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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

September 25, 2008

Ms. Gladys Carrión Esq.  
Commissioner  
Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Re: Report 2008-F-5

Dear Ms. Carrión:

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 have followed up on the actions taken by officials of the New York State Office of Children and Family Services officials (OCFS), to implement the recommendations contained in our prior audit report, *Office of Children and Family Services, New York City Day Care Complaints* (Report 2005-S-40).

**Background, Scope and Objective**

Section 390 of the Social Services Law assigns OCFS responsibility for overseeing the provision of most day care services in the State. The objectives of this oversight are to protect the health and safety of children cared for by day care providers by verifying that such providers comply with certain minimum standards (e.g., for safety, sanitation, nutrition, prevention of child abuse and maltreatment, etc.) established by OCFS' regulations.

OCFS' central office directs day care oversight activities throughout the State, except in New York City. In New York City, OCFS contracts with the New York City Department of Health and Mental Hygiene (NYC Health) to serve as its agent for monitoring the more than 7,100 day care providers governed by the Law. NYC Health oversees providers who offer residence-based day care for children aged 6 weeks to 12 years in Family Day Care (3 - 6 children) and Group Family Day Care (7 - 12 children), and providers who offer facility-based before and after-school services in School-Age Child Care Programs. Group Day Care Centers, which offer facility-based care for more than 7 children under 6 years old, are regulated directly by NYC Health under Article 47 of the New York City Health Code. The Law requires OCFS to establish a toll-free statewide telephone number to facilitate inquiries about child day care providers and the reporting of complaints about providers who may be in violation of OCFS' regulations. OCFS maintains day care complaint data on its CCFS system, and uses CCFS to monitor complaint processing.

A complaint generally starts with a phone call from parents or other members of the public to the complaint coordinator in NYC Health's central office. The coordinator listens to the complainant and decides how to classify the complaint (imminent danger; serious, a new category added in the 2005 contract; or non-emergency) and records the information on a complaint intake form and in CCFS. For calendar year 2007, OCFS paid NYC Health about \$9.3 million to oversee New York City day care providers' compliance with the Law and regulations. The 2008 contract is scheduled to pay NYC Health another \$9.3 million for these services.

Our initial audit report, which was issued on December 18, 2006, found that OCFS needs to improve its monitoring practices to verify that all complaints related to day care in New York City are properly classified, promptly recorded, timely investigated and thoroughly resolved in compliance with the Law and its contract with NYC Health. The objective of our follow-up was to assess the extent of implementation as of May 5, 2008, of the 12 recommendations included in our initial report. We focused our follow-up review on actions taken by both OCFS and the New York City Department of Health and Mental Hygiene.

### **Summary Conclusions and Status of Audit Recommendations**

We found that OCFS and NYC Health officials have made some progress in correcting the problems we identified in our prior report. Of the 12 prior audit recommendations eight were implemented, one was partially implemented, and three have not been implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Assess the need to staff the toll-free telephone number after 5 p.m., and on weekends and holidays.*

Status - Implemented

Agency Action - Our prior audit found OCFS operated a toll-free number to receive complaints only during standard business hours, Monday through Friday 9 a.m. to 5 p.m. While neither OCFS nor NYC Health presented evidence that an assessment was conducted, a system has been put in place to have calls taken 24 hours a day by New York City's (NYC) 311 hotline number. NYC's 311 Citizens' Service Center hotline staff receive calls for any type of complaint, including complaints about child care, 24 hours a day seven days a week. Complaints regarding child care received by NYC's 311 Citizens' Service Center hotline are sent to NYC Health, where a Complaint Intake in CCFS is created and information about the compliant recorded.

#### **Recommendation 2**

*Require NYC Health to have staff available, possibly on an on-call basis, to conduct investigations on weekends and holidays.*

Status - Implemented

Agency Action - In response to this recommendation, NYC Health officials established a unit of Health Managers and Public Health Sanitarians who are available on an on-call basis to conduct investigations on weekends and holidays.

### **Recommendation 3**

*Confirm that NYC Health's policies are changed to require the immediate entry of complaint data in CCFS. Review NYC Health's policies and procedures on a periodic basis to confirm that they comply with the Law and contract requirements.*

Status - Implemented

Agency Action - To confirm that NYC Health is following this recommendation, OCFS officials indicated that they conduct quarterly case reviews based on a valid sample of complaints received to ensure that the complaints are immediately entered into CCFS, and investigated in accordance with applicable statutes and regulations. For cases found not to be in compliance, OCFS discusses them with NYC Health to make sure that the applicable statutes and regulations are understood. OCFS provided us with summary data for 2007 that shows the results of its quarterly monitoring of NYC Health. These reports show that NYC Health is generally in compliance with the Law and contract requirements.

### **Recommendation 4**

*Require NYC Health to develop a review process to confirm the accuracy of complaint classification on CCFS.*

Status - Implemented

Agency Action - According to OCFS officials, OCFS has developed a process to confirm the accuracy of complaint classification on CCFS. This is achieved through its quarterly case reviews of complaints received and investigated by its borough offices. OCFS provided us with summary data for 2007 that shows the results of its quarterly monitoring of NYC Health. This process includes reviewing the accuracy of complaint classification by NYC Health.

### **Recommendation 5**

*Seek the appropriate change to the Social Services Law or regulations to establish a third category of complaint classification and the corresponding time frame for investigation. Clarify the distinction between an "imminent danger" complaint and a "serious complaint" in the complaint classification descriptions.*

Status - Not Implemented

Agency Action - OCFS still disagrees with our recommendation, and indicates that it has the authority to establish a third category of complaints, such as "serious complaint", and can

shorten the 15 day time frame for complaints not designated as imminent danger as needed. We still believe OCFS should seek a change to the Law if it wants to treat complaints other than those classified as imminent danger in different ways.

### **Recommendation 6**

*Seek the appropriate change to the Social Services Law to clarify the time allowed between an inspection and a determination of whether a violation has occurred and the time within which OCFS may require a provider to complete corrective actions.*

Status - Not Implemented

Agency Action - OCFS officials still disagree with our recommendation. According to OCFS officials' timeframes in these areas are statutorily supportable and reasonable with respect to the child care providers, and require violations be corrected "within" 30 days, interpreting within to mean that it can require corrective actions before 30 days in certain circumstances.

We still believe that the authority to do so should be granted by law, not by OCFS on a case by case basis.

### **Recommendation 7**

*Make certain that complaints are investigated within the legally required timeframe.*

Status - Implemented

Agency Action - OCFS now utilizes CCFS and their quarterly case review of complaints to assess the timeliness of investigations. Based on summary data provided by OCFS for 2007, OCFS' reviews have found that these investigations were being carried out appropriately.

### **Recommendation 8**

*Require NYC Health to equip borough offices with necessary mailing machines to expedite the mailing of inspection notifications.*

Status - Partially Implemented

Agency Action - According to NYC Health officials, mailing machines were installed in some of their borough offices. There are a total of eight borough offices. We selected a judgmental sample of four borough offices located in Queens and Brooklyn to verify the existence of the mailing machines. We found mailing machines in three of the four borough offices we inspected.

### **Recommendation 9**

*Refine performance monitoring tools to effectively measure NYC Health's compliance with mandated complaint-processing requirements.*

Status - Implemented

Agency Action - To refine its performance monitoring tools, OCFS reviewed the monitoring instruments it had in place and installed revised instruments to more effectively measure NYC Health's compliance with complaint processing requirements. We found that the new monitoring tools had been developed and are in use. Additionally, OCFS officials indicated it is gathering user feedback on the revised forms and, if necessary, the forms will be revised again.

### **Recommendation 10**

*Develop and distribute policies and procedures for complaint processing that include the steps necessary to comply with the Law and regulations and an easy-to-follow complaint classification listing.*

Status - Implemented

Agency Action - OCFS officials developed and distributed a Complaint Intake Desk Reference Guide (guide) containing policies and procedures to assist their staff in assessing and classifying complaint calls.

### **Recommendation 11**

*Develop a mechanism to compare the NYC Health employee database to the training rosters to identify the employees who have attended mandated training and formal investigation training.*

Status - Implemented

Agency Action - Our review determined that OCFS does periodically request, and NYC Health does compare the schedule of its Public Health Sanitarians with the SUNY Training Strategies Group rosters listing all employees who attend mandated and formal investigation training, and also match such employees to the attendance rosters for such training.

### **Recommendation 12**

*Verify that NYC Health complaint investigators attend mandated training courses.*

Status - Not Implemented

Agency Action - OCFS officials indicated that they verify attendance at mandated training courses by following the mechanism describe above for recommendation 11. When we followed that process we did not find the investigators listed as attending the mandated training.

Major contributors to this report were Santo Rendon, Orin Ninvalle and John Ames.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department and the Facility for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Michael Solomon  
Audit Manager

cc: Mr. Thomas Lukacs, Division of the Budget  
Mr. Kevin Mahar, OCFS External Audit Liaison  
Mr. Ralph Timber, OCFS External Audit