

Office of Children and Family Services

Oversight of Direct Placement of Children

Report 2017-S-30 | March 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Office of Children and Family Services (OCFS) has effective controls in place to ensure that children placed in the direct care of relatives or a suitable person via Family Court Act (FCA) Section 1017 are placed in a safe environment. The audit covers children who were in direct placement between January 1, 2014 and December 31, 2017 and includes subsequent documentation and information provided by OCFS through August 26, 2019.

About the Program

OCFS oversees the State's child welfare system, and its Central Office is responsible for supervising and coordinating child welfare services, which are administered by 58 Local Departments of Social Services (Local Districts) throughout the State and include preventive services focusing on averting scenarios that could result in the placement of a child in foster care. One alternative to foster care is direct placement, where a child is placed in the direct custody of a relative or suitable person under the jurisdiction of the court. In direct placement cases, the court will likely order the Local District to supervise the placement. Most of the standards for foster care do not apply to children in direct placement. However, the New York Codes, Rules and Regulations require Local Districts to document that a placement can safely provide for the needs of the child. Local Districts must also provide the court with information to make decisions regarding the safety and well-being of a child, such as details of the child's service plan and the family's progress. Information regarding children in direct placement is tracked in CONNECTIONS, the system of record for child welfare in New York State.

Key Findings

- OCFS does not maintain adequate oversight of direct placement to ensure that Local Districts comply with applicable laws and regulations and that children are placed in safe environments. Of 30 direct placement cases we sampled, 10 lacked evidence that the Local District provided the courts with all critical case information, which the courts rely on to make decisions regarding the safety and well-being of a child.
- While Local Districts must follow certain regulations, OCFS has not developed the same type of centralized standards, policies, or procedures for supervising all direct placement cases that it has for similar child welfare services, such as foster care. This includes minimum standards for home investigations, which the FCA states may be done "pursuant to regulations of OCFS." As a result, we found that not all cases are receiving the same level of attention across, and possibly even within, Local Districts.
- Direct placement data in CONNECTIONS was not always complete or accurate, which may compromise its integrity and usefulness for OCFS' data analysis, reporting, and performance measure purposes, as well as the reliability of direct placement case tracking. For example, we found discrepancies between source information and

CONNECTIONS data for 23 of the 30 cases we reviewed. Additionally, the field indicating why a child was removed from direct placement was blank for over 40 percent of the children whose placement had ended. We also identified four cases where children were misclassified as being in direct placement.

Key Recommendations

- Develop procedures for monitoring Local Districts' handling of direct placement cases.
- Establish minimum standards for the safety of children in direct placement.
- Correct the errors identified in the direct placement data and implement ways to prevent and detect input errors to ensure that information in CONNECTIONS is complete and accurate.

Agency Response

Throughout its response to the draft report, OCFS attempts to minimize our audit findings and deflect attention from the report's core issue of child safety. In general, OCFS officials took issue with our "flawed" audit objective, proclaiming that the scope of our audit terminates after the court has placed a child. However, OCFS' assertion is wrong. We explained to officials throughout the audit that we were evaluating OCFS on its responsibilities related to the safety of the children before, during, and after the court placement decision. OCFS' response acknowledges it has the legal authority to provide oversight before and after court placement. Rather than attempting to challenge our audit scope and minimize the findings of this audit, we urge OCFS to consider our recommendations and implement changes to better ensure the health, safety, and welfare of children in direct placement.

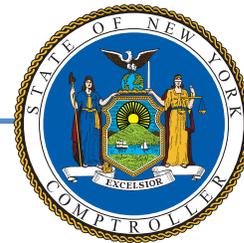
OCFS also states that our "narrowly construed" scope places OCFS in an "impossible" position to satisfy our recommendations and that our findings presume that OCFS has the authority to overrule a court's placement decision. However, nowhere in the report or during the audit did we make such a claim.

In addition, OCFS indicates that supposed errors and lack of detail in our findings prevented it from providing a full response. In part, OCFS states that our report assumes children placed into direct relative custody follow a statutory schedule for permanency hearing and that our findings were not backed by specific examples or cases for OCFS to review. Yet, we did not state that children in direct placement follow such a schedule and only considered a permanency hearing report to be missing if there was a court order for a permanency hearing. We provided detailed information to OCFS for any cases that we found to be missing permanency hearing reports, some of which OCFS was able to provide. OCFS also finds fault with the two case examples in our report, stating, in part, that there were no immediate safety concerns. However, one of the case records had a document stating that there was enough credible evidence to support allegations of insufficient guardianship, as well as inadequate food, clothing, and shelter. We are concerned by OCFS' unwillingness to recognize areas for

improvement, given the vulnerable population it serves. Also, OCFS states that the tone of our report contains “pejorative generalizations about local caseworkers.” It’s worth noting that we visited numerous counties during our audit that, by and large, agreed there are no minimum standards for handling direct placement cases. Accordingly, we found that counties throughout the State handle direct placements differently.

Lastly, OCFS states that, due to its concerns about OSC’s ability to protect the confidentiality of OCFS records, OCFS and OSC entered into a confidentiality agreement that would guarantee access to complete and accurate records. OCFS adds that this necessitated an extensive redacting process and that our follow-up questions about the redacted files involved requests for additional documents not required under the confidentiality agreement. Despite the confidentiality agreement “guaranteeing access to complete and accurate records,” OCFS required that we amend the original agreement before providing us with data we had requested for months. Included in the amendment was OCFS’ requirement that files be redacted and scanned to us electronically, rather than allowing us to visit counties to view the files with the assistance of an OCFS representative. We did not request information in violation of the confidentiality agreement or federal and State confidentiality laws. In fact, the follow-up documents (e.g., permanency hearing reports) we requested from OCFS for certain cases had been included in some of the case files OCFS provided initially, and thus were covered under the confidentiality agreement.

OCFS’ response includes multiple misleading and/or inaccurate statements. Furthermore, its dismissive response is not indicative of an appropriate agency control environment, particularly given the vulnerable population it protects. Consequently, we urge OCFS to reconsider its position relating to the audit’s findings and recommendations to enable it to better fulfill its vital mission. Our responses to those comments are included in the report’s State Comptroller’s Comments, which are embedded in OCFS’ response.



Office of the New York State Comptroller Division of State Government Accountability

March 2, 2020

Ms. Sheila J. Poole
Acting Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Dear Commissioner Poole:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Direct Placement of Children*. This audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Central Office	Office of Children and Family Services' Central Office	<i>Key Term</i>
Direct placement	Children placed in the direct custody of a relative or suitable person via Section 1017 of the Family Court Act	<i>Key Term</i>
FCA	Family Court Act	<i>Law</i>
Local District	Local Department of Social Services	<i>Key Term</i>
NYCRR	New York Codes, Rules and Regulations	<i>Regulation</i>
OCFS	Office of Children and Family Services	<i>Auditee</i>

Background

In New York State, the child welfare system is State supervised and locally administered. The Office of Children and Family Services (OCFS) oversees the child welfare system, and its Central Office is responsible for supervising and coordinating child welfare services, including child protective services, foster care, adoption, and preventive services, which are administered by 58 Local Departments of Social Services (Local Districts) throughout the State. According to the Social Services Law, one purpose of preventive services is “averting an impairment or disruption of a family which will or could result in the placement of a child in foster care.” In keeping with the law, OCFS developed its Child Welfare Practice Model, designed to establish a consistent and recognizable approach to child welfare practices across the State and ensure that out-of-home placements (when necessary) are a safe, short, and stable experience for children.

Preventive services may be provided to a family voluntarily or as a result of a Family Court order. Court-ordered services usually result from a proceeding involving alleged abuse or maltreatment of a child, based on Article 10 of the Family Court Act (FCA), arising from a petition filed by a Local District. These proceedings may result in a child being temporarily placed directly with a relative or suitable caregiver under FCA Section 1017 and are sometimes referred to as direct placement custody.

With direct placement custody, the appointed caregiver has the authority to care for the child temporarily and the court will likely order the Local District to supervise the placement. New York Codes, Rules and Regulations (NYCRR), Title 18, Part 428, requires Local Districts to document whether a placement can safely provide for the needs of the child. Local Districts are also required under the NYCRR to develop permanency hearing reports, which address the progress and status of children who have been removed, including safety in their current environment.

Like foster care, direct placement is intended to be a temporary arrangement while parents work to resolve safety or child behavior issues. However, most of the standards required for foster care do not apply to children in direct placement. For example, whereas a home investigation for foster care must take into account such factors as the age of the caregiver, the size and location of the child’s sleeping space, and whether space is being rented out to others, there are no similar detailed standards for a direct placement home investigation. Nevertheless, Local Districts are increasingly turning to alternatives to foster care – such as direct placement – as a means to promote safety through the use of relatives or other suitable persons as alternate caretakers.

OCFS’ *Family Assessment and Service Plan Manual* establishes certain

requirements for Local Districts in their oversight of direct placement cases. For instance, OCFS is responsible for assessing the well-being of children in a direct placement setting to ensure their normal growth and development and to identify and respond to any issues, concerns, or needs that may arise. The manual also states that it is the Local Districts' duty to proactively assess safety within the direct placement setting and take timely and effective action to lessen vulnerabilities and protect the children if safety concerns arise.

OCFS uses CONNECTIONS as its system of record to document information about children in direct placement. CONNECTIONS data is also used to report to the Executive and the public, and it is the main way OCFS can centrally access case information about direct placement cases recorded by Local Districts. As reported in CONNECTIONS, from 2014 through 2017, 13,394 children in New York State were directly placed with caregivers via FCA Section 1017, with 3,837 (29 percent) of those still in direct placement as of December 31, 2017.

Audit Findings and Recommendations

While using relatives or other suitable persons as alternate caretakers may be preferable to foster care as a safe, short, and stable experience for children, whenever a child moves from one living environment to another, safety is always of paramount concern. However, OCFS has not developed the same type of centralized standards, policies, or procedures for Local Districts to follow in supervising all direct placement cases as it has for similar child welfare services, such as foster care. Rather, it relies on each Local District to develop and follow its own policies. OCFS also does little to monitor Local Districts' handling of direct placement cases. As such, there is limited assurance that Local Districts are providing the level of direct placement supervision these situations necessitate, consistent with OCFS' Child Welfare Practice Model.

Additionally, we found that OCFS' CONNECTIONS database, the system of record for direct placement information, contained numerous inaccuracies that compromise its integrity and usefulness for OCFS' data analysis, reporting, and performance measure purposes and the reliability of direct placement case tracking.

OCFS Oversight

Central Office does not have procedures for monitoring Local Districts' handling of direct placement cases, and does little to assess their performance. Central Office itself asserted that its role in the oversight of the direct placement of children is very limited under the law.

According to Central Office officials, OCFS' regional offices assist Local Districts when an issue regarding children in direct placement is brought to their attention. In addition, direct placement cases may be selected during regional office assessments of preventive service cases. Other than this, OCFS does not take any proactive steps to ensure that Local Districts comply with applicable laws and regulations for direct placement cases, and that children are placed in a safe environment. Furthermore, its office assessments do not specifically target direct placement cases for review. Without adequate oversight, there is no way to ensure that Local Districts are properly supervising direct placements, including providing courts with all relevant information for legal decision making. Given that direct placements may be used as one measure of success for OCFS' Child Welfare Practice Model – specifically, direct placements with relatives – we believe greater oversight is warranted.

We reviewed a sample of 30 case files, which included 56 children in direct placement supervised by four different Local Districts, and found that Local Districts are not always supervising direct placement cases as required by

the governing regulations. For instance, we identified seven cases lacking evidence that the respective Local District developed all required permanency hearing reports, which supply the court with case information critical for its decision making.

In addition, we found that Local Districts do not always report all the details of a case to the court, as we identified three cases with questionable conditions that lacked documentation that they had been reported to the court. The Local Districts had developed all required permanency hearing reports for these three cases, but did not report questionable conditions to the court, whether on the permanency hearing reports or otherwise. For example:

- In one case, siblings were placed with an adult relative who had a history of domestic violence and suspected drug use. A neighboring Local District performing its own investigation expressed concerns about the adult relative, including possible drug use and unlicensed driving. Furthermore, the children regularly came to school disheveled and unkempt. The Local District overseeing the children claimed that it confirmed with the Department of Motor Vehicles that the adult relative had a valid license; however, within seven months, multiple police reports surfaced stating the adult relative not only had a suspended learner permit, but also kept a loaded shotgun in one of the bedrooms of the placement home. A school nurse also notified the Local District that she feared for the safety of one of the children. Although custody of the children was transferred to their grandmother, she lived in the same building as the adult relative and the adult relative continued to look after the children. We could not find any indication that these conditions had been communicated to the court. According to county officials, they do not report specific events of a Child Protective Services investigation to the court.
- In another case, Local District notes described a placement home as having garbage and dirty dishes constantly present throughout the home, along with medications within children's reach. In addition, children were sleeping in cluttered rooms with laundry blocking the exits. These conditions existed for at least two months with no record of ever having been reported to the court. Furthermore, Local District notes indicated that the placement home was only cleaned to meet the "minimum degree of care." However, neither the Local District nor OCFS defined what constitutes a "minimum degree of care" for a home, as both have stated that there are no required standards.

While it is a family court judge who makes the legal decision as to whether a child will be placed or continue in direct placement, this decision is based, in

part, on input from the Local Districts. Without proper oversight, OCFS has no way of ensuring that Local Districts are providing all relevant information to the courts.

Inconsistent Local District Practices

Local Districts must follow certain regulatory requirements, but OCFS has not developed the same kind of centralized standards, policies, or procedures for supervising all direct placement cases as it has for similar child welfare services, such as foster care. This includes minimum standards for home investigations, which the FCA states may be done pursuant to regulations of OCFS. The FCA also states that if a home is found to be unqualified, the Local Districts shall report this and the reasons to the court. Further, while OCFS has developed several guides and manuals with information for Local District supervision of direct placements, this guidance does not apply in all instances. For example, there is a *Child Protective Services Program Manual*, but this only applies if there is also an open Child Protective Services case while a child is in direct placement.

We interviewed officials from 53 Local Districts and found that their supervision of direct placement varied, and not all cases are receiving the same level of attention across, and possibly even within, Local Districts. For instance, several Local Districts told us that, to the extent possible, they monitor children in direct placement as they would those in foster care. Some Local Districts utilize a checklist or other form to document the home investigation and ensure that critical aspects are covered. However, 25 of the Local Districts stated they do not use a standard form or template to ensure they gather consistent information during a home investigation.

We also found that Local Districts varied in their documentation of home investigations. While some Local Districts included explicit details – for example, noting smoke and carbon monoxide detectors, sleeping spaces, and weapons – others were vague and nondescript. For example, documentation by one Local District contained statements such as:

- “Home appears to meet minimum standards for health and safety.”
- “No safety issues present during home visit.”
- “House was neat and exceeded minimum degree of care ... no domestic violence in the house and no drugs or alcohol used.”

Furthermore, Local Districts also varied in the frequency of their follow-up visits. In our sample of 30 cases, we found that, in the majority of cases, Local Districts visited the placement home once a month (17), while others

visited twice a month (4), weekly (2), or less than monthly (4). In another two instances, the Local District only visited the placement home once; for one case, we found no evidence that the Local District ever visited the placement home. The frequency of home visits varied significantly both across and within Local Districts.

The lack of standards for supervising direct placements is contradictory to OCFS' Child Welfare Practice Model, which was developed to establish a consistent and recognizable approach to child welfare practices across the State and designed to ensure that out-of-home placements (when necessary) are a safe, short, and stable experience for children. As such, we have limited assurance that this model's purpose is being carried out.

Accuracy of Direct Placement Data

OCFS uses CONNECTIONS – the system of record for documenting information about children who are in direct placement – to centrally access case information recorded by Local Districts. However, we found errors and discrepancies that render the data unreliable for OCFS' reporting and performance measure purposes, not to mention for accurately tracking children who have been placed. During our review of the 30 case files, we identified 4 cases where children were misclassified as being in direct placement. Additionally, while pulling our sample cases, OCFS identified and corrected discrepancies for eight cases.

For example, when pulling one of the cases in our sample, OCFS determined that the court order listed the wrong name for the child. Fortunately, the child was in the correct direct placement. An amended order was submitted in November 2018, three years after the original placement in December 2015 and one month after OCFS began pulling our requested sample. The child had been removed from the direct placement in September 2016.

We also identified additional discrepancies between the original case files and the CONNECTIONS data for 23 of the 30 cases we reviewed. For example, some cases had incorrect placement start or end dates, while others had no end date at all, even though the file contained a court order showing that the placement had ended.

Despite using CONNECTIONS data for reports and performance measures, OCFS could not support how it ensures the accuracy of the direct placement data in the system. Further, while OCFS internal audits of preventive cases may include children in direct placement, as previously mentioned, they do not specifically target direct placement when selecting cases to review. As a result, it is possible that these discrepancies would have remained

undisclosed had they not been selected for our sample review.

In addition, the direct placement data provided by OCFS did not contain a field for caregiver name and address. Furthermore, for over 40 percent of the children whose placement ended, the field for explaining why a child was removed from direct placement was blank. Without accurate and complete information, OCFS cannot effectively monitor direct placements using CONNECTIONS.

Access to Information

Our audit required access to confidential and sensitive information, and we entered into a confidentiality agreement with OCFS. However, after signing the confidentiality agreement, OCFS sought to impose additional restrictions based on its misguided interpretation of various laws as well as the confidentiality agreement itself. While we disagreed and objected to the additional restrictions being placed on our access to information, we ultimately agreed to the subsequent amendment of the confidentiality agreement in the interest of proceeding with the audit. Despite the additional restrictions, we were still able to draw conclusions regarding our audit objective to the extent possible based on the documentation we received.

The agreement and subsequent amendment limited our access to case files and CONNECTIONS records. Therefore, we have no assurance that the information we received is complete. Readers should consider these limitations when reviewing our findings and conclusions.

Recommendations

1. Develop procedures for monitoring Local Districts' handling of direct placement cases.
2. Develop procedures for county supervision of children in direct placement to ensure greater consistency across the State.
3. Establish minimum standards for the safety of children in direct placement.
4. Correct the errors identified in the direct placement data and implement ways to prevent and detect input errors to ensure that information in CONNECTIONS is complete and accurate.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if OCFS has effective controls in place to ensure that children placed in the direct care of relatives or suitable persons via FCA Section 1017 are placed in a safe environment. The audit covers children who were in direct placement between January 1, 2014 and December 31, 2017 and includes subsequent documentation and information provided by OCFS through August 26, 2019.

To accomplish our objective and assess internal controls related to our objective, we reviewed relevant laws and regulations as well as OCFS guidance related to direct placement. We also interviewed officials at Central Office and from 53 of the 58 Local Districts in the State. Additionally, to test county supervision of direct placement cases, we judgmentally selected a sample of four counties based on geographic location and the total number of children in direct placement during our scope. In each of these counties, we selected two random samples of cases, one sample each of cases with and without children involved in an active Child Protective Services investigation, for a total of 30 out of 6,608 direct placement cases (outside of New York City). In evaluating the case records, we reviewed whether the Local District provided the services required under the NYCRR, assessed the safety of the placement home, and notified the court when it identified any circumstances that compromised the safety and well-being of children in direct placement. The results of our sampling work cannot be projected.

As described in this report, our access to case files and CONNECTIONS records was limited. In addition, we found instances where information in CONNECTIONS could not be relied upon, as it was inaccurate and/or incomplete. As a result, we placed limited reliance on the data, mainly using it to select our sample and for background information. We relied on other documentation in OCFS case files to support our findings.

Statutory Requirements

Authority

The audit was performed 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 conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

A draft copy of the report was provided to OCFS officials for their review and formal written comment. We are disappointed in OCFS' failure to address the report's recommendations. Rather than consider the recommendations as an opportunity to improve their oversight, OCFS officials expressed nearly universal disagreement with the audit conclusions and recommendations. We urge OCFS to consider our recommendations and implement changes to ensure the health, safety, and welfare of children in direct placement.

We also note that OCFS' response includes multiple misleading and/or inaccurate statements. Our responses to those comments are included as State Comptroller's Comments, which are embedded in OCFS' response. OCFS' response references two exhibits that are not included because they contain confidential information.

Within 180 days after 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 the

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 why.

Agency Comments and State Comptroller's Comments



Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Commissioner

January 15, 2020

Mark Ren
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

Re: Audit 2017-S-30 - Draft Report:

Dear Mr. Ren:

The New York State Office of Children and Family Services (OCFS) has prepared this letter in response to the Office of the State Comptroller's (OSC) Draft Report for Audit 2017-S-30. OSC's stated objective was to determine whether OCFS had effective controls in place to ensure that children placed in the direct care of relatives or a suitable person via Family Court Act (FCA) section 1017 are placed in a safe environment. Over the course of this audit, OCFS has explained to OSC officials the incurable flaw in the scope of the audit as written. The scope of OSC's audit terminates after the act of a New York State Family Court (Court) placement into a relative's (or suitable person's) home. While OCFS has the legal authority to provide oversight prior to and after the Court's placement, OCFS lacks the legal authority to interfere with the Court's determination. Consequently, OCFS cannot legally provide oversight of the Court's placement decision, a factor that OSC failed to take into consideration during their audit. Nevertheless, OSC held fast in their belief that the current audit scope encompasses what they deem as OCFS' exclusive responsibility to ensure the safety of children placed in the direct care of relatives or a suitable person, and as a result OSC incorrectly holds that OCFS should be held accountable for decisions that belong exclusively to the Courts.

State Comptroller's Comment 1 – OCFS' assertion that the scope of our audit terminates after court placement is wrong. Throughout the report, we explicitly explain what we reviewed during the audit. At no point did we purport that OCFS may overrule the court's authority regarding the placement decision, or state anywhere that OCFS holds exclusive responsibility to ensure the safety of children in direct care. Rather, we evaluated OCFS on its responsibilities related to the safety of children placed in the direct care of relatives before, during, and after the court placement decision. We explained this to OCFS officials many times during the audit, and they were well aware of what this audit would cover, as evidenced by the documentation they agreed to provide us – including documents developed before and after the court placement. It is not up to OCFS to determine the scope of an OSC audit. In fact, the confidentiality agreement made it abundantly clear which confidential records "shall" be made available to OSC to the extent such records were reasonably deemed "by the Comptroller" to be relevant and necessary to the conduct of the audit. Rather than attempting to challenge our audit scope and minimize the findings of this audit, we urge OCFS to consider our recommendations and implement changes to ensure the health, safety, and welfare of children in direct placement.

The child welfare system has many components in New York: OCFS works in tandem with the Local Departments of Social Services (LDSS), Voluntary Authorized Agencies (VA), and New York State Family Courts to pursue actions that protect the health and safety of children while promoting permanency and the best interests of the child. Some responsibilities of the LDSS or VA are under the supervision of OCFS.

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However, New York State law gives the Court discretion to make decisions regarding whether there is the need for an inquiry into the relative or suitable person prior to a Court's decision to make a direct custodial placement of a child with such relative or other suitable person.

OCFS advised OSC on the legal and practice nuances of a Court decision to place a child into a relative's or other suitable person's home and OCFS' lack of legal authority to interfere with the Court's determination. At no time did OSC provide an opposing understanding of the law, its interpretation or applicability to the audit scope. Nevertheless, OSC's draft report fundamentally misconstrues the law and its applicability to the audit scope. Due to OSC's narrowly construed scope and OSC's incorrect and overly broad interpretation of OCFS' authority under the law, OCFS is left in an impossible position to satisfy the OSC's findings and recommendations.

Response to Draft Report:

OSC's flawed Objective: Does OCFS have effective controls in place to ensure that children placed in the direct care of relatives or a suitable person via Family Court Act §1017 are placed in a safe environment.

OCFS Response:

i. Scope of OSC's Audit

OSC's audit scope examines a very narrow provision of the New York State Family Court Act, specifically § 1017(2)(a). This statute imparts the Family Court with the authority to place children into the direct care of relatives or a suitable person. Neither OCFS nor a LDSS may usurp the Court's authority regarding the placement decision, and neither has standing to challenge the Court's decision.

Additionally, while the stated audit scope relates to the safety of a child when the Court decides to place a child in another home, much of the draft report is devoted to a discussion regarding the actions by OCFS or LDSS after that placement decision has already been made. This focus on actions after the children are placed exceeds the limited audit scope of reviewing controls to "ensure the children **placed** in the direct care of relatives...are **placed** in a safe environment." The scope of OSC's audit terminates after the act of a Family Court placement into a relative's (or suitable person's) home.

State Comptroller's Comment 2 – As explained in comment 1, our audit report explains what we reviewed, and OCFS officials were well aware of what our scope included. OCFS acknowledges above it has the legal authority to provide oversight before and after court placement. It is not up to OCFS to determine the scope of an OSC audit.

ii. OCFS' Oversight Role

a. Legal Authority Does NOT Exist for OCFS Oversight of the Court Placement Decision

OSC in its first key finding alleges "OCFS does not maintain adequate oversight of direct placements to ensure that Local Districts comply with applicable laws and regulations and that children are placed in safe environments." This assumption presupposes that a LDSS or OCFS has the authority to overrule a Court's placement decision if the LDSS or OCFS should disagree with the Court's decision to place a child in a particular setting. This authority simply does not exist. It should be noted that during the audit OCFS requested OSC provide the legal standards for which OSC was holding OCFS accountable. At no point did

OSC provide such statutory or regulatory standards, outside of its understanding of section 1017 of the FCA.

State Comptroller's Comment 3 – OCFS' assertion that auditors failed to provide the legal standards for the audit is patently false. The auditors met and corresponded with OCFS throughout the audit, often with OCFS legal staff present or participating, to help ensure that OCFS personnel fully understood the audit process, including our application of audit criteria. Our report clearly states the relevant statutory and regulatory standards we audited against. Furthermore, we provided OCFS officials with preliminary reports detailing the criteria that we based our audit findings on, including laws and regulations, such as NYCRR Title 18, Part 428, and the FCA.

Under the authority provided in Family Court Act §1017(2)(a), the legislature granted the judicial branch of government the ability to temporarily release a child directly to a non-respondent parent, relative, or suitable person. The legislature did not give such authority to OCFS, which is within the executive branch of the government, and has no legal mechanism to insert itself into the placement decision-making process by the Family Court via this section of the FCA, which was the subject of OSC's audit.

The doctrine of separation of powers rooted in the United States Constitution precludes OCFS in taking the action OSC recommends. Under the doctrine of separation of powers, each branch of government (executive, legislative and judicial) is vested with specific powers and authority to prevent any single branch from wielding too much power. Additionally, where the authority of the separate branches is intermingled, with one branch being granted the ability or authority to review or interpret the decisions of another, it is to ensure the presence of checks and balances in the government system. Where such authority exists, it has been granted by statute or constitution. This discussion is relevant to the instant audit because **neither OCFS nor the LDSS have been given the ability to intervene** in the legal authority provided to the Court by the legislature to make the safety and direct placement decision of a child. Even in situations where the LDSS has been granted statutory authority to remove children due to imminent danger to the child (see Family Court Act §1024(a)); the court is the only entity with authority to keep that child out of their home and place them elsewhere. (see Family Court Act §§1022, 1023, and 1027.)

State Comptroller's Comment 4 – As explained in comment 1, we did not claim that OCFS may overrule the court's authority regarding the placement decision. OCFS has the authority to implement every recommendation in this report.

b. Legal Authority Does Exist for OCFS Oversight Prior to the Court Placement Decision

Where OCFS does have oversight authority over LDSS services and activities OCFS provides guidance and reviews LDSS actions accordingly. Under section 1017 of the FCA, the Court may, but is not mandated to require the LDSS to investigate the home of a relative or suitable person. If required by the Court, such an investigation would be pursuant to child protective investigative standards established by OCFS, for which OCFS has oversight. In addition to the Court ordering a LDSS investigation, the LDSS has other opportunities to be involved with families before a Court makes a placement decision. Such opportunities would involve either a family involved in a child protective services case or a family receiving mandated preventive services through the LDSS. Both child protective services and preventive services are provided for or arranged by the LDSS. Both child protective services and preventive services are areas within the child welfare system where OCFS asserts legal oversight authority as provided for by the legislature in the New York State Social Services Law. Notably, neither preventive nor protective services were the subject of this audit.

c. Legal Authority Does Exist for OCFS Oversight **After** the Court Placement Decision

Additionally, OCFS has provided to OSC information explaining the circumstances in which OCFS and LDSS would have a role regarding children or families who have become involved with a Family Court Act §1017 direct placement; this includes the LDSS and OCFS involvement after the Court placement decision. OCFS provided the relevant legal authorities, related uniform case record requirements, family assessment service plans and amendments, and service plan reviews. OCFS provided OSC with at least a dozen regulatory references as to our valid and authorized oversight work, as well as demonstrated oversight through policy guidance documents and manuals directing LDSS actions and OCFS expectations.

For example, the requirement for the development of a uniform case record for children in direct placement mirror the requirements for such documentation for children in foster care. (see 18 NYCRR 428.1(a)(1) and 18 NYCRR 428.3(e).) Children in direct placements, however, are not in foster care. Children in direct placements are in the custody of private citizens.

Additionally, OCFS requires that each child placed in the direct custody of a relative or other suitable person by the Court subsequently have a family assessment and service plan (FASP) developed and reviewed on a periodic basis. (18 NYCRR 428.9) The FASP must address both the current safety of the child and the work to provide permanency for the child. These service plan reviews or case consultations are required every six months or whenever a child's placement is modified. (18 NYCRR 428.6 and 18 NYCRR 428.7)

OCFS and the LDSS work closely with Courts toward our shared goals of safety and permanency for all children in New York. Work done under OCFS regulations covering uniform case records, FASPs, plan amendments, service plan reviews and case consultations were used by OCFS and the New York State Unified Court System to develop a permanency hearing report. The permanency hearing report, a copy of which was provided to OSC, is one tool used by the Court in deciding whether such direct placement should be continued or terminated.

d. OCFS Additional Oversight and Monitoring **Around** the Court Placement Decision

The additional oversight and monitoring OCFS performs along the continuum of a Family Court Act §1017 direct custodial placement may include case reviews. As with all OCFS periodic reviews, direct placement cases could be selected within a sample of preventive services cases during periodic OCFS assessments. Preventive services provided by a LDSS could be provided either before or after a placement decision has been made. If the Court has ordered preventive services for the children or family as part of a direct placement decision, then OCFS would have a role in the monitoring and oversight of the LDSS provided preventive services. If such case is selected for OCFS oversight and monitoring review, OCFS would do an assessment of the frequency and quality of the casework contact, and services provided in that case to address the child or family's needs, such as the child's physical, mental and behavioral health, any known risks to the child, and the child's safety.

Another important consideration OSC fails to mention is the notice that the statute provides to relatives or other suitable persons who are required to submit to the Court's jurisdiction under this provision of the Family Court Act. Relatives or other persons are not required by statute to submit to the jurisdiction of the executive branch and oversight of OCFS or the LDSS when they offer to care for a child placed directly in their home. However, the Court could order, and often does order, an added layer of oversight through preventive services by the LDSS or through a LDSS child protective services investigation. In these scenarios, OCFS would quite obviously have an oversight role, and the LDSS would have continued involvement with the child

and relative family *after* the court initially places the child. Unfortunately, the audit scope does not capture this potential continued presence and oversight of the LDSS. This continued involvement would be case-specific and fact specific. As explained above, only what is directly ordered by the Court under Family Court Act § 1017(3) is what triggers the legal authority and other regulatory guidelines for LDSS and thus, OCFS' oversight and monitoring. To be clear, while in a 1017 placement, *an LDSS has no authority or ability to supervise the child unless expressly ordered by the Court.*

State Comptroller's Comment 5 – As explained in comment 1, our audit scope included the oversight of OCFS and the Local Districts related to the direct placement of a child under the FCA. OCFS' response makes it clear that it understands its responsibilities related to children in direct placement. Further, OCFS states “an investigation would be pursuant to ... standards established by OCFS,” acknowledging that it has the authority to meet our recommendation regarding minimum standards.

e. OSC Errors or Lack of Detail in Findings Prevent Full Response

OSC's report assumes children placed into direct relative custody by the Court follow a statutory schedule for permanency hearings, which they do not. Permanency hearings are not mandated in statute for these types of placements, however in practice are often ordered by the court. If a hearing is ordered, then a report is completed for the hearing. Children placed into direct custody of relatives or other suitable persons do not have rules for continuing permanency hearings otherwise found under the Family Court Act for children in foster care. Children placed into foster care have stringent time frames and rules for appearing before a Judge for permanency hearings. Children placed directly into the custody of relatives or other suitable persons have no such schedule to re-appear before the Court that placed them.

State Comptroller's Comment 6 – We did not state anywhere in the report that children in direct placement must follow a statutory schedule for permanency hearings. However, as OCFS indicated in its response, in practice, courts often order permanency hearings for these types of placements. Under NYCRR Title 18, Part 428, Local Districts are required to file a permanency hearing report prior to these court-ordered permanency hearings. During our review of case files, we only considered a permanency hearing report missing if there was a court-ordered permanency hearing.

OSC commented that the files they reviewed did not have access to all “required” permanency hearing reports and that “critical information” was lacking in the reports. As this comment was not backed by specific examples or cases for OCFS review, it is difficult for OCFS to respond other than to remind OSC that the permanency report which follows a placement decision is not part of the scope of the audit.

State Comptroller's Comment 7 – As explained in comment 6, we only considered a permanency hearing report missing if there was a court-ordered permanency hearing. Further, we provided detailed information regarding the seven cases missing permanency hearing reports and provided OCFS with the opportunity to respond.

Additionally, OSC's report errs in suggesting that LDSS do not always report all the details of a relevant case to the Court. OSC provided only two examples of such situations and the impression OSC has of each situation is incorrect. Specifically, OSC is concerned that information about open child protective services investigations were not shared with the Court. The two cases highlighted by OSC involve child protective services reports in the resource relative home *after* the placement decision was made by the Court. As such, the issue OSC is raising is outside the scope of the audit. Nevertheless, OCFS would like to correct the impression of OSC that the LDSS failed to take appropriate actions to inform the Court of issues of safety for the children in placement. In each of these instances, the LDSS records from the investigation of the incidents

document no immediate safety concerns for the children. More importantly, in each instance the LDSS did the work they are expected to do to engage the children and the placement resource so that their relationship with the placement families continued beyond the scope of the investigation with the provision of services and permanency planning for the best outcomes for the children.

Worth noting, the tone throughout OSC's draft report is offensive and contains pejorative generalizations about child welfare work done daily by local caseworkers who serve New York's children and families.

State Comptroller's Comment 8 – As explained in comment 1, our audit scope was not limited to the court's placement decision. As OCFS stated in its response, work done under OCFS regulations is used by the court in deciding whether direct placements should continue or be terminated. Furthermore, one of the cases in question contained a document stating that there was enough credible evidence to support allegations of inadequate guardianship, and inadequate food, clothing, and shelter, and yet we found no evidence this was reported to the court. We maintain that OCFS should provide courts with all information relevant to the safety of children in direct placement and are concerned by OCFS' unwillingness to recognize these deficiencies, given the vulnerable population it serves. It's worth noting that we visited numerous counties during our audit that, by and large, agreed there are no minimum standards for handling direct placement cases.

iii. Cases Identified by OSC

Within the draft report, OSC cites two cases as examples of questionable conditions lacking documentation that were not reported to the Court. In both cases, OSC is finding fault with the LDSS for not providing reports to the Court during an on-going child protective investigation. In both cases, the LDSS conducting the child protective investigation of the relative who has been given direct custody by the Court did not find safety conditions that warranted immediate removal of a child from the relative's home before the conclusion of its investigation. To be clear, reporting only allegations to the Court during an on-going investigation would be in violation of the relative's right to due process. If the LDSS child protective caseworker did find conditions that warranted an immediate removal from the direct relative's home, then the Court would need to know about the disruption in the custody order and the Court would be notified. But those were not the facts in these cases.

State Comptroller's Comment 9 – As explained in comment 8, work done under OCFS regulations is used by courts in deciding whether direct placements should continue or be terminated. We maintain that Local Districts should provide courts with all information relevant to the safety of children in direct placement.

a. First Case Referenced: OSC Error and Misconstrues Statement of Collateral Contact.

In the first referenced case in the draft report, OSC claims that the LDSS failed to share investigative details with the Court. OCFS emphasizes that it appears the investigation at issue occurred *after* the Court's placement decision and therefore outside the scope of the audit. The children in this case were originally placed with the maternal grandmother but had to be moved due to a medical condition that impaired the grandmother's ability to care for the children. At the time of new placement, the Court was made aware that the new placement resource had domestic violence incidents in their past. During the time the children were with the new relative placement, a report of suspected child abuse or maltreatment was received by OCFS and referred to the LDSS for investigation. The investigation found, and documented, no immediate risk to the safety of the children. As such, there were no grounds for the LDSS to remove the children from the new relative placement.

Of note and of significant concern to OCFS, OSC misrepresents what a key contact told investigators. OSC said the reporter was fearful for the children who had been placed with the new relative. In fact, that is not what is in the record. Rather, the reporter speculated that the new relative's demeanor and agitation with being investigated by CPS could impact her (the reporter's) own safety. Importantly, the reporter did not make any statement regarding imminent concern for the children's safety. Also, the reporter did not say the new relative made any threat toward her, credible or otherwise.

State Comptroller's Comment 10 – The facts presented in this report were taken from case notes completed by caseworkers, as well as actual police reports. Furthermore, the key contact in question made statements recorded in the case notes such as, "he scared me," referring to the new relative responsible for the children, and "I was afraid for his safety," referring to the safety of one of the siblings placed with this relative. Being that this relative had a history of domestic violence, we maintain all known facts should be reported to the court so it can make an informed decision on where a child is placed. OCFS' attempts to question our audit scope and misconstrue the facts, rather than acknowledge areas to improve its services to this vulnerable population, is a concern.

b. Second Case Referenced: OSC Failure to Demonstrate Violation of a Legal Standard

In the second case referenced in the draft report, OSC's primary concern is the condition of the home. The report documented a dirty house. Such conditions may not be optimal; however, they do not necessarily cause a safety concern nor evidence of imminent risk to a child. The LDSS who conducted the investigation and visited the home did not find that the dirty home conditions rose to the standard established in law, such that a removal was required. In this case, the home was also visited prior to the Court's section 1017 FCA placement decision, and there were no observable hazards in the home. The report and issues referenced by OSC occurred after the Court ordered the placement, and even still the LDSS determined that the home met the minimum degree of care required and the children safely remained in the home. As there is no sound footing for OSC's criticisms in a standard found in law, OSC's criticisms sound more like biased assumptions about families facing poverty; condemning those whose household are in varying degrees of upkeep or repair.

State Comptroller's Comment 11 – According to an investigation conclusion document on the second case referenced in the draft, the "home was found to be in deplorable conditions, with garbage, dirty laundry, dirty food dishes throughout the home. The children were sleeping in rooms cluttered with laundry, which was also blocking an exit door prohibiting children leaving in case of fire ... many prescriptions within reach of the children." Furthermore, as explained in comment 8, the document states there is enough credible evidence to support the allegations of inadequate guardianship and inadequate food, clothing, and shelter. OCFS states in its response that the conditions did not rise to the standard established in law. However, OCFS, as well as several Local Districts, stated throughout the audit that there are no such standards for children in direct placement. OCFS acknowledges this in the very same paragraph where it states "there is no sound footing ... in a standard found in law." Rather than contradict itself, OCFS should seek to ensure that standards are put in place to ensure the safety of this vulnerable population.

iv. **CONNECTIONS Data**

OSC's draft report identified several discrepancies in data entries in the CONNECTIONS system of record for documenting information about children in direct placement. OCFS recognizes that the accuracy and reliability of information is a vital and critical component to oversight and monitoring. The cases pulled in the sample for this audit were from 2014 to 2017. In 2018, OCFS initiated measures to enhance the timeliness

and accuracy of data entered into the CONNECTIONS system. As part of this initiative, OCFS instituted Data Leaders in each of the Regional Offices who are trained to provide technical assistance to LDSS so that they may better access and understand the data.

v. Access to Information

Lastly, OSC states in its report that OCFS imposed additional restrictions based on a “misguided interpretation of various laws and the confidentiality agreement” agreed to between the parties. OCFS disputes this statement. It is important to note that OSC fails to cite any laws which would entitle them to unfettered access to any record they would like. OCFS is presuming the statutes OSC find relevant include Social Services Law §§ 372(4)(b)(i), 409-a(9)(a), and 422(4)(A)(v)(i). While these laws grant OSC access to OCFS records for purposes of conducting an audit, they do not grant OSC *unfettered* access. All three statutes have a provision that state:

Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is **absolutely essential** to the specific audit activity and the department gives prior written approval. SSL §§ 372(4)(b)(i), 409-a(9)(a), and 422(4)(A)(v)(i).

State Comptroller's Comment 12 – We did not request information in violation of federal and State confidentiality laws and, in fact, worked tirelessly with OCFS to ensure compliance with these laws. There were certain records to which OSC required access for purposes of the audit that are deemed confidential pursuant to law. The Social Services Law provides, in part, that such confidential information “shall” be made available to OSC for purposes of a duly authorized performance audit, provided that OSC shall have certified to OCFS that it has instituted procedures to limit access to client-identifiable information. The confidentiality agreement provided the requisite assurances.

a. Confidentiality of OCFS Records

OSC has historically failed to protect the confidential nature of OCFS records while conducting audits of this agency. These failures include sending OCFS auditors records obtained from a different state agency, as well as violating a domestic violence site visit agreement. In such instances, as herein, OSC has taken the position that because they are an agency of the state, they should have unfettered access to any record.

State Comptroller's Comment 13 – As explained in comment 12, all of our requests for information were made in accordance with applicable confidentiality laws. As a courtesy, we worked out an agreement with OCFS to not access certain information due to the confidentiality of the data. While OCFS claims it fashioned the agreement in such a way to guarantee access to complete and accurate records, it's important to note that it required an amendment to the agreement before providing us the majority of the information needed to complete our audit.

Because of OCFS' concerns regarding OSC's previous failures to honor the confidentiality of OCFS records, OCFS and OSC, entered into a confidentiality agreement for the purpose of this audit on July 21, 2017. The agreement detailed the type of records OSC was entitled to review and ensured OSC understood and agreed to all applicable confidentiality requirements before being granted access to such records. A copy of the

Confidentiality Agreement of July 21, 2017 with the 2018 Amendment is attached as **Exhibit A**.¹

Throughout the audit, despite concerns over OSC's ability to adhere to the confidentiality agreement and confidentiality statutes, OCFS provided OSC with answers to any questions that arose relating to the provided documents. OSC takes the position that they cannot assure they received complete information. However, given the limited scope of OSC's audit, OCFS fashioned the confidentiality agreement in such a way to guarantee access to complete and accurate records, while balancing the need for protecting the confidential information of the families and children involved in the 1017 placement process. OSC's statement is simply a response to being denied the unfettered access it claims it is entitled to, despite contrary law and regulation.

State Comptroller's Comment 14 – We did not request information that violated applicable confidentiality laws and, in fact, worked tirelessly with OCFS to ensure compliance with these laws. As a courtesy, we worked out agreements with OCFS to not access certain identifiable information due to the confidentiality of the data. Furthermore, OCFS provided the additional documents (e.g., permanency hearing reports) we requested in other cases, just not in all of them. Additionally, OCFS makes a reference in its response to Exhibit A, which is the signed confidentiality agreement. This document is confidential and is not included as part of the OCFS response.

b. Process to Provide Redacted Files

Due to OSC's previous lapses and the confidential nature of the records sought by OSC for review, OCFS was presented with a redaction workload which would take staff hundreds of hours to complete. It is imperative to note that a single case file can contain upwards of 1000 pages and requires a multi-faceted, complex review. Every word in every page of a file must be reviewed for potential redactions, and draft redactions must be reviewed prior to the final file being sent to OSC.

In response to a request by OSC, OCFS programmatic and legal staff held a meeting with OSC in December of 2018 to discuss how best to expedite the process. During the December 2018 meeting, OCFS went through a sample case file with OSC and pointed out a list of relevant documents in each file which could be provided rather easily, were within the audit scope, and would assist OSC in performing their audit. The documents included the 1017 Court Order which placed the subject child, Permanency Hearing Orders occurring during 1017 placement within the period of review, any Dispositional Orders, and the Safety Assessments of 1017 resources. OSC agreed to this disclosure of documents. OCFS also reiterated its availability to answer any questions or fulfill any additional requests for information. A listing of the materials provided as well as an email confirming this agreement is attached as **Exhibit B**.

Upon review of the documents provided pursuant to the agreement between OCFS and OSC, OSC asked numerous follow-up questions about the files provided. OSC also required additional documents which OCFS was not required to provide under the terms of the Confidentiality Agreement and/or the Amendment to the Confidentiality Agreement. However, to expedite OSC's audit and to assist them in achieving their audit objectives, OCFS provided OSC staff the additional documents on two separate occasions, in April 2019, and July 2019. Furthermore, OCFS staff was also made available to OSC throughout the audit and provided answers to numerous questions posed by OSC without delay. For instance, in May 2019, OCFS Program Staff met with the OSC auditors in person for an hour and a half to answer any of their additional questions. As such, any delay in providing documents to OSC was due to the confidential and sensitive nature of the

¹ It is important to note that the three statutes previously referenced contain a clause allowing OCFS to deny "any further access" to records when confidentiality violations have occurred. The confidentiality agreement was a compromise to so allow OSC's continued work. See SSL §§ 372(4)(b)(ii), 409-a(9)(b), and 422(4)(A)(v)(ii).

documents and the statutory responsibility to maintain that confidentiality.

OCFS has a responsibility to every citizen of New York State to protect that individual's confidential information to the full extent of the law. OSC's characterization of OCFS' protection of confidential information as a hindrance to OSC's audit is a gross mischaracterization of the facts. At all times, OCFS adhered to the confidentiality agreement agreed to by the parties. OCFS sought assurances and employed reasonable safeguards to protect confidential information and still provided OSC with the material needed to complete its audit in a timely manner.

OCFS again appreciates the opportunity to respond to OSC' draft report and the opportunity to provide further clarity on the final report. If you have any questions regarding this response, please contact Bonnie Hahn at Bonnie.Hahn@ocfs.ny.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Ogundimu', with a horizontal line extending to the right.

Lisa Ghartey Ogundimu
Deputy Commissioner
Division of Child Welfare and Community Services

cc: Sheila J Poole, Commissioner
Brendan Schaefer, Director Internal Audit

Contributors to Report

Executive Team

Tina Kim - *Deputy Comptroller*
Ken Shulman - *Assistant Comptroller*

Audit Team

Stephen Goss, CIA, CGFM - *Audit Director*
Donald Geary - *Audit Manager*
Mark Ren - *Audit Manager*
Andrea LaBarge - *Audit Supervisor*
Todd Seeberger - *Audit Supervisor*
Cheryl Glenn - *Examiner-in-Charge*
Stephon Pereyra - *Examiner-in-Charge*
Lisa Dooley - *Senior Examiner*
Kathy Gleason - *Senior Examiner*
Adriane Inman - *Senior Examiner*
Zachary Schulman - *Senior Examiner*
Jarrold Weir - *Senior Examiner*
Mary McCoy - *Supervising Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



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