



March 2009

MANAGING IN THE NEW FUNDING ENVIRONMENT:

FREQUENTLY ASKED QUESTIONS AND ANSWERS FOR ACS-FUNDED CHILDCARE AND HEAD START PROGRAMS

On February 20th and February 24th, Lawyers Alliance for New York participated in a series of Roundtable Discussions sponsored by Child Care, Inc. to discuss changes proposed by ACS in the funding of childcare and Head Start programs. Below are answers to a number of questions that were raised at the Roundtables.

QUESTIONS ABOUT ACS FUNDING CHANGES

Do the procurement rules allow the New York City Dept. of Education (DOE) to exclude bidders with an ACS contract from applying for a UPK contract?

It is allowable for DOE to establish the terms of the Request for Proposal (RFP) and neither the DOE's Standard Operating Procedures nor the city procurement rules prohibit an agency from excluding vendors that have contracts with other city agencies.

What is the relationship between collectively bargained staff salaries and actual personnel costs for programs with both ACS-funded childcare and/or Head Start and UPK programs?

Employees must be paid for work in accordance with the collective bargaining agreement (childcare or Head Start) under which the work is performed. The extent to which compensation for UPK-funded services performed outside of an employee's normal workday can be credited for benefits purposes is uncertain. With respect to staff salaries, anticipated increases due to teachers' attaining higher certification levels should be reflected in the budget, as these salary increases are mandated by the collective bargaining agreement.

How can we get a copy or more information about the "intra-city agreement" that exists between the DOE and the New York City Children's Services (ACS) to provide UPK funding?

Lawyers Alliance for New York is currently working to obtain a copy of the intra-city agreement between the DOE and ACS.

Under New York's Freedom of Information Law, individuals have a right to access the records maintained by state and local government agencies, including ACS and DOE.

The request must be made in writing (e-mail is acceptable), and must "reasonably describe" the record requested.

Once the agency receives a FOIL request, it must respond within five business days by making the record available, denying access in writing, or furnishing written acknowledgement of receipt and an approximate date on which the request will be denied or granted. The agency must also provide copies of the record on request, however it may charge a reasonable fee for copies.

For more information and sample request letters, see "Your Right to Know" by the Committee on Open Government, available at www.dos.state.ny.us/coog/Right-to-know.html

FOIL requests submitted to the DOE should be addressed to:

Records Access Officer
NYC Department of Education
52 Chambers Street, Room 308
New York, NY 10007
By email: FOIL@schools.nyc.gov (with "FOIL Request" in the subject line)

FOIL requests submitted to the ACS should be addressed to:

Records Access Officer
NYC Administration for Children's Services Legal Counsel Unit
150 William Street 18th Floor,
New York, NY 10038

QUESTIONS ABOUT PARENTAL CHOICE

If ACS no longer provides childcare services for five year olds, what choices do parents have for childcare?

Parents who do not meet public assistance eligibility requirements for childcare services may either pay the full-fee (non ACS-subsidized) for their five year old to enroll in childcare or enroll the child in kindergarten.

Under the New York Education Law, a child over five years old is entitled to attend a public school in the school district where he or she resides. A child must become five years old before December 31 of the school year he or she begins school. Districts without a kindergarten program must admit five year old children to the first grade.

A child may still attend kindergarten even if parents missed the March 6th application deadline for kindergarten enrollment. Parents may visit their school of choice or their borough enrollment center to inquire about available seats and complete the appropriate paperwork for September 2009 enrollment. Information about kindergarten enrollment can also be found on DOE's website:

<http://schools.nyc.gov/ChoicesEnrollment/Elementary/default.htm>

Is a child entitled to transportation to and from kindergarten?

Under New York Education Law, eligibility for transportation is determined by two factors: (1) the child's grade level, and (2) the distance the child lives from the school. Kindergarteners are eligible for free transportation if they reside ½ mile or more from their school. Parents may contact the school directly to determine bus routes and stops. Additional information is available on the DOE website:

<http://schools.nyc.gov/Offices/Transportation/ParentResources/GeneralEducationEligibility/default.htm>

Parents may also contact the Office of Pupil Transportation: (718) 392-8855.

What are the rights of parents eligible for public assistance? Do they have a choice as to the type of childcare provided by ACS?

Under the New York Social Services Law, families receiving public assistance are guaranteed childcare services for children under 13 years old under certain circumstances. In general, families are eligible for financial assistance for childcare if they meet the state's low-income guidelines and need childcare to work, look for work, or attend employment training. Families are *guaranteed* childcare if they are on public assistance and *need* childcare in order to meet any work participation requirements.

The New York Social Services Law does not address the rights of a parent of a child that is kindergarten eligible. However, it is possible that ACS may take the position that childcare is not *necessary* to meet any work participation requirements because the child may enroll in kindergarten. After school childcare may still be considered necessary and provided by ACS for families that qualify for public assistance.

Under the New York Code of Regulations, childcare services means care provided by a day care center, family day care home, or group family day care home. Families that are guaranteed child care services under the Social Services Law are not entitled to receive services from a particular day care center or family home care provider. Parents may apply to programs of their choice, but there is no guarantee that their child will be able to attend that program.

Parents can find more information about ACS subsidized day care on their website (http://www.nyc.gov/html/acs/html/child_care/child_care_eligibility.shtml) or by calling 311.

Does a parent, whose child is enrolled in a full-day childcare program blending ACS and UPK funding, have to pay the full ACS fee?

ACS has stated that it expects to increase parent fees and will distribute a fee-increase notification to parents in April explaining the changes that will occur. The increased fees will continue to be based upon the family income and will be equivalent to no more than 12% of the family's income. ACS has not, however, stated that it will make any reductions to the fee structure based on blended UPK and ACS funding.

QUESTIONS ABOUT LOBBYING, FUNDRAISING, AND BOARD OVERSIGHT

At what point do advocacy efforts become subject to regulations about lobbying?

If your organization is considering engaging in advocacy efforts to prevent or minimize funding cuts, you should be aware that attempts—both indirect and direct—to influence agency rules and regulations are considered lobbying. Most charitable organizations can engage in some lobbying activity, however, engaging in a substantial amount of lobbying may jeopardize your organization’s tax-exempt status.

Local, state, and federal lobbying restrictions may apply if your organization spends \$2,000 or more per calendar year on lobbying or if lobbying constitutes a substantial part of your organization’s activities. Remember to include the value of staff time spent in lobbying activities, as well as in-kind contributions of services, in determining whether your organization has reached the \$2,000 threshold.

If your organization intends to engage in a substantial amount of lobbying, please contact Elizabeth Perez at Lawyer’s Alliance, 212-219-1800 ext. 232, for guidance in complying with lobbying laws.

What are the rules about fundraising by Head Start staff?

Childcare providers can fundraise in order to supplement Head Start program funds so long as i) no Head Start funds are used for fundraising activities and ii) no resources (equipment, facilities, etc.) are used for fundraising activities during the program’s normal work hours. Head Start staff members may not engage in fundraising activity during work hours. Head Start staff members may volunteer for fundraising activities during non-work time, however, be advised that volunteer services by staff may raise wage and hour law issues and providers should consult an attorney about such activities. This restriction does not apply to the Head Start governing board – only to employed staff members. A Head Start governing board may participate in fundraising activities generally without any time restrictions (except those relating to use of program facilities and equipment during operation hours).

Revenue generated from fundraising activities that are conducted “*under Head Start’s auspices*” must be used in a manner consistent with the Head Start’s mission and must be treated as program income and used in accordance with 45 CFR Part 74.24 or Part 92.25. “*Under Head Start’s auspices*” means fundraising by a Head Start program designed to generate revenue for that program; the people participating in the fundraising activity are doing so to support that Head Start program. The mere inclusion of the phrase Head Start in an organization’s name does not, in and of itself, mean that any and all fundraising activities performed by that organization would be subject to the Head Start fundraising rules. Similarly, if the organization simply states that it operates a Head Start program but does not solicit contributions explicitly for the betterment of the Head Start program, it would not be subject to the fundraising rules. *Note: Head Start programs that have an ACS contract should consult their contract to determine if the more stringent ACS requirements described below apply to their programs.*

To discuss your Head Start's fundraising plan, please contact Judith Moldover at 212-219-1800, ext. 250, or jmoldover@lawyersalliance.org

Are there restrictions concerning fundraising by ACS-funded childcare programs?

Yes. The ACS contract prohibits any funds payable under the ACS contract and any materials, property or services contributed by ACS to be used for "any fund-raising expenses". The ACS contract does not define what is considered a "fund-raising expense." Moreover, unlike the Head Start regulations, the ACS contract prohibits the use of any materials, property or services contributed by ACS in connection with fundraising expenses, regardless of whether such use is during or outside of normal operation hours of the program. This prohibition would likely include the use of any childcare facility that is under an ACS direct lease to conduct fundraising activities.

How can the governing board of a childcare or Head Start program provide greater assistance to the childcare or Head Start program?

To facilitate greater assistance and support to the Head Start or childcare program, the governing board should consider forming a Head Start or Childcare Committee of the board. Such a committee makes it easier to make decisions more regularly and with greater ease about program decisions. The committee can also serve an important role in the fundraising activities for Head Start or childcare programs.

The governing board can establish and give authority to the childcare or Head Start committee in the bylaws, certificate of incorporation or resolution of the board. Such committees are typically governed by a document called a "committee charter" that states the purpose, authority and responsibilities of the committee. A Childcare or Head Start Committee may have the *full authority* of the board concerning decision-making, oversight and compliance with regulations and program standards.

QUESTIONS ABOUT ECONOMIC STIMULUS AND BUDGETARY SHORTFALLS

How will the federal economic stimulus package benefit childcare and Head Start programs?

Congress passed the American Recovery and Reinvestment Act on February 17, 2009 in an effort to jumpstart the economy. The Act incorporates several different funding streams; some money will be paid out by federal agencies, some by state governments, and some money will go directly community organizations. Federal agencies have just begun to announce how they will distribute their stimulus funds, and we expect more information to be available in the coming weeks.

New York State also has not yet announced how it will distribute its funds. We do know that New York has received the following grants, which may affect childcare:

Child Care Block Grant \$100,000,000
Community Service Block Grant (CSBG) \$110,000,000

Community Development Block Grant (CDBG) \$103,000,000
Head Start & Early Head Start \$130,000,000
State Fiscal Stabilization - Education Restoration \$2,500,000,000
State Fiscal Stabilization - Other Government Services \$556,000,000

Full information regarding New York's recovery funds is available at www.economicrecovery.ny.gov. We are hopeful that some of these funds will be used to offset some of the state's budget shortfalls. However, Governor Patterson has stated that the stimulus funds could only cover a fraction of the state's deficit.

For detailed coverage of the federal stimulus package and its effect on not-for-profit organizations, including childcare and Head Start providers, see Fred Scaglione, *Grab Your Shovels!* New York Nonprofit Press, March 09, available at www.nynp.biz.

The state has created a website that allows individuals and groups to submit proposals for funding, available at <http://www.economicrecovery.ny.gov/system/proposal.cfm>.

You can get more information and updates about the American Recovery and Reinvestment Act at www.recovery.gov.

Are there other legal resources that might help organizations cope with the projected budgetary shortfalls?

The current economic climate and the projected budgetary shortfalls at all levels of government will mean that most sectors dependent upon government funding will experience budget cuts. Now is the time to create a contingency plan to prepare your organization to operate on a reduced budget. A well-crafted contingency plan will minimize the budget cuts' effect on your organization's programming. It may involve reducing staff, renegotiating a lease, or sub-letting part of your organization's space.

Lawyers Alliance has published materials advising not-for-profit organizations on how to create a contingency plan. The following materials are available on our website:

- Board Talking Points: [Assigning or Subletting Your Organization's Space](#)
- Board Talking Points: [Rollback Employee Benefits](#)
- Board Talking Points: [Real Estate Tax Exemption for Nonprofit Organizations](#)
- Board Talking Points: [Tapping Cash Reserves](#)
- Board Talking Points: [Assert Fiscal Oversight Responsibility](#)