

EXECUTIVE ORDERS

Executive Order No. 12: Representation of Child Care Providers.

WHEREAS, child care providers perform an essential service for working parents and guardians in this state by creating a safe, enjoyable and educational home-like environment for their children; and

WHEREAS, many of New York's children spend a significant part of their crucial, early years of development under the supervision of child care providers; and

WHEREAS, to promote the availability of affordable quality child care, it is in the public interest for New York to maintain a child care delivery system that fosters a multiplicity of quality child care options to deliver these vital services; and

WHEREAS, some child care providers receive compensation or benefits, or work in conditions, that may not be commensurate with the value of the work that they perform; and

WHEREAS, long hours, limited benefits and low pay for child care providers can drive them from the market, thereby limiting the availability of quality care; and

WHEREAS, the State of New York regulates certain child care providers, and provides social services districts with funding through block grants to assist low income families in purchasing child care; and

WHEREAS, many child care providers lack an organized voice in governmental decisionmaking on issues that impact the manner in which they carry out their profession; and

WHEREAS, creating a framework for child care providers to secure representation can help improve the environment in which they work, and the benefits and funding that they receive; and

WHEREAS, child care providers should be given the option to organize themselves and select representatives for the purpose of discussing with the State the conditions of their employment, the stability, funding and operation of child care programs, and the expansion of quality child care;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

1. For purposes of this Order, "child care provider" shall mean an operator of a group family day care home as defined in Social Services Law § 390(1)(d) or a family day care home as defined in Social Services Law § 390(1)(e), or an individual providing child care in a residence to one or more children who are receiving child care assistance under Title 5-C of the Social Services Law under circumstances where the individual is not required to be licensed or registered under Social Services Law § 390, or to be licensed under the Administrative Code of the City of New York.

2. Solely for purposes of this Order, New York's child care providers shall be divided into four representation units: (a) all child care providers in New York City who are paid from funds administered by New York City pursuant to Social Services Law § 410-u; (b) all registered or licensed child care providers in New York City who are not paid from funds administered by New York City pursuant to Social Services Law § 410-u; (c) all registered or licensed child care providers

outside New York City; and (d) all child care providers outside New York City who provide child care in a residence to one or more children who are receiving child care assistance under Title 5-C of the Social Services Law under circumstances where the individual is not required to be licensed or registered under Social Services Law § 390.

3. For the purposes of this Order, New York State shall recognize as the representative of the child care providers in any unit set forth in Paragraph 2 of this Order such representative as is designated by a majority of the providers in the unit.

4. Any prospective representative may demonstrate majority designation by submitting authorization cards approving its representation, signed within twelve months of their submission by the majority of providers comprising the unit, to the State Employment Relations Board or any successor agency ("SERB") for the purpose of such review. SERB or its designee shall review the cards and, if it determines that they constitute at least 50 percent plus one of the providers in the unit at issue, shall certify the party making the application as the designated representative of that unit. If SERB determines that the cards constitute at least 30 percent of the providers in the unit at issue, but no more than 50 percent, it shall conduct an election in a manner directed by SERB, and consistent with its standard election procedures, to determine if the majority of members designate the prospective representative.

5. Any relevant state agencies, including the Office of Children and Family Services ("OCFS"), shall provide SERB with such reasonable information as is necessary in determining the size of the units and the identities of their members, subject to any limitations on dissemination of such information that the agency believes necessary to protect confidentiality, or as otherwise required by law.

6. Any party seeking to challenge the status of a unit representative designated under the procedures of this Order may submit information to SERB indicating that a majority of the unit wishes to be represented by a different representative, or do not wish to be represented under the terms of this Order. SERB shall determine whether the information provides a reasonable basis for such a conclusion. If SERB so determines, it shall adopt such process as it believes to be warranted to ascertain the majority's choice of representation, including by the submission of authorization cards or election, unless such process had been undertaken in the previous two years.

7. OCFS shall meet with designated representatives of those units of child care providers determined pursuant to the procedures set forth in this Order, either separately or jointly, for the purpose of entering into a written agreement to the extent feasible. The agreement may address the stability, funding and operation of child care programs; expansion of quality child care; and improvement of working conditions, including subsidies, benefits or payment, for child care providers. If the issues under discussion require the participation and approval of other state agencies, those agencies shall participate in the discussions. Nothing in this Order shall require that an agreement be reached on any such matters.

8. In the event that agreement is reached it shall be embodied in writing between OCFS and any other affected agency, and the designated representative for the applicable unit covered by the agreement. The agreement shall be binding on the State of New York, contingent upon the successful completion of such regulatory or legislative action as may be required to implement the terms of the agreement.

9. If any provisions of the agreement require legislative action, or require the appropriation of funds in order to be effective, the parties will jointly seek legislation or appropriation. If any provisions of the agreement require the adoption or modification of rules and regulations of any department or agency of State government to be effective, the department or agency shall seek the adoption or modification of such rules or regulations through appropriate regulatory action, as consistent with the New York State Administrative Procedure Act. In seeking such legislation or regulatory change, nothing in this Order shall bar the State and its agencies from applying, or require the State and its agencies to apply, the same terms contained in any agreement under this Order to any child care providers not represented by the unit(s) that signed the agreement, including child care centers, to the extent the State and its agencies deem appropriate.

10. In the event any dispute arises under the terms of this Order, on the application of any unit representative, OCFS or any other involved state agency, SERB may direct the parties to engage in non-binding mediation under such terms and conditions as it may deem appropriate.

11. Nothing in this Order shall:

- a. permit child care providers collectively to engage in any strike or work action to secure any right or privilege from the State or any of its agencies or political subdivisions;
- b. render any child care provider a state officer or public employee, or in any way imply any employer-employee relationship between the child care operator and the State or its subdivisions for any purpose, including but not limited to any public retirement system, membership in any public health insurance program, unemployment insurance, workers' compensation, disability coverage, New York Civil Service Law, or indemnification under New York Public Officers Law;
- c. alter in any way any current regulations, policies or procedures for health, safety, discipline, inspection or enforcement applicable to child care providers or programs, or otherwise interfere with any enforcement procedures of OCFS or any other agency, unless agreed to and enacted, in accordance with the provisions of this Order;
- d. interfere with the existing relationship between consumers and child care providers, including the existing rights of parents or guardians to choose their own provider, or to terminate that provider's services at any time;
- e. interfere with any ability that child care providers, or any organization that represents such providers, may otherwise have to meet or correspond with, or otherwise appear before, state agencies in regard to any matter of relevance, including any matter under discussion or set forth in any agreement between the agency and a unit representative; or
- f. create any contractual rights or obligations.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this eighth day of May in the year two thousand seven.

BY THE GOVERNOR

/S/ Eliot Spitzer

/s/ Richard S. Baum

Secretary to the Governor