

# Ontario private school and storefront daycares operate in legal loophole <sup>[1]</sup>

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*This article was part of a three part series on unregulated child care featured in the Toronto Star. See related links below for additional articles.*

## EXCERPTS:

With its bright blue façade and prominent sign on Broadview Ave., Mini Bluebird Montessori looks like many of the licensed child-care centres in Toronto - with one major difference.

Bluebird operates in a legal loophole, allowing it to avoid dozens of rules that limit staff-child ratios, mandate play space, govern food preparation and require annual inspections.

In fact, it isn't subject to any rules at all.

Bluebird operates under a grandfathered exception to Ontario's Day Nurseries Act, the law that governs child care in the province.

Its lawyer says it's a "school-based Montessori program," not a daycare. Mini Bluebird Montessori operates as a registered campus of Angel Academy Montessori school, located more than 15 km away on Kingston Rd., near Eglinton Ave. This association allows Bluebird to operate under the pre-1993 exception.

Such private-school-operated daycares such as these operate with no limit on the number of children they can care for, no child-staff ratio rules, no first aid, CPR or early childhood training and no government inspections.

"Why are they exempt from licensing?" asked child-care expert Martha Friendly. "Why should an older school be able to operate without oversight, but a new one needs to get licensed?"

Until 1993, preschool programs affiliated with private schools could exist without having to be licensed as a daycare. The government closed the loophole that year, but allowed existing programs to continue operating without a daycare licence.

Other unregulated daycares - in homes and in storefronts - have the same free rein, except for a single rule: no more than five children under age 10.

Ontario has licensed daycare spots for only about one in five Ontario children under age 12. It means about 80 per cent of Ontario children whose mothers work or study are cared for in a patchwork of unregulated settings, including unlicensed private schools, storefronts and home child-care businesses.

As with all unregulated care, the government doesn't know how many grandfathered private schools look after babies, toddlers and preschoolers without a licence.

Child-care advocates have been pushing for years to tighten up oversight and regulation, and hope the province will address some of these loopholes when it introduces legislative changes this fall.

Mini Bluebird Montessori cares for children as young as 12 months at its location on Broadview Ave., north of Danforth Ave.

"Montessori Schools and their associated teaching methodologies begin in infancy," the school's lawyer, Mark McMackin, wrote in a letter to the Star. All parents are made aware of the program's "special status" on school registration forms and parent information brochures, he added.

The Mini Bluebird Montessori Google+ website identifies the business as a "Daycare Centre." McMackin says the site was not set up by anyone at the school.

But this can be confusing for parents. Friendly points out other provinces, such as Nova Scotia, have banned unlicensed daycares from describing themselves as child-care centres, because it deceives the public into believing they are licensed and inspected.

McMackin would not disclose the number of children in care, nor the number of staff and whether they had CPR qualifications or background checks.

Ministry of Education inspection reports obtained through a Freedom of Information request, however, reveal an inspector found 23 children, all under age 3, in the program in February.

The inspector was acting on a complaint that there were too many children, not enough adults, diapers not being changed regularly and parents not being allowed to visit after 11:30 a.m.

The inspector found no evidence of mistreatment and concluded the Mini Bluebird was allowed to operate without a licence because of its affiliation with Angel Montessori. However, she notified Toronto Fire Services to follow up on a previous complaint about fire safety.

Child-care operations use a number of different names, like "preschool" or "nursery school," but they're all considered daycares under the law, unless they fall under the 1993 private-school loophole, according to Ministry of Education spokesperson Lauren Ramey.

#### Chabad Daycare Preschool

Driving past Chabad of Midtown's "preschool-daycare" on Bathurst St., south of St. Clair Ave, you can't miss the colourful, fenced-in playground. It would be easy for a parent to mistake it for a licensed daycare centre.

In its parent handbook, the daycare says that as part of the private Hebrew Chabad Schools, it is registered with the Ministry of Education. What it doesn't mention is that the daycare isn't licensed or inspected.

Program director D'vora Deutsch says the daycare operates legally without a licence because it is affiliated with Cheder Chabad elementary school, located more than 13 km away near Steeles Ave. and Dufferin St.

The daycare has only been at its present location for about 10 years, but brought the exception with them when it moved. They currently run buses back and forth between the two locations, Deutsch said.

The facility is regularly inspected by Toronto fire and public health officials, she said.

While she would not disclose the number of children or staff at the daycare, she said all employees have first aid and CPR certification.

Deutsch says she meets "regularly" with ministry officials and sees no reason to license the daycare, since they have extensive internal policies and procedures in place.

"We're under the law, so why would you change anything? We don't have any problem," she said. "Our parents are very familiar with that."

Chabad has had no complaints made against them in the last year.

The government only finds out about an unlicensed program, and only inspects, if someone complains. Of almost 300 complaints about unregulated daycare last year, 20 involved programs in private schools, according to documents obtained by the Star.

More than half of the private schools were found to be operating illegally; in other words, they were caring for more than five children without a licence and were not exempt under the 1993 policy.

Weak laws allow some daycares to mislead parents into believing they're regulated, says Friendly, who heads the Toronto-based Child Care Resource and Research Unit.

"They're masquerading as something they're not," she said.

"We don't inspect unregulated child-care arrangements and we have no way to know whether they're illegal or not," she said.

"When you look at the list of things that government inspectors check, they're quite thorough. . . . But in unregulated cases, no one outside the centre is making sure the boxes are being ticked off."

Many operators of unlicensed daycares say they offer high-quality care, but parents have to take them at their word.

This puts parents in the position of having to be their own inspectors, said Friendly, but "parents aren't legal experts and don't know when the regulations are changed or what the legislation is."

Private schools aren't the only places that appear to be licensed, but operate without any government oversight.

#### Play 'N Stay / Riverdale Playhouse

Play 'N Stay Childcare operates out of a storefront on Gerrard St. E. at Logan Ave., displaying a large commercial sign and children's artwork in the window.

Owner Gloria De Melo runs the operation - located on a shopping strip across from the Beer Store - as an unlicensed home daycare.

Business records show Play 'N Stay is a registered corporation and De Melo is its sole director.

Around the corner from Play 'N Stay, De Melo's partner, Sultan Jaffer, runs another storefront daycare, Riverdale Playhouse on Broadview Ave., which also operates as an unlicensed home daycare.

The two daycares operate separately, the owners say, though a Star reporter observed groups of children from both daycares go to a local park on a common play date.

Jaffer's daycare is also a registered corporation.

De Melo says she interviews potential parents on the premises and shows them her first aid and CPR certificates.

"They know I'm not licensed, that I'm a private daycare, and they know the reason why," she said, adding she is doing nothing illegal.

"It's better than a home daycare because everything's specialized for the children. It's not like a home that's crowded. Everything is dedicated to the kids."

De Melo looked into getting a licence, but said it would have required expensive renovations for an outdoor play area.

De Melo previously ran a daycare out of a house on nearby Withrow Ave. In 2007, down it was shut when police found 26 children on site after responding to a call alleging a 22-month-old child was bitten 18 times by another child.

De Melo was charged with criminal negligence causing bodily harm and operating a day nursery without a licence. The negligence charge was dropped, but De Melo pleaded guilty to operating an illegal daycare and was fined \$3,000, according to inspection documents.

The Ministry has the power to fine unlicensed daycare \$2,000 for every day they operate with more than five children.

Despite this record, there was nothing to prevent De Melo from opening up the new centre on Gerrard St, which she did in 2010.

That year, she was found to be caring for seven children on site, according to inspection reports.

In 2012, Jaffer was found to have seven kids at his daycare, though he said that two were visiting from Play 'N Stay.

After CBC aired an episode of Marketplace in February 2013 that showed 10 children being dropped off at Play 'N Stay, the ministry inspected again, but found only five children at each site.

Inspectors contacted Toronto Fire Services regarding the safety of the basement kitchens, but because the daycares are unlicensed, the fire department wrote it cannot enforce a fire plan, retrofit or other requirements that would otherwise be obligatory, the report said.

The education ministry says there is no problem with running a "home" daycare out of a storefront; it would only change the way the children are counted.

"When care is provided in a location other than the provider's home, the provider's children are 'received' at that location and are counted in the total number of five children," ministry spokeswoman Ramey wrote in an email.

But if multiple home daycares are being "co-ordinated," they must be licensed as a home daycare agency, Ramey said.

Friendly says when Ontario's child-care legislation was drafted in the 1970s, the government made allowances for unregulated care, so that stay-at-home mothers could also look after a couple of neighbourhood kids in their homes.

No one anticipated "home daycares" would be set up in dedicated commercial facilities.

"Now, these rules have pulled in all kinds of entrepreneurs who operate in the loopholes," she said.

Friendly says she can't believe De Melo is still in the child-care business.

"Years after breaking the law, why is she still allowed to operate?"

This is the first of a three-part series looking into unregulated daycares in Ontario. Tomorrow: A Toronto mother defends her unregulated home daycare.

-reprinted from the Toronto Star

#### Related links:

Daycare crisis: Scrambling for care after Eva Ravikovich's death <sup>[2]</sup>, 2 Dec 2013

Unlicensed home daycares in Ontario oppose regulation <sup>[3]</sup>, 1 Dec 2013

**Region:** Ontario <sup>[4]</sup>

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