



New York State  
Office of  
Children & Family  
Services

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**Testimony of Commissioner John A. Johnson**

**to the**

**Council of the City of New York  
General Welfare, Health and Women's Issues  
Committees' Hearing on Oversight-Inspection  
and Monitoring of Child Care Centers in New York City**

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**Thursday, October 14, 2004**

The New York State Office of Children and Family Services (OCFS) is charged by State Law to regulate, license/register and monitor those child care settings that meet the State definition of child day care. At the current time there are approximately 18,800 regulated facilities that are licensed or registered under the auspice of OCFS. The types of licensed and registered care are day care centers (outside of New York City); School Age Child Care Programs (statewide) that provide supervision for children before and after school and outside normal school hours; group family day care (statewide) which can care for up to 14 children in a provider's home; and registered family day care programs that can provide care to a maximum of 8 children in a provider's home.

Excluded from this definition are those programs defined as day care centers located in New York City and those additional settings that are generally known as "informal child care" across New York State. Day care centers in New York City fall within the jurisdiction of the New York City Department of Health (NYCDOH).

OCFS contracts with NYCDOH to conduct licensing, registration and inspection activities on its behalf for all school-age child care, group family day care and family day care programs located in New York City.

In 2000, Governor Pataki called for and successfully won passage of major reforms and enhancements to the requirements for licensing and registration of regulated child care, as well as the expectations for monitoring by State and contract staff.

Since Governor Pataki signed the Quality Child Care and Protection Act in 2000, there has been a significant statewide increase in OCFS and contract staff to enforce the health and safety improvements contained in the Act. This staff increase, which more than doubled the number of staff previously available, has resulted in streamlined licensing and inspection procedures and greater consistency in the monitoring of regulatory compliance.

In response to Governor Pataki's direction, OCFS undertook an intensive effort to re-engineer all aspects of the licensing and oversight process. An automated system is now in place that provides enhanced supports to the initial application and renewal process, inspections and complaint investigations, as well as for criminal history reviews. This has also enabled the creation of an automated "real time" directory of providers on the OCFS website, allowing immediate public access to resource and referral information on the location and status of all regulated providers.

### **The Oversight Process – Scope and Level of Interaction**

OCFS meets this responsibility through a work force composed of both direct OCFS staff assigned across 6 regional offices and contracts with 38 counties (included the City of New York). All staff, both direct and contract, must follow the same policies and procedures in all aspects of their work.

The following summary is offered as a way to better understand the oversight role and the level of interaction between the regulated community and OCFS and its agents.

The typical provider makes first contact with the State's licensing representatives by initiating the application process for becoming a regulated provider. This process includes at least one required inspection before an initial license or registration can be issued to determine compliance with applicable building, health and safety and programmatic requirements. To the extent that the applicant is notified of changes that will be required, follow-up inspections are conducted to determine whether these changes were made. In addition, the application process includes background screening against the State's criminal history data base; child abuse and maltreatment data base; and the child care licensing data base to discern any past issues that might preclude the licensing or registration of the facility. Personal and employment references are also checked.

The application also encompasses documentation of appropriate staff educational, experiential and health qualifications as well as approvals of various required policies and procedures. In addition, all new family and group family day care providers must successfully complete an intensive health and safety training program conducted by a trainer certified by OCFS before being licensed or registered and must complete a total of 15 hours of training (including the health and safety training) within the first six months of being licensed or registered.

Once licensed, every day care center and group family day care provider must be inspected MINIMALLY once during every two-year licensing period as part of the renewal process. The minimum requirement set by law for registered school-age child care programs and registered family day care providers is that 50% of all facilities will be inspected every year. It must be stressed that this is the legislative minimum. While I will address later the issues we have had in working with New York City to perform at the same level as all other regions in the State, let me state that an analysis of all regulated facilities that were open for ANY PART of the 12-month period of September 2003 through August 2004, showed that the average number of inspections conducted per facility outside of New York City was 1.53 inspections in the 12-month period. Even with New York City's data included in the statewide analysis, typically, a facility was inspected 1.1 times during that time period. It should be noted that this actually undercounts the typical number of inspections that a provider would receive in a full 12 months of operation, since many of the facilities were not open for the full 12 months examined.

Other reasons for inspections besides those to meet the required initial and renewal visit are to investigate complaints, follow up on previous regulatory violations, evaluate requested changes to some aspect of the facility, respond to a technical assistance request on the part of the provider, or simply perform an unannounced monitoring visit.

During September 2003 through August 31, 2004, OCFS, directly or through its contractors, investigated 4,400 complaints of regulatory violations. Over 1,200 of these

were allegations of illegal child care operations. The inspections conducted as part of investigating complaints were part of an overall, 29,000 inspections conducted statewide, approximately 6,300 of them in New York City.

Not counted in these basic inspections are required interviews conducted whenever OCFS is notified of a criminal conviction or arrest of an individual associated with a regulated child care provider.

While the inspection process must sometimes be tailored in response to the specific situation, in general, there are three types of inspections: a general monitoring inspection, a complaint investigation, and a follow-up visit to confirm corrective action.

A general monitoring inspection is designed to assess overall compliance with law, regulations and policies. The inspector will observe interactions between the children and the provider, evaluate compliance with staffing requirements, inspect the physical plant, and review paper documentation. The inspection concludes with an exit interview so that the inspector can share his or her initial findings and respond to questions and technical assistance requests from the provider. All of the inspection findings are entered into the Child Care Facilities System (CCFS) and a letter to the provider is generated. The letter will signify if any of the regulatory violations are determined to be serious in nature. The letter will also specify time frames for the submission of corrective action plans. This level of inspection is also required as part of the renewal process for group family day care and to meet the annual inspection requirements outlined in law for family day care and school age child care.

The scope of a complaint investigation will often be tailored to the unique circumstance of the complaint. While inspectors are encouraged to use the opportunity of the complaint investigation to conduct a complete inspection, particularly if this provider has not been recently inspected, this is often not feasible. The first priority is to assess the safety of children and to gather information necessary to ascertain the validity of the complaint. Again, the results of the inspection and all other aspects of the complaint investigation are entered into CCFS and the results issued to the provider. The provider is informed whether the complaint has been substantiated and, if so, what corrective action is necessary. In addition, the letter will convey any other regulatory violations that were detected incidentally.

A follow-up visit will be conducted to confirm that previously detected violations have been corrected. While the inspector will observe general core compliance around such things as child/staff ratios and capacity, such inspections are appropriately more limited in scope. Again, the results of these inspections are also entered into CCFS, and correspondence to the provider is generated.

In those instances where the provider fails to come into compliance after repeated efforts on the part of OCFS and/or its agents to seek remediation, the provider will be referred for an enforcement action. An enforcement action can range from restrictions or limitations on the provider and/or his/her program, fines, or revocation of the provider's

permit to provide child care. Furthermore, in the case of a provider being found in violation of the same regulation twice in a six-month period, they can be fined, regardless of whether they have since corrected the violation. In all of these cases, the provider is informed of his/her hearing rights and the implementation of the enforcement action will be dependent on the outcome of the administrative hearing.

In instances of imminent danger, the Office may issue a suspension of the provider's license or registration. In these instances, the provider must stop providing care immediately. The provider has the right to appeal – but the suspension is in effect until the imminent danger is resolved or until the hearing officer determines that the suspension should be lifted.

The Office took a total of 1091 enforcement actions in 2003. These included:

52 Suspensions

22 Revocations

269 Denials

107 Fines

249 Limitations on Licenses/Registrations

216 “Cease and Desist” Letters issued to unlicensed/unregistered providers

37 “72 Hour” Letters (the provider must correct the cited health and safety violations within 72 hours or face suspension of his/her license/registration.)

### **Supports for Monitoring the Process and Promoting Consistency of Practice**

As stated earlier, all aspects of the regulatory oversight process are monitored through the Child Care Facilities System or CCFS. This system is designed to capture all aspects of the application process as well as all complaints, inspections and regulatory violations. Letters to providers defining their regulatory compliance status are issued through the CCFS system and are captured as part of the facility's history. Furthermore, to the extent that staff are diligent about timely and complete data entry, the system feeds both a real time status report of regulated facilities on the OCFS web site as well as the production of “Profile Reports” that can be generated on any facility. These Profile Reports provide all key demographic information on each facility as well as a listing of all regulatory violations in the last 24 months and the current status of corrective actions regarding those violations.

CCFS is also an important management tool for monitoring the timeliness and consistency of efforts across regions, offices and individual workers. Real time data on the performance of each worker, office and region are available at any time from CCFS. It is expected that supervisors in each region are monitoring the work of their staff using these tools. In addition, on a monthly basis, all offices are provided with a summary report of performance on key indicators and that performance is reviewed in a regular monthly supervisory session between the management team of that region (including NYCDOH) and the head of the OCFS Bureau of Early Childhood Services.

Performance requires that the staff in each office have the skills and information needed to perform the task. As part of the strategy to address this crucial component, the Bureau of Early Childhood Services regularly conducts a skills/ training needs assessment of all staff, both direct and contract. The results of that needs assessment inform the calendar of in-service training and professional development opportunities for the coming year.

In addition, all staff are provided with a licenser's manual, which contains a description and required steps of all major aspects of the licensing/ registration and monitoring process. The manual is updated regularly with any newly issued bureau policies and/or regulatory changes. To augment this, there is an on-line manual that cross-walks the various procedures with the related functionality in the CCFS system.

To further enhance the accountability and consistency of practice across all contracts, including the contract with NYCDOH, starting January 2005, all such contracts will have been restructured as performance-based contracts. That is, payment for any quarter will be based on acceptable performance, both in terms of quantity and quality, across each of a set of defined functions. The data for this analysis will be extracted from CCFS and augmented by actual "desk reviews" of backup documentation of the information entered in CCFS.

### **New York City Specific Issues**

As stated previously, OCFS contracts with the NYCDOH to serve as its agent for the purpose of regulating and monitoring licensed group family day care, registered family day care and registered school-age child care in the five boroughs. The license or registration being issued is a State license or registration, and it must be issued and monitored in accordance with State law, regulation, policies and practice. While the City of New York may decide whether to elect to continue to accept the contract to serve in this capacity, the City is not allowed to substitute its own rules, procedures or practices for how this work is to be conducted.

OCFS has been working diligently to assist NYCDOH in improving the timeliness and adequacy of its performance. In addition to the regular monitoring efforts outlined above, the Office has communicated consistently with senior staff of the Day Care Bureau concerning issues related to the operation of that office. In addition, OCFS officials had three meetings in the past two years with NYCDOH leadership above the level of the Director of Child Care to call attention to the issues in performance that were evident. Among the issues highlighted in that session were the following:

- The lack of specific staff assigned to key positions
- The appropriateness of staffing decisions regarding field versus office assignments
- The lack of timeliness in issuing initial and renewal licenses and registrations

- The lack of frequency of inspections
- The lack of timeliness in completing safety assessments when notified of a criminal conviction or arrest.

New York State has contracted with NYCDOH since 1992. In the current year, the contract is for an amount of approximately \$5.6 million. The amount of the contract has increased in each of the past seven years, in spite of the fact that NYCDOH has failed to fully spend the funds made available to it in any of those years. In the majority of the cases, the lack of claiming has been due to the inability of NYCDOH to fill staff vacancies on a timely basis. However, in spite of this, OCFS worked with NYCDOH to determine critical staff increases and made funds available, as well as whatever support it could to promote the hiring of needed staff.

OCFS has continued to work diligently with the newly appointed leadership for child care licensing in the NYCDOH since the actions of Dr. Freidman last week. We have resupplied previous performance data and communications between ourselves and NYCDOH staff. We will continue to set performance standards consistent with that which is demanded of all other regions of the State.

### **Improving the Quality of Care**

Even as we continue on this path, it is important not to lose sight of the many other improvements that Governor Pataki has put in place to promote the safety and quality of child care in NYC and across the State. I close by highlighting just a few of these efforts.

- Legislation was recently passed directing OCFS to review and revise its regulations related to the administration of medications to children in child care settings. While New York State has always had clear procedures for administering medications in child care settings, changes in many aspects of the profile of children in care required the State to update and refine these requirements. The implementation date of the new law is January 30, 2005.
- In May 2004, \$2 million was approved to help child care providers offer health insurance to their employees. The initiative was built on the Healthy NY insurance program by paying a portion of both the employer and employee share of the insurance benefit to participating health insurance carriers selected by employers. The goal of the initiative is to promote stability of employment by helping child care providers across the State recruit and retain quality staff. This initiative offers \$50 per month per individual and \$100 per month for two-adult or family premiums. It is estimated that approximately 2,100 child care employees will participate.
- In 1997, the Educational Incentive Program (EIP) was created to provide scholarships to help child care providers and staff receive the training and education they need to provide quality care. Nine million dollars has been allocated for EIP in

2004. Annually, EIP awards have supported over 10,000 distinct credit-bearing courses or activities directly related to day care providers and staff receiving a recognized credential in the child care field.

- At the direction of Governor Pataki, OCFS crafted and implemented minimum health and safety requirements for legally exempt child care providers caring for children whose families receive day care subsidy payments. These standards must be met in order for providers of legally exempt family child care, legally exempt in-home child care, and legally exempt group child care (for example, nursery schools and summer camps) to receive payment for child care services to families funded by the New York State Child Care Block Grant. We are working on a new initiative to recommend ways to further strengthen the quality and safety for children in legally exempt child care.
- Building on its efforts in the area of improving care for very young children, \$1.1 million in funding was provided to create seven regional technical assistance centers to enhance services for infants and toddlers.
- To assist parents in selecting quality child care, New York State introduced a bilingual (English/Spanish) consumer education campaign called "Think About Child Care." The parent education video developed as part of this campaign was awarded the 1999 Golden Eagle Award by CINE, an international film association, as well as the 1999 Axiem award. An updated campaign is currently under development. Revisions are being finalized, and we anticipate a release of new materials during 2004. The current versions of the "Think About Child Care" brochures in English and Spanish are available online at OCFS' website.
- Child care resource and referral agencies, through contracts with OCFS, have been a hub for child care activities at the local level for over a decade. To strengthen the efficiency of this funding initiative, the contracts were translated into performance-based contracts with clear, measurable targets, upon which payments are based. These performance measures are based on nationally developed performance standards and statewide time studies.

**While we are all saddened by the recent death, we will use this tragic event as an opportunity to redouble our resolve and our efforts. I can also state that under the leadership of Governor Pataki, New York State has put in place a strong set of supports and structures to monitor the safety of child care in the State. We will continue to work with the New York City Department of Health so that its performance is consistent with those standards.**