

TO: Early Learning Coalitions
FROM: Matt Mears, Chancellor
Department of Early Learning
Florida Department of Education
DATE: February 9, 2022
RE: Use of CCDF Funds by Sectarian Child Care Providers

Congress passed the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) and the American Rescue Plan Act (ARP) to address the pandemic's impact on the economy and public health sector. These statutes provide additional relief funding through the Child Care and Development Fund (CCDF) to support the early learning and child care market. The Florida Department of Education, Division of Early Learning (DEL), in consultation with outside counsel Brustein & Manasevit, PLLC, offers guidance on the use of CRRSA and ARP CCDF funds through direct and indirect sources by private sectarian child care providers.

Question 1. Can sectarian child care providers¹ use CCDF vouchers or child care certificates for sectarian purposes and activities²?

Yes, a sectarian child care center may use CCDF provided through parent certificates or vouchers for sectarian purposes and activities. In general, direct recipients of CCDF grants or contracts cannot expend those funds for any sectarian purpose or activity, including sectarian worship and instruction. 45 CFR 98.56(d). Funds provided through child care certificates or vouchers, however, are considered assistance to the parent, rather than assistance to the provider. 45 CFR 98.2; 98.30(c)(6). Because certificates are assistance to the parent, funds provided through child care certificates “may be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction.” 45 CFR 98.30(c)(5); 98.56(d). Thus, when parents pay for child care services through DEL-provided certificates, sectarian child care centers can use CCDF to fund child care programs that include sectarian activities or worship.

Question 2. Can sectarian child care providers that receive direct CCDF grants or contracts use those funds for sectarian purposes and activities?

No, sectarian child care providers that receive direct CCDF grants or contracts are prohibited from expending those funds on sectarian purposes or activities. Unlike the CCDF vouchers and child care certificates described in Question 1 above, direct grants and contracts “may not be **expended** for any sectarian purpose or activity, including sectarian worship or instruction.” 45

¹ For purposes of this memorandum, a *sectarian child care provider* means “religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content[.]” 45 CFR 98.2. These centers are sometimes called “religious exempt” or “faith-based” providers.

² The phrase, *Sectarian purposes and activities* means “any religious purpose or activity, including but not limited to religious worship or instruction[.]” 45 CFR 98.2.

CFR 98.56(d). This does not, however, completely bar sectarian child care providers from engaging in sectarian activities or worship.

For most HHS programs, an organization that receives financial assistance through grants, contracts, or cooperative agreements is prohibited from engaging in any explicitly religious activity. 45 CFR 87.1(a). If the organization conducts sectarian activities, they “must be offered separately, in time or location, from the programs or services funded with direct financial assistance.” 45 CFR 87.3(b). CCDF programs are exempted from these regulations and requirements, however. See 45 CFR 87.2.

Because 45 CFR Part 87 does not apply to CCDF grants and contracts, sectarian child care providers could continue to incorporate sectarian activities or worship as part of their child care services but cannot pay for any portion of those activities with CCDF funds. Providers could accomplish this by moving religious instruction to the end of the program or by determining the portion of time spent on unallowable sectarian activities and ensuring that these unallowable hours are not charged to CCDF programs. Providers should maintain documentation of how they determined and charged the allowable and unallowable activities in their child care program. 45 CFR 75.405(d).

Question 3. If a sectarian child care provider receives a CCDF grant or contract, do the CCDF non-discrimination requirements apply?

Yes, sectarian child care providers that receive direct assistance through CCDF grants or contracts cannot discriminate in admission or employment based on religion. 45 CFR 98.48 & 98.49. Generally, child care providers that receive direct assistance cannot discriminate in admissions against any child on the basis of religion. 45 CFR 98.48(a). A provider may, however, select children for participation in non-directly funded child care slots (i.e. funded privately or through certificates) because those children participate on a regular basis in the other activities of the organization that owns the provider.

In addition, sectarian child care provider that receive direct assistance through CCDF cannot discriminate in employment of caregivers on the basis of religion. 45 CFR 98.49(a)(1). If two or more prospective employees are qualified for any position, the sectarian provider may choose to employ a prospective employee who is already participating on a regular basis in the other activities of the organization that owns the provider. 45 CFR 98.49(a)(2). Further a sectarian organization may require employees to adhere to religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol. 45 CFR 98.49(b).

Question 4. Do other nondiscrimination requirements apply to sectarian child care providers that receive CCDF grants or contracts?

Other nondiscrimination requirements are generally interpreted to be broadly applicable and may apply to programs that receive CCDF grants or contracts. For further guidance on other

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potentially applicable civil rights requirements, please see the HHS implementing regulations for each program:

Title VI of the Civil Rights Act of 1964: 45 CFR Part 80

Section 504 of the Rehabilitation Act of 1973: 45 CFR Part 84

Title IX of the Education Amendments of 1972: 45 CFR Part 86

The Age Discrimination Act of 1975: 45 CFR Part 91

In addition, the U.S. Department of Justice has published an FAQ about child care centers and the Americans With Disabilities Act available at <https://www.ada.gov/childqanda.htm>.

If you are unsure of whether any of the above nondiscrimination requirements apply to your specific entity or program, please consult your counsel.