Department of Health.”

Note that the Health Care Consultant cannot be one of the persons in the provider’s home or another person with a role in providing child care. Hence, the provider cannot act as his or her own Health Care Consultant and the provider’s employee, volunteer and/or household member cannot serve as the Health Care Consultant.

- In the event of any concern or question regarding the qualifications of the Health Care Consultant or the validity of the license, the EA may contact the NYS Education Department, Office of the Professions:

  Telephone: (518) 474-3817

  Internet Site: http://www.op.nysed.gov/opsearches.htm

  Mailing Address:

  New York State Education Department, Office of Professions
  State Education Building - 2nd floor
  89 Washington Avenue
  Albany, NY 12234
C) Plan Approval

The provider must have a Health Care Plan for the Administration of Medication approved by a qualified health care consultant within the past two years. The approval of the plan is the responsibility of the Health Care Consultant.

Prior to approval of a plan, the health care consultant visits the child care site, reviews the plan to determine that the plan to administer medication to children in the provider’s care is safe and reasonable, and determines that the provider has met all the necessary OCFS requirements. This includes a determination that the person designated to administer medication to children in subsidized care meets the training requirements, is at least 18 years of age, and meets the literacy requirement. When a qualified health care consultant approves the Health Care Plan for the Administration of Medication, the designated person who is certified to administer medication becomes authorized to administer medication only to subsidized children and only within the framework of the Health Care Plan for the Administration of Medication.

D) Enrollment Agency Review of Health Care Plan pages

(1) REVIEW OF THE COVER PAGE

The EA must review the cover page to confirm basic provider information and review the qualifications of the Medication Administrator.

- The EA must review the provider name and the address where child care is provided and verify that the information provided is consistent with the known provider information. Note that the OCFS-LDSS 7000, Health Care Plan for the Administration of Medication for Legally-Exempt Provider, is site-specific. If a provider gives child care at more than one site, the provider must have an approved OCFS-LDSS 7000, Health Care Plan for the Administration of Medication for Legally-Exempt Provider, and an enrollment form for each site.

- The provider must inform the parent/caretaker about the policies and procedures regarding administration of medicine at the time the child is signed up and whenever the health care plan changes. It is recommended that the provider provide a copy of the Health Care Plan for the Administration of Medication to the parent/caretaker. The provider must make the plan available for reading, whenever a parent/caretaker requests.

- The provider must attest that the provider’s policies and procedures follow OCFS regulations.

(a) REVIEW OF QUALIFICATIONS OF THE PERSON(S) DESIGNATED TO GIVE MEDICATION

OCFS regulations require that the provider designate (choose) at least one person who is legally permitted to administer medicine to give medicine to children in your care. This person is usually the provider,
but can be a staff member including an employee or volunteer. In this section the provider identifies the Medications Administrant and gives their qualifications.

- **Name:** The exact person listed must be recorded in CCFS as the Medication Administrant and must have one additional role (i.e.: provider, employee, volunteer, household member).

- **Title:** If the Medication Administrant is a medical professional, title associated with the professional is stated, for example “doctor”.

- **Basic Requirements:** The Medication Administrant must meet the basic requirements of age (18 years of age or older) and language (ability to read, write, speak, and understand the language in which medicine instructions and permissions are written and spoken).

- **Qualifications:** The Medication Administrant must have completed OCFS training requirements or may be a specified medical professional. The provider must show how the Medication Administrant is qualified to give medicine. The EA must review the information provided for completeness and verify that the certifications have not expired.

  **i. Certified to Administer Medication**

  The medications administrant is *certified to administer medication* when the Medication Administrant has successfully completed the three listed trainings: Cardio-pulmonary Resuscitation (CPR), First Aid, and Medication Administration Training (MAT). The certification dates and expiration dates are required.

  - The certification date for training is the date the designated person completed training (found on the training completion certificate).

  - The expiration date for training is the date the training certificate expires. For example, the MAT certificate will expire three years after the certification date. An expired certificate is not valid. If any training has expired, the provider must provide a current certificate or the provider is not in compliance.

  It is the provider’s responsibility to make sure the Medication Administrant gets re-certified in each training topic area before the certificates expire. The provider must continually update this part of the plan with the new information by attaching a page. The provider must keep the original training certificates and re-certifications for MAT, CPR and First Aid to prove the qualifications of the person designated to give medicine.

  **ii. Authorized to administer medication**

  The medications administrant is *authorized* to administer medication when the medications administrant is a trained medical professional with a license issued by NYS Department of Education or, for an advanced emergency medical technician, a
Persons with current NYS licensure or certification in the medical professions specified below are authorized to administer medication and are, therefore, not required to attend the MAT, first aid or CPR trainings.

- practical nurse,
- physician,
- physician assistant,
- nurse practitioner,
- registered nurse, or
- a current certification from the NYS Department of Health as an advanced emergency medical technician.

The EA reviews the license or certificate, the number, and the expiration date.

- Type of license or certificate: the person’s professional occupation, as found on the license.
- License or certificate number: the individual's license/certificate number, as found on the license/certificate.
- Expiration Date: the date the license or certificate expires (found on the license). If the license/certification has expired, it is considered invalid.

The designated person may not administer medicine if the professional medical license or certification is expired. In the event of any question regarding validity of a license, confirm that the medical license is valid by using the CCFS link to the website of the NYS Education Department, Office of the Professions, http://www.op.nysed.gov/opsearches.htm.

(2) REVIEW OF THE APPROVAL PAGE FOR THE HEALTH CARE PLAN FOR THE ADMINISTRATION OF MEDICATION

All of the information requested in the Health Care Consultant Certification and Approval section is important to demonstrate whether a qualified Health Care Consultant has approved the Health Care Plan for the Administration of Medication, in effect authorizing the child care program to administer medication. The EA must review the approval page to confirm that a Health Care Consultant has approved the plan and that the qualifications of the Health Care Consultant are clearly stated. If information identifying the Health Care Consultant or his or her credentials is missing, the EA representative should check to see if the missing information can be obtained. If the deficiency cannot be immediately corrected, the EA must inform the parent/caretaker of the approval’s inadequacies and that the provider does not meet the legal requirements to administer medication. A missing phone number or address does not necessitate such action if all other areas in this section are satisfactorily completed. If the phone or address information is
missing, the EA should request that it be provided to the EA and recorded on the original plan at the child care site. Such phone or address information is primarily for the use of the parent/caretaker and provider and is not grounds for rejection of the plan.

The health care consultant certification and approval section must include:

- **Signature and plan approval date** - The consultant’s signature is absolutely required. Check to make sure that the approval date is within two years of the date the plan was submitted to the EA. A Health Care Plan for the Administration of Medication is valid for two years from the time of approval by the health care consultant. Providers are required to renew their plans and resubmit their approval page every two years. If the plan’s expiration is imminent, the EA must remind the parent/caretaker and provider that a new plan must be submitted.
- **Printed name and title** - the consultant’s name and profession must be legible.
- **Professional medical license number and license expiration date** must be legible. Compare the expiration date with the plan approval date to insure that the license was valid at the time the plan was signed (the license expiration date must post-date the plan approval date).
- **The health care consultant’s phone number and address.**

**F. PARENT’S DECISIONS PERTAINING TO MEDICATION ADMINISTRATION**

Separate and apart from whether the program or provider is legally permitted to administer medication, the parents/caretakers must determine how their children’s medications needs will be met. The parent/caretaker must discuss their children’s medication needs with their selected providers. As part of the enrollment process, parents must document whether the parent or provider will be responsible for meeting the children’s medication needs, and, the EA must verify that the parental decision correlates to the provider’s legal administration of medication status.

For informal child care and legally-exempt group programs not operating under the auspices of another government agency, the parent/caretaker must indicate on the enrollment form whether the parent/caretaker or the child care provider is responsible for meeting the medication needs of the child while in the care of the provider. The EA must verify that each parental choice in this regard is consistent with the provider/program’s authority to administer medication, as for example:

- **The provider with a current approved Health Care Plan for the Administration of Medication may administer medication to the child when the parent chooses the provider/program to be responsible for meeting the medication needs of the child.**
• The Medication Administrant designated by the provider in the current, approved Health Care Plan for the Administration of Medication may administer medication to the child when the parent chooses the provider/program to be responsible for meeting the medication needs of the child.

• The provider who is also a physician, physician assistant, registered nurse or nurse practitioner may administer medication to the child, under his or her professional medical license, when the parent chooses the provider/program to be responsible for meeting the medication needs of the child.

• The in-home child care provider may administer medication to the child (exempt) when the parent chooses the provider/program to be responsible for meeting the medication needs of the child.

• The family child care provider who is related to the parent or step-parent of the child may administer medication to the child (exempt) when the parent chooses the provider/program to be responsible for meeting the medication needs of the child.

The parent/caretaker may administer the medication personally or designate a person who is legally permitted by law, other than the provider or the provider’s qualified employee or volunteer, to administer medication. The parent/caretaker must inform the provider, in writing, of any person authorized to give a child medication. A parent/caretaker may authorize a qualified medical professional, or an exempt person, as stated in Title 8, Article 139, Section 6908 of the NYS Education Law, such as a member of the child’s household or a relative, to administer medication to the child. The relatives who may be authorized include: the child’s grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse).

It is possible that the parent/caretaker and child care provider will share the responsibility of administering medication. In that event, they assume mutual responsibility for insuring that they plan adequately to meet the child’s needs, and should indicate accordingly on the enrollment form.

Upon submission of an enrollment form, the EA must determine whether the provider is authorized by OCFS or NYSED to administer medications, or is otherwise legally permitted to administer medication to the specified child(ren). If the provider designated by the parent to meet the child’s medication needs is not legally permitted or authorized to do so, the provider is not in compliance with the regulations governing the administration of medication. In such instances, the EA must work with the parent and provider to inform the parent and provider of the laws and regulations governing the administration of medication and attempt to bring the provider into compliance. If the provider cannot or will not come into compliance, the enrollment must be denied or terminated.
Since State Education regulations regarding persons who are exempt from the Nurse Practice Act, that limits the practice of “administration of medication, do not define age as a factor, this Guide remains silent on the matter of age for those who are included in one of these exempt categories previously described. Nevertheless, it remains the responsibility of the parent/caretaker to make appropriate judgments regarding the competency of the chosen caregiver in regards to all aspects of child care provision.

1. Child with Special Health Care Needs Versus Child with Special Needs

The Health Care Plan for the Administration of Medication addresses the concept of a “child with special health care needs,” which is defined in 18 NYCRR Section 413.2(am): “Children with special health care needs means children who have chronic physical, developmental, behavioral or emotional conditions expected to last 12 months or more and who require health and related services of a type or amount beyond that required by children generally.” Please note that the definition of “child with special health care needs” is different from the definition of “child with special needs” found in 18 NYCRR Section 415.1(c). The definition of a “child with special needs” is used by the district for eligibility determinations and for determination of maximum child care reimbursement rate. A child with “special health care needs” is not considered to be a “child with special needs” unless the child meets the definition stated in 18 NYCRR §415.

2. Medication Errors and Non-Compliance with Administration of Medication Regulations

Providers are required to report any medication errors they make, by the following business day, to the appropriate OCFS Division of Child Care Services Regional Office or, in NYC, the Department of Health and Mental Hygiene. A listing of regional offices can be found by navigating to either the OCFS Internet or intranet sites, then to Day Care, Resource and Oversight Agency Listings, and to the list of OCFS Division of Child Care Services Regional Offices.

If the EA becomes aware of any medication errors or other medication-related concerns, they should be reported to the appropriate OCFS Division of Child Care Services Regional Office or, in NYC, to the Department of Health and Mental Hygiene (DOHMH). Such reports will be handled as day care complaints. The investigating office must inform the EA when complaints for providers currently enrolled by the EA are substantiated.

If OCFS, or NYC DOHMH, determines that a legally-exempt provider is unwilling or unable to operate in compliance with the regulations regarding the administration of medication; or if OCFS has taken actions against a provider based on a failure by the provider or employee to comply with the requirements for administration of medication, OCFS may require retraining, prohibit the provider or employee from involvement with administering medication, and may ultimately terminate the provider’s enrollment.
3. Forms Pertaining to the Administration of Medication

A parent/caretaker or provider may need several forms and/or handouts to complete the process of becoming authorized to administer medication, and to document authorization and instructions for administering medication. The necessary forms are available through the EA and the OCFS website. The list below identifies the forms and/or handouts related to administration of medication.

A) Handout for providers:
- OCFS/LDSS-7007, Obtaining Authorization to Administer Medication to Subsidized Children in Legally-Exempt: For child care providers who are not currently authorized to administer medication but may be interested in becoming authorized, the EA must offer referral information to relevant service providers, as well as give the handout, Obtaining Authorization to Administer Medication to Subsidized Children in Legally-Exempt Care.

B) Forms for obtaining authorization to administer medication under OCFS regulations:
- OCFS/LDSS-7000, Health Care Plan for the Administration of Medication for Legally-Exempt Provider
- OCFS/LDSS-7001, Instructions for the Health Care Plan for the Administration of Medication for Legally-Exempt Provider
- Medication Administration Training (MAT) Grant Application

C) Forms needed by providers to actively administer medication to children:
- OCFS/LDSS-7002, Written Medication Consent Form
- OCFS/LDSS-7004, Log of Administration
- OCFS/LDSS-7003, Verbal Medication Consent Form and Log of Administration
- OCFS/LDSS-7005, Medication Error Report Form
- OCFS/LDSS-7006, Individual Health Care Plan for a Child with Special Health Care Needs

G. AGREEMENT ON PROVISION OF MEALS AND SNACKS

The parent, the provider, or both may provide the children’s meals and snacks while children are in care. The enrollment form provides a place for documenting the agreement between the parties.

H. HEALTH & SAFETY CHECKLIST AND CERTIFICATION

The provider and the parent/caretaker must complete the home safety checklist, additional agreements, conditions and certification, jointly, before the provider may care for children. The provider must meet all of the requirements in the checklist, and agree to abide by all of the conditions in the certification section, before he or she can be enrolled. If the home safety checklist indicates a health
or safety concern, but the provider resolves the issue prior to the temporary enrollment decision, the EA may consider that provider for temporary enrollment.

1. Home Safety Checklist

Generally, the statements on the enrollment form in the checklist must be answered "YES" in order for the provider to be enrolled. Enrollment cannot be authorized until all checklist items marked "NO" have been corrected. Any exceptions are specifically noted on the checklist. The EA must receive and review documentation that corrections have been made prior to completing enrollment.

Most of the items on the home/facility safety checklist are self-explanatory, but additional clarification is warranted for the following.

- **Two means of escape:** Two ways out of the home must be available in the event of an emergency. Both means of escape have to be remote from one another (separate and apart, not side-by-side or adjacent to one another along the same wall) and lead to an immediate escape. The two routes do not have to be doors that immediately lead to the outdoors. Consideration must be given to the provider's ability (such as the provider's age and physical condition) to use an alternate means of escape (e.g., a window leading to a fire escape or an emergency ladder that descends from a window) and to remove all children safely in an emergency. The number, ages and any handicapping condition of the children in care are factors to be considered.

- **Provider health/physical condition:** The provider attests that the provider and anyone assisting in the care of children are physically, emotionally and mentally able to provide care. In addition, providers must certify that they, themselves, anyone assisting in the care of the children, and all persons residing in the home, are free of communicable disease unless the person's health care provider has indicated that the presence of a communicable disease does not pose a risk to the health and safety of the children in care. Further, when care is provided in a home that is not the child's home; the communicable disease clause also applies to household members in the home where care is provided.

If the EA has reason to suspect that the information provided is incorrect or incomplete, the EA may require the provider to submit a statement from a physician, physician's assistant, or nurse practitioner verifying the information.

- The provider is reminded that s/he must be present when children are in the care of employees or volunteers, and for family child care, household members residing at the residence where child care is provided.

When documenting compliance/non-compliance in CCFS, the values recorded in CCFS represent the *determinations, or conclusions*, of the Enrollment Agency, and, they must always be the *current* determinations of compliance.
made by the enrollment agency. While at initial enrollment, it is appropriate for the Enrollment Agency to use the attestations of compliance on the enrollment form as the basis of the Enrollment Agency’s determination of “Current Compliance”, this is not an appropriate practice when the Enrollment Agency has previously documented one or more non-compliance issues that have not been resolved. Once non-compliance has been documented, the Enrollment Agency must verify that the non-compliance has been corrected prior to modifying values in CCFS.

2. Additional Conditions, Agreements, And Certification
By completing and signing the enrollment packet, both the provider and parent are attesting and agreeing to compliance with the requirements of the Health and Safety Checklist. The provider must agree to abide by the additional conditions following the checklist, before he or she can be enrolled. Please note that only the provider may be alone with the children in care, even if the provider has employees or volunteers who help to care for the children. Neither the parent/caretaker nor the provider can be given a waiver of any of these requirements. For example, a parent/caretaker may say he or she does not care that the provider smokes. Nevertheless, smoking indoors while children are in care (or in a vehicle) is prohibited. Similarly, a provider who will not abide by the prohibition against corporal punishment (i.e., "I just give them a swat on the behind," ) is not eligible for enrollment. The examples of corporal punishment listed in this section are not meant to be an exhaustive list and are cited in order to clarify and emphasize that such actions are unacceptable.

The provider and parent/caretaker(s) must sign and date the enrollment packet, attesting that the home has been inspected with the parent/caretaker; that all statements in the Home Safety Checklist are true and accurate; and that provider and parent/caretaker(s) agree with the conditional statements. Failure of the parent/caretaker(s) or provider to sign the checklist precludes the provider from being enrolled. If a minor is providing care, failure of the adult in charge of the home to sign the checklist also precludes the provider from being enrolled.

3. Annual Inspections Of 20% Enrolled Family Child Care Programs Not Enrolled In CACFP
Per 18 NYCRR §415.4(f)(8)(iv) - On an annual basis, the applicable legally-exempt caregiver enrollment agency must conduct on-site inspections including reviewing the immunization records of at least twenty percent of the currently enrolled legally-exempt family child care caregivers in the applicable district who do not participate in the child and adult care food program, to determine whether such caregivers are in compliance with the health and safety standards set forth in this section.

EAs must review and follow the annual instruction issued by OCFS each January for conducting the annual inspections for 20% of the enrolled Family Child Care Programs not enrolled in CACFP.
I. INFORMATION ON REPORTS OF CHILD ABUSE AND MALTREATMENT

Per 18 NYCRR §415.4(f)(7)(v)(ii) - The caregiver must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the caregiver's knowledge, such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children and, for caregivers of legally-exempt family child care, any household member age 18 or older, has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Prior to furnishing the caretaker with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment. The caregiver must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication and any other relevant information.

On the enrollment form, the provider certifies that he or she has:

- Listed all people who may be helping to care for children, and if the provider provides care in a place other than the child's home, has listed all household members;
- Asked each of these people if s/he has been the subject of an indicated report of child abuse or maltreatment;
- Informed the parent/caretaker whether any of the potential caregivers or the provider have been the subject of any indicated reports of child abuse or maltreatment;
- When an indication of child abuse or maltreatment exists, given the parent/caretaker, in writing, true and accurate information including: a description of the incident(s), the date of the indication(s), and any other relevant information regarding the indication(s); and
- Agreed that all statements are true and accurate.

There may be circumstances in which the EA is aware that the information the parent/caretaker received from the provider regarding indicated reports of child abuse or maltreatment is inaccurate or false. Nevertheless, the EA can act only on information it has legally obtained. The EA cannot seek out child protective information by conducting a State Central Register check or requesting the district to conduct a check, and cannot provide confidential information to the parent/caretaker without the provider's consent. Districts/EAs must inform the parent/caretaker that the provider cannot be enrolled until the provider gives correct information to the parent/caretaker without the provider's consent. Districts/EAs must inform the parent/caretaker that the provider cannot be enrolled until the provider gives correct information to the parent/caretaker without the provider's consent. If the parent/caretaker wishes to use the provider, the EA must contact and inform the provider that the provider must give a full account of the indicated report(s) to the parent/caretaker. No action can be taken on the enrollment of the provider until the parent/caretaker is given a correct written statement from the provider and makes a decision based on this information. If the revised statement leads the EA to conclude that the child would be at risk if placed with the provider in question, the worker must inform the parent/caretaker of this conclusion and advise that the EA may file a report.
with the State Central Register should the parent/caretaker place his or her child with the same provider.
Section III. Site Person Level Requirements

Site person level requirements apply to the provider/program director and other persons who may help the legally-exempt child provider to care for children, including:

- Each volunteer who is likely to have regular contact with children in care,
- Each employee, and
- Household members: If care is given in a home other than the child’s home, list each person that is age 18 years or over, living in the home where care is given.

Persons having one of the roles above may be collectively referred to as “site persons” or “site people” in this document and in CCFS. Identifying information is required to enable the required database checks to be run and to assure that the provider’s record, if any, can be accurately identified.

A. Criminal History of the Provider and Site People

1. Applicable Regulations

18 NYCRR §415.4(f)(7) Basic health and safety requirements for caregivers of informal or legally-exempt group child care.

(i) At the time of applying for enrollment and for re-enrollment, the caregiver must furnish a sworn statement indicating whether, to the best of his or her knowledge, such caregiver, any employee of the caregiver, and any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of legally-exempt family child care, each household member age 18 or older, has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction. Prior to furnishing the caretaker and the legally-exempt caregiver enrollment agency with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.

(a) When a caregiver indicates that he or she or such an employee, volunteer or household member has been convicted of a crime, the caregiver must give the caretaker and the legally-exempt caregiver enrollment agency true and accurate information about the crime which will enable the caretaker and the legally-exempt caregiver enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child (ren). Such information must include, but is not limited to, the nature of the crime, the penalties imposed as a result of the conviction, and the length of time which has elapsed since the conviction.
(b) No person convicted of a felony or misdemeanor against children or, for caregivers of legally-exempt family child care, whose household includes an individual convicted of such a crime may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(c) No legally-exempt informal child care program or legally-exempt group child care program which employs an individual or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(d) A legally-exempt caregiver enrollment agency may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the office for evaluating applicants with criminal conviction records.

2. Overview

Article 23-A of the New York State Correction Law was enacted to prevent unfair discrimination in the licensure and employment of a person previously convicted of one or more criminal offenses. In order to make a fair and accurate determination of the person’s appropriateness to care for children, the EA must obtain pertinent documentation from the legally-exempt child care provider and may interview the provider as needed.

The EA must review the criminal history record of the provider, volunteers with regular and substantial contact with the children in care, employees and, for providers of legally-exempt family child care (other than in-home care), household members age 18 years or older.

- If the conviction is for a felony or misdemeanor crime against children, also referred to as a Category A crime, the provider cannot be enrolled. Therefore, an extensive criminal evaluation need not be conducted.

- A conviction for a violent and other serious crime not against a child, also known as a Category B, creates a strong presumption against enrolling the legally-exempt provider. After denial of enrollment, a provider convicted of a violent or other serious crime can request that the district consider and review any extenuating circumstances pertaining to the conviction and determine whether an exception could be made to the presumption against enrollment. This presumption could be overcome only upon a showing of some extraordinary circumstances justifying enrollment.

- For all other felony and misdemeanor convictions, crimes that are not against children and are not violent or serious, also referred to as Category C crimes, the EA must evaluate, during the full enrollment review, whether the criminal background poses an unreasonable risk to the safety and welfare of the child(ren). The EA is authorized to reject or terminate the enrollment of a legally-exempt provider based on the outcome of the criminal history review/evaluation. When an evaluation is required, the EA must follow the
procedure for conducting the evaluation so that an appropriate determination can be made.

Failure to cooperate with the criminal history review/evaluation will result in a denial or termination of the enrollment of a legally-exempt provider. Without an evaluation, the EA will be unable to accurately assess the safety of the children either in the provider’s care or planning to be in the care of the provider.

3. Review of the Criminal History Section of the Enrollment Form

This section solicits information regarding whether the provider or any employee or volunteer has any criminal convictions in New York State or in any other jurisdiction. The provider must complete each statement for him/herself, on behalf of all volunteers who have the potential for regular and substantial contact with children in care, and for all employees, by checking the appropriate box to designate accurate and correct information for all caretakers’ respective situations. Additionally, the provider of legally-exempt family child care must also attest to the criminal convictions of household members (age 18 years or over) of the home in which care is being provided (other than the child's own home). The provider must attest that he or she has specifically asked each volunteer, employee, and such household member if he or she has been convicted of a crime.

If the provider or any employee, volunteer, or household member has been convicted of a crime, additional information concerning the specifics of the crime, the date of conviction and other relevant information must be provided to both the parent/caretaker and EA in writing. If the provider fails to furnish such information, the provider cannot be enrolled.

Sealed criminal convictions for crimes committed as a juvenile are not considered in the evaluation of an individual's criminal background. However, if there is independent knowledge of the events in question, for example the applicant voluntarily tells his history of fire setting or sexual abuse, that information could be used since it is separate and distinct from the sealed criminal record. The review would be based on the underlying facts of the activity and not the fact that the person was convicted.

Table 1-Useful Terminology

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<th><strong>Offense</strong> means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.</th>
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<td><strong>ACOD</strong> - An Adjournment in Contemplation of Dismissal (ACOD) is an adjournment of the action with a view to ultimate dismissal of the accusatory instrument in furtherance of justice. The court may restore the case to the calendar; however, if the case is not so restored within such six months or one year period, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed by the court in furtherance of justice. The granting of an adjournment in contemplation of dismissal shall not be deemed</td>
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</table>
to be a conviction or an admission of guilt. No person shall suffer any disability or forfeiture as a result of such an order. Upon the dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

Sealing Criminal Records—allows for the sealing of records and destruction of fingerprints, palmprints, photographs, proofs and copies thereof when the outcome of the criminal case is favorable to the defendant. Cases become favorable for sealing immediately upon a favorable finding of: Acquittal, Outright dismissal; Upon dismissal after an Adjournment in Contemplation of Dismissal pursuant to CPL 170.55/170.56.

Crime means a misdemeanor or a felony. Note: All DWI’s are crimes.

Felony means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.

Misdemeanor means an offense, other than a "traffic infraction" for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.

Violation means an offense, other than a "traffic infraction" for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. A violation is not a crime.

Traffic infraction means any offense defined as "traffic infraction" by section one hundred fifty-five of the vehicle and traffic law.

Pending Criminal Charge means that there is an open criminal charge against the provider that has not yet reached disposition.

A Disqualifying Conviction is one that has been predetermined by OCFS to be directly related to child care and/or pose unreasonable risk to a child in the provider’s care. Therefore a provider who has a Disqualifying Conviction is permanently barred from enrollment. When the Disqualifying Conviction applies to an employee or volunteer, and/or, a household member at the site of a family child care program, the provider cannot be enrolled until such time as the employee, volunteer or household member has no role in the child care program. Category A crimes and Sex Offenses are Disqualifying Convictions.

Presumptive Disqualifying Conviction is a conviction which is presumed to disqualify the person or provider, based on a predetermination by OCFS that enrollment of the provider would pose unreasonable risk to a child in the provider’s care. The conviction is considered to be disqualifying unless and until a review of extenuating circumstances is conducted, and an exception is granted allowing enrollment.

Preclude means to bar, disqualify, prohibit.

Probation is a sentence or disposition imposed by a criminal court or family court. In
general, probationers are released in the community without serving a period of local incarceration, although in certain circumstances they may be sentenced to both imprisonment (local) and probation; the sentence of incarceration shall be a condition of and run concurrently with a sentence of probation. Probation is a county function in NYS, although in New York City, the probation department is run by the City government. The Division of Probation and Correctional Alternatives (DPCA) provides regulatory oversight and funding to local probation departments.

Conditional Discharge is a sentencing option, imposed by the court for an offense, if the court, having regard to the nature and circumstances of the offense (convicted of) and to the history, character and condition of the defendant, feels that the interest of justice is best served by establishing a period of time (depending on whether it was a felony, misdemeanor or violation) where the guilty party may complete certain court ordered/assessed responsibilities, instead of incarceration or probation. The conditions of conditional discharge shall be such as the court deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. For additional information, refer to NYS PENAL Law S 65.05 and 65.10.

Parole is a portion of a correctional sentence served in the community following a term of incarceration in state prison. For offenders serving an "indeterminate" sentence, the NYS Board of Parole makes decisions whether an eligible state inmate is granted or denied parole. Offenders sentenced to a "determinate" prison term generally are released after serving 6/7 of their sentence. The period of supervised release following incarceration for such offenders is known as "Post-Release Supervision." Parole or Post-Release Supervision is intended to assist offenders in returning to society. These offenders are supervised in the community by parole officers, who are state officials employed by the NYS Division of Parole.

4. Evaluating Criminal History and Appropriateness to Care for Children

For purposes of evaluating criminal history, crimes have been grouped into three categories.

- **Crimes against children, felony or misdemeanor.** The provider cannot be enrolled and a criminal history evaluation does not need to be conducted.

A provider who has been convicted or a provider that employs an individual, uses a volunteer, or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who has been convicted of a felony or misdemeanor crime against children (or of an attempt to commit a felony or misdemeanor crime against children), cannot be enrolled. Felony and misdemeanor crimes against a child are listed on the following pages.
• Violent or other serious crimes, not specific to children. There is a strong presumption against enrolling the legally-exempt provider. The provider is “presumptively” denied enrollment.

A provider convicted or a provider that employs an individual, uses a volunteer, or provides care in a home (other than the child’s own home) in which a household member age 18 years or older who has been convicted of a violent or other serious crime, is considered by OCFS to present an unreasonable risk to the safety or welfare of the child(ren) in legally-exempt care. A conviction for any of these crimes creates a strong presumption against enrolling the legally-exempt provider in question, and the EA must deny enrollment.

A provider who has been presumptively denied enrollment can request that the EA consider and review any extenuating circumstances pertaining to the conviction. The EA is not required to review extenuating circumstances concerning these convictions unless the parent/caretaker indicates that he or she still wants to arrange care with this provider. The provider is responsible for supplying documentation that details the extenuating circumstances. The EA must review the criminal history and extenuating circumstances according to the following guidelines, and determine whether an exception could be made to the presumption against enrollment. The presumption can be overcome only upon a showing of some extraordinary circumstances justifying enrollment and a determination that the conviction would not pose an unreasonable risk to the safety or welfare of the child. If the parent/caretaker still wishes to use the provider, the EA must obtain a signed statement from the parent/caretaker indicating that the parent/caretaker is aware of the specific convictions(s) and still chooses the provider in question. A model acknowledgment form that the EA may use for this purpose is provided as OCFS-4915, History of Criminal Convictions and Parental Acknowledgment.

• All other felony or misdemeanor convictions—those convictions which are NOT for crimes against children or violent or other serious crimes, as defined previously.

The EA must evaluate the criminal history in a manner consistent with these guidelines and determine whether the criminal background poses an unreasonable risk to the safety and welfare of the child(ren). The provider must furnish additional information needed for the evaluation. Such information may include, but is not limited to: the nature of the crime, the penalties imposed as a result of the conviction, any evidence of rehabilitation, and the length of time that has elapsed since the conviction. The information provided must be verified. The EA may enroll the provider if the EA determines that the conviction would not pose an unreasonable risk to the safety or welfare of the child. When the EA intends to enroll the provider, the EA must verify that the provider has given true and accurate
information to the parent sufficient that the parent can make an informed decision.

5. Determining the Category of the Crime
The category of the crime determines the EA’s next step, as stated above. Use the lists below to determine if the crime identified represents a “crime against a child,” OCFS Category A, or a “violent crime or other serious crime,” OCFS Category B, or “other felonies and misdemeanors,” OCFS Category C.

A) Crimes Against a Child
A provider who has been convicted or a provider that employs an individual, uses a volunteer, or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who has been convicted of a felony or misdemeanor crime against a child or of an attempt to commit a felony (or misdemeanor crime against a child), cannot be enrolled.

(1) NEW YORK STATE CRIMES AGAINST A CHILD-OCFS CATEGORY A

<table>
<thead>
<tr>
<th>NEW YORK STATE CRIMES AGAINST A CHILD-OCFS CATEGORY A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FELONIES AGAINST A CHILD</strong></td>
</tr>
<tr>
<td>120.01 – Reckless Assault of a Child by a Child Day</td>
</tr>
<tr>
<td>120.02 – Reckless Assault of a Child</td>
</tr>
<tr>
<td>120.05 – Assault 2nd degree/Subdivision (8)</td>
</tr>
<tr>
<td>120.12 – Aggravated Assault Upon a Person Less</td>
</tr>
<tr>
<td>120.70 – Luring a child</td>
</tr>
<tr>
<td>120.55 – Stalking in the second degree/subdivision</td>
</tr>
<tr>
<td>130.25 – Rape 3rd degree/subdivision (2) relates</td>
</tr>
<tr>
<td>130.30 – Rape 2nd degree</td>
</tr>
<tr>
<td>130.35 – Rape 1st degree/Subdivision (3) relates</td>
</tr>
<tr>
<td>130.40 – Criminal Sexual Act 3rd degree/Subdivision</td>
</tr>
<tr>
<td>130.45 – Sodomy 2nd degree/Sub relates</td>
</tr>
<tr>
<td>130.50 – Sodomy 1st degree/Subdivision (3) relates</td>
</tr>
<tr>
<td>130.65 – Sexual Abuse 1st degree/Subdivision (3)</td>
</tr>
<tr>
<td>130.66 – Aggravated Sexual Abuse 3rd</td>
</tr>
<tr>
<td>130.96 – Predatory Sexual Assault Against a Child</td>
</tr>
<tr>
<td>135.50 – Custodial Interference</td>
</tr>
<tr>
<td>135.55 – Substitution of Children</td>
</tr>
<tr>
<td>220.28 – Use of a Child to Commit a controlled</td>
</tr>
<tr>
<td>230.05 – Patronizing Prostitution 2nd degree/Relates</td>
</tr>
<tr>
<td>230.06 – Patronizing Prostitution 1st degree/Relates</td>
</tr>
<tr>
<td>230.25 – Promoting Prostitution 3rd degree/Subdivision</td>
</tr>
<tr>
<td>230.30 – Promoting Prostitution 2nd degree/Subdivision</td>
</tr>
<tr>
<td>230.32 – Promoting Prostitution 1st degree/Subdivision</td>
</tr>
<tr>
<td>235.21 – Disseminate Indecent Material to Minors</td>
</tr>
<tr>
<td>235.22 – Disseminate Indecent Material to Minors</td>
</tr>
<tr>
<td>255. – Incest (only when against a child)</td>
</tr>
<tr>
<td>260.00 – Abandonment of a Child</td>
</tr>
<tr>
<td>260.06 – Non-support 1st degree</td>
</tr>
<tr>
<td>263.05 – Use of a Child in a Sexual Performance</td>
</tr>
<tr>
<td>263.10 – Promoting an Obscene Sexual</td>
</tr>
</tbody>
</table>
# New York State Crimes Against a Child - OCFS Category A

<table>
<thead>
<tr>
<th>Degree/Subdivision (1)(c)</th>
<th>Performance by a Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>130.67 – Aggravated Sexual Abuse 2nd degree/Subdivision (1)(c)</td>
<td>263.11 – Possessing an Obscene Sexual Performance by a Child</td>
</tr>
<tr>
<td>130.70 – Aggravated Sexual Abuse 1st degree/Subdivision (1)(c)</td>
<td>263.15 – Promoting a Sexual Performance by a Child</td>
</tr>
<tr>
<td>130.75 – Course of Conduct Against a Child 1st degree</td>
<td>263.16 – Possessing a Sexual Performance by a Child</td>
</tr>
<tr>
<td>130.80 – Course of Conduct Against a Child 2nd degree</td>
<td>265.14 – Criminal Sale of a Firearm with the Aid of a Minor</td>
</tr>
<tr>
<td>130.85 – Female Genital Mutilation</td>
<td>265.15 – Criminal Sale of a Firearm to a Minor</td>
</tr>
<tr>
<td>1192.2 (12) Vehicle and Traffic Law – DWI with a child in the car</td>
<td></td>
</tr>
</tbody>
</table>

## Misdemeanors Against a Child

<table>
<thead>
<tr>
<th>Degree/Subdivision (1)(c)</th>
<th>Performance by a Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>130.52 – Forcible touching</td>
<td>260.11 – Endangering the welfare of a child; corroboration</td>
</tr>
<tr>
<td>130.55 – Sexual abuse 3rd degree</td>
<td>260.15 – Endangering the welfare of a child; defense</td>
</tr>
<tr>
<td>130.60 – Sexual abuse 2nd degree</td>
<td>260.20 – Unlawfully dealing with a child in the first degree</td>
</tr>
<tr>
<td>135.45 – Custodial interference</td>
<td>260.21 – Unlawfully dealing with a child in the second degree</td>
</tr>
<tr>
<td>230.04 – Patronizing a prostitute 3rd degree</td>
<td>260.30 – Misrepresentation by a child day care provider¹</td>
</tr>
<tr>
<td>260.03 – Abandonment of a child; defense</td>
<td>263.20 – Sexual performance by a child; affirmative defense</td>
</tr>
<tr>
<td>260.05 – Non-support of a child in the second degree</td>
<td></td>
</tr>
<tr>
<td>260.10 – Endangering the welfare of a child</td>
<td></td>
</tr>
</tbody>
</table>

## Former Penal Law Offenses

<table>
<thead>
<tr>
<th>Degree/Subdivision (1)(c)</th>
<th>Performance by a Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>480 – Abandonment of Children</td>
<td>483-a – Carnal Abuse of a Child</td>
</tr>
<tr>
<td>481 – Abandonment of Children under 14 years of age</td>
<td>483-b – Carnal Abuse of a Child, 10 years of age and less than 16</td>
</tr>
<tr>
<td>484 c – Employment of Children in Drug Traffic</td>
<td></td>
</tr>
</tbody>
</table>

# B) Violent or Other Serious Crimes, Not Specific to Children

A list of “violent or other serious crimes” which are not specific to children appears below. A conviction for any of these crimes creates a strong presumption against enrolling the legally-exempt provider. A provider convicted of a violent or other serious crime can request that the EA consider and review

¹ Two versions of 260.30 have been enacted.
any extenuating circumstances pertaining to the conviction and determine whether an exception could be made to the presumption against enrollment.

If the provider, employee, volunteer or household member (when care is not provided in a child’s home) has committed any of the crimes below against a child, then the specific occurrence of that crime is a crime against a child, OCFS Category A, and is treated as such.

(1) **Table 2-Violent or Other Serious Crimes, OCFS Category B Crimes**

<table>
<thead>
<tr>
<th>Violent or Other Serious Crimes, Not Specific to Children, OCFS Category B</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Any of the Following Class A-1 Felonies:</strong></td>
<td></td>
</tr>
<tr>
<td>105.17 – Conspiracy 1st degree</td>
<td>125.27 – Murder 1st degree</td>
</tr>
<tr>
<td>125.25 – Murder 2nd degree</td>
<td>135.25 – Kidnapping 1st degree</td>
</tr>
<tr>
<td>125.26 – Aggravated Murder</td>
<td>150.20 – Arson 1st degree</td>
</tr>
<tr>
<td>Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section creates a strong presumption against enrolling the legally-exempt provider.</td>
<td></td>
</tr>
<tr>
<td><strong>Any of the Following Class B Violent Felonies:</strong></td>
<td></td>
</tr>
<tr>
<td>120.07 – Gang Assault 1st degree</td>
<td>140.30 – Burglary 1st degree</td>
</tr>
<tr>
<td>120.11 – Aggravated Assault on a Police Officer or a Peace Officer</td>
<td>150.15 – Arson 2nd degree</td>
</tr>
<tr>
<td>125.14 – Aggravated Vehicular Homicide</td>
<td>160.15 – Robbery 1st degree</td>
</tr>
<tr>
<td>125.20 – Manslaughter 1st degree</td>
<td>215.13 – Tampering with a Witness 1st degree</td>
</tr>
<tr>
<td>125.22 – Aggravated Manslaughter 1st degree</td>
<td>215.17 – Intimidating a Witness or Victim 1st degree</td>
</tr>
<tr>
<td>130.35 – Rape 1st degree</td>
<td>265.04 – Criminal Possession of a Dangerous Weapon 1st degree</td>
</tr>
<tr>
<td>130.50 – Criminal sexual act in the first degree</td>
<td>265.09 – Criminal Use of a Firearm 1st degree</td>
</tr>
<tr>
<td>130.70 – Aggravated Sexual Abuse 1st Degree</td>
<td>265.13 – Criminal Sale of a Firearm 1st degree</td>
</tr>
<tr>
<td>120.10 – Assault 1st degree</td>
<td></td>
</tr>
<tr>
<td>135.20 – Kidnapping 2nd degree</td>
<td></td>
</tr>
<tr>
<td>Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section creates a strong presumption against enrolling the legally-exempt provider.</td>
<td></td>
</tr>
</tbody>
</table>

---

1 When the victim is a child, the OCFS category of crime becomes “Category A.”
### VIOLENT OR OTHER SERIOUS CRIMES, NOT SPECIFIC TO CHILDREN, OCFS CATEGORY B

#### ANY OF THE FOLLOWING CLASS C VIOLENT FELONIES:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.06</td>
<td>Gang Assault 2nd degree</td>
</tr>
<tr>
<td>120.08</td>
<td>Assault on a Peace Officer, Police Officer, Fireman, or Emergency Medical Professional</td>
</tr>
<tr>
<td>120.09</td>
<td>Assault on a Judge</td>
</tr>
<tr>
<td>121.13</td>
<td>Strangulation 1st degree</td>
</tr>
<tr>
<td>125.11</td>
<td>Aggravated Criminally Negligent Homicide</td>
</tr>
<tr>
<td>125.13</td>
<td>Vehicular Manslaughter 1st</td>
</tr>
<tr>
<td>125.15</td>
<td>Manslaughter 2nd</td>
</tr>
<tr>
<td>125.21</td>
<td>Aggravated Manslaughter 2nd degree</td>
</tr>
</tbody>
</table>

Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section CREATES A STRONG PRESUMPTION against enrolling the legally-exempt provider.

#### ANY OF THE FOLLOWING CLASS D VIOLENT FELONIES:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.05</td>
<td>Assault 2nd degree</td>
</tr>
<tr>
<td>120.18</td>
<td>Menacing a Police Officer or Peace Officer</td>
</tr>
<tr>
<td>120.25</td>
<td>Reckless Endangerment 1st degree</td>
</tr>
<tr>
<td>121.12</td>
<td>Strangulation 2nd degree</td>
</tr>
<tr>
<td>120.60</td>
<td>Stalking 1st (eff. 12/1/99)</td>
</tr>
<tr>
<td>125.12</td>
<td>Vehicular Manslaughter 2nd</td>
</tr>
<tr>
<td>130.65</td>
<td>Sexual Abuse 1st degree</td>
</tr>
<tr>
<td>130.66</td>
<td>Aggravated Sexual Abuse 3rd degree</td>
</tr>
<tr>
<td>130.90</td>
<td>Facilitating a Sex Offense with a controlled Substance</td>
</tr>
</tbody>
</table>

Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section CREATES A STRONG PRESUMPTION against enrolling the legally-exempt provider.
### Violent or Other Serious Crimes, Not Specific to Children, OCFS Category B

**Any of the Sex Offenses**

Please note: Any person listed on the NYS Sex Offender Registry may not be enrolled.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>130.25</td>
<td>Rape 3rd degree</td>
</tr>
<tr>
<td>130.30</td>
<td>Rape 2nd degree</td>
</tr>
<tr>
<td>130.35</td>
<td>Rape 1st degree</td>
</tr>
<tr>
<td>130.40</td>
<td>Criminal Sexual Act 3rd degree</td>
</tr>
<tr>
<td>130.45</td>
<td>Criminal Sexual Act 2nd degree</td>
</tr>
<tr>
<td>130.50</td>
<td>Criminal Sexual Act 1st degree</td>
</tr>
<tr>
<td>130.53</td>
<td>Persistent Sexual Abuse (eff. 2/1/01)</td>
</tr>
<tr>
<td>130.65</td>
<td>Sexual Abuse 1st degree</td>
</tr>
<tr>
<td>130.65(a)</td>
<td>Aggravated Sexual Abuse 4th (eff. 2/1/01)</td>
</tr>
<tr>
<td>130.66</td>
<td>Aggravated Sexual Abuse 3rd degree</td>
</tr>
</tbody>
</table>

Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section CREATES A STRONG PRESUMPTION against enrolling the legally-exempt provider and the crime is considered a Category B.

### Hate Crimes

A conviction for one of the crimes listed below as a result of section 485.05 of the Penal Law transforms a reportable conviction into a presumptive disqualifying conviction. That crime will be categorized as a crime involving violence. The following crimes will become presumptive disqualifying convictions when the NYS Division of Criminal Justice Services (DCJS) identifies them as a hate crime.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.00</td>
<td>Assault 3rd degree</td>
</tr>
<tr>
<td>120.20</td>
<td>Reckless Endangerment 2nd degree</td>
</tr>
<tr>
<td>150.05</td>
<td>Arson 4th degree</td>
</tr>
<tr>
<td>150.10</td>
<td>Arson 3rd degree</td>
</tr>
</tbody>
</table>

Note: A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section creates a strong presumption against enrolling the legally-exempt provider.

### Physical Assault, Battery Within the Past 5 Years

The commission of one of these assaults against a child results in the crime being assigned to the Category A.

The commission of such assault against the perpetrator’s spouse results in the crime being assigned permanently to Category B. The commission of the assault within the past 5 years against a person who is not a child and not the perpetrator’s spouse results in the crime being assigned to Category B. A felony conviction for the ATTEMPT to commit such a crime creates a strong presumption against enrolling the legally-exempt provider and the crime is considered a Category B.

*However, when the assault conviction is older than 5 years and the victim was not a child and not the perpetrator’s spouse, the crime is considered a Category C crime.*

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.03</td>
<td>Vehicular assault in the second degree</td>
</tr>
<tr>
<td>120.04</td>
<td>Vehicular assault in the first degree</td>
</tr>
<tr>
<td>120.04-A</td>
<td>Aggravated Vehicular Assault</td>
</tr>
</tbody>
</table>
### Violent or Other Serious Crimes, Not Specific to Children, OCFS Category B

**Any of these Former Penal Law Offenses**

The list of Former Penal Law Offenses set forth below is not an all-inclusive list and is intended to include felony offenses which contain elements similar to the existing offenses referenced in this official list.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>Abduction</td>
</tr>
<tr>
<td>221</td>
<td>Arson 1st</td>
</tr>
<tr>
<td>222</td>
<td>Arson 2nd</td>
</tr>
<tr>
<td>240</td>
<td>Assault 1st</td>
</tr>
<tr>
<td>242</td>
<td>Assault 2nd</td>
</tr>
<tr>
<td>402</td>
<td>Burglary 1st</td>
</tr>
<tr>
<td>403</td>
<td>Burglary 2nd</td>
</tr>
<tr>
<td>690</td>
<td>Sodomy, Crime against Nature</td>
</tr>
<tr>
<td>1042</td>
<td>Homicide</td>
</tr>
<tr>
<td>1044</td>
<td>Murder 1st</td>
</tr>
<tr>
<td>1046</td>
<td>Murder 2nd</td>
</tr>
<tr>
<td>1049</td>
<td>Non-Negligent Manslaughter</td>
</tr>
<tr>
<td>1050</td>
<td>Manslaughter 1st</td>
</tr>
<tr>
<td>1052</td>
<td>Manslaughter 2nd</td>
</tr>
<tr>
<td>1053</td>
<td>Vehicular Homicide or Criminal Negligence in Operation of Motor Vehicle</td>
</tr>
<tr>
<td>1110</td>
<td>Incest</td>
</tr>
<tr>
<td>1400</td>
<td>Maiming</td>
</tr>
<tr>
<td>1250</td>
<td>Kidnapping</td>
</tr>
<tr>
<td>1760</td>
<td>Willfully Poisoning Food</td>
</tr>
<tr>
<td>2010</td>
<td>Rape, 1st and 2nd (felony)</td>
</tr>
<tr>
<td>2124</td>
<td>Robbery 1st</td>
</tr>
<tr>
<td>2126</td>
<td>Robbery 2nd</td>
</tr>
<tr>
<td>1051</td>
<td>Manslaughter 2nd</td>
</tr>
</tbody>
</table>

**Note:** A felony conviction for the ATTEMPT to commit a violent other serious crimes listed in this section **creates a strong presumption** against enrolling the legally-exempt provider and the crime is considered a Category B.

### Any of the Following Class E Felonies

<table>
<thead>
<tr>
<th>Code</th>
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<tbody>
<tr>
<td>120.00 (Sub 00H)</td>
<td>Assault 3rd degree as a Hate Crime</td>
</tr>
<tr>
<td>120.13</td>
<td>Menacing 1st degree</td>
</tr>
<tr>
<td>120.30</td>
<td>Promoting a Suicide Attempt</td>
</tr>
<tr>
<td>120.55</td>
<td>Stalking 2nd degree</td>
</tr>
<tr>
<td>125.10</td>
<td>Criminally Negligent Homicide</td>
</tr>
<tr>
<td>130.53</td>
<td>Persistent Sexual Abuse 4th</td>
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<tr>
<td>130.65(a)</td>
<td>Aggravated Sexual Abuse 4th</td>
</tr>
<tr>
<td>130.90</td>
<td>Facilitating a Sex Offense with a controlled substance</td>
</tr>
<tr>
<td>135.10</td>
<td>Unlawful Imprisonment 1st degree</td>
</tr>
<tr>
<td>240.55</td>
<td>Falsely Reporting an Incident 2nd degree</td>
</tr>
<tr>
<td>240.61</td>
<td>Placing a False Bomb 2nd degree</td>
</tr>
</tbody>
</table>

**Note:** Unlike convictions in the other classes, a conviction for an ATTEMPT at any of the Class E felonies listed in this section **does not** place the crime in Category B or result in a presumptive denial.

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1 This page has been corrected on December 16, 2016
<table>
<thead>
<tr>
<th>Crimes of Terrorism</th>
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<tbody>
<tr>
<td>490.10 – Soliciting or Providing Support for an Act of Terrorism 2nd degree</td>
<td>490.37 – Criminal Possession of a Chemical Weapon or Biological Weapon 3rd degree</td>
</tr>
<tr>
<td>490.15 – Soliciting or Providing Support for an Act of Terrorism 1st degree</td>
<td>490.40 – Criminal Possession of a Chemical Weapon or Biological Weapon 2nd degree</td>
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<tr>
<td>490.20 – Making a Terrorist Threat</td>
<td>490.45 – Criminal Possession of a Chemical Weapon or Biological Weapon 1st degree</td>
</tr>
<tr>
<td>490.25 – Crime of Terrorism-violent felony when person commits murder, assassination or kidnapping with intent to intimidate, coerce or influence the policy of government.</td>
<td>490.47 – Criminal Possession of a Chemical Weapon or Biological Weapon 3rd degree</td>
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<tr>
<td>490.30 – Hindering Prosecution of Terrorism 2nd degree</td>
<td>490.50 – Criminal Use of a Chemical Weapon or biological weapon 2nd degree</td>
</tr>
<tr>
<td>490.35 – Hindering Prosecution of Terrorism 1st degree</td>
<td>490.55 – Criminal Use of a Chemical Weapon or Biological Weapon 1st</td>
</tr>
</tbody>
</table>

Note: A felony conviction for the ATTEMPT to commit a Crime of Terrorism CREATES A STRONG PRESUMPTION against enrolling the legally-exempt provider and the crime is considered a Category B.
## Violent or Other Serious Crimes, Not Specific to Children, OCFS Category B

### Drug-Related Offenses Within Five (5) Years

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>178.15</td>
<td>Criminal Diversion of Prescription Medications 3rd Degree</td>
<td>220.55</td>
<td>Criminally Using Drug Paraphernalia 1st degree</td>
</tr>
<tr>
<td>178.20</td>
<td>Criminal Diversion of Prescription Medications 2nd Degree</td>
<td>220.60</td>
<td>Criminal Possession of Precursors of Controlled Substances∞</td>
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<tr>
<td>178-25</td>
<td>Criminal Diversion of Prescription Medications 1st Degree</td>
<td>220.65</td>
<td>Criminal Sale of a Prescription for a Controlled Substance</td>
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<tr>
<td>220.06</td>
<td>Criminal Possession of a Controlled Substance 5th degree</td>
<td>220.71</td>
<td>Criminal Possession of Methamphetamine Material 1st Degree</td>
</tr>
<tr>
<td>220.09</td>
<td>Criminal Possession of a Controlled Substance 4th degree</td>
<td>220.72</td>
<td>Criminal Possession of precursors of Methamphetamine</td>
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<tr>
<td>220.16</td>
<td>Criminal Possession of a Controlled Substance 3rd degree</td>
<td>220.73</td>
<td>Unlawful Manufacture of Methamphetamine 3rd Degree</td>
</tr>
<tr>
<td>220.18</td>
<td>Criminal Possession of a Controlled Substance 2nd degree</td>
<td>220.74</td>
<td>Unlawful Manufacture of Methamphetamine 2nd Degree</td>
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<tr>
<td>220.21</td>
<td>Criminal Possession of a Controlled Substance 1st degree</td>
<td>220.75</td>
<td>Unlawful Manufacture of Methamphetamine 1st Degree</td>
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<tr>
<td>220.31</td>
<td>Criminal Sale of a Controlled Substance 5th degree</td>
<td>220.76</td>
<td>Unlawful Disposal of Methamphetamine Laboratory Material</td>
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<tr>
<td>220.34</td>
<td>Criminal Sale of a Controlled Substance 4th degree</td>
<td>221.20</td>
<td>Criminal Possession of Marijuana 3rd degree∞</td>
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<tr>
<td>220.39</td>
<td>Criminal Sale of a Controlled Substance 3rd degree</td>
<td>221.25</td>
<td>Criminal Possession of Marijuana 2nd degree</td>
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<tr>
<td>220.41</td>
<td>Criminal Sale of a Controlled Substance 2nd degree</td>
<td>221.30</td>
<td>Criminal Possession of Marijuana 1st degree</td>
</tr>
<tr>
<td>220.43</td>
<td>Criminal Sale of a Controlled Substance 1st degree</td>
<td>221.45</td>
<td>Criminal Sale of Marijuana 3rd degree∞</td>
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<tr>
<td>220.44</td>
<td>Criminal Sale of a Controlled Substance in or near School Grounds</td>
<td>221.50</td>
<td>Criminal Sale of Marijuana 2nd degree</td>
</tr>
<tr>
<td>221.20</td>
<td>Criminal Possession of Marijuana 3rd degree∞</td>
<td>221.55</td>
<td>Criminal Sale of Marijuana 1st degree</td>
</tr>
<tr>
<td>Public Health Law § 3304</td>
<td>Unlawful possession, manufacture, sale, prescription, distribution, etc. of a controlled substance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

∞ “Attempts” of this crime are MISDEMEANORS and thus NOT Category B crimes and not subjected to presumptive denial.

Note: Unless otherwise specified, a FELONY conviction for the ATTEMPT to commit a violent other serious crimes listed in this section creates a strong presumption against enrolling the legally-exempt provider and the crime is considered a Category B.

### C) All Other Felony or Misdemeanor Convictions

Crimes not mentioned above likely belong to a third category, All Other Felony or Misdemeanor Convictions. However, changes to penal law do occur and the EA may occasionally need to evaluate federal crimes or crimes committed in other states. You can find an up-to-date listing of New York State Penal Law on
the New York State Senate’s website, www.senate.state.ny.us. Any questions should be directed to the legally-exempt enrollment specialists at OCFS.

6. Evaluating Criminal History

The EA must evaluate the criminal history and determine whether the specific conviction would eliminate the provider from being enrolled.

A) Crime against a Child-OCFS Category A

No person convicted of a felony or misdemeanor against children or, for providers of legally-exempt family child care, whose household includes an individual convicted of such a crime, may be enrolled by a legally-exempt caregiver enrollment agency as a child care provider.

No legally-exempt informal child care program or legally-exempt group child care program which employs an individual or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by a legally-exempt caregiver enrollment agency as a child care provider.

B) Violent or Other Serious Crime-Not against a Child-OCFS Category B

For a person whose criminal conviction history does NOT include a crime against a child, but DOES include a violent or other serious crime (OCFS Category B), the provider’s enrollment is first presumptively denied/terminated, after which the provider is eligible to request a Review of Extenuating Circumstances.

C) OCFS Category C

For persons whose criminal convictions history does NOT include a crime against a child or a violent or other serious crime (OCFS Category C), the criminal history evaluations are conducted during the full review phase of the enrollment process. The EA must evaluate the criminal background and determine whether enrollment of the provider poses an unreasonable risk to the safety and welfare of the child(ren).

7. Differences between the Criminal History Reviews

A) When is the review conducted?

- All criminal convictions are evaluated to determine the highest Category of Crime convicted of, and this “Category of Crime” is assigned prior to the Preliminary Review Decision.

- The review of Extenuating Circumstances occurs AFTER the denial or termination of enrollment. The reviewing agency must conduct the review of extenuating circumstances and make a determination within 60 days of the date the criteria for review were met.
o For Category C Reviews, the review occurs DURING the Full Review phase of the enrollment and re-enrollment and concurrently with any addition of a new site person who has a criminal convictions history.

B) What is the highest level of criminal conviction?

o For the Review of Extenuating Circumstances, the highest level of conviction in the person's criminal history is a violent or other serious crime—not against a child.

o For Category C Reviews, the highest level of criminal conviction is for a crime that is not a crime against a child, and is also not a violent or other serious crime.

C) What is the decision point?

o For the Review of Extenuating Circumstances, there is a presumption against enrollment—meaning that enrollment of the provider is deemed to pose an unreasonable risk to the safety or welfare of children in the provider's care. To consider the provider for enrollment, the EA must determine that the provider's enrollment will not pose an unreasonable risk to the safety or welfare of the child.

o For the Category C review, if the EA determines there is an unreasonable risk to the safety or welfare of children in the provider’s care, the EA must deny or terminate the enrollment based on the criminal history.

D) Who has the burden of proof?

o For the Review of Extenuating Circumstances, the burden of proof is on the provider to prove to the satisfaction of the EA that the provider’s enrollment WILL NOT pose an unreasonable risk to the safety or welfare of the child.

o For the Category C review, the burden of proof is on the EA to establish that that the provider’s enrollment WOULD pose an unreasonable risk to the safety or welfare of the child. However, the provider must cooperate with the evaluation.

8. Review Process

In performing the review, the EA must consider all of the factors in Corrections Law §753 that are relevant. The review includes the following steps:

- Reviewing all of the information at hand: enrollment packet, attachments, notes of conversations, etc.
- Gathering additional information. Determine what additional information is needed. If an explanation of the circumstance leading
to each crime has not been provided, obtain this from the provider. Allow the provider to present documentation. The provider is responsible for supplying any documentation that details the circumstances surrounding the criminal convictions and which may justify enrollment. All evidence submitted for consideration by provider or the provider’s employee, volunteer or, for family child care, household member, must be reviewed and considered. When information is presented verbally, record a detailed summary.

- Consider the Corrections Law Factors discussed in this chapter.
- Allowing the provider to present information and be heard. Ideally interviews are conducted face to face, in the office or at the child care site.
- Verifying the information provided-to the extent possible.
- Making a decision based on facts and policy. The EA is authorized to reject or terminate the enrollment of a legally-exempt provider based on the outcome of the criminal history review/evaluation.
- Documenting your decision in CCFS. In the decision summary, the EA must explain, in writing, how it weighed the Corrections Law §753 factors and arrived at its conclusion.

The child care provider must cooperate with the review/evaluation process by providing additional information needed to assess whether children will be placed at risk in the provider’s care. Such cooperation may include interviews, in person or over the phone, and provision of documentation to support and verify the child care provider’s verbal or written statements. Failure to cooperate with the criminal history review/evaluation will result in a denial or termination of the enrollment of a legally-exempt provider. Without an evaluation, the EA cannot accurately assess the safety of the children either in the provider’s care or planning to be in the care of the provider.

9. Category C Review

The EA conducts the Category C review during the Full Review phase of the enrollment and re-enrollment, and also concurrently with the addition of a new site person who has a criminal convictions history. The purpose of the Category C review is to determine whether the criminal convictions history poses an unreasonable risk to the safety or welfare of children in the provider’s care. If the enrollment agency determines enrollment of the provider would pose an unreasonable risk to the safety or welfare of children in the provider’s care, the enrollment agency must deny or terminate the enrollment. If the EA determines that enrollment of the provider would NOT pose an unreasonable risk to the safety or welfare of children in the provider’s care, the enrollment agency may enroll the provider.
10. Factors to be Considered in Criminal History Reviews

A) Cooperation
Failure to cooperate with the Category C criminal history evaluation will result in a denial or termination of the enrollment of a legally-exempt provider, and, in a review of extenuating circumstances, will result in NO exception being granted. Without the cooperation of the provider in the evaluation, the EA will be unable to accurately assess the safety of the children either in their care or planning to be in their care.

B) Nature and seriousness of the crime
Consider the nature of the crime committed, the effect of the crime and whether the crime involved any violence. A felony is a more serious crime than a misdemeanor. Felonies are classified from “A” to “E,” with an “A” felony being the most serious.

The explanation offered by the provider and the underlying facts of the criminal act are important pieces of information that need to be collected. The EA will want to read all the background facts of the case and not just rely on the statutory definitions of the convictions themselves.

Sealed criminal convictions as a juvenile age 16 or under are not considered in the evaluation of an individual's criminal background. However, if there is independent knowledge of the events in question, for example the provider voluntarily tells his or her history of fire setting or sexual abuse, that information could be used since it is separate and distinct from the sealed criminal record. The review would be based on the underlying facts of the activity offered by the provider, and not the fact that the person was convicted.

C) Indications regarding the person’s character or judgment
An examination of the circumstances involved in the crime and the degree with which the person used their judgment should be assessed. Some circumstances when reviewed in light of a person's age and experience are better explained and understood than others. For example, a shoplifting crime committed by a teenager may be viewed differently than a crime where physical injury is inflicted on an animal or another child.
D) Age of the person when the crime was committed and how long ago it occurred
A review of the criminal history record and the determination of what action should be taken will consider the age of the person at the time of the commission of the crime. Also considered is the passage of time since the last involvement with the criminal justice system.

E) Pattern of criminal behavior
Examine whether there were similar crimes committed repeatedly over time and if the crimes became more serious over time.

F) Circumstances and/or factors that indicate the incident is likely to be repeated
Does the individual verbalize the belief that he or she would do it again or minimize the importance of committing a crime?

The EA should take into consideration the number of convictions. Where there is more than one conviction, each conviction should be evaluated separately. The EA should also evaluate the total effect of more than one conviction in assessing the risk the individual might pose to children.

G) The individual’s explanation for the crime
A person’s explanation of his or her behavior will give the EA insight into what motivates the person to act and the person’s judgment abilities. If an individual asserts that the charges have been “taken care of” or have “been dropped,” ask the individual to submit copies of any documentation that would support the disposition of the case. This includes:

- court papers,
- probation reports,
- police reports,
- an explanation, in writing, why he or she should be permitted to provide care to children.

H) Truthfulness of the individual when providing information about his or her criminal history
The enrollment form informs the provider that failure to truthfully and accurately provide information may constitute grounds for denial or termination of enrollment or for legal action. If a provider has been deceitful in filling out the enrollment form or an individual has been deceitful in providing information, the deceit should be seen as painting part of the picture in assessing his or her character and ability to care for children.

An assessment of the person’s explanation for not advising the EA of the existence of a criminal history should be made part of the record. For
example, the person may have believed that a sealed record or an arrest disposed of by an Adjournment in Contemplation of Dismissal constitutes a non-conviction and therefore did not answer accurately to the criminal conviction inquiry.

I) Jail time served or community service performed

The extent of the sentence may also reflect the court's perception of the seriousness of the crime. Receiving the maximum or minimum sentence for a crime may become a part of the EA’s analysis of the case.

The individual must provide information and documentation that court-ordered obligations have been completed. This should be part of the assessment as it speaks to the integrity and reliability of the provider.

J) Efforts and Success at rehabilitation

Evidence of rehabilitation may include a Certificate of Relief from Disabilities, a Certificate of Good Conduct and/or documentation of successful job performance.

- A Certificate of Relief from Disabilities is a document issued by the court (which sentenced the applicant) to relieve a first offender of any forfeiture or disability or to remove any bar to employment automatically imposed by law by reason of his or her conviction. The certificate may create the presumption of rehabilitation in regard to the offense specified in the document and only that offense. However, the EA may find a person with such a certificate unfit for enrollment, when all relevant factors are considered. A Certificate of Relief from Disabilities is not considered as applicable in regard to the categories of crimes against children and other violent crimes. Conversely, not all first offenders will have received a Certificate of Relief from Disabilities. Use other types of documentation listed below.

- A Certificate of Good Conduct is issued to reduce a sentence due to good conduct and the efficient and willing performance of duties assigned to the person while incarcerated.

- Performance evaluations and references for jobs held subsequent to the last conviction which indicates a successful record of employment, especially in positions similar to the position for which the person is applying, may be considered an indicator of rehabilitation, especially in positions similar to that of child care provider.

K) The individual’s explanation of how his or her circumstances have changed since the crime was committed

Can the person articulate how their circumstances have changed since the crime was committed? The person may be able to point out things such as continuing education, volunteer experiences, life experiences, references, or
performance evaluations that have had a rehabilitative effect. Collect any documents that show evidence of rehabilitation.

L) The Individual’s Explanation Of How His Or Her Circumstances Have Changed Since The Crime Was Committed
For example, a conviction for embezzlement would bear a direct relationship to a job handling money, but would not necessarily be directly related to the duties of a provider working with children. Many cases will not be as clear as this example. It is understood that judgment and consultation will be necessary to make some of the more difficult assessments and recommendations.

M) Role of the person within the Child Care Setting
Consider whether the person in question will be closely monitored or supervised while performing child care, or if he or she will be providing independent care to a group of children. The fact that a volunteer may not be given the responsibility to independently care for children may be considered in the assessment process. However, if there is any chance (no matter how remote) that a person could be alone with children in care, then the safety of the child(ren) must be considered to be the first priority.

11. Extenuating Circumstances Review for Criminal Convictions
A conviction for a violent and other serious crime (OCFS Category B) creates a strong presumption against enrolling the legally-exempt provider. A provider convicted of a violent or other serious crime can request that the district consider and review any extenuating circumstances pertaining to the conviction and determine whether an exception could be made to the presumption against enrollment.

The provider may request a review of extenuating circumstances when the provider has received a presumptive denial based on a violent or other serious crime not specific to a child. When the conviction pertains to a crime against a child, felony or misdemeanor, however, the provider is not entitled to a review of extenuating circumstances.

The presumption against enrollment can be overcome only upon a showing of some extraordinary circumstances justifying enrollment. The provider is responsible for supplying documentation that details the extenuating circumstances.

A) The determination
The provider must demonstrate to the satisfaction of the EA that enrollment of the provider would NOT pose an unreasonable risk to children in the provider’s care, or the EA must not grant an exception allowing enrollment.
B) Basic factors to be considered in the review:
The basic factors considered in the review of extenuating circumstances are the same factors to be considered in the Category C review and found in Section III.A.9, Site Person Level Requirements, Criminal History of the Provider and Site People, Factors to be Considered in Reviews.

- Cooperation
- Nature and seriousness of the crime
- Indications regarding the person's character or judgment.
- Age of the person when the crime was committed and how long ago it occurred.
- Pattern of criminal behavior
- Circumstances and/or factors that indicate the incident is likely to be repeated.
- The individual's explanation for the crime.
- Truthfulness of the individual when providing information about his or her criminal history.
- Jail time served or community service performed
- Efforts and success at rehabilitation
- The individual's explanation of how his or her circumstances have changed since the crime was committed
- Role of the person within the child care setting

Please refer to Section III.A.9, Site Person Level Requirements, Criminal History of the Provider and Site People, Factors to be Considered in Reviews.

C) Extenuating Circumstances
In addition to the basic factors to be considered in the review listed previously, which are also considered in the review of extenuating circumstances, the person must also demonstrate “extenuating circumstances.” Extenuating circumstances are those extraordinary circumstances which occurred at the time of the original incidents or since the original incidents, which may justify enrollment.

Within 60 days of the initiation of the review of extenuating circumstances, the EA must make and record the review decision in CCFS.

If the person demonstrates to the satisfaction of the EA, that extenuating circumstances exist and the provider's enrollment will not jeopardize the health
or safety of children in the provider’s care, the provider may be considered for enrollment. The reviewing agency must determine whether an exception could be made to the presumption against enrollment allowing the provider to be considered for enrollment. An exception may only be granted when the provider demonstrates to the satisfaction of the reviewing agency that the provider’s enrollment will not jeopardize the health or safety of children in the provider’s care. As a reminder, the burden of proof is on the provider to prove to the satisfaction of the EA that the provider’s enrollment will not pose an unreasonable risk to the safety or welfare of the child.

12. Enrollment of Provider with Criminal History
If the EA determines that the conviction would not pose an unreasonable risk to the safety or welfare of the child and the parent/caretaker still wishes to use the provider, the EA must obtain a signed statement from the parent/caretaker indicating that the parent/caretaker is aware of the specific convictions(s) and still chooses the provider in question. The OCFS-4915, History of Criminal Convictions and Parental Acknowledgment, or local equivalent form, must be used for this purpose.

13. New York State Sex Offender Registry Check and Results
As a condition of full enrollment and re-enrollment of an informal provider, the EA must call the New York State Sex Offender Registry at 1-800-262-3257 to determine if the provider, employee, volunteer and, for caregivers of legally-exempt family care, each household member 18 years or older is listed as a sex offender on the New York State Sex Offender Registry. To obtain a search, the EA must provide the registry with the person’s name and either the date of birth or the NYS driver’s license number. The registry will inform the EA if the person is listed and, if listed, the level at which the person is rated. The EA must record in its records identifying information for the staff member at the New York State Sex Offender Registry who provides the information.

Note that an analogous State website search does not provide all the information which is given when contacting the New York State Sex Offender Registry by phone. Therefore, use of the website is not an acceptable alternative to the process described.

A provider who is listed on the New York State Sex Offender Registry or a provider that employs an individual, uses a volunteer or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who is listed on New York State Sex Registry, cannot be enrolled.

B. Child Abuse and Maltreatment Attestation

1. Applicable Regulation
Per 18 NYCRR §415.4(f)(7)(ii), *The caregiver must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the caregiver's knowledge, such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children*
and, for caregivers of legally-exempt family child care, any household member age 18 or older, has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Prior to furnishing the caretaker with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment. The caregiver must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication and any other relevant information.

2. Attestation
The provider certifies that he or she has:

- Asked ALL employees, volunteers, and individuals who may be helping to care for or who have regular contact with the child(ren), and, if they provide care in a home other than the child(ren)'s home, all household members 18 years of age or older, if they have been the subject of an indicated report of child abuse or maltreatment;

- Informed the parent/caretaker whether any of the potential caregivers, or the provider, have been the subject of any indicated reports of child abuse or maltreatment;

- When an indication of child abuse or maltreatment exists, given the parent/caretaker, in writing, true and accurate information, including: a description of the incident(s), the date of the indication(s), and any other relevant information regarding the indication(s); and,

- Agreed that all statements are true and accurate.

3. No State Requirement For Verification
State regulations do not authorize the enrollment agency to verify as part of the enrollment process, that the provider has shared true and accurate information regarding indicated reports of child abuse and maltreatment with the parent. However, some local districts have received the approval of OCFS to impose additional local standards for verifying that the provider has accurately disclosed the information to the parent/caretaker, and must have a process in place to do so and report back to the EA. When a subsidy-paying district has an OCFS–approved additional local standard, it will be noted on the provider's CCFS “profile page” and the EA can find the details of the additional local standard process in the Child Care Plan at the OCFS website.

4. Complaints
There may be circumstances when the EA or the local district is aware that the information the parent/caretaker received from the provider regarding indicated reports of child abuse or maltreatment is inaccurate or false. This information may be investigated as a complaint. Due to the EA’s limitations, the EA cannot seek out child protective information by conducting a State Central Register
check and cannot provide confidential information to the parent/caretaker, without the provider’s consent; therefore in these circumstances it is recommended that the EA engage the district in the verification process. The EA must inform the parent/caretaker that the provider cannot be enrolled until the provider gives correct information to the parent/caretaker. If the parent/caretaker wishes to use the provider, the EA must contact and inform the provider that the provider must give a full account of the indicated report(s) to the parent/caretaker. No action can be taken on the enrollment of the provider until the parent/caretaker is given a correct written statement from the provider, and the parent/caretaker makes a decision based on the information. Again, the local district may work with the EA to confirm the provider’s compliance. If the revised statement leads the EA/local district to conclude that the child would be at risk if placed with the provider in question, the worker must inform the parent/caretaker of this conclusion and that the EA may file a report with the State Central Register should the parent/caretaker place his/her child with the provider.
Section IV. Provider Level Requirements-Enrollment

These requirements examining child welfare and day care enforcement history pertain only to the child care provider, or program director for legally-exempt group programs operating under the auspices of another government agency.

A. Child Welfare History Enrollment Review by Local District

1. Applicable Regulations

A) Attestation

Per 18 NYCRR §415.4(f)(7)(iii)(b)--To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing… (b) Whether the caregiver has ever had his or her parental rights terminated, or had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act. If a caregiver indicates that he or she has had his or her parental rights terminated or has had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act, the caregiver must provide true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had his or her parental rights terminated or has lost custody of a child(ren) by court order under Article 10 of the Family Court Act, based on guidelines issued by the office.

B) Verification

Per 18 NYCRR §415.4(f)(8)(ii)--Upon applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency must verify the information in the attestation of each caregiver of informal child care to determine if the caregiver's parental rights have been terminated, or if a child(ren) was removed from his or her care by court order under Article 10 of the Family Court Act…(a) The legally-exempt caregiver enrollment agency will request that the applicable social services district conduct a child welfare database check of the caregiver and provide the applicable social services district with such available information about the caregiver as is necessary to complete the database check to determine whether the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under Article 10 of the Family Court Act. The district must provide the legally-exempt caregiver enrollment agency with the results of the child welfare database check within 15 days of receiving the request.

(1) When the check of the district's child welfare database reveals that the caregiver has had his or her parental rights terminated or had a child
removed from his or her care by court order under Article 10 of the Family Court Act, the district shall provide the specific office mandated information on the foster care and/or court records concerning the caregiver’s termination of parental rights and the removal of the child from the caregiver’s home to the legally-exempt caregiver enrollment agency for the purposes of determining whether to enroll the caregiver.

(2) When the check of the district’s child welfare database reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under Article 10 of the Family Court Act, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding the reasons underlying the loss of parental or custodial rights, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine, based on guidelines issued by the Office, whether to enroll a caregiver who has had such a loss of parental or custodial rights.

2. Background

A) Provider’s History of Court-Ordered Article 10 Removal of a Child

Article 10 refers to a section in the Family Court Act that addresses abuse and neglect (child protective) proceedings. The removal of a child under FCA Article 10 is a reversible action intended to protect a child from imminent danger (immediate danger of serious harm) or imminent risk to the child’s life or health. A removal may occur without a fact-finding hearing and, in itself; a removal does not establish or prove wrongdoing by the parent/caretaker. However, before removing a child to foster care, a judge must consider whether the issuance of a temporary order of protection would eliminate the need for the removal.

B) Provider’s History of Termination of Parental Rights

When it is clear that the natural parent of a child in foster care cannot or will not provide a safe family home for the child and when continued foster care is not an appropriate plan for the child, the child welfare agency may initiate a proceeding to terminate the parental rights under SSL 384-b. The purpose of such an action is to permanently terminate the parent’s custodial rights and guardianship, free the child for adoption, and find a permanent alternative home for the child. Grounds for termination of parental rights under SSL 384-b include:

- Abandonment
- Permanent Neglect
- Mental Illness or Mental Retardation
- Severe or repeated abuse
C) Placement Mechanisms which are not due to TPR or FCA Article 10.

Legal mechanisms for foster care placement which are NOT the result of court-ordered Article 10 removal or termination of parental rights under SSL 384-b, must NOT be considered here. Such types of placements include, but are not limited to:

- Voluntary Placement under Social Services Law (SSL) 384-a. The care and custody of a child may be transferred to the district by a written instrument/agreement.
- Voluntary Surrender
- FCA Article 7 allows for the placement of a Person in Need of Supervision (PINS).
- FCA Article 3 allows for the placement of a Juvenile Delinquent (JD).

3. Review of Enrollment Attestations

A provider of legally-exempt family or in-home child care, or a provider of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State, or local government agency, must attest and certify in writing whether the provider has ever had his or her parental rights terminated.

The provider who has had his or her parental rights terminated must indicate such on the enrollment form, and attach the completed OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form.

- The provider must give true and accurate information regarding the reasons underlying the removal of a child and/or termination of parental rights; must identify the underlying causes and specify enough detail for the SSD, the agency responsible for a determination, to ascertain the sequence of events leading to the termination of parental rights.

- Both the provider and the parent/caretaker must sign the OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form. The enrollment form is not considered to be “complete” if OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form, is not submitted and complete, for any provider who has a history of a termination of parental rights.

The EA reviews the enrollment form and attachments for any disclosure by the provider of a history of termination of parental rights or removal of child by court order under Article 10 of the Family Court Act.

4. Enrollment Agency Response to a Disclosure in Enrollment Packet

A “disclosure” is the indication by the provider, on the enrollment form itself and/or on the attachment, OCFS-LDSS-4917, History of Termination of Parental Rights and/or Court-Ordered Removal of a Child and Parental Acknowledgment,
that a termination of parental rights or removal of child by court order under Article 10 of the Family Court Act has occurred. The presence of such history creates a high risk situation resulting in a presumptive denial. The high risk may only be diminished when there has been a review of extenuating circumstances conducted by the SSD resulting in the SSD’s finding that enrollment of the provider will not jeopardize children in the provider’s care, and the SSD has granted an exception to the presumption against enrollment. When the provider discloses such a history, the agency response will vary depending on the provider’s current enrollment status, whether the disclosure was previously known, and whether an exception to the presumption against enrollment has been granted following a review of extenuating circumstances by the SSD.

The EA is required to take the appropriate safety response, including denial or termination, regardless of whether the packet is “incomplete” or “complete”.

5. Referral to LDSS for Database Check
An automated referral is generated by CCFS to inform the LSSD to conduct the local child welfare database check. For initial enrollments or re-openings, the referral occurs when the provider exits the Preliminary Review Phase and enters the Full Review Phase with a status of either Enrolled: Temporary or Under Full Review. For re-enrollments, the referral is generated upon receipt of the first renewal packet.

The automated referral is sent to the district in which the provider resides. Per 12-OCFS-LCM-01, the SSD is required to retrieve and respond to the CCFS E-Notice referrals in a timely manner. For additional information, refer to Section I..D.4.A.3 : Overview of the Enrollment Process, Initial Enrollment, Local District Enrollment Tasks, Local District Child Welfare Database, CCFS E-Notice Referral.

6. Enrollment Agency Action upon Receipt of Results of Database Check
The district must inform the enrollment agency in writing using the OCFS 2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, or OCFS-approved local equivalent, of the results of the local child welfare database check required at enrollment and re-enrollment, within 15 days of the receipt of the request for a check through CCFS E-notices. The SSD must inform the enrollment agency whether the LECCP:

- Does or does not have a history of termination of parental rights under SSL 384-b, and

- Does or does not have a history of court-ordered removal/placement of a child under Family Court Act Article 10.

The enrollment agency must enter the result into CCFS within a timely manner.

When the results indicate a provider has a history of termination of parental rights under SSL 384-b and/or a history of court-ordered removal/placement of a
child under Family Court Act Article 10, the EA must take appropriate action. The presence of such history creates a high-risk situation. When the provider discloses such a history, the agency response will vary depending on the provider’s current enrollment status, whether the disclosure was previously known, and whether an exception to the presumption against enrollment has been granted following a review of extenuating circumstances by the SSD. A provider’s enrollment must be (presumptively) denied, or terminated, unless there has already been a review of extenuating circumstances conducted by the SSD, resulting in the finding that enrollment of the provider will not jeopardize children in the provider’s care, and the SSD has granted an exception to the presumption against enrollment, and, for re-openings and re-enrollments, the SSD has chosen to “continue” the exception granted. The provider’s enrollment must be denied or terminated if there has NOT been a review of extenuating circumstances resulting in the SSD granting an exception to the presumption against enrollment.

When a provider has a history of judicial termination of parental rights or having a child removed from his or her care by court order under Article 10 of the Family Court Act, the provider’s enrollment is presumptively denied or terminated. Such a provider may request a review of extenuating circumstances by submitting a written request to the Enrollment Agency within 30 days. The review of extenuating circumstances affords the provider an opportunity to prove that the health, safety or welfare of children in his or her care is not in jeopardy.

As part of the review of extenuating circumstances, the SSD must review the information on the enrollment form, results of the database check, and documentation presented by the provider to determine whether the presumptive denial/termination of enrollment may be overcome. The presumption against enrollment may ONLY be overcome if the provider demonstrates to the district’s satisfaction that enrollment will not jeopardize the health and safety or welfare of children in the provider’s care. The burden of proof is on the provider, not the district.

A) Request for the Review Of Extenuating Circumstances
The review of extenuating circumstances is conducted AFTER the presumptive denial or termination of enrollment.

- The request for the review of extenuating circumstances is submitted by the provider to the Enrollment Agency.

- The EA determines whether the criteria to initiate the review are met, documents its determination in CCFS, and notifies the provider.

- When the criteria for review are met, CCFS generates an E-Notice to the district responsible for the review.
Refer to Section I.E., Review of Extenuating Circumstances Overview, for an overview of the phases of the review of extenuating circumstances and the criteria to initiate a review.

**B) Initiation of the Review of Extenuating Circumstances**

The district is notified by E-Notice, LE-CCFS LD-005, Legally-Exempt Child Welfare Extenuating Circumstances Review Referrals, when a provider is eligible for a review of extenuating circumstances. The district must run the Legally-Exempt Child Welfare EC Review Referrals report in CCFS to retrieve the details of the referral. The district must complete the review within 60 days.

**C) Documentation**

The EA must provide to the SSD copies of the documentation it has received relevant to the request for a review of extenuating circumstances. The district may communicate directly with the provider to request any other documentation needed for the review. In Article 10 and termination of parental rights matters the provider’s proof should include original paperwork from the family court and child welfare agency, including court petitions, court orders, court summaries/reports, correspondence, service plans, and progress reports.

Any provider who indicates a history that includes a court-ordered Article 10 removal or termination of parental rights must provide true and accurate information, on the OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form, to the child’s parent/caretaker and the EA regarding the reasons underlying the child’s removal.

Documents which are pertinent to the district’s review include, but are not limited to:

- the enrollment form,
- the OCFS-LDSS-4917, History of Termination of Parental Rights and/or Article 10-Removal of a Child and Parental Acknowledgment form,
- the results of the child welfare database check,
- the written request for review of extenuating circumstances, and,
- documentation submitted by the provider for the purpose of the review.

The district may choose to review its local child welfare records; however, the burden of proof is on the provider to establish to the district’s satisfaction that

**enrollment of the provider will not jeopardize the health, safety or welfare of children in the provider’s care.**

All providers must include in their documentation:

- Names of children involved:
• Date(s) of removal/termination

• Name of the court issuing the order

• County and State where removal or termination occurred

• The type of court involvement:
  o Judicial Termination of Parental Rights Under Social Services Law 384-b, or
  o Court-Ordered Removal of a Child under Family Court Act Article 10 (Child Protective)

• If a judicial termination of parental rights, the legal reason:
  o Permanent neglect, mental retardation, severe or repeated abuse, or other (must explain).

• If Court-Ordered Removal of a Child under Family Court Act Article 10 (Child Protective),
  o whether, as a result of the Article 10 proceeding, there was a subsequent judicial finding of: Neglect; Abuse; Severe or Repeated Abuse;
  o If there was NOT a finding of abuse or neglect, the provider must indicate the reason why. An Article 10 removal not accompanied by a judicial finding of neglect or abuse may be an indicator that extenuating circumstances exist in the case.
  o Length of time children removed from home. If the child was initially placed under Article 10, but then remained out of the home under another type of family court proceeding, the provider must give an explanation of why this occurred in his or her written statement

• All providers must:
  o Describe the situation(s) that led to the termination of parental rights and/or the removal of children. The summary must contain enough detail for the EA to ascertain the sequence of events and the severity of the situation.
  o Explain the reasons underlying the termination of parental rights and/or the removal of children
D) Reasons Underlying the Removal or Termination of Parental Rights

The summary must contain enough detail for the EA to ascertain the underlying reasons for the events and the severity of the underlying issue(s). Underlying reasons are likely to include, but not be limited to, one or more of the following:

- Alcohol misuse/abuse, drug misuse/abuse; or
- Mental health issues, developmental, or cognitive disabilities; or
- Sexual offender issues; or
- Anger management problems, batterer's issues, domestic violence issues; or
- Lack of parenting/child care skills, lack of understanding of normal child development; or
- Insufficient coping strategies for managing stress, inadequate support system.

E) Evaluation of Extenuating Circumstances

Due to current regulatory constraints, the child care unit may not be able to receive corroboration (or contradiction) of the provider's account directly from a child welfare unit. Districts may wish to utilize their child welfare specialists to conduct the reviews of extenuating circumstances and/or assist child care workers in understanding the significance of a particular Article 10 removal or termination of parental rights determination and its implications regarding child caring capability. When staff other than child welfare staff conducts the reviews, the district should consult with its own child welfare specialists as to the adequacy of the statement and documentation submitted for a current or former child welfare case when the district is considering enrollment of a high risk provider.

The history of Judicial Termination of Parental Rights Under Social Services Law 384-b, or Court-Ordered Removal of a Child under Family Court Act Article 10 (Child Protective), in nearly all cases means that the provider has failed to meet the standards for the minimum degree of care of a child while the provider was legally responsible for the child’s care, acting either as a child care provider, a parent, or a parental substitute. In the review of extenuating circumstances, the district must evaluate the severity of the original incident, the underlying causes, what has changed since the incident(s) to reduce risk to children in the provider’s care, and any extenuating circumstances presented by the provider. Extenuating circumstances are those extraordinary circumstances which occurred at the time of the original incidents or since the original incidents, which may justify enrollment.

In its review, the SSD considers whether the provider establishes to the satisfaction of the district that extenuating circumstances exist and the provider’s
enrollment will not jeopardize the health or safety of children in the provider’s care, the provider may be considered for enrollment.

The district reviews the explanation of extenuating circumstances and any proof submitted. Districts must determine on a case-by-case basis whether the documentation is appropriate and sufficient. Truthfulness and completeness of disclosure from the provider must be considered.

**Extenuating circumstances occurring at the time of the original incidents** may include things such as:

- A court-ordered removal under Family Court Act Article 10 may occur without a fact-finding hearing and, in itself; a removal does not establish or prove wrongdoing by the parent/caretaker. The judicial finding, or adjudication, of abuse or neglect, establishes the culpability of the parent/caretaker, in that the abuse or neglect was satisfactorily proven, admitted or consented to in family court. The definitions of abused child and neglected child are found in the Family Court Act, Section 1012.

  This may occur in an Article 10 removal proceeding wherein the child was ordered to be removed from a parent/caretaker who was believed to be neglectful or abusive at the time of removal, but later the allegations were found to be unconfirmed. In this type of situation, one might expect to find no adjudication of abuse or neglect against the individual and an out-of-home placement which is short in duration. For example, a provider states that his child was removed from his care but that he did not abuse or neglect the child. The provider states that the child was returned to his care within two weeks and that there was no adjudication against him. The explanation given is that the judge ordered a removal of the child from the custodial father, based on the caseworker’s testimony that the child disclosed she was sexually abused by “daddy.” Upon further investigation, the CPS caseworker concludes that the abuse occurred while the child was living with her mother, that “daddy” was the child’s stepfather, and that the custodial father had no involvement. The abuse petition filed against the father by child protective was withdrawn and the child was discharged from foster care to her father’s care and custody.

  The father in this example might be able to produce the following items corroborating his account: notification letters from Child Protective Services advising of the determination of the hotline report; family court orders, petitions, and court paperwork showing the petition was either withdrawn or dismissed, and/or child welfare service plans.

- In a TPR based on abandonment, it is possible that an estranged parent may not have known that an abandonment proceeding was being conducted, or even that his/her child was in foster care.

**Extenuating circumstances occurring after the precipitating incidents** include evidence of rehabilitation, successful resolution of underlying causes, and other factors which minimize risk. These may include, but are not limited to:
- Successful participation in treatment or counseling (alcohol, drug, mental health, anger management and domestic violence, etc.), or
- Successful participation in parenting skills or child development classes, or
- Demonstration of strategies learned in treatment or class, or
- Development of an appropriate support system and use of effective strategies for coping with stress, or
- A significant period of time has elapsed since the incident and the provider has had significant maturational growth, or
- The provider has had personal achievements which demonstrate the development of relevant skills and knowledge, or
- The provider has not had additional incidents of Article 10 proceedings or termination of parental rights proceedings, or
- The provider has otherwise been rehabilitated.

The length of placement may be linked to the resolution of the underlying cause of the removal. Shorter placements may occur when the underlying issues are more easily resolved, or the extended family has become a placement resource for the child. Because child welfare staff must work towards a goal of reunification of children in foster care with their families as soon as the children can be safely returned home, a long foster care placement may be indicative of more severe factors underlying the removal. A placement lasting 15 months or more has additional significance because when a child has been in foster care for 15 of the preceding 22 months, the SSD may be required to file a petition to terminate parental rights.

Failure of the provider to cooperate with the information sharing and evaluative process will result in sustaining the denial or termination of enrollment.

8. Completing the Review
As part of the verification process, and prior to granting an exception, the Local district must complete the Child Welfare Database check for TPR and Article 10 removal. If the district has an additional local standard to verify that the provider has fully disclosed to the parent any history of indicated CPS reports, the additional process must be fully implemented during the review, prior to granting an exception allowing the provider to be considered for enrollment.

9. Granting an exception
Refer to Section I.E., Review of Extenuating Circumstances Overview.

10. Provider Communications and Notifications
It is the responsibility of the SSD to communicate with the provider during the review, to allow the provider to be heard and to respond to questions from the
provider regarding the determination on the extenuating circumstances review of court-ordered removal of a child and termination of parental rights.

a. Parental Acknowledgement
When the district intends to grant an exception to a provider, allowing the provider to be considered for enrollment, the district must review the OCFS-4917, History of Termination of Parental Rights and/or Court-ordered Article 10 Removal of a Child and Parental Acknowledgement to verify that it accurately represents to the parent the events leading to the TPR or removal and the underlying reasons for the events. The form must be signed by the provider; include an acknowledgement signed by the parent/caretaker that the parent/caretaker is aware of the provider’s specific history of an Article 10 removal and/or the termination of parental rights and knowingly chooses the provider in question to care for his or her children. When such a form is on file, but does not fully disclose the relevant details, the district must obtain a true and accurate OCFS-4917, History of Termination of Parental Rights and/or Court-ordered Article 10 Removal of a Child and Parental Acknowledgement, signed by the parent and the provider, before the exception can be granted.

Due to confidentiality issues, the district must not share information directly with the parent.

b. District Notification to EA
The district must notify the EA of its decision on the review of extenuating circumstances within 60 days of receipt of the CCFS E-Notice referral.

The district must use the OCFS-2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, to notify the EA or it may use an OCFS-approved local form which includes the following language:

- A review of extenuating circumstances has been completed by the district, AND
- The district has
  - GRANTED an exception to the presumption against enrollment, because the provider has demonstrated that enrollment will not jeopardize the health, safety, or welfare of children in the provider’s care. (Accordingly, the provider may be considered for enrollment.)
  - OR
  - DENIED an exception to the presumption against enrollment. (Accordingly, the provider cannot be considered for enrollment.)
- The name of the district, name of the district representative making the determination, and date of determination.

The EA will notify the provider of the decision.

A) Falsification of Information
If a district has reason to believe a provider has falsified information on the enrollment forms, the district must make a referral to its fraud investigation unit and notify the EA.
B. DAY CARE ENFORCEMENT HISTORY ENROLLMENT REVIEW

A provider of legally-exempt family or in-home child care, or a provider of legally-exempt group child care which is not required to be operated under the auspices of another federal, state or local government agency, must attest and certify in writing whether the provider has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked.

1. Background

Denial, revocation and/or suspension of a license to operate a child day care program are legal actions, known as enforcement actions, which are initiated by OCFS licensors and registrars when a child care provider is out of compliance with the regulations put in place to protect the health and safety of children in child day care. Enforcement action may force a provider to comply with OCFS regulations or may remove the provider’s legal authority to operate as a licensed or registered day care provider. However, OCFS may not interrupt the provider’s operation until all due process rights have been exhausted, except in the event of imminent danger (immediate danger of serious harm) to the children in care. When imminent danger is found, a suspension, which is an order to immediately cease provision of child care services, may be issued.

2. Applicable Regulations

A) Attestation

18 NYCRR §415.4(f)(7)(iii) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing: (a) whether, to the best of his or her knowledge, the caregiver has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked. If a caregiver indicates that he or she has been denied such a license or registration or had such a license or registration suspended or revoked, the caregiver must provide true and accurate information to the child's caretaker and the legally-exempt caregiver enrollment agency about the reasons for the denial, suspension or revocation. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked, based on guidelines issued by the Office.

B) Verification

18 NYCRR §415.4(f)(8)(iii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency will:

(a) Check each caregiver against the Office's child care facility system to determine whether the caregiver has ever been denied a child day care license
or registration or had a child day care license or registration suspended or revoked. When the check of the Office’s child care facility system reveals that the caregiver has been denied a child day care license or registration or had a child day care license or registration revoked or suspended, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the Office.

3. Review of Enrollment Attestations

The provider who has had a day care license or registration to operate a day care program revoked or suspended, or been denied an application or renewal of a license or registration, must indicate such on the enrollment form, and attach the completed OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment. The information given by the provider will initially help the EA determine the risk level to be assigned and later be used to conduct the full review or the review of extenuating circumstances.

The OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment, submitted by the provider to the EA must contain the following information:

- Name of the Day Care Program subject to enforcement action(s);
- Location of the Day Care Program subject to enforcement action(s);
- The Type(s) of Enforcement Action which occurred (Denial, Revocation, Suspension);
- The Dates of Enforcement Action(s);
- A description of what led to the denial, revocation or suspension of the license/registration to operate a child day care program;
- An explanation of reasons underlying why the violations and enforcement occurred;
- Other relevant information;
- A signed attestation and certification by the child care provider that the information is a true and accurate summary; and,
- The signature of the parent/caretaker.
The enrollment form is not considered to be “complete” if the provider has made a disclosure on the enrollment form but has not submitted the OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment form, or if the form is incomplete or inaccurate.

4. Child Care Facility System Check
Prior to making the Preliminary Review Decision, the EA must conduct a review of the CCFS licensing and registration database to verify whether or not a family or in-home provider has applied for and been denied an initial license or registration, or had a license or registration to operate a child day care program denied, revoked or suspended. The presence or absence of a daycare enforcement history is easily determined in CCFS, as CCFS searches for licensed and registered programs include an indicator for providers who have undergone enforcement called the “Enf Status Hx.’ This database check must be conducted prior to assigning a “Risk Level” to a daycare enforcement history, as described in the subsequent section. To the extent possible, the EA must to verify the provider’s enforcement history in CCFS matches what is reported.

When the provider fails to disclose his or her history of day care enforcement and falsely attests to that effect on the enrollment from, the Enrollment Agency must document the false statements as a violation in CCFS, along with other known violations, and deny or terminate the enrollment, as applicable, based on the false statements on the enrollment form.

As part of the EA’s evaluation of daycare enforcement history, the EA must view the provider’s licensing/registration record in CCFS that summarizes compliance violations and note any enforcement action taken. The EA may contact the licensor named in CCFS to confirm the underlying reasons for the enforcement actions.

5. Assignment of Risk Level
The Enrollment Agency may become aware of a daycare enforcement history through the provider’s disclosure on the enrollment form, the CCFS database check or other means. A “disclosure” is the indication by the provider, on the enrollment form itself and/or on the attachment, the OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment, wherein the provider indicates a history including a denial, revocation or suspension of a license or registration to operate a child day care program. When the Enrollment Agency becomes aware that the provider has a daycare enforcement history, the Enrollment Agency is required to evaluate the information, assign a risk level of high or low, and follow the appropriate course of action associated with the risk level.

The written summary must contain enough detail for the EA to ascertain the sequence and severity of the events and the underlying reasons for the enforcement action taken. The underlying reasons may pertain specifically to child care programs, or may resemble those found in Article 10 and TPR histories.
The information given by the provider on the OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment, will help the EA retrieve the provider's record from CCFS, obtain information from the appropriate regional office that conducted the enforcement and supervised the provider's program, and assign the appropriate risk level.

A) Determining Risk level for Day Care Enforcement History

As part of the Preliminary Review Phase, the Enrollment Agency must assign a risk level to the provider based on the provider’s attestations and any other information known to the Enrollment Agency.

(1) HIGH RISK GROUP

The high risk group includes any provider whose license or registration to operate a child day care program was denied, revoked or suspended due to his or her own actions or inactions in connection with abuse or neglect, a child fatality due to negligence, chronic non-compliance with regulations, lack of supervision resulting in a serious injury to a child, or another serious violation.

Assignment to the high risk group results in a presumptive denial of enrollment which may be overcome ONLY if the provider or the parent/caretaker requests reconsideration of the enrollment decision and demonstrates to the EA’s satisfaction that enrollment will not jeopardize the health and safety or welfare of children in the provider’s care. The EA is required to take the appropriate safety response, including denial or termination, regardless of whether the packet is incomplete or complete.

The EA must notify the provider and the parent/caretaker of the decision. The provider may request a Review of Extenuating Circumstances within 30 days.

A high risk provider may be reconsidered for enrollment only after a presumptive denial is issued and the provider demonstrates extenuating circumstances exist. Extenuating circumstances are those extraordinary circumstances which occurred either at the time of, or since, the original incidents, which may justify enrollment.

(2) LOW RISK GROUP

A provider must only be assigned to the Low Risk group if the provider does not have any of the risk factors listed for the High Risk group and the non-compliance was not based on a health and safety issue. Providers assigned accordingly may include those who have had a license or registration to operate a day care program denied or revoked based on failure to meet training requirements, other similar licensing or registration requirements, not applicable to enrollment. Providers in the low risk group must be evaluated on their day care enforcement history during the Full Review phase, before they can be considered for enrollment.
6. Enrollment Decision based on Risk Level Assigned
When the Enrollment Agency learns of the day care enforcement history during Intake, Preliminary Review, or any other time, the EA must assign a Risk Level to the provider. When the provider is in the process of enrolling, the Risk Level must be assigned prior to making the Preliminary Review Decision. The risk level assigned drives the next steps to be taken.

- For providers assigned to the Low Risk category, the history of daycare enforcement is evaluated during the next enrollment phase.

- For providers assigned to the High Risk category, the provider’s enrollment is presumptively denied.

7. The Low Risk Review - Daycare Enforcement
Providers who are assigned to the Low Risk group are not presumptively denied. The Low Risk review occurs during the Full Review Phase. A provider with a low risk day care enforcement history cannot be enrolled temporarily. Instead, the provider must be placed “Under Full Review,” where the Enrollment Agency must carefully evaluate the provider history of the denial, revocation and/or suspension of a license or registration to operate a child day care program, including, but not limited to:

- Review of the enrollment form and the completed OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment;

- Verify, to the extent possible, that the information given on the enrollment form and attachments regarding the description of the original incident and the underlying reasons, is true and accurate;

- Encourage the provider to submit documentation to corroborate and clarify the reasons underlying the denial, revocation or suspension of a license or registration to operate a day care program, keeping in mind that the provider must cooperate with the review;

- Contact the OCFS regional offices to verify and clarify the daycare enforcement history;

- The EA must evaluate the severity of the original incident, the underlying reasons for the daycare enforcement, and what, if anything, has changed since the incident(s) to reduce risk to children in the provider’s care. Refer to the next subsection, IV.B.8, Review of Extenuating Circumstances – Daycare Enforcement, for examples of “underlying reasons” for the daycare enforcement and factors which may reduce risk to children in the provider’s care;

- Review collateral information received; and

- Determine whether the enrollment of the child care provider will jeopardize the health, safety or welfare of children in the provider’s care.
The EA may request that the provider submit proof as appropriate, in which case it is the responsibility of the provider to submit such proof. Failure of the provider to cooperate with the information sharing and evaluative process will result in a denial or termination of enrollment.

When the EA enrolls any provider with a daycare enforcement history, the EA must complete an OCFS 4916, History of Day Care Enforcement and Parental Acknowledgment, signed by the provider and parent, indicating that the parent/caretaker:

- Is aware of the provider’s specific history of denial, revocation and/or suspension of a license or registration to operate a child day care program;
- Has received the written explanations of the circumstances involved, which contain the same information submitted to the EA; and
- Knowingly chooses this provider to care for his or her children.

8. Review of Extenuating Circumstances - Daycare Enforcement

A provider who has a history of daycare enforcement and who is assigned to the High Risk group, must be presumptively denied enrollment, or, if enrolled, have that enrollment terminated. The presumptive denial/termination means that it is presumed that the enrollment of the child care provider would jeopardize the health, safety or welfare of children in the provider’s care. When an enrollment has been presumptively denied or terminated, the provider may request an extenuating circumstances review within 30 days of the issuance date of the Notice of Denial or Termination. For providers who meet the criteria for review, the EA must complete the review within 60 days. Extenuating circumstances may include unusual circumstances surrounding the original incident and/or factors that successfully resolve the underlying causes and tend to eliminate risk. The review of extenuating circumstances affords the provider an opportunity to prove that the health, safety or welfare of children in his or her care are not in jeopardy.

c. Criteria for Initiating Review of Extenuating Circumstances

The review of extenuating circumstances is conducted AFTER the presumptive denial or termination of enrollment, based on the existence of the prior denial, revocation and/or suspension of a license or registration to operate a daycare program, and categorized as “High Risk” by the Enrollment Agency. The request for the review of extenuating circumstances is submitted by the provider to the Enrollment Agency. When the EA determines that the criteria to initiate a review have been satisfied, a CCFS–generated notice will be sent by the EA to the provider. Refer to Section I.E.2, Review of Extenuating Circumstances Overview, for an overview of the review to be conducted, including the criteria to initiate a review.

d. Documentation to be submitted by the Provider

Minimally, the provider must submit:
• A timely written request for review of extenuating circumstances,

• OCFS 4916, History Of Day Care Enforcement And Parental Acknowledgment form, if the EA has it on file that will suffice, and

• Any other documentation needed for the review, such as: original paperwork from the enforcement action, correspondence, corrective action plans, etc.

(i). The Review of Extenuating Circumstances

Within 60 days, the EA conducts the review for the purpose of determining whether extenuating circumstances exist, and if so, whether the presumption against enrollment may be overcome. The presumption against enrollment may be overcome ONLY if the provider demonstrates to the EA’s satisfaction that enrollment of the provider will not jeopardize the health, safety, or welfare of children in the provider’s care. The burden of proof for a review of extenuating circumstances is on the provider, not the EA. For presumptive denials or terminations of enrollment, based on a prior denial, revocation or suspension of a day care license or registration (daycare enforcement history), the review of extenuating circumstances is conducted by the EA.

The EA must verify, to the extent possible, that the information given on the enrollment form and attachments regarding the description of the original incident and the underlying reasons, is true and accurate. If the CCFS database check required to verify the attestations has not been conducted, such check must be conducted as part of the review.

A) The EA must evaluate the severity of the original incident, the underlying causes, and what, if anything, has changed since the incident(s) to reduce risk to children in the provider’s care, as well as any extenuating circumstances. Truthfulness and completeness of disclosure from the provider must be considered.

The underlying reasons may pertain specifically to child care programs or may be similar to those found in Article 10 and TPR histories. For example:

• Lack of parenting/child care skills;

• Lack of understanding of normal child development;

• Unsafe day care site;

• Inadequate staffing;

• Alcohol misuse/abuse, drug misuse/abuse;

• Mental health issues, developmental or cognitive disabilities;

• Anger management problems, batterer’s issues, domestic violence issues; or
• Insufficient coping strategies for managing stress, inadequate support system.

B) The reviewing agency must evaluate the provider's claim of extenuating circumstances. Extenuating circumstances occurring after the precipitating incidents include evidence of rehabilitation and successful resolution of underlying causes as well as other factors that minimize risk. These may include, but are not limited to:

• Successful participation in treatment or counseling (alcohol, drug, mental health, anger management and domestic violence, etc.);
• Successful participation in parenting skills or child development classes;
• Demonstration of strategies learned in treatment or class;
• Development of an appropriate support system and use of effective strategies for coping with stress;
• Passage of a significant period of time since the incident and evidence that the provider has achieved significant maturational growth;
• Personal achievements by the provider which demonstrate the development of relevant skills and knowledge;
• The absence of multiple daycare enforcements against the provider;
• The absence of incidents of court-ordered removals under Article 10 or termination of parental rights proceedings against the provider; or
• Other evidence that the provider has been rehabilitated.

C) The EA may request that the provider submit proof as appropriate, in which case it is the responsibility of the provider to submit such proof. Failure of the provider to cooperate with the information sharing and evaluative process will result in a denial or termination of enrollment.

D) The EA must determine whether an exception should be made to the presumption against enrollment pertaining to the specific requirement it is reviewing. The EA must NOT allow an exception to be made unless the provider has satisfactorily demonstrated that enrollment will not jeopardize the health, safety, or welfare of children in the provider's care.

E) When an exception is granted by the EA, the EA must verify that the provider has shared true and accurate information with the parent regarding the extenuating circumstances. The EA must obtain an OCFS 4916, History of Day Care Enforcement and Parental Acknowledgment, for this purpose, signed by the provider and the parent/caretaker stating that the parent/caretaker:

• Understands that the provider has a history of daycare enforcement and was initially denied enrollment, and that an exception has been made to allow the provider to be enrolled; and
• Chooses this provider to care for his or her children.

F) The results of the review of extenuating circumstances will impact the final enrollment determination as follows:

• When the EA determines an exception to the presumption against enrollment will not be made, the EA cannot enroll the provider. The provider returns to the previous enrollment status of denied or terminated.

• When the EA has made a decision to overturn the presumptive denial by granting an exception, the EA must reconsider the provider for enrollment, including conducting a full review of the enrollment package, all required database checks and additional local standards requirements, leading to a determination of whether the provider has met ALL other enrollment requirements. The EA may only enroll a provider who meets ALL enrollment requirements.

G) Within 60 days of the initiation of the review of extenuating circumstances, the EA makes and records the enrollment decision in CCFS. The EA notifies the provider and the parent/caretaker of the decision following the review of extenuating circumstances. The local district is notified through CCFS E-notice and reports only when and if the provider’s status changes back to a payable status.
Section V. Parent/Caretaker

The certification sections on the enrollment specify responsibilities and requirements with which providers and parents/caretakers must comply, as well as rights of the parent/caretaker.

A. Parent/Caretaker Certifications

Certifications include, but are not limited to, the following:

The parent/caretaker certifies that he or she will notify the Department of Social Services if there is a change in the number of hours that care is needed or if any other circumstance changes that would affect his or her need for care or eligibility for child care services.

The parent/caretaker certifies that he or she has selected the provider to furnish care to the children and assumes responsibility for monitoring the quality of care furnished to the children.

The parent/caretaker understands and agrees to pay the family share (fee) as directed by the Department of Social Services.

The parent/caretaker must certify that he or she understands the social services district may not be able to pay a provider if the provider is ineligible. If the parent chooses to use such a provider, the parent is responsible for paying for the child care. The parent/caretaker has the right to select another provider.

The parent/caretaker states that he or she understands these agreements apply for as long as the provider is caring for his or her children.

B. Provider Certifications

Certifications include, but are not limited to, the following:

The provider must certify that he or she will notify the EA immediately of changes in the number of children in care or the number of hours that care is provided. In addition, the provider will maintain and submit accurate attendance records as required by the Department of Social Services. The provider also agrees to collect the family share (fee) if instructed by the social services district to do so and will inform the district if the parent/caretaker fails to pay the required family share.

The provider agrees to allow representatives of the district, the EA and the State of New York access to the child care program and understands that refusal to do so may result in the provider becoming ineligible and losing enrollment status.

The provider agrees to allow the parent/caretaker: unlimited and on-demand access to their child; the right to inspect, on-demand and at any time during the hours of operation of the home or facility, all parts of such home or facility used
for child care or which could present a hazard to the health or safety of a child; unlimited and on-demand access to the provider(s) caring for such child whenever such child is in care and during the normal hours of operation; and, unlimited and on-demand access to written records concerning such child except where access to such records is otherwise restricted by law.

The provider understands that the Department of Social Services will check its child welfare database for history of court-ordered removal of a child under Family Court Act (FCA) Article 10 and any termination of parental rights. The provider understands that the EA will check the New York State Sex Offender Registry to determine if he or she, any volunteer who is likely to have regular contact with children in care, any employee, or person living in the home (other than the child’s home) age 18 years or older is listed on the New York State Sex Offender Registry for committing a sex offense. The provider understands that the EA will check the New York State Child Care Facility System to determine whether the provider has ever been denied a child day care license or registration, or had a child day care license revoked, suspended or denied.

The provider understands that any child care provided to a child receiving a child care subsidy, while he or she is deemed an ineligible provider by the EA, will not be reimbursed by the Department of Social Services.

The provider understands and agrees to meet all the conditions for as long as he or she is providing child care, and agrees that he or she is required to inform the EA and the parent/caretaker of changes in the information stated on the enrollment form.

C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

The parent/caretaker and provider are informed of and acknowledge that the district may not be able to pay a provider who has a history of an Article 10 removal, termination of parental rights (TPR) or denial, revocation and/or suspension of a license or registration to operate a day care program, or when the provider, any volunteer who is likely to have regular contact with the children, any employee, or person living in the home (other than the child’s home) age 18 years or older has been convicted of a crime.

The parent/caretaker and provider understand that if the EA determines a provider cannot be enrolled, the Department of Social Services cannot issue payment for care given by the provider. The parent/caretaker has the right and responsibility to decide whether he or she wants to use the provider in question. If the parent/caretaker chooses to use such a provider, the parent/caretaker is responsible for paying for the child care.

The parent/caretaker and provider are also informed that they may request the EA review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

The parent/caretaker and provider certify that the statements on the enrollment form and any attachments are accurate and true. They understand and
acknowledge that providing false or inaccurate information could cause termination of payments and legal action by the Department of Social Services.

Both the parent/caretaker and the provider are required to sign and date this section of the enrollment form, attesting that they agree with the terms and conditions specified. The provider cannot be enrolled if either the parent/caretaker or provider refuses to sign or agree to the requirements.

D. CERTIFICATION

Certifications include the following:

The parent/caretaker and provider certify to the best of their knowledge that all statements made on the enrollment form and any of its attachments are true and accurate. They understand that providing false information or deliberately concealing information may result in the provider being denied enrollment, the provider’s enrollment being terminated, the Department of Social Services terminating child care subsidy payments, and/or the local Department of Social Services taking legal action against the provider or parent/caretaker.
Section VI. Using COGNOS Reports for the Local Child Welfare Database Check for Legally-Exempt Family and In-Home Child Care Providers

A. BACKGROUND

Legally-exempt child care providers must attest on the enrollment form whether they have ever had their parental rights terminated under SSL 384-b and/or had a child removed/placed by court order under Family Court Act (FCA) Article 10. A local database check is required to verify that the provider gives true and accurate information on the enrollment form. A provider who has such a history must be presumptively denied enrollment when the enrollment agency learns of the history. If the provider still wishes to be considered for enrollment, following the denial, he/she may submit a written request to the enrollment agency for a review of Extenuating Circumstances. The review is conducted by the Local Social Services District (LSSD) where the provider resides, in accordance with the procedures set forth in the present Guide to Enrollment, with the applicable district required to determine whether an exception will be made that would allow the provider to be considered for enrollment.

The purpose of the local child welfare database check is to verify the legally-exempt family and in-home child care provider’s history of court-ordered Article 10 removals and termination of parental rights pursuant to Social Services Law (SSL) 384-b. The database check:

- Is conducted by the district where the provider resides
- Is conducted annually at enrollment and re-enrollment
- Is a local database check

B. REGULATORY REQUIREMENT

18 NYCRR 415.4(f)(8)(ii) -
(8) Additional health and safety requirements for caregivers of informal child care.

(ii) Upon each application for enrollment, and as part of each annual re-enrollment, the legally-exempt caregiver enrollment agency must verify the information in the attestation of each caregiver of informal child care to determine if the caregiver’s parental rights have been terminated, or if a child(ren) was removed from his or her care by court order under Article 10 of the Family Court Act.

(a) The legally-exempt caregiver enrollment agency will request that the applicable social services district conduct a child welfare database check of the caregiver and provide the applicable social services district with such available information about the caregiver as is necessary to complete the database check to determine whether the caregiver has had a termination of parental rights or a child removed from his or her care by court order under Article 10 of the Family Court Act. The district must provide the legally-
exempt caregiver enrollment agency with the results of the child welfare database check within 15 days of receiving the request.

(1) When the district child welfare database check reveals that the caregiver has had a termination of parental rights or a child removed from his or her care by court order under Article 10 of the Family Court Act, the district shall provide the specific Office-mandated information on the foster care and/or court records concerning the termination or removal to the legally-exempt caregiver enrollment agency for the purposes of determining whether to enroll the caregiver.

(2) When the district child welfare database check reveals that the caregiver has had a termination of parental rights or a child removed from his or her care by court order under Article 10 of the Family Court Act, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding the reasons underlying the loss of parental or custodial rights, if such information has not already been provided to those parties. A legally-exempt caregiver enrollment agency must determine, based on guidelines issued by the Office, whether to enroll a caregiver who has had such a loss of parental or custodial rights.

C. E-NOTIFICATION TO DISTRICT-BY CCFS REFERRAL PROCESS

Local districts are informed of the legally-exempt family and/or in-home child care providers for whom child welfare database checks are required by CCFS E-Notices and reports. SSDs must have procedures in place to receive and respond to CCFS E-notices, per 12-OCFS-LCM-01. SSDs are informed of the providers for whom they must conduct child welfare database checks by CCFS E-Notices and reports, as described previously. Providers are referred to the SSD when one of the following actions has occurred:

- An enrolling provider has a status change to Enrolled: Temporary or Under Full Review, or
- A re-enrolling provider has a status change to a renewal status

The district must run the **LE Child Welfare Database Referral List (DSS)** report in CCFS to obtain the detailed listing of providers needing the child welfare database check.

D. JURISDICTION

The district where the legally-exempt child care provider resides is responsible for completing the local child welfare database check at enrollment and re-enrollment. If the child care provider does not reside within New York State (NYS), the responsibility for conducting the checks will be assigned to the district issuing the subsidy or another affiliated district within NYS.

E. APPLICABILITY

Child welfare database checks are required to be conducted on legally-exempt family and in-home child care providers. Directors of legally-exempt group programs are not subject to the child welfare database check requirement.
Household members, employees, and/or volunteers of legally-exempt providers are not subject to the database check.

F. NOTIFICATION TO ENROLLMENT AGENCY
The district must conduct the database check and notify the enrollment agency of the results of the check in writing using the OCFS 2114, District Notification to Legally-Exempt Caregiver Enrollment Agency, within 15 days of the date the E-Notification referral was issued by CCFS.

G. CONFIDENTIALITY
Information in these reports, especially the “Adoption Reportable Events” report, is highly confidential, and districts are cautioned to take all appropriate measures to safeguard confidentiality. Access to these reports on COGNOS, in printed form, may only be given to local district staff members knowledgeable about the confidentiality issues. Districts must only release that information which is specifically allowed to be released, by regulation/or law, to the enrollment agencies. The OCFS 2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, has been designed to limit the information provided to the enrollment agency to precisely what the enrollment agency needs to know. Districts are not to share any information regarding indicated or unfounded reports in the Statewide Central Register of Child Abuse and Maltreatment. Enrollment agencies have no statutory or regulatory authority to act on such information.

H. RESULTS AND ENROLLMENT AGENCY DECISION
Results of the database checks must be shared with the Enrollment Agency using the OCFS 2114, District Notification To Legally-Exempt Caregiver Enrollment Agency, taking care to release only the designated information.

The enrollment agency is responsible for making all enrollment decisions in accordance with State law, Office of Children and Family Services regulations, and the present Guide to Enrollment. In accordance with OCFS policy, the enrollment agency must presumptively deny the provider when a provider initially discloses or is found through the child welfare database check to have had either a termination of parental rights or a child removed from their care by court order under FCA Article 10.
If a legally-exempt child care provider is presumptively denied enrollment based on these findings, the provider may request a review of extenuating circumstances to determine if an exception can be granted. Requests for review must be sent to the enrollment agency and recorded in CCFS prior to being assigned to the LSSD for review and determination.

I. THE COGNOS 10 REPORTS FOR SEARCHING THE LOCAL CHILD WELFARE DATABASE
SSDs may choose to use their own local database to conduct the verification for legally-exempt family and in-home child care providers, or they may utilize the OCFS-created pre-defined reports in COGNOS. Although the COGNOS reports for searching the Child Welfare Database were created specifically for this
The COGNOS Reports designed for the district to use for searching the child welfare database are:

1. Termination of Parental Rights Report
2. Adoption Reportable Events Report
3. Court-Ordered Article 10 Removal Report

These three predefined reports are based on either legal or adoption codes entered into CCRS, which tracks children in foster care placements. The reports identify cases for which a court-ordered Article 10 removal/placement under FCA Article 10 or a termination of parental rights under Social Services Law 384-b has been recorded in CCRS and which are assigned to the county initiating the COGNOS Reports. The reports do NOT name the individual responsible for the Article 10 removal or TPR. Due to the nature of CCRS as a child-specific database which does not link an activity to a named adult, the reports must be used in conjunction with other verification steps to accurately determine a legally-exempt family or in-home child care provider's local child welfare history.

1. Requirements for Staff Assigned to Review the COGNOS 10 Reports

Information on the COGNOS reports, especially the “Adoption Reportable Events” report, is both highly confidential and technical. Therefore, any person assigned by the district to review the reports must:

- Understand CCRS codes, legal activities and adoption activities. Certain interpretation and verification steps are prerequisites for determining whether the child care provider was the person at fault for the TPR or removal, or was the child that was removed, or was some other person affiliated with the child’s case. The CCRS coding guide can be found at [http://ocfs.state.nyenet/it/GeneralResources/CCRSDefault.asp](http://ocfs.state.nyenet/it/GeneralResources/CCRSDefault.asp).

- Have access to view the family court orders or other local documentation which establishes the responsible party for the court-ordered removal or TPR.

- Understand confidentiality issues pertaining to foster care and adoption information. The district must secure any saved and/or printed reports to prevent viewing by unauthorized individuals, and dispose of hard copies of reports appropriately.

2. Running the COGNOS 10 Reports

To access the COGNOS 10 Reports, staff members conducting the search must have the following:

- OCFS Data Warehouse access. If not an OCFS Data Warehouse user, the staff member’s security coordinator will need to request access on their behalf by sending an e-mail to the Data Warehouse team at: data.warehouse@ocfs.state.ny.us.
• CONNECTIONS "Standard Access" and "Access All District" assigned by the staff member’s security coordinator.

To understand and accurately interpret the COGNOS reports, users must have:

• COGNOS Report descriptions providing technical descriptions of each COGNOS report, which are available in COGNOS;
• CCRS coding guide to interpret the codes; and
• The present chapter from this Guide to Enrollment.

3. Required Steps for Conducting the COGNOS 10 database checks

Identifying all possible case matches on the COGNOS reports requires conducting a careful preliminary search on the legally-exempt family or in-home child care provider’s name in the Welfare Management System (WMS) to retrieve possible case names, numbers and related case compositions. Importantly, such a search requires flexibility because a relevant case listed on the COGNOS report may exist under a name other than the legally-exempt family or in-home child care provider’s. For example, since service case-naming conventions vary from county to county, a foster care case may be named after the mother while an adoption case may be named for the child who has been freed for adoption.

• Search WMS on the legally-exempt family or in-home child care provider’s name, date of birth and social security number (if known).

• Identify services cases associated with the legally-exempt child care provider that have a foster care component

• Record or print the services case number(s) and list of names for each case. This list is necessary to search all listed individuals to find additional cases.

• After obtaining any necessary information from WMS, open COGNOS and click on My Home.

• On the upper left-hand side of the screen, click on the OCFS Data Warehouse tab. This calls up a list.

• Select Division of Child Care Services to produce a list of reports along with their descriptions.

• Run each report according to the instructions for the specific report.

• Review the results.

• Verify the result and determine whether the provider has a relevant history.

• Notify the Enrollment Agency.

A) Court-Ordered Article 10 Removal Report

This report lists cases identified with a given county by CCRS that contain legal codes for court-ordered removals and placements made under FCA Article 10.
Each case entry includes a case ID and a case name that may match the foster care case IDs or names found in WMS that are affiliated with the legally-exempt family or in-home child care provider. The activity date of the “legal activity” is the date the “removal order” or “placement order” was issued.

(1) SEARCH FOR A MATCH.

Search criteria for this report can be specified in one of the following ways.

1. **By WMS service case number.** Remember that when searching by case number, only results attached to that particular case are displayed. Searching the children’s names and the names of the other individuals listed in the case composition may lead to additional results. Using the service case numbers obtained for the legally-exempt family or in-home child care provider in WMS can yield a matching number under the column labelled “Case ID”. Clicking on the Court-Ordered Article 10 Removal Report will yield a prompt page; type the Case ID into the appropriate window and click on the Finish button. After finding a match based on the services case number, proceed to Step B.

2. **By Case Name.** Using the list of names found in the WMS case composition enables users to search for a match under the “Case Name” column.

Clicking on the report name to run the report yields a prompt page. Type the Case Name in the appropriate window, using either upper case or lower case letters, and click on the Finish button. Since different districts use different naming conventions, searches may not produce the results expected when entering the full name, so for best results, type only the first name and then search only the last name when using this search method. It is important to search all members listed on the WMS case composition in this manner, to find all associated cases.

The report returns all Case Names that contain the text entered. Once the results appear, use the scroll bar along the right margin to move up and down within a particular page, and use the Page Up and Page Down hyperlinks at the bottom of the screen to move between pages of the report. If finding a match based on the Case Name, users then need to determine if the legally-exempt family or in-home child care provider is or was a member of that case by searching further into the case composition. If the legally-exempt family or in-home child care provider is listed in the case composition, proceed to Step B.

1 Cases found in the COGNOS search are related to the legally-exempt provider but a match does NOT mean the provider is the culpable party in the court-ordered removal or termination of parental rights, but only that the provider is somehow affiliated with the case.
(2) **DETERMINE WHETHER THE CHILD CARE PROVIDER IS THE CULPABLE PARTY IN THE CASE(S).**

When finding related cases, reviewers must determine whether the provider was the person at fault in the removal/placement using local records and/or any external court files. Providers named as the “respondent” on court petitions for court-ordered removals can be considered a responsible party, and culpable. If the legally-exempt family or in-home child care provider was an adult or could have been a parent at the time of the activity, reviewers must inspect local records to determine whether the provider was the “respondent” in the court matter and whether the child was removed from the provider’s care or another adult’s care. In some instances providers may be able to be ruled out, for example, if the provider was a minor and too young to be a parent at the time of the event. Determine the provider’s age at the time of the legal activity by comparing the legally-exempt child care provider’s date of birth and the “activity date.”

(3) **INTERPRET THE RESULTS.**

Using local records, confirm the legally-exempt family or in-home child care provider’s role and whether the provider meets the enrollment requirement for the history of court-ordered removal of a child under FCA Article 10. Any legally-exempt child care provider who was the respondent in a proceeding under FCA Article 10 that resulted in a court order removing or placing a child does not satisfy the enrollment requirement. Additional information on making this determination is found in 05-OCFS ADM-03 attachment A.

B) Termination of Parental Rights Report

This report lists cases identified with a given county by CCRS that contain legal codes for children’s foster care placements affiliated either with termination of parental rights adjudications or appeals of the same. Each case entry includes a case ID and a case name that may match a foster care case ID or name found in WMS to be affiliated with a legally-exempt family or in-home child care provider. In this instance, the activity date of the “legal activity” is the date the order terminating parental rights was issued.

(1) **SEARCH FOR A MATCH BY CASE NUMBER OR NAME.**

Follow the search instructions given previously for the Court-Ordered Article 10 Removal Report.

(2) **DETERMINE WHETHER THE CHILD CARE PROVIDER IS THE CULPABLE PARTY IN THE CASE(S).**

When finding related cases, reviewers must determine whether the provider was the person at fault in the termination of parental rights or whether another person’s parental rights were terminated. If the legally-exempt family or in-home child care provider was an adult or could have been a parent at the time of the activity, reviewers must inspect local records to determine whether the termination of parental rights names the provider as “respondent;” if so, the provider is considered a responsible party, and culpable.
Just as described previously, some providers may be able to be ruled out, for example, if the provider was a minor and too young to be a parent at the time of the termination of parental rights. For such an evaluation, determine the provider’s age at the time of the legal activity by comparing the legally-exempt child care provider’s date of birth and the “activity date”.

(3) *INTERPRET THE RESULTS.*

Any legally-exempt family or in-home child care provider whose parental rights have been terminated pursuant to SSL 384-b does not satisfy the enrollment requirement and must be presumptively denied enrollment. Any provider granted a stay of an order terminating parental rights or a successful appeal of such an order is considered to have had a termination of parental rights. Such providers may request a review of extenuating circumstances, upon having their enrollment denied or terminated, by submitting a timely written request to the EA which rebuts the denial/termination of enrollment and presents evidence of either the stay or successful appeal of the termination of parental rights. A higher appellate court may issue a stay of the court-ordered termination of parental rights pending appeal. A stay prevents enforcement of the court order pending the disposition of the appeal. This information will be considered only after a denial of enrollment, if the provider requests a review of extenuating circumstances.

C) Adoption Reportable Events Report

This report represents yet another avenue for seeking information on terminations of parental rights, identifying all cases associated with a given county by CCRS that contain at least one legal parent whose parental rights have been terminated. In this report’s results, both the mother and father show a coding entry even if only one parent had a termination of parental rights. Consequently this review requires an inspection of the codes to determine whether the mother, the father, or both parents had their parental rights involuntarily terminated. In turn, this requires that reviewers have a good understanding of CCRS to accurately interpret the codes and determine which legal parent had the termination of parental rights.

(1) **SEARCH FOR A MATCH BY CHILD’S NAME.**

A commonly used naming convention for adoption cases is to name the case after the child being freed for adoption. Users should not expect to find the name of the person being searched for listed as a “case member” on these cases.

Using the list of children affiliated with the legally-exempt child care provider’s past services cases found in WMS, search for matches under the “Case Name” column. When a match is found, proceed to Step B.

(2) **DETERMINE WHETHER THE CHILD CARE PROVIDER IS THE CULPABLE PARTY IN THE CASE(S).**

Reviewers need to be familiar with CCRS codes used in order to accurately interpret this report. For each parent, the report lists a code specifying the legal
means used to free the child. Review the data returned for the identified case, then use the Adoption Activity Codes and the Adoption Coding Tables in the CCRS Coding Guide to determine if the method used to free for adoption (by reviewing the code listed) for each parent is a termination of parental rights or another method. *Only the termination of parental rights codes are relevant.* In order for a termination of parental rights to have taken place, one of the following codes/reasons of the termination must be specified: 2B Technical Abandonment, 2C Permanent Neglect, 2D Mental Illness, 2E Retardation, 2F Repeated Child Abuse or 2G Severe Child Abuse. Note that although one parent may have had their rights terminated, that does not mean that the other parent had their rights terminated as well. One parent may have voluntarily surrendered their rights, in which case they would not be considered a “hit” based on the Child Welfare Database Check. It is necessary to determine which parent had their rights terminated.

**(3) INTERPRET THE RESULTS.**

Any legally-exempt family or in-home child care provider *identified as the respondent* in a termination of parental rights proceeding pursuant to SSL 384-b and who has had his or her parental rights terminated does not meet the enrollment requirement.

**4. Contacts**

For help in reviewing and interpreting results from these reports, or programmatic information, contact Ann Haller at 518 408-0759, or e-mail: Ann.Haller@ocfs.ny.gov

For technical assistance in using the Data Warehouse and the COGNOS 10 Reports, E-mail your questions to: data.warehouse@ocfs.state.ny.us.