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COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 6, 2006

Mr. John A. Johnson
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144-2796

Re: Accounting for and Contacting
Children in Foster Care
Report 2004-N-5

Dear Mr. Johnson:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we audited the Office For Children and Family Services' (OCFS) oversight of services the New York City Administration for Children's Services (ACS) provides to foster children in its district for the period January 1, 2003 through June 30, 2005.

A. Background

OCFS's mission, which is to promote the well-being and safety of children, families and communities, includes oversight of the State's foster care program. Foster care placement is intended as a temporary out-of-home arrangement for children whose parents are not able to care for them and for children awaiting adoption. OCFS provides technical support and supervision to the State's 58 local social services districts and the St. Regis Mohawk Tribe (districts) that provide foster care services. Districts may provide foster care services directly or contract with voluntary agencies to provide them. District caseworkers coordinate the delivery of foster care program services required by the Social Services Law (Law) and regulations. Caseworkers are responsible for developing service plans; for maintaining a written case record to document case progress; for contacting the children, parents and foster parents; and for developing plans for the child's permanent placement (i.e., reunification with his or her family or freed for adoption).

OCFS uses the Child Case Review Service System (CCRS) to record the foster child's status and to record actions taken on the child's behalf. For example, CCRS documents actions taken by districts to initiate judicial proceedings intended to free the child for adoption. OCFS also uses CCRS information to pay foster care parents and other providers for foster care services.

ACS is responsible for supervising foster children in New York City, the largest district in the State. According to CCRS data, there were 20,353 children in foster care in New York City as of December 31, 2004. Of that number, 800 children received care directly from ACS; 18,691 children received care services from contracted voluntary agencies; and 862 children were Absent Without Consent (that is, absent without district approval and unaccounted for) or AWOL.

Title 18 of the New York State Codes, Rules and Regulations (Title 18) requires districts to:

- account for each child in their custody;
- provide face-to-face contacts with foster children to gauge the child's adjustment to placement and arrange for needed services;
- perform a specified number of contacts with the child;
- document all services, contacts, home visits, interviews, AWOLs, etc. in written progress notes, which should be recorded promptly and kept in the case file;
- have the caseworker and the caseworker's supervisor sign the progress notes; and
- make diligent efforts to locate foster children who are Absent Without Consent.

ACS guidelines also require that caseworkers make additional face-to-face contacts with the foster child, including home visits.

In our prior report (*Report 2000-S-2, issued March 13, 2001*), we found that OCFS needed to improve its oversight of district foster care activities by developing a risk assessment instrument to regularly monitor district compliance with relevant laws and regulations. To implement this recommendation, OCFS developed Safety and Permanency Assessments, and now uses this tool as its primary means of monitoring district foster care activities. In New York City, OCFS uses a similar assessment instrument to evaluate ACS compliance, and visits foster care agencies on a three-year schedule.

B. Audit Scope, Objectives and Methodology

For the period January 1, 2003 through June 30, 2005, we audited ACS's accountability for foster children in their care and OCFS's oversight of its foster care contacts. The objectives of our performance audit were to determine: whether ACS could physically locate the foster children in its custody, including children newly entered into care; whether the voluntary agencies under contract with ACS provided foster children with the required number of caseworker contacts; whether ACS made diligent efforts to find children reported as AWOL; and whether OCFS adequately oversees ACS, and the extent to which the New York City foster care program complies with Title 18 and relevant ACS guidelines.

To accomplish our objectives, we interviewed OCFS, ACS, and voluntary agency officials and reviewed relevant State laws and regulations as well as ACS guidelines. Our audit scope included children in the custody of the ACS and at contracted voluntary agencies. We selected three samples of foster care cases: in the first sample, we tested districts' awareness of children's location and their compliance with contact requirements; in the second, we tested whether districts could readily locate children who had recently entered foster care; and in the third, we tested the diligence of district efforts to find AWOL foster children. The first sample was a random sample comprising 64 of the 19,491 foster care children OCFS reported to be in care in New York City (and not AWOL). To verify the children's existence and districts' awareness of their location, we accompanied district or agency caseworkers on visits to placement sites to meet the children. We also reviewed each child's case file to determine whether the agencies made all the face-to-face contacts required during the one-year period ended December 31, 2004. In the second sample, we randomly selected 10 children from among the 120 foster children who had recently entered district custody (and whose case information had not yet been entered on CCRS) to determine whether ACS knew where the children were located. For the third sample, we randomly selected 24 children from 1,101 AWOL children that OCFS reported AWOL during our audit scope period. The 22 children who were actually AWOL (2 children were incorrectly listed as AWOL) were under the care of 9 voluntary agencies. We reviewed each child's case file to determine whether ACS or its contractors had made timely and diligent efforts to locate the child, and whether caseworkers had provided the contacts required during the year before the AWOL occurred.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess the operations included in our audit scope. Further, these standards require that we understand OCFS's and ACS's internal control structures, and their compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

ACS could locate or otherwise account for all 64 foster children in our sample, as well as an additional sample of 10 children newly entered into care. We also found that ACS-contracted voluntary agencies could document almost all the face-to-face contacts required by Title 18 and

ACS guidelines. However, we also determined that, for a separate sample of 22 AWOL cases, agencies did not inform law enforcement about the absence of 17 AWOL children within 24 hours, as required; in 7 of the 22 cases, agencies could not show they made diligent efforts to locate AWOL children within 72 hours. Since lack of compliance with Title 18 could jeopardize the safety of AWOL children in district care, ACS should verify agencies are meeting these requirements. In addition, while most progress notes were available in the case files we sampled, required signatures were missing on 25 percent (caseworker) and 21 percent (supervisor) of the notes. We also found that, in the year preceding an AWOL occurrence, AWOL children received fewer caseworker contacts than required: in one instance, an agency responsible for 4 of the 22 cases could not produce 12 of the 17 required progress notes. We noted that a few agencies accounted for the majority of the contact and documentation exceptions. To address these concerns, OCFS should require that ACS verify that progress notes are present and signed; investigate noncompliant agencies identified by this audit; and develop and implement risk-based monitoring procedures designed to identify and perform assessments at those agencies with prior documentation deficiencies.

1. Accountability for Foster Children

Districts must be able to locate or account for all the children in their custody. We confirmed that ACS and its contracted voluntary agencies could locate or otherwise account for all 64 children in the sample of children in foster care, and for all 10 of a sample of children who had recently entered into care, but whose information was not yet entered in CCRS. However, we also found ACS did not notify law enforcement within 24 hours of the absence of 17 of 22 sampled children who were AWOL, or make diligent efforts to locate 7 of these runaway children within 3 days, as required.

a. Children in Care

ACS and its voluntary agencies must be able to account for all of the foster children in their custody to provide for their safety, to perform case management assessments and to meet the service goals required by the law. To determine whether ACS can physically locate the foster children for whom they have responsibility, we selected a random sample of 64 children from among the 19,491 children in the care of ACS (and not AWOL) as of December 31, 2004. We confirmed that ACS and the relevant voluntary agencies could locate or otherwise account for all 64 children in our sample. We visited 60 children at their placement sites, accompanied by caseworkers, and verified that 4 children were adopted since the sample was selected.

b. Children Newly Entered into Care

ACS and its voluntary agencies must know a child's location to appropriately manage his or her foster care case. This is especially true for children newly entered in to foster care, because their case information may not be available right away on CCRS. There may be a lag between a child's actual entry into foster care and ACS's entry of the child's name and relevant information on the CCRS. Among the reasons for this lag in data entry are court delays in sending agencies necessary paperwork for the child and ACS data entry backlogs. During this lag period, and until CCRS is

updated to reflect the child's information, only ACS and the voluntary agencies are aware of the child's location.

To determine whether ACS knew the location of newly-entered foster children during this lag period, we randomly selected 10 children cared for by two voluntary agencies. For the sample we reviewed, there was no lag in seven cases in updating CCRS, and in three cases the lag ranged from five days to 7 weeks. In each of these 10 cases, the agencies used their records to provide us with location records for the children. Thus we concluded that ACS and its voluntary agencies do a good job tracking the location of children newly arrived in foster care.

c. Children Absent Without Consent

According to Title 18, a child is Absent Without Consent, or AWOL, when the child runs away or otherwise leaves a foster care placement without the knowledge or consent of the person(s) responsible for the child's care. When a foster child goes AWOL, Title 18 requires that the name of the child must be reported no later than 24 hours from the time the absence occurs by the foster parent or agency responsible for the child. Title 18 requires a voluntary agency to report the child's absence to ACS and to law enforcement authorities within 24 hours. Title 18 further states that the caseworker or supervisor of an AWOL child must make diligent efforts to locate the child within 72 hours of the reported absence, and document those efforts in progress notes. "Diligent efforts" should involve contacting sources (e.g., biological or foster families; school officials; counselors) who may be able to provide information about the child's location. If the child is still AWOL and in district custody 30 days or more after the absence occurred, the caseworker must continue efforts to locate the child, on at least a monthly basis, and document these actions in progress notes.

We reviewed the case files of 22 AWOL foster children, randomly selected from among 1,101 children OCFS listed as AWOL as of December 31, 2004, to determine whether voluntary agencies complied with Title 18 notification and diligence effort requirements. The 22 children were under the care of 9 voluntary agencies.

In reviewing the case files for these 22 AWOL children, we found that, in 17 cases (77 percent), the 9 voluntary agencies responsible for the children did not notify law enforcement about the absence within 24 hours, as required. Personnel at seven of these agencies told us it is the foster parent's responsibility to contact the law enforcement agency. We acknowledge that foster parents must inform agencies about an AWOL child before the agency can act. However, once agencies have been informed about the child's absence, Title 18 clearly states it is the agency's responsibility to contact law enforcement, as well as ACS, within 24 hours of the child's absence. Further, some of the above exceptions related to children residing in agency-operated facilities. Both foster parents and voluntary agencies are compensated for their services by ACS, and both agree to comply with Title 18 requirements, as well as ACS and OCFS guidelines, when they assume foster care duties. Since ACS is responsible for foster care children in New York City, ACS officials must make sure voluntary agencies and foster care parents understand and comply with notification requirements. Unless law enforcement authorities are promptly informed when a child goes missing, the child's well-being and safety could be in jeopardy.

In addition, agencies did not always make the required diligent efforts to find AWOL children. For 7 of the 22 AWOL cases (32 percent), caseworkers at the 6 agencies responsible for these children had no evidence they made the diligent efforts required to locate the child within 72 hours of the child's absence. In 6 of these 7 cases, which involved children AWOL for 30 days or more, there was no evidence that caseworkers had made continuing efforts, as required, to locate the children. ACS should verify that agencies are complying with the diligent efforts required by Title 18 so the district can monitor the status of AWOL children, or demonstrate reasonable efforts to do so.

Subsequent to the audit exit conference, ACS told us that it had gathered additional documentation from the voluntary agencies relating to AWOL cases, which indicated that most of the children included in our sample of 24 AWOL cases were not actually AWOL and diligent efforts had been made to locate the remainder. We do not consider this additional information to be reliable enough to cause us to revise our observations for the following reasons: we had to wait four months to receive it; the information was not in the case files during our review; during the audit no program officials told us they knew the location of any of the children; and we were given photocopies of police reports, warrants and other correspondence rather than original documentation.

2. Title 18 and ACS Requirements for Caseworker Contacts

Caseworker contacts are intended to gauge a foster child's adjustment to placement, and to arrange for services that meet the child's needs. Thus, Title 18 requires caseworkers to have at least two face-to-face contacts with the foster child during the first month of placement, and from one to three contacts per quarter thereafter, depending on the child's needs. Caseworker contacts must be documented in progress notes, signed by the caseworker and supervisor, and maintained in the child's case file. ACS requires caseworkers to make additional contacts. According to ACS guidelines, caseworkers must make two contacts per month (one of which must be a home visit) for the first three months. Subsequently, caseworkers must have at least one face-to-face contact per month with the child, and make at least one home visit per quarter. Voluntary agencies in New York City must comply with both sets of requirements.

To determine the extent of this compliance, we tested contacts and documentation for the 64 cases we had previously tested to verify ACS's ability to locate foster children. The 64 children in this sample, whose cases were serviced by 13 different agencies, should have received a total of 727 face-to-face contacts with agencies' caseworkers. Our tests determined that agencies could document 710 (98 percent) of the 727 required contacts.

However, our tests also revealed that compliance needs to improve in certain areas. For example, we found that agencies did not always comply with the attestation required by Title 18: caseworker and supervisor signatures were missing on 182 (26 percent) and 156 (22 percent) of the progress notes, respectively. This requirement functions as a control measure to verify that the caseworker made and documented the contact, and that the supervisor reviewed and approved the progress notes. Since agencies are not consistently complying with this requirement, ACS and OCFS have less assurance that contacts were actually made.

We also determined that ACS should strengthen its oversight of several of the agencies in our sample where we noted a significant number of the missing contacts and/or missing signatures and a greater frequency of noncompliance. Examples from two such agencies are listed below.

- One agency served 5 sampled children, who should have had a total of 60 progress notes during our audit period. We found 1 note was missing, and for the remaining 59 notes none were signed by the caseworker, and 51 notes were not signed by the supervisor.
- Another agency, which served 17 of the 64 children, should have had a total of 202 progress notes in the children's case files. However, 6 notes were not written; 25 notes were photocopies; and 52 notes were unsigned by either caseworkers or supervisors.

We also tested the extent to which agencies performed and documented the required contacts for our 22 sampled AWOL children during the year before the AWOL occurred. These 22 children, served by 9 different agencies, should have received a total of 165 progress notes during the year before the AWOL occurred. However, we found that 18 (11 percent) of the progress notes were not prepared; furthermore, 73 progress notes were not signed by the caseworker, and 103 progress notes were not signed by the supervisor, as required. At one agency, responsible for 2 AWOL children, none of the 24 progress notes in the files were signed by either the caseworker or the supervisor. Officials at this agency claimed the electronic format of its documentation precludes signatures. However, since electronic signature capabilities are available, this agency should make use of this feature to comply with Title 18.

It is important to note that the most serious documentation exceptions for our sampled AWOL children occurred at the same agencies listed above. One agency, responsible for 4 of the 22 AWOL children, could not produce 12 of the 17 progress notes required. Another 12 notes were unsigned by the caseworker, and 36 notes were unsigned by the supervisor. At a second agency, responsible for 7 of the 22 children, 35 progress notes present in the case file were not signed by the caseworker, and 25 were not signed by the supervisor.

Progress notes are critical evidence for monitoring a foster child's development and for evaluating the success of a child's placement in foster care. Performing all the required contacts with a child, and documenting the contacts, may not prevent a child from going AWOL. However, compliance with Title 18 and ACS requirements demonstrates, at the very least, a conscientious effort to maintain the child in a safe and secure setting. To protect the interests of the foster children in its care, ACS should regularly monitor all agencies' compliance with these requirements. ACS should also investigate the practices at those agencies where we found the greatest incidence of noncompliance, and require these agencies to correct contact and/or recordkeeping deficiencies.

3. OCFS Oversight of ACS Performance

OCFS monitors districts' compliance with Title 18 requirements primarily through Safety and Permanency Assessments (SPAs). The SPAs include questions about each aspect of a child's stay in foster care, including the number of contacts made with the district caseworker. During a SPA visit, OCFS personnel review case files and assess district performance to determine whether contacts meet the Title 18 requirements. If the SPA identifies deficiencies in case management, the

district must submit a corrective action plan to OCFS. At ACS, OCFS performs an assessment that is similar to the SPA, but adapted for monitoring compliance in New York City. We reviewed this assessment instrument, and determined that it includes fewer questions than the SPA, but requires more on-site visits to voluntary agencies. OCFS visits voluntary agencies with foster care cases on a three-year cycle to review caseworkers' compliance with Title 18, including child contacts and progress notes.

The above monitoring procedures are designed to identify problem districts and problem agencies. Since our audit tests showed that most of the contacts required for our sampled children were made, as required, we conclude that OCFS assessment tools and visits to agencies are generally effective in promoting compliance with Title 18 and ACS guidelines.

Recommendations

1. *Require ACS to strengthen its monitoring of voluntary agencies' compliance with Title 18 with regard to the response and follow up to AWOL occurrences. Specifically, ACS should:*
 - *make sure both voluntary agencies and foster parents understand and comply with their notification responsibilities; and*
 - *verify that agencies make and document their diligent efforts to locate the AWOL child.*
2. *Require ACS to monitor agencies' compliance with Title 18 and ACS guidelines. Monitoring should include procedures designed to verify that all required contacts are documented in progress notes, and that all progress notes (including electronically maintained documents) are signed by both the caseworker and the supervisor.*
3. *Require ACS to investigate practices at the agencies we identified in this report, and confirm that these agencies made necessary corrections to comply with the requirements of Title 18 and ACS guidelines.*
4. *Direct ACS to develop and implement risk-based monitoring procedures designed to identify and perform assessments at those agencies with prior documentation deficiencies.*

We provided a draft copy of this report to OCFS officials for their review and comment. Their comments have been considered in preparing this report, and are included as Appendix A. In addition, a State Comptroller's Note, in response to OCFS's comments, are included as Appendix B. OCFS officials indicated that they were requesting a corrective action plan from ACS to address the implementation of most of our recommendations.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to the report include Richard Sturm, Frank Patone, Barry Mordowitz, Tony Carbonelli, Salvatore D'Amato, Roseline David, Carole Le Mieux, Altagracia Rodriguez, Elaine Yu and Nancy Varley. We wish to thank OCFS and ACS management and staff for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

William P. Challice
Audit Director

cc: Lisa Ng, Division of the Budget



**New York State
Office of
Children & Family
Services**

January 17, 2006

George E. Pataki
Governor

John A. Johnson
Commissioner

Mr. William P. Challice, Audit Director
Office of the State Comptroller
Division State Services
State Audit Bureau
123 William Street – 21st Floor
New York, New York 10038

Subject: Draft Audit #2004-N-05

Capital View Office Park

52 Washington Street
Rensselaer, NY 12144-2796

Dear Mr. Challice:

The Office of Children and Family Services has reviewed the Draft Audit, Oversight of Foster Care Services Provided by the New York City Administration of Children's Services', issued November 28, 2006. Enclosed is our response for your consideration.

Sincerely,

Susan A. Costello
Deputy Commissioner
for Administration

Enclosure

cc: L. Dobriko



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**New York State Office of Children and Family Services
Response to the State Comptroller
Draft Audit Report
Oversight of Foster Care Services Provided by the New York City
Administration of Children's Services' (ACS)—2004-N-05**

The Office of Children and Family Services (OCFS) has reviewed the draft audit report on the OCFS oversight of services that the New York City Administration of Children's Services' (ACS) provides to foster children in its district for the period January 1, 2003 through June 30, 2005 and offers the following response:

Background

The first paragraph, third sentence should be changed to include the 58 Local social services districts and the St. Regis Mohawk Tribe.

Recommendation 1: Require ACS to strengthen its monitoring of voluntary agencies' compliance with Title 18 with regard to the response and follow up to AWOL occurrences. Specifically, ACS should:

- Make sure both voluntary agencies and foster parents understand and comply with their notification responsibilities; and
- Verify that agencies make and document their diligent efforts to locate the AWOL child.

OCFS Response: OCFS is requesting a corrective action plan from ACS' staff to address implementation of the recommendation.

Recommendation 2: Require ACS to monitor agencies' compliance with Title 18 and ACS guidelines. Monitoring should include procedures designed to verify that all required contacts are documented in progress notes, and that all progress notes (including electronically maintained documents) are signed by both the caseworker and the supervisor.

OCFS Response: OCFS does not now or for the period covered by the audit (January 1, 2003 - June 30, 2005) require, or have criteria that require, that the case worker or the case worker's supervisor sign the progress notes. 18 NYCRR 428.5 is the regulatory provision that governs progress notes. Section 428.5, requires only the initials of the person (author) making the entry into the progress notes and the initials of the person actually making the entry into the database. No signature for a progress note entry is required.

The current 428.6 requires signatures in the family assessment and service plan and any plan amendment. However, the regulation does not apply to progress notes, which is where entries regarding casework contacts would be found in the case record.

* Note 1

OCFS is requesting a corrective action plan from ACS' staff to address implementation of the recommendation regarding verification that all required contacts are recorded in the progress notes.

At districts' requests, OCFS staff have provided in CONNECTIONS for the caseworker's progress notes to remain modifiable until the supervisor approves them, but this is in response to local practices, not regulation.

Recommendation 3: Require ACS to investigate practices at the problematic agencies we identified in this report, and confirm that these agencies made necessary corrections to comply with the requirements of Title 18 and ACS guidelines.

OCFS Response: OCFS is requesting a corrective action plan from ACS' staff to address implementation of the recommendation.

Recommendation 4: Direct ACS to develop and implement risk-based monitoring procedures designed to identify and perform assessments at those agencies with prior documentation deficiencies.

OCFS Response: OCFS is requesting a corrective action plan from ACS' staff to address implementation of the recommendation.

State Comptroller's Note

1. In their response to this audit, OCFS officials disagreed with our interpretation that 18 NYCRR 441 and 18 NYCRR 428 taken together required that the caseworker and the caseworker's supervisor sign progress notes. Their response states that OCFS did not require that caseworkers or their supervisors sign progress notes. Notwithstanding OCFS's position, we found during the course of the audit that a significant number of progress notes did contain both caseworker and supervisor signatures. Subsequently, OCFS officials informed us that effective August 2005, they had revised a reference in 18 NYCRR 441.21 and repealed section 18 NYCRR 428.11 to make clear that going forward such signatures were not required for progress notes. We are concerned that this action eliminates responsibility and accountability which may be afforded by supervisory review and endorsement of caseworker notes. We further believe that this action could potentially impact the health and safety of children in the care of the local districts, and therefore should be reversed.