

OCFP Office of Child and Family Policy	Department of Children and Family Services	
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	Distribution: Licensing Staff (L)	
	Key Words: 89 IAC 406, Licensing Standards for Day Care Homes, capacity, assistant, children.	
	Approved by: 	

Interpretation

Questions: **May a licensed day care home with a full time assistant care for 4 additional children during the day?**

May school age children of a day care home provider be counted in the extended capacity of 4 additional children for before and after school?

Applicable To: **Day Care Home and Group Day Care Home Providers**

Policy Citation: **Child Care Act of 1969**

"Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household.

(Source: Child Care Act of 1969 (225 ILCS 10/2.18))

Section 406.2 Definitions

"School age" means children from 6 to 12 years of age and 5 year olds who are in full-day kindergarten.

Section 406.13 Number and Ages of Children Served

- a) The maximum number of children under the age of 12 cared for in a day care home by a caregiver alone shall be 8. The maximum number includes the caregiver's own children, related children and unrelated children under age 12 living in the home.



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- b) A caregiver alone may care for:
- 1) A mixed age group consisting of:
 - A) Up to 8 children under the age of 12, of which
 - B) Up to 5 children may be under the age of 5, of which
 - C) Up to 3 children may be under 24 months of age.
 - 2) A mixed age group consisting of:
 - A) Up to 8 children under the age of 12, of which
 - B) Up to 6 children may be under the age of 5, of which
 - C) Up to 2 children may be under 30 months of age.
 - 3) A school age group consisting of 8 school age children, as defined in Section 406.2.

- c) A caregiver and an assistant under age 18 may care for:
- 1) One of the groupings in subsection (b) and 4 additional children who are attending school full-time; or
 - 2) A total of 8 children under 5 years of age of which up to 5 children may be under 24 months of age.

Care provided for the additional before and after school children is limited to children who attend school full-time and it is limited to before and/or after school, holidays, weekends, during unforeseen school closings, and during the summer.

- d) A caregiver and an assistant 18 years of age or older may care for:
- 1) The groupings in subsection (b), and 4 additional children who are attending school full-time; or
 - 2) Eight children under 5 years of age of which up to 5 children may be under 24 months of age, and 4 additional children who are attending school full-time.

Care provided for the additional before and after school children is limited to children who attend school full-time and it is limited to before and/or after school, holidays, weekends, during unforeseen school closings, and during the summer.

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- e) The maximum number of children receiving night care shall be 8 children and the groupings shall be consistent with subsections (b) and (c) of this Section.
- f) Any children under age 12 living in the home who are receiving home schooling shall be counted in the maximum of 8 children in subsections (b), (c), and (d), unless another parent or caregiver is providing the schooling apart from the day care area and the caregiver has no responsibility for care or supervision or schooling of the children during the hours home day care is provided.

Section 408.65 Number and Ages of Children Served

- a) A caregiver alone

The maximum number of children under the age of 12 cared for in a group day care home by a caregiver alone shall be 8 except when all the children are school age. The maximum number includes the caregiver's own children, related children and unrelated children under age 12 living in the home. A caregiver alone may care for children in accordance with the following age groupings:

- 1) A mixed age group consisting of:
 - A) Up to 8 children under 12 years of age, of which
 - B) Up to 5 children may be under 5 years of age, of which
 - C) Up to 3 children may be under 24 months of age; or
- 2) A mixed age group consisting of:
 - A) Up to 8 children under 12 years of age, of which
 - B) Up to 6 children may be under 5 years of age, of which
 - C) Up to 2 children may be under 30 months of age; or
- 3) Up to 8 pre-school children if no child is under age 3; or
- 4) Up to 12 school age children as defined by Section 408.5.

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- b) A caregiver and an assistant 18 years of age or older

The maximum number of children under the age of 12 cared for in a group day care home by a caregiver and an assistant shall be 12 except when extended capacity is considered under condition in Section 408.65(c). The maximum number includes the caregiver's own children, related children and unrelated children under age 12 living in the home. The caregiver and assistant 18 years of age or older may care for children in accordance with the following age groupings:

- 1) 12 children between 3 and 6 years of age. The assistant must be present when more than 8 such children are present; or
- 2) No more than 12 children under 12 years of age of which no more than 6 children may be under 30 months of age, of which no more than 4 children may be under 15 months of age.

- c) Extended capacity

- 1) A caregiver, a full-time assistant and a part-time before and/or after school assistant is employed may care for 4 additional children who are attending school full-time. The assistant shall be present at all times when school children are present and there are more than 12 children in the home.
- 2) Care provided for the additional before and after school children is limited to children who attend school full-time and it is limited to before and/or after school, holidays, weekends, during unforeseen school closings, and during the summer.

- d) The maximum number of children receiving night care shall be 12 children and groupings shall be consistent with subsections (a) and (b) of this Section.

- e) In the event of a brief unforeseen school closing, the caregiver may accept one additional school-age child and still be considered in compliance with the capacity requirements, as long as the total number of children under age 12 in the home does not exceed the maximum of 16 children. The caregiver shall maintain a record of the dates, names and ages of the children for whom this care was provided.

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The Department must prescribe and publish minimum standards for licensing that apply to the various types of facilities for child care defined in this Act and that are equally applicable to like institutions under the control of the Department

(Source: Child Care Act of 1969 (225 ILCS 10/7(a))

Discussion:

Question 1: Several day care home providers argue that a provider that employs a full time assistant during the day is not a “caregiver alone” and thus should be able to care for up to 4 additional children during the entire day (including school days).

Question 2: Several providers argue that the provider’s own school age children who are enrolled in school full time should be counted in the extended capacity for before and after school and not counted in the maximum capacity of 8 children. They submit that because the provider’s school age children are being cared for by another adult in school, the situation is similar to when a student is being home schooled and taught by another adult as mentioned in Section 406.13(f).

The language in Section 406.13(a) of the licensing standards is clear: a provider’s own school age children under the age of 12 shall be counted in the maximum capacity of 8 children, and not in the extended capacity of 4 additional children for before and after school care.

Sections 406.13(c), (d) and (f)) of the licensing standards provide that, whether a provider has a part-time or full-time assistant, care provided for up to 4 additional (extended capacity) children who attend school full-time is limited to before and/or after school, holidays, weekends, during unforeseen school closings, and during the summer. Having an assistant on school days during school hours does not increase the number of children that can be cared for during the day beyond the maximum 8 children.

Section 406.13(f) is unambiguous, and applies only to children who are receiving home schooling. The section does not apply to children who attend a public or private school.

The Department licenses group day care homes pursuant to Rule 408, the standards for which provide that a provider can care for up to 12 children during the day with a full time assistant (Sec. 408.65(b)). With an additional part-time assistant, the provider can care for 4 additional children before and after school (Sec. 408.65(c)).

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A provider with a full-time assistant wishing to care for more than 8 children on school days during school hours should apply for licensure as a group day care home.

Response:

A licensed day care home with a full time assistant may care for 8 children on school days during school hours, and may care for 4 additional children who attend school full time before and/or after school, on holidays and weekends, during unforeseen school closings, and during the summer.

A provider’s own school age children shall be counted in the maximum capacity of 8 children and not in the extended capacity of 4 additional children for before and after school care.

A provider with a full-time assistant wishing to care for more than 8 children on school days during school hours should apply for licensure as a group day care home pursuant to Rule 408.