

OCFS FACT SHEET: CHILD DAY CARE INSPECTIONS & VIOLATIONS

The Inspection Process

In order to promote the safety and well-being of children in child care, NYS Office of Children and Family Services (OCFS) inspectors must perform routine inspections to evaluate compliance with regulations. Research shows that unannounced inspections encourage compliance with regulatory standards and improve quality. OCFS may make announced or unannounced inspections of the records and premises of any child day care provider, whether or not such provider is licensed by or registered with OCFS. Providers must admit inspectors at any time during their hours of operation or while children are in care, for the purpose of conducting inspections. Inspectors must be given free access to the building or buildings used by the provider, staff and children, and to any records of the provider. The recent change in licensing and registration from two years to four years for subsequent renewal periods was an opportunity for the Division of Child Care Services to evaluate the timing of inspections and their purpose.

There are a variety of inspection types:

- **Initial and Renewal Licensing Inspections:** The application process to become a registered day care provider and renew a licensure; includes an announced inspection of the facility.
- **Routine Inspections:** By law, 50% of all registered day care programs must be inspected each year. The registered programs (family day care and school age child care) inspected are chosen at random and inspections may or may not be announced.
- **Complaint Investigations:** Anyone with a concern or complaint about a child care program in New York State may call the child care complaint line, 1-800-732-5207. If OCFS receives a complaint about a program, the required inspection is a complaint investigation. These inspections are never announced and the investigation of a complaint requires an inspector to address each aspect of the complaint. Inspections for complaints rated as **imminent danger** will begin by the next day of the program's operation. Inspections for complaints rated as **serious** will begin within five days, and inspections for complaints rated as **non-emergency** will begin within 15 days. See below for definitions of levels of danger.
- **Monitoring Inspections:** This type of inspection is scheduled as a follow-up to a previous inspection to assess compliance with regulation.
- **Fire Safety Inspections:** Fire safety representatives from OCFS schedule regular inspections to check for compliance with building and equipment safety standards.
- **Technical Assistance Inspections:** Day care program representatives may ask OCFS inspectors to provide on-site technical assistance for a variety of issues and concerns.
- **Fatality Inspections:** When a child dies in care, an OCFS inspector is immediately sent to the day care program to gather information on the cause of death, assess the health of the other children in care, and provide support when needed to the family and the provider.

Violations

When a violation is found, OCFS must notify the provider in writing of the observed violation(s) within 10 calendar days of the inspection. The program is required to correct the violation immediately. If the violation is not corrected, OCFS may take enforcement action.

There are three types of violations:

- **Imminent danger:** A complaint or violation is classified as "imminent danger" when there is a condition or practice in a child day care program that is causing, has caused, or could reasonably be expected to cause death, serious or protracted disfigurement, or protracted impairment of physical or emotional health to any child if the operation of the child day care program were to continue before the violation, condition, or practice was eliminated. The "imminent danger" classification is assigned to complaints and violations when the circumstance includes an urgent need for intervention in order to avoid further harm or risk of harm. Refusal or failure to provide access and inadequate or incompetent supervision may be considered imminent danger. Because of the many factors affecting each situation, determining imminent danger must be done with care and professionalism and each situation is handled individually.

- **Serious:** A complaint or violation is classified as serious when there is a condition or practice in a child day care program that is causing, has caused, or creates the risk of harm to a child in care but the probable harm would not likely result in death, serious or protracted disfigurement, or protracted impairment of physical or emotional health.
- **Non-emergency:** A complaint or violation is classified as non-emergency when the condition or practice does not appear to create any risk to the safety of children; no harm has occurred, nor is harm imminent. Non-emergency complaints are those complaints not categorized as imminent danger or serious.

Enforcement

If it is determined that a provider is in violation of regulations, OCFS takes steps to enforce the regulations. The actions taken by OCFS depend on many factors, including what the provider has done or failed to do, as related to the regulations.

OCFS actions may include:

- **A Corrective Action Plan:** The goal of the corrective action plan is to bring the program into compliance with the regulations and keep children safe. The corrective action plan, developed by a provider and approved by OCFS, includes a time frame for making the correction(s). If a provider doesn't follow through and correct the cited violations within the specified time frame or a child is injured or at risk of being injured, OCFS may take additional enforcement action.
- **License Suspension:** OCFS will suspend a license if a child's safety or welfare is in imminent danger. A suspension is effective immediately. The provider has ten days to request a hearing in writing. Failure to do so will be evidence that the finding was valid, and the suspension will continue until the condition is corrected or the license is permanently revoked.
- **Cease and Desist Order:** require a provider to immediately stop operating a program found to be operating illegally.
- **Fines:** civil fines may be assessed for the occurrence of some violations. Providers are entitled to a hearing to contest the imposition of fines. There are three classes of fines:

Class 1: \$500/day defined as any violation that places a child in imminent danger: a serious fire, safety or health risk; use of corporal punishment; inadequate/incompetent supervision; inadequate light, ventilation, sanitation, food, water or heating; repeated overcapacity; abuse, failure to report child abuse; refusal to provide access to inspectors.

Class 2: \$200/day defined as any violation that places a child in serious danger: use of corporal punishment; inadequate/incompetent supervision; inadequate light, ventilation, sanitation, food, water or heating; exceeding maximum capacity.

Class 3: \$50/day which is any violation of a regulatory requirement other than those included under Class 1 or Class 2 violations.

If a provider demonstrates that a corrective action has been taken within 30 days of notification of the penalty, the fine will not be imposed except in cases of **non-rectifiable violations**, which include:

- Total or substantial failure of the fire detection or prevent system or emergency evacuation procedures
- Failure to provide adequate, competent supervision
- Failure to provide adequate sanitation
- Abuse or maltreatment of a child in care or use of corporal punishment
- Violation of the same regulation or law more than once within six months
- Failure to obtain a license after denial of an application, revocation of a license or termination of registration
- Failure to obtain necessary medical attention for a child
- Failure to report suspected child abuse or maltreatment

Revocation

This is a determination made by OCFS to revoke a day care provider's license or registration based on non-compliance with regulatory standards of care. A provider has 30 days to request a hearing, or the revocation becomes final and the provider must cease operation.

Denials

This is a determination by OCFS to deny a license or registration to a new applicant or to deny the renewal of a license or registration. Denial actions are taken for a variety of reasons that include, but are not limited to, character issues, fraud, criminal history reviews, child abuse and maltreatment indications, and non-compliance with regulatory standards of care. A provider has 30 days to request a hearing, or the denial becomes final and the provider must cease operation.

Administrative Hearings

In each enforcement situation, providers are entitled to have a hearing with OCFS. It is a legal proceeding. The hearing notice must specify the date, time and place of the hearing, the manner in which the hearing will be conducted, the proposed action, and the charges which are the basis for the proposed action. The charges must specify the statutes, rules and regulations with which the provider failed to comply and must include a brief statement of the facts pertaining to each violation. Hearings involving cease and desist orders must be scheduled within 30 days after receipt of the request by OCFS. All other hearings must be scheduled to commence as soon as possible.

Posting of Violations on the OCFS Website

A two-year record of violations is available on the OCFS child care website. Parents are encouraged to make their child care choices by visiting the website (www.ocfs.state.ny.us), and by speaking to the licensing office and the provider themselves. It is up to parents to assess whether a program meets the needs of their child.

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