



The Inspection Process

To promote the safety and well-being of children in child care, New York State Office of Children and Family Services (OCFS) regulators perform frequent and routine inspections of child day care programs to evaluate compliance with regulations. Research shows that unannounced inspections encourage compliance with regulatory standards and improve quality of care. OCFS may make announced or unannounced inspections of the premises and records of any child day care program whether or not such program is licensed by or registered with OCFS. Child day care programs must admit regulators to conduct inspections at any time during the hours of operation or while children are in care. A day care program must cooperate with inspections, and regulators must be given free access to the building or buildings, the caregivers, the children, and to any program records. When conducting inspections, OCFS regulators use an inspection checklist specific to the type of inspection being conducted.

There are various inspection types; the most frequent reasons for OCFS inspections are:

- **Initial and Renewal Licensing/Registration Inspections:** The application process to become a regulated child day care program or to renew an existing license/registration includes an announced inspection of the facility.
- **Monitoring Inspections:** These are the most frequent type of inspections conducted and may vary in scope. They are generally unannounced inspections that are conducted to assess compliance with regulations. Annual, unannounced inspections as required by the federal Child Care and Development Block Grant Act are always unannounced and are included in the monitoring inspection process.
- **Fire Safety Inspections:** Fire safety representatives from OCFS conduct regular inspections to check for compliance with building and equipment safety standards.
- **Technical Assistance Inspections:** Technical assistance inspections may be done at the request of a child day care program representative or may be initiated by OCFS regulators to provide on-site technical assistance education for a variety of reasons.
- **Complaint Investigations:** Anyone with a concern or complaint about the regulatory compliance of a child day 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 type is a complaint investigation. These inspections are never announced, and the investigation of a complaint requires a regulator to address each aspect of the complaint. Inspections for complaints classified as **imminent danger** will begin by the next day of the program's operation. Inspections for complaints classified as **serious** will begin within five days, and inspections for complaints classified as **non-emergency** will begin within 15 days. See below for classification of violations.

Violations

When a regulatory violation is found, OCFS must notify the provider in writing of the observed violation(s) within 10 calendar days of the inspection. The child day care program is required to correct the violation immediately. Regardless of corrective action, however, 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 threat to the public health, or an individual's safety or welfare as a result of a condition or practice in a 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 to avoid further harm or risk of harm. Because of the many factors affecting each situation, determining imminent danger requires individual assessment.

- **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 a 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 a serious imminent risk to the health or 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 OCFS determines that a child day care program is in violation of regulations, OCFS takes steps to enforce the regulations. OCFS’s actions depend on many factors, including what the program has done or failed to do, as related to the regulations.

OCFS actions may include:

- **Corrective Action Plan:** The goal of the corrective action plan is to bring the child day care program into compliance with the regulations and keep children safe. The corrective action plan, developed by a program and approved by OCFS, includes a time frame for making the correction(s). If a program does not correct the cited regulatory violations within the specified time frame, or a child is injured or at risk of being injured, OCFS may take additional enforcement action.
- **Safety Plan:** A safety plan is developed by OCFS when there are allegations of risk of harm to children are under investigation. Programs are required to follow safety plans. **Suspension:** OCFS will suspend a license or registration if a child’s safety or welfare is found to be in imminent danger. A suspension is effective immediately. The provider has 10 days to request a hearing to contest the suspension in writing. Failure to do so will be evidence that the finding was valid, and the suspension will continue until the condition is deemed corrected by OCFS or the license or registration is permanently revoked.
- **Limitation:** A license or registration may be limited in its terms if a child’s safety or welfare is found to be in imminent danger. A limitation places specific conditions or restrictions on the terms of a license or registration. A limitation is effective immediately. The provider has 10 days to request a hearing in writing to contest the limitation. Failure to do so will be evidence that the finding was valid, and the limitation will continue until the condition is corrected or the license or registration is permanently revoked.
- **Revocation:** This is a determination made by OCFS to revoke a child day care program’s license or registration based on non-compliance with regulatory standards of care. A provider has 30 days to request a hearing in writing to contest the proposed revocation, or the revocation becomes final, and the provider must cease operation.
- **Denial:** 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. A child day care program has 30 days to request in writing a hearing to contest the denial, or the denial becomes final, and the child day care program must cease operation if currently operating.
- **Cease and Desist Order:** This order requires a provider to immediately stop operating a program found to be operating without a license/registration when a license/registration is required.
- **Fines:** A fine of up to \$500 per day may be assessed against any person for the provision of child day care without a license or registration. Civil fines may also be assessed against a licensed/registered child day care program for regulatory violations. Child day care programs are entitled to a hearing to contest the imposition of fines. There are three classes of fines:

Class 1: Class I violations are subject to a maximum fine of \$500 a day. A Class I violation is defined as any violation of a regulatory requirement that harms a child or places a child at risk of death, serious or protracted disfigurement, or protracted impairment of physical or emotional health; the abuse of a child, as defined in Section 1012(e) of the Family Court Act, who is receiving care at the facility by the owner, caregivers, employees, director or any staff member of the program; the intentional failure to report instances of alleged child abuse or maltreatment to the Statewide Central Register of Child Abuse and Maltreatment

and/or to take appropriate action to protect children when an allegation of such abuse or maltreatment is reported to a caregiver, employee or volunteer; or the refusal or failure to provide access to the day care facility to a representative from OCFS for the purpose of inspecting the facility for compliance with the requirements of OCFS regulations.

Class 2: Class II violations are subject to a maximum fine of \$450 a day for a first-time offense and up to \$500 a day for subsequent offenses. A Class II violation is defined as any violation of a regulatory requirement which places a child at risk of physical, mental or emotional harm, including but not limited to: use of corporal punishment; inadequate/incompetent supervision; inadequate light, ventilation, sanitation, food, water or heating; or exceeding maximum capacity.

Class 3: Class III violations are subject to a maximum fine of \$400 a day for a first-time offense and no more than \$500 a day for a subsequent offense. A Class III violation is defined as any violation of a regulatory requirement other than those included under Class I or II 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 prevention system or emergency evacuation procedures.
- Failure to provide adequate, competent supervision.
- Failure to provide adequate sanitation.
- Injury to, abuse or maltreatment of, failure to obtain medical attention for, or use of corporal punishment on, a child in care.
- Violation of the same regulation or law more than once within six months.
- Operating a program without a required license/registration.
- Failure to report suspected child abuse or maltreatment.
- Submission of fraudulent documentation to OCFS.

Pending Status: An enforcement action is “pending” when a child day care program has been notified that OCFS is taking enforcement action. An enforcement action will remain “pending” until a final decision has been rendered by an administrative law judge or by a court, or until the enforcement action has been resolved. A program may continue to operate while an enforcement action is in a pending status unless it is also suspended.

Administrative Hearings

In each enforcement situation, except for the corrective action plan and the safety plan, child day care programs are entitled to have a hearing with OCFS, which 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 that 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 an Order to Cease and Desist; Suspension; or Limitation must be scheduled within 30 days after OCFS receives a timely request. All other hearings must be scheduled to commence as soon as possible.

Posting Requirements

A four-year record of a child day care program’s compliance history is available on the OCFS Division of Child Care Services website. In addition, Social Services Law requires that all child day care programs post and maintain in a prominent place at the program, a notice containing the results of the most recent OCFS inspection history. OCFS may require the program to post the notice of suspension, limitation, and/or revocation of licensure or registration on the premises of the facility. Parents are encouraged to make their child care choices by visiting the website (<https://ocfs.ny.gov/programs/childcare/>) 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.

Additional information on enforcement regulations can be found at: [413-Definitions.pdf \(ny.gov\)](#).