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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE SERVICES**

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**OFFICE OF CHILDREN AND  
FAMILY SERVICES**

**NEW YORK CITY DAY  
CARE COMPLAINTS**

**Report 2005-S-40**

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## AUDIT OBJECTIVES

The Office of Children and Family Services (OCFS), which oversees day care services in the State, contracts with the New York City Department of Health and Mental Hygiene (NYC Health) to monitor New York City providers. NYC Health must investigate and resolve complaints alleging providers are violating health and safety standards stated in the Social Services Law (Law). The Law requires that complaints be investigated within stated timeframes. The Law directs OCFS to establish a toll-free statewide telephone number to receive inquiries about providers or reports of suspected violations. OCFS relies on its automated Child Care Facility System (CCFS) to monitor NYC Health's compliance with the Law and its contract.

For the period January 2004 through September 2005, our objectives were to assess whether OCFS verifies that all complaints are properly classified, promptly recorded, timely investigated and thoroughly resolved, and whether OCFS oversight confirms NYC Health complies with the Law and its contract.

## AUDIT RESULTS - SUMMARY

Our audit found that OCFS needs to improve its monitoring practices to verify that all complaints are properly classified, promptly recorded, timely investigated and thoroughly resolved in compliance with the Law and its contract with NYC Health.

OCFS has established a statewide toll-free number, but the number is staffed only on weekdays between 9 a.m. and 5 p.m. Parents using providers operating after 5 p.m. can leave a message to report a complaint. Although weekend and extended hour day care is a growing trend, the toll-free number is

not staffed, and investigations are not performed, on weekends and certain holidays; thus a complaint involving imminent danger may not get investigated the next business day, as required. Delays in investigating complaints could put children at risk. (Page 4)

NYC Health should enter complaints in CCFS immediately and investigate complaints according to mandated timeframes. For founded complaints, NYC Health must timely notify providers and verify that violations are corrected. However, our tests showed that 34 of the 48 sampled complaints (71 percent) were not entered on CCFS within the required timeframes; 18 of the 48 complaints (31 percent) were not classified properly as to the severity of the complaint; half of our sampled imminent danger complaints were investigated late; and most sampled providers likely received violation letters late. These problems were caused by NYC Health's inefficient mailing practices, a lack of data entry review, and inadequate OCFS oversight. NYC Health and OCFS have agreed to address these deficiencies to better safeguard children's health and safety. (Pages 4-9)

To enhance its oversight of NYC Health's compliance with the Law, OCFS should improve its performance-based monitoring tools, develop complaint processing policies and procedures, and verify that investigators attend training classes. (Pages 9-13)

Our report makes 12 recommendations to improve complaint processing in New York City. OCFS officials agreed with certain of our recommendations. They did not agree with our conclusions and recommendations pertaining to seeking clarifications to the Law.

This report dated December 18, 2006 is available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us) Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
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## BACKGROUND

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

OCFS' central office directs day care oversight activities throughout the State, except in New York City. In New York City, OCFS contracts with NYC Health to serve as its agent for monitoring more than 7,100 day care providers governed by the Law in the five boroughs of New York City. NYC Health oversees providers who offer residence-based day care for children aged 6 weeks to 12 years in Family Day Care (3 - 6 children) and Group Family Day Care (7 - 12 children), and providers who offer facility-based before and after-school services in School-Age Child Care Programs. Group Day Care Centers, which offer facility-based care for more than 7 children under 6 years old, are regulated directly by NYC Health under Article 47 of the New York City Health Code.

OCFS can make unannounced inspections of a day care provider at any time to review the provider's premises and records for compliance with the Law and regulations. However, when OCFS receives a complaint alleging a provider is not in compliance, the Law requires OCFS to inspect the premises within specific timeframes to substantiate the complaint and confirm that identified problems are corrected. The Law also requires OCFS to establish a toll-free statewide telephone number to facilitate inquiries about child day care providers and the reporting of complaints about providers who may be in violation of OCFS' regulations. OCFS maintains day care complaint data on its CCFS system, and uses CCFS to monitor complaint processing.

A complaint generally starts with a phone call from parents or other members of the public to the complaint coordinator in NYC Health's central office. The coordinator listens to the complainant and decides how to classify the complaint (imminent danger; serious, a new category added in the 2005 contract; or non-emergency) and records the information on a complaint intake form. After May 2005, the coordinator entered this information directly on NYC Health's Day Care Automated Tracking System (DCATS). OCFS requires that intake data be entered immediately into CCFS. The intake information is then faxed (intake form) or emailed (DCATS entry) to the appropriate borough office, where the complaint is assigned for investigation. Investigations must be completed within required timeframes, depending on the severity of the complaint. If a complaint is substantiated, the provider is notified of this finding in writing, and must correct the violation within 30 days of notification. NYC Health must follow up to verify that providers have corrected imminent danger and serious violations. NYC Health can suspend or

revoke the license of providers that do not make such corrections.

For calendar year 2004, OCFS paid NYC Health about \$5.4 million to oversee New York City day care providers' compliance with the Law and regulations. The 2005 contract is scheduled to pay NYC Health approximately \$9.3 million for these services. The purpose of the additional funding is to hire additional investigators. At NYC Health, 134 employees perform contract-related services; 53 of these employees investigate day care complaints. OCFS records indicate that NYC Health received 927 complaints, 114 of which were classified as imminent danger, between January 1, 2004 and July 14, 2005.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

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### *Toll-Free Telephone Number*

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The Law requires OCFS to establish a toll-free statewide telephone number to receive both inquiries about child care providers and complaints alleging a provider is operating in violation of the Law or regulations. The purpose of the toll-free number is to provide parents and the public with ample opportunity to inquire about day care providers, and to report potential violations that could endanger children's health and safety. Information available to the public through the toll-free number includes child care resource data and the licensing status of registered day care providers. The Law requires that OCFS develop a process to publicize this number. OCFS does provide a toll-free number; callers connect to an operator during standard business hours: that is, Monday through Friday from 9 a.m. to 5 p.m. An answering machine takes calls received after 5 p.m. A

parent wishing to report a complaint at this time must leave a message.

OCFS officials told us that weekend day care is a growing area of service. However, on weekends and certain holidays, the toll-free number is not staffed, and NYC Health employees are not available to do investigations.

The Law requires OCFS or its contractor to investigate imminent danger complaints no later than the next day of operation of the provider to protect children's health and safety. The limited staffing of the toll-free number and the lack of investigative staff on weekends and holidays could delay investigations of alleged violations that put children at risk.

As the need for non-traditional child care grows, an increasing number of providers will be operating after 5 p.m. and on weekends and holidays. Therefore, we believe OCFS should change its staffing of the toll-free number, and work with NYC Health to make investigators available on weekends and holidays. OCFS officials indicated they will examine these issues. Officials report that, as a first step, they have modified CCFS to include an indicator for programs that report they operate during non-traditional hours. OCFS will determine the prevalence of these programs and adjust staffing as needed.

### **Recommendations**

1. Assess the need to staff the toll-free telephone number after 5 p.m., and on weekends and holidays.
2. Require NYC Health to have staff available, possibly on an on-call basis, to conduct investigations on weekends and holidays.

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### *Day Care Complaint Processing*

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NYC Health should enter complaints in CCFS immediately upon receipt, as its contract requires, so OCFS officials have access to up-to-date complaint data. As OCFS' agent in New York City, NYC Health is required to investigate and resolve complaints according to the timeframes stated in the Law. Further, NYC Health must determine whether such complaints are founded and, if so, verify that providers promptly correct violations. However, we found that: complaint information was not entered promptly or accurately in CCFS; almost one-third of our sampled complaints were investigated late; and most sampled providers likely received violation letters late. We attribute the above deficiencies to NYC Health's inefficient mail routines and lack of data entry review, and to OCFS' inadequate oversight of NYC Health's complaint processing. NYC Health and OCFS officials have agreed to address the above issues to improve compliance with the Law and regulations. Improved compliance more effectively safeguards the health and safety of children in day care in New York City.

We designed our audit tests to assess whether NYC Health promptly recorded and properly classified complaints on CCFS; timely investigated complaints; and thoroughly resolved complaints. The test of thorough resolution included determining whether providers were timely notified of the violation(s) and the required corrective actions, and whether investigators verified the corrections required for substantiated complaints.

### **Prompt Entry of Complaint Information CCFS**

OCFS officials informed us that NYC Health is required to enter complaint data in CCFS immediately upon receipt. OCFS relies on CCFS data to monitor day care complaint processing statewide, to assess NYC Health's performance of its contract responsibilities and to monitor and respond to inquiries about individual providers of day care services.

To determine if the data is being entered into CCFS timely, we reviewed our sample of 50 complaints and compared the date on the complaint intake form (or in DCATS) to the date the complaint was entered in CCFS. Our review determined that 2 of the 50 complaints were not entered into CCFS at all. Of the remaining 48 complaints, only 14 complaints were entered in CCFS on the same day, as required; the remaining 34 complaints (71 percent) were entered in CCFS late, with the entry time ranging from 1 to 54 business days late. Of the 20 imminent danger complaints in our 2005 sample, only 5 complaints were entered in CCFS on the same day; the remaining 15 imminent danger complaints took 6 business days, on average, to be entered in CCFS. Without up-to-date complaint data in CCFS, OCFS cannot properly monitor NYC Health's compliance with its contract or with the Law and regulations.

Our review of complaint processing found that NYC Health staff routinely waited to enter complaints in CCFS until the investigation had taken place - sometimes many days later. Staff would first record complaint data on an intake form or in DCATS, and then fax or email the data to a borough office, where an investigator would be assigned. After the investigation, staff would enter the complaint data, along with



the results of the inspection, in CCFS. This entry delay occurred because NYC Health's policies and procedures did not require immediate entry in CCFS. Since OCFS officials had not carefully reviewed NYC Health policies, they did not detect and correct this discrepancy.

### **Accurate Complaint Classification in CCFS**

The Law states specific timeframes for investigating complaints, and the timeframes are driven by the severity of the violation, as assessed by the complaint coordinator. Complaints that indicate a violation that could put the health and safety of children in imminent danger must be investigated no later than the next day of operation of the provider. The 2004 contract stated that all other non-emergency complaints must be investigated within 15 business days. The 2005 contract purports to recognize a new classification of complaint "serious complaints" and a new time frame within which these must be investigated - five days. We question the legal basis for this new complaint classification. The statute establishes two categories of complaints and prescribes corresponding time frames within which each type must be investigated. We do not question OCFS' authority to administratively establish a third category of complaint that would accelerate OCFS' review of those complaints currently in the 15-day category. On the other hand, it is clear that OCFS cannot act administratively to lengthen the one day period for review of imminent danger complaints. That would require a statutory amendment. We further believe that the guidance to which OCFS directed us regarding the description of "serious complaints" is nearly indistinguishable from that of the imminent danger category. Such confusion could result in the inaccurate

categorization of a complaint as "serious" when it in fact is an example of an "imminent danger" complaint, and a corresponding unauthorized extension of time - from one day to five days - in which to investigate the alleged violation.

A complaint's classification in CCFS must be accurate for investigation response time to be appropriate and for provider profile data in CCFS to be up-to-date and accurate.

When a complaint is received and initially classified as imminent danger, serious or non-emergency, the CCFS entry for the complaint should list the same classification. NYC Health recorded initial classification information on complaint intake forms throughout 2004, but began entering this data directly in DCATS beginning May 2005. To determine if complaints were accurately classified, we compared CCFS classification data to intake forms or DCATS information for our 48 sampled complaints (2 of the 50 were not entered into CCFS). We found that, for 18 of 48 complaints (37 percent), the classification in CCFS did not match the original classification assigned to the complaint. In each instance, the complaint was assigned a less severe classification in CCFS than in the source document. Of the 18 complaints assigned a lesser severity in CCFS:

- Sixteen were imminent danger complaints that were reclassified as serious or non-emergency complaints; and
- Two were serious complaints that were reclassified as non-emergency complaints.

When informed of this discrepancy, NYC Health officials stated that staff members may

have improperly changed the classification based on their investigation results - a practice that could easily occur, given that staff regularly waited to enter complaints in CCFS until after investigations were completed. NYC Health officials did not detect incorrect classifications of complaints on CCFS because neither supervisors in borough offices nor complaint coordinators in the central office reviewed classification accuracy.

OCFS relies heavily on CCFS for monitoring NYC Health's processing of day care complaints. If complaints are incorrectly classified on CCFS, OCFS officials do not have accurate, real-time information about the number of specific types of complaints NYC Health receives, or NYC Health's performance in responding to such complaints. Further, without accurate complaint data, OCFS profiles of individual providers - and the information available to the public about such providers - could be unreliable.

### **Complaint Investigation Within Required Timeframes**

The 2004 and 2005 day care contracts require NYC Health to investigate day care complaints within a set number of business days (1 day, 5 days or 15 days), depending on the complaint's classification. In reviewing our 50 sampled complaints for compliance with this requirement, we compared the complaint's date of receipt and classification on the intake form or the entry on DCATS to the date on the investigator's inspection report. For the 49 complaints for which source documentation was available (one imminent danger complaint lacked an inspection report), we determined that 16 complaints (33 percent) were investigated late.

As noted in *Table 1* on the following page, 11 of the 20 (55 percent) imminent danger complaints in 2005 were not investigated within the next day of operation, as required. Instead, NYC Health took anywhere from 2 business days to 48 business days to perform the investigations. This marks a decline in performance from 2004, when all imminent danger complaints were investigated timely.

Details of two complaints follow:

- An imminent danger complaint, in which a child was reported to have been spanked by their parent with a belt, was received on March 21, 2005, but not investigated until 31 business days later.
- An imminent danger complaint about a possible illegal provider received on February 18, 2005 was not investigated until 48 business days later.

### **Timely Notification of Complaint Investigation Results**

According to OCFS officials, formal notification of inspection results should be sent to all providers, regardless of the results of the investigation. However, when an inspection substantiates the alleged violation(s), the Law requires that the provider be notified of the result, in writing, within 10 days of this finding. The provider has 30 days from the date it receives the notice to correct the violation(s). After reviewing the formal notification documentation related to our 50 sampled complaints, and discussing notification requirements with NYC Health officials, we concluded that, due to NYC Health's mailing practices, it is very unlikely that any of the providers who should have received notices received them within ten days.

<b>Table 1: Complaints Not Timely Investigated</b>						
	<b>2004</b>			<b>2005</b>		
<b>Complaint Classification</b>	<b>Total Complaints Sampled</b>	<b>Complaints Investigated Late</b>	<b>Percent</b>	<b>Total Complaints Sampled</b>	<b>Complaints Investigated Late</b>	<b>Percent</b>
Imminent Danger	4	1	25	20	11	55
Serious	-	-	-	10	1	10
Non-Emergency	10	2	20	5	1	20

Delays in investigations, particularly investigations of imminent danger complaints, could needlessly jeopardize the health and safety of children in day care. NYC Health officials acknowledged the noncompliance, but did not explain why it occurred. We attribute this lack of compliance with the Law to inadequate monitoring by OCFS. In fact, OCFS monitoring reports incorrectly concluded that NYC Health was meeting performance standards. We discuss OCFS monitoring in the next section of this report.

Of the 50 complaints in our sample, 14 complaints were substantiated by investigations. We determined that 12 of the 14 notification letters were generated within the 10-day timeframe, and that 2 letters were generated late.

OCFS officials informed us that, since these two cases involved a third party - specifically, Child Protective Services and the New York City Police Department - the contract allowed NYC Health 60 days for third-party investigation and provider notification.

The statute is unclear regarding the amount of time permitted between the inspection of a provider following a complaint and the determination by the agency of whether a violation has occurred. However, we

question the prudence of a contractual provision allowing for a 60 day time frame for such period, especially given the nature of this type of complaint which necessitates intervention by law enforcement agencies. The statute is silent regarding time between inspection and determination; however, it seems to anticipate that the determination will be made simultaneously with the inspection or within a short time thereafter, given the comparatively short time frames provided for notification of violations and time to cure. We believe that this provision of the statute warrants further Legislative attention.

Although the above 12 letters were produced within the 10-day period, it is doubtful that providers actually received them on time because of NYC Health's inefficient mailing practices. We found that complaint investigators cannot mail inspection complaint letters (or any correspondence) to providers directly from their borough offices, because the offices do not have the necessary mailing machines.

Instead, the prepared letters must be sent by courier to NYC Health's central office, where the letters are stamped and sent to the providers. According to NYC Health officials, this process can take up to two weeks. Therefore, even if the inspection



notifications are prepared on time, it is highly doubtful that providers would be notified within the required ten days. Since a provider has up to 30 days to correct a violation upon notification, noncompliance with this requirement could delay the correction of identified health and safety risks.

### **Verification of Corrective Actions**

For substantiated complaints, the complaint inspection notification letter also includes a Corrective Action Plan (Plan) which lists violations found during the complaint investigation, the required corrective actions and the dates each corrective action must be implemented. The Law requires that providers complete corrective actions within 30 days of receipt of the notification letter. However, where the public health or an individual's safety or welfare are in imminent danger, a license or registration may be temporarily suspended or limited immediately upon written notice to the provider prior to a hearing and opportunity for corrective action. OCFS maintains that the language of this statute authorized it to establish a shorter period within the 30 day framework where appropriate. OCFS argues that it is desirable to have a period that is shorter than 30 days for violations that are more serious but do not warrant the alternative of suspension or limitation of license provided in statute. We agree. As OCFS points out, without the option of a shorter period for the correction of more serious violations, OCFS may have to suspend licenses and disrupt needed services even where prompt remediation would have been adequate. Nevertheless, in order to avoid any potential challenge to its authority to provide for a shorter period in such circumstances, we recommend that OCFS seek legislative clarification of the statute.

According to OCFS' policy, if an imminent danger or serious complaint is substantiated, NYC Health must directly verify that the provider implemented the required corrective actions. In most cases, verification requires another site visit, or corroboration of correction by a third party, such as Child Protective Services. On-site follow-up visits are not required for non-emergency violations unless the provider was cited for more than five violations during the investigation. Once the corrective actions are implemented, the complaint is closed out on CCFS.

We reviewed the Plans related to the 14 substantiated complaints and found that NYC Health made follow-up visits in each instance to verify that violations were actually implemented. All the visits were made within a reasonable time of the due date for the corrective action.

### **Recommendations**

3. Confirm that NYC Health's policies are changed to require the immediate entry of complaint data in CCFS. Review NYC Health's policies and procedures on a periodic basis to confirm that they comply with the Law and contract requirements.
4. Require NYC Health to develop a review process to confirm the accuracy of complaint classification on CCFS.
5. Seek the appropriate change to the Social Services Law or regulations to establish a third category of complaint classification and the corresponding time frame for investigation. Clarify the distinction between an "imminent danger" complaint and a "serious complaint" in the complaint classification descriptions.

6. Seek the appropriate change to the Social Services Law to clarify the time allowed between an inspection and a determination of whether a violation has occurred and the time within which OCFS may require a provider to complete corrective actions.
7. Make certain that complaints are investigated within the legally required timeframe.
8. Require NYC Health to equip borough offices with necessary mailing machines to expedite the mailing of inspection notifications.

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### *OCFS Oversight of NYC Health Performance*

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OCFS is responsible for monitoring NYC Health's performance in verifying that day care providers in New York City maintain a safe and secure environment for children in their care. To monitor NYC Health effectively, OCFS must have reliable monitoring tools to measure the extent to which NYC Health's complaint processing complies with the Law and regulations. To promote compliance, OCFS should promulgate policies and procedures that detail how complaint processing should be performed, and require that complaint investigation staff receive the training required by the Law.

We found that OCFS developed monitoring tools for use in conjunction with the 2005 performance-based Day Care Contract, which tied payments to NYC Health's achievement of performance goals. Since these tools measure performance using CCFS data, which we found to be inaccurate and incomplete, the results of this measurement are inherently unreliable. However, we also

determined that the monitoring tools themselves - apart from the data reliability problem - were not effective for accurately assessing performance. The reports we examined omitted investigation timeliness in assessing NYC Health's performance, and the on-site review process incorrectly "passed" sampled complaint cases for which one or more critical compliance requirements were not met. We also found that OCFS training policies did not clearly require or track the provision of mandated training for investigative personnel. Without accurate complaint data, reliable performance measurement and policies and procedures that provide adequate direction, OCFS cannot determine whether NYC Health is complying with requirements in the Law and regulations intended to safeguard children's health and safety.

### **Performance-Based Monitoring Tools**

OCFS has developed three monitoring tools to be used in conjunction with the 2005 Day Care Contract: a regional monthly indicators report; a quarterly standard performance review; and a quarterly on-site case review. The 2005 contract is performance-based, so payments on the contract are directly related to NYC Health's achievement of timeliness and compliance goals for complaint processing. We support the use of performance-based contracts and monitoring tools to measure goal achievement. However, we found OCFS' monitoring tools were not reliable for measuring performance, since they omitted certain key indicators or incorrectly "passed" sampled complaint transactions for which critical elements of compliance were not met.

## **Regional Indicators Report**

Each month, OCFS issues a regional monthly indicators report, which tracks and compares day care data in CCFS by region throughout the State. The complaint section of the report focuses on whether a determination has been made on a complaint. A determination is a decision, based on an investigation, that a day care complaint has been substantiated (and a violation exists) or unsubstantiated. One listed goal is for all complaints to have had a determination made by the month following the complaint's receipt, and within 60 days of the investigation.

When we reviewed the July 2005 regional monthly indicators report, however, we found the report lacks data about investigation timeliness, based on level of severity - a critical indicator for measuring compliance. This statistic would inform OCFS officials whether imminent danger complaints were investigated by the next day of program operations, as the Law requires. The performance of investigations within required timeframes is also a contract requirement for NYC Health. OCFS officials agreed with us, and have since included investigation timeliness as a goal in the report.

### **Quarterly Standard Performance Review**

OCFS conducts a quarterly program review to determine whether NYC Health's performance in processing complaints achieved an acceptable level of compliance, (95 percent) for the quarter. NYC Health can reach this compliance level by having investigated and made determinations for 95 percent of all the complaints received during that quarter within mandated timeframes. If NYC Health does not meet this standard, OCFS can reduce NYC Health's payments for the quarter by 10 percent. OCFS officials

indicated that full monetary penalties would not be imposed until the fourth quarter of 2005.

OCFS' methodology in assessing NYC Health's performance involves reviewing all the day care complaints captured in CCFS during the prior quarter to determine whether NYC Health conducted investigations within the timeframes required and made determinations within 60 days of performing the investigation. OCFS' reviews of complaints received during the first two quarters of 2005 showed that NYC Health had achieved 95 percent compliance in both quarters. However, we discovered that OCFS had included the timeliness of determinations and not the timeliness of investigations - in its calculations. When this error was corrected, NYC Health did not meet the performance standard for the first quarter of 2005. OCFS made the same error in the second quarter, but it did not change NYC Health's overall rating. OCFS officials concurred with our calculations. Had penalties been in effect, NYC Health could have been penalized more than \$232,000, based on the value of the 2005 contract.

### **Quarterly On-Site Case Review**

Starting in 2005, OCFS began doing quarterly on-site reviews of a sample of day care complaint records at NYC Health to determine whether appropriate entries were made into CCFS in the time, manner and form required. OCFS requires that NYC Health comply with 90 percent of the required timeframes and other criteria by the fourth quarter of 2005 or risk a penalty of up to 30 percent of its quarterly contract amount.

OCFS' first two quarterly on-site reviews examined a total of four 2005 complaints: one complaint from the first quarter and three

complaints from the second quarter. OCFS personnel compared relevant NYC Health source documents to CCFS data, and used a Complaint Review Form to grade NYC Health's performance. The form requires assessments for 19 items, 4 of which are deemed critical to compliance: correct complaint classification by severity level; timely complaint investigation; notification of a provider within 10 days, including a citation of the appropriate violations. A deficiency in any one of these items results in an automatic failure of the entire complaint. According to OCFS records, all four sampled complaints passed the reviewers' comprehensive examination.

In doing our review of these same four complaints, we also reviewed all relevant NYC Health source documents and compared this information to data in CCFS. We then assessed compliance with three of the critical compliance elements using OCFS' Complaint Review Form. Our review concluded that none of four complaints should have passed the reviewers' examination because each complaint failed one or more critical items, as shown in *Table 2*.

**Table 2: Critical Item Deficiencies Passed by OCFS Reviewers**

	Total Complaints	Incorrect Classifying	Late Investigate	Late Notify	Total Failed Critical Items
1 <sup>st</sup> Quarter Sample	1	0	0	1	1
2 <sup>nd</sup> Quarter Sample	3	2	2	3	7
Total	4	2	2	4	8

One second quarter complaint was classified as imminent danger on the intake form, but misclassified as serious on CCFS. The

complaint took two business days, rather than one day, to be investigated. Another second quarter complaint was incorrectly classified as non-emergency on the intake form, and then classified as serious on CCFS. Since the quarter complaint was incorrectly classified as non-emergency on the intake form, and then classified as serious on CCFS. Since the complaint alleged that a provider was operating illegally, the complaint should have been classified as imminent danger, according to NYC Health classification guidance. This complaint took three days to investigate, rather than the one day required for compliance. None of the four providers were notified of violations identified during inspections within the required 10-day period. Noncompliance with this requirement is attributable to the lack of mailing machines in borough offices, which NYC Health has agreed to correct.

If OCFS had imposed penalties for lack of 90 percent compliance in the first and second quarters of 2005, payments to NYC Health could have been reduced by almost \$1.4 million. Since OCFS does not plan to impose noncompliance penalties until the last quarter of 2005, however, the more important issue to be addressed is improving the reliance OCFS can place in the quarterly on-site review as a monitoring tool. If review results are to be meaningful in assessing performance, reviewers must verify that complaints really do meet compliance requirements, especially for critical items.

OCFS generally improved its oversight of NYC Health between 2004 and 2005 by developing the above monitoring tools. However, these tools need refinement to effectively measure NYC Health's compliance with mandated complaint-processing requirements that help protect the health and safety of children in day care.

OCFS officials also opened a New York City-based oversight office in September 2005 to enhance their ability to monitor NYC Health's contract activities. OCFS can further improve its oversight by regularly informing NYC Health officials about their performance results, including areas that need improvement.

#### **Recommendation**

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

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#### *Complaint Processing Policies and Procedures*

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OCFS policies and procedures should provide detailed guidance for addressing day care complaints, including a comprehensive listing of processing steps, mandated timeframes for compliance, and clearly described complaint classification listings. However, we found OCFS' policies are vague about timeframes, such as those required for sending notification to providers and following-up on violations. OCFS' complaint policies also mention only two types of complaints, even though a third type - serious complaints was added in 2005.

We also determined that OCFS has not provided NYC Health with adequate guidance on classifying complaints. Although OCFS developed a listing of "serious" regulatory citations, NYC Health officials report that this listing is not helpful, since references are only to regulatory violations. For example, instead of providing an example of a serious complaint, such as inadequate indoor air quality, the listing provides references that require an inspector to cross-reference regulation numbers to various sections of the

Law. In January 2005, NYC Health took the initiative to produce a listing of complaints, their related classifications, and examples to help staff apply the classifications properly.

The lack of adequate policies and procedures from OCFS has contributed to the noncompliance problems we identified at NYC Health. Although OCFS, through its contract, has delegated responsibility for monitoring New York City day care providers to NYC Health, OCFS is ultimately responsible for overseeing its contractor's performance, and providing the direction needed to comply with the Law and regulations. That direction clearly includes the development of adequate policies and procedures for complaint processing. OCFS officials informed us they are currently in the process of developing easy-to-use policies and procedures for processing day care complaints.

#### **Recommendation**

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

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#### *Training for NYC Health Personnel*

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The Law requires municipalities involved in the registration, licensing and inspection of day care providers to take the following training courses, at a minimum: relevant OCFS regulations; child abuse prevention and identification; safety and security procedures in child day care settings; principles of childhood development; and laws, rules and regulations governing the prevention of child abuse. These basic courses are considered necessary for the effective performance of their jobs. OCFS and NYC Health offer this



training in New York City. Since the training is required for compliance with the Law, and important for improving staff knowledge and skills, OCFS should verify that NYC Health investigators have attended the training classes.

To determine whether NYC Health complaint investigation staff received the required training, we compared a list of all 30 newly hired investigators, employed by NYC Health from January 1, 2004 through July 31, 2005, to training rosters for the same period. We found that none of the 30 employees received all the training required by the Law. While attendance at courses on safety and security in day care settings and OCFS regulations was good (93 percent and 97 percent, respectively), attendance at the other three courses ranged from just 23 percent to 33 percent.

OCFS also offers a training class on complaint investigations, the goal of which is to provide the information and skills needed to do an effective complaint investigation. To determine whether investigators received this training, we compared the same roster of 30 employees to the training roster for this class. We found that 10 of 30 employees (33 percent), all hired in 2004 and 2005, had not taken complaint investigation training.

We determined that OCFS does not use a centralized personnel database to track which employees attended what required training, or to enforce existing training requirements. OCFS officials agreed that the Law required investigation staff to be trained, but stated that NYC Health staff are sometimes absent from training they are scheduled to attend. However, officials reported that attendance improved in 2005.

### **Recommendations**

11. Develop a mechanism to compare the NYC Health employee database to the training rosters to identify the employees who have attended mandated training and formal investigation training.
12. Verify that NYC Health complaint investigators attend mandated training courses.

### **AUDIT SCOPE AND METHODOLOGY**

We audited New York City day care complaints for the period January 1, 2004 through September 30, 2005. The objectives of our audit were to determine whether OCFS verifies that all complaints are: properly classified, promptly recorded, timely investigated, and thoroughly resolved; and whether OCFS oversight adequately ensures that NYC Health complies with the Law and contract terms.

To accomplish our objectives, we reviewed applicable laws, rules, regulations and procedures. We also interviewed OCFS and NYC Health officials and reviewed various OCFS reports, CCFS computer data and supporting documentation related to complaints. We evaluated the operation of the toll-free day care complaint number OCFS is required by Law to maintain. To determine whether day care complaints were processed in compliance with the Law and regulations, we selected a judgmental sample of 50 NYC Health complaint files, which included 15 complaints from calendar year 2004, and 35 complaints from January 1 - July 14, 2005. We reviewed more 2005 complaints because we believed their processing more accurately reflected current procedures. The 50 complaints comprised 25

imminent danger complaints; 10 serious complaints; and 15 non-emergency complaints. The 50 complaints involved 50 individual day care providers. To assess OCFS oversight, we reviewed the adequacy of OCFS' performance monitoring tools and complaint processing policies and procedures. We also reviewed the training records of NYC Health day care complaint investigators hired in 2004 and 2005 to determine whether investigators received the training required by the Law.

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, several of which are performed by the Division of State Services. 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 duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

## **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.

## **REPORTING REQUIREMENTS**

A draft copy of this report was provided to OCFS officials for their review and comment. OCFS officials agreed with certain of our recommendations. They did not agree with our conclusions and recommendations pertaining to seeking clarifications to the Law. A complete copy of OCFS's response is included as Appendix A. Appendix B contains State Comptroller's Comments which address OCFS' response.

Within 90 days of the 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 therefor.

## **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include William Challice, Richard Sturm, Stephen Lynch, Diane Gustard, Jerry Vasquez and Nancy Varley.

## APPENDIX A - AUDITEE RESPONSE



New York State  
Office of  
Children & Family  
Services

September 14, 2006

George E. Pataki  
*Governor*

John A. Johnson  
*Commissioner*

Mr. William P. Challice  
Audit Director  
Office of the State Comptroller  
State Audit Bureau  
123 William Street – 21<sup>st</sup> Floor  
New York, New York 10038

Subject: Draft Audit Report 2005-S-40

Capital View Office Park

52 Washington Street  
Rensselaer, NY 12144-2796

Dear Mr. Challice:

The Office of Children and Family Services has reviewed the draft audit report on New York City Day Care Complaints, issued July 10, 2006. Enclosed is our response for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Susan A. Costello".

Susan A. Costello  
Deputy Commissioner  
for Administration

Enclosure

cc: Lynn Dobriko



An Equal Opportunity Employer

**New York State Office of Children and Family Services  
Response to Office of the State Comptroller (OSC)  
Draft Report—2005-S-40  
New York City Day Care Complaints**

The New York State Office of Children and Family Services (OCFS) has reviewed Draft Report 2005-S-40 on New York City Day Care Complaints and offers the following response:

**Introduction**

The OCFS' Bureau of Early Childhood Services (BECS) is responsible for the day care complaint investigations in New York City, with the exception of child day care centers, which are licensed by the City of New York. In New York City, these investigations are conducted for BECS by the New York City Department of Health and Mental Hygiene (NYC Health) under contract. OCFS would like to note that before the start of the audit, BECS also found many of the same issues and weakness in the New York City Department of Health and Mental Hygiene (NYC Health) regarding day care complaint investigations that are reflected in the audit report. OCFS' BECS had already initiated significant activities to increase oversight of NYC Health, by imposing greater accountability measures and was in the process of hiring staff for a NYC regional office that would maintain oversight of NYC Health. Implementation of these initiatives began in the second half of 2005, and thus, the impact of the changes is not reflected in the sample selected by the Office of the State Comptroller (OSC).

Similarly, NYC Health underwent significant restructuring and expansion of field staff capacity beginning in late 2004, with full implementation in mid-2005.

OCFS' staff welcomed the audit as a means to strengthen the work that had already been completed. During the course of the audit, however, OSC auditors failed to understand key aspects of the related Social Services Law, policies, and procedures. If those crucial misinterpretations are corrected, the audit report could serve as a baseline study against which OCFS and NYC Health could continue to track progress in this area.

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Comment  
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**Background**

Shown below is information on all day care complaints received statewide for the years 2004 and 2005. This data shows that generally OCFS and its agents categorize complaints by assigning greater risk at the intake stage. As the complaint is processed through the investigative process, the category assigned to the complaint may change.

\*See State Comptroller's Comments, page 25

- Statewide, 7,685 complaints were received.
- Of the 7,685 complaints, 60 percent were found to be unsubstantiated.
- Of the remaining 3,106 complaints, where some portion or the entire complaint allegation was substantiated, in 36 percent of the cases, the final assessment of severity, based on inspection, was less than the severity level applied at intake.
- The inspections revealed imminent danger in only 1.3 percent of the cases where the initial assessment of severity was serious.
- The final determination of imminent danger when the initial intake assessment was non-emergency occurred less than two-tenths of one percent.

### **Response to Recommendations**

**Recommendation 1:** Assess the need to staff the toll-free telephone number after 5 p.m., and on weekends and holidays.

**OCFS Response:** OCFS concurs with the importance of addressing the emergence of “non-traditional hour care.” BECS is evaluating the most appropriate long-term strategies while also putting into place a series of interim steps. For example, NYC Health reports that NYC’s 3-1-1 Citizens’ Service Center hotline has agents receiving calls for any type of complaint, including those related to child care, 24 hours a day, seven days per week. The Mayor’s Office has made public awareness of this hotline number a high priority. The public awareness efforts have highlighted this central number as the single number NYC residents can use for all purposes, including inquiring about and lodging complaints about child care providers. In addition, OCFS will seek data from NYC Health related to the level of usage of this hotline for day care complaints during non-traditional hours as part of its overall efforts to assess the need and appropriate responses to changing family needs.

OCFS is also evaluating other mechanisms, such as the Internet, for complaints to be lodged during non-traditional hours.

**Recommendation 2:** Require NYC Health to have staff available, possibly on an on-call basis, to conduct investigations on weekends and holidays.

**OCFS Response:** NYC Health, Division of Environmental Health, which includes the Bureau of Day Care (BDC), has an on-call manager and Public Health Sanitarian (PHS) available 24 hours a day, seven days per week to respond to any complaints received by the Citizens’ Service Center. Furthermore, NYC Health has also developed a set of guidelines to assist the on-call manager and the PHS in determining if a complaint needs an immediate response. If an immediate response is necessary, the PHS is available to visit the child care program.



BECS has added a new indicator in the Child Care Facilities System (CCFS) to tag programs that have either self-reported non-traditional hours, or where such hours of operation have been documented through inspection or other verified information. Based on an analysis of the size of this "non-traditional hour" caseload, as part of the next budget cycle, OCFS' BECS will develop recommendations for staffing and on-call procedures.

**Recommendation 3:** Confirm that NYC Health's policies are changed to require the immediate entry of complaint data on CCFS. Review NYC Health's policies and procedures on a periodic basis to confirm that they comply with the law and contract requirements.

**OCFS Response:** OCFS reasserts its position that the immediate entry of data into CCFS has been the stated policy. Policy and practice standards around this and all stages of complaint investigation have been reemphasized with NYC Health staff and management. As noted above, NYC Health has undergone significant restructuring in the past year. OCFS has supported those efforts and provided ongoing training and technical assistance. In addition, NYC Health has been directed to participate more frequently in OCFS' BECS management activities. Ongoing monitoring by BECS indicates that practice has improved greatly.

OCFS' BECS staff has taken over direct responsibility for data entering into CCFS all complaints that originate through a referral from the New York State Central Register for Abuse and Maltreatment. As these complaints often require the greatest degree of coordination of effort across multiple agencies, direct OCFS' BECS involvement in the initial stages of these complaints will reinforce the importance of accuracy and timeliness of the complaint entry into CCFS.

**Recommendation 4:** Require NYC Health to develop a review process to confirm the accuracy of complaint classification on CCFS.

**OCFS Response:** It is important to clarify a basic misunderstanding that led OSC to make this recommendation. The audit report asserts that the distinction between "serious" and "imminent danger" is unclear. OCFS disagrees and believes the distinction is clear. Further, the ability of a caseworker to differentiate the category of a case is a core principal in human services work, whether it is to require immediate closure of a day care program, or the removal of a child in a child protective context. To ignore the need to make such distinctions would severely limit the responses available to licensers and registrars in balancing their responsibilities of promoting health and safety and promoting the availability and stability of child care.

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Comment  
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In response to suggestions from local district field staff and the OSC auditors, BECS developed and issued a desk aid for regional office and registrar staff. This desk aid assists in both classifying the severity of complaint allegations and

\*See State Comptroller's Comments, page 25

in structuring the conversation with the person lodging the complaint to gather adequate information to guide the development of the initial complaint investigation. This tool was field-tested across the state, refined and released for Statewide use.

**Recommendation 5:** Seek appropriate change to the Social Services Law or regulations to establish a third category of complaint classification and the corresponding timeframe for investigation. Clarify the distinction between an "imminent danger" complaint and a "serious complaint" in the complaint classification descriptions.

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Comment  
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**OCFS Response:** OCFS disagrees with the recommendation that a change to the Social Services Law or OCFS' regulations needs to be made to establish a third category of complaint titled "serious complaints". OCFS already has the authority to establish this category of complaint. Social Services Law § 390(3)(c) allows OCFS to establish a system for investigation of complaints and Social Services Law § 390(3)(a) mandates that OCFS inspect all complaints that are not imminent danger complaints within 15 days of receipt of the complaint. As such, OCFS has the ability to develop a system for complaint inspection. Further, the term "within" allows OCFS to shorten the 15-day timeframe to a timeframe within 15 days for some complaint inspections. In addition, the audit report confirms that OCFS does not need to obtain either statutory or regulatory authority to impose this third category of complaint. Please see page 6, first paragraph. As a result of the statute and OSC's own admission regarding OCFS' authority, the OCFS requests that this part of the recommendation be removed from the report.

**Recommendation 6:** Seek the appropriate change to the Social Services Law to clarify the time allowed between an inspection and a determination of whether a violation has occurred and the time within which OCFS may require a provider to complete corrective action.

**OCFS Response:** OCFS disagrees with this recommendation. The established timeframes in these areas are statutorily supportable and reasonable with respect to the child care providers, while continuing to protect the health, safety and welfare of the children in care.

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The statutory authority is included in Social Services Law § 390(3)(b). The language of the statute states that violations must be corrected "within thirty days" and as such, the term "within" allows the OCFS to shorten the timeframe. Because of this statutory authority, OCFS requests that this recommendation be removed from the report.

**Recommendation 7:** Make certain that complaints are investigated within the legally required timeframe.

**OCFS Response:** The audit report indicates that the governing statute is unclear regarding the amount of time permitted between inspection and the determination of

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\* See State Comptroller's Comments, page 25

any violations. It also questions the timeframe (60 days) OCFS permits after inspection and before a determination is made when a third party (law enforcement or Child Protective Services) is involved in the investigation. The audit report implies that OCFS' practice in this area violates the governing statute.

OCFS disagrees with this implication. The timeframes are not in violation of the statute per se or even its spirit. The reasoning behind OCFS' 60-day complaint determination timeframe when a third party is involved is based on Social Services Law § 424(7), which mandates that Child Protective Services (CPS) make its determination within 60 days of receipt of a child protective report. OCFS wanted the day care complaint to be afforded the same timeframe to allow any CPS investigation information to be considered in the day care complaint determination. Similarly, when law enforcement is involved in a report, OCFS also wanted to provide a longer timeframe to avoid interfering in law enforcement's investigation and to have the opportunity to review any information discovered by law enforcement during its investigation. As such, OCFS requests that OSC either support this implication with the available legislative history, or remove this implication from the report because it lacks a supportable basis.

The OCFS and NYC Health also reassert their disagreement on the findings related to the lack of timeliness on certain of the complaints. In four of the cases noted, the facilities were either day care centers in New York City, which are not subject to New York State licensing statutes and, as a result, are outside the scope of this audit, or the auditors failed to include holidays and/or weekends in calculating the number of days it took for the investigation to be initiated.

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Comment  
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**Recommendation 8:** Require NYC Health to equip borough offices with necessary mailing machines to expedite the mailing of inspection notifications.

**OCFS Response:** The concern raised by the audit team regarding the protocol in place at NYC Health to manage postage and mailing was noted. An agreement was reached between OCFS and NYC Health to expedite the mailing by equipping each field office with postage metering equipment. All offices were fully equipped by Spring 2006.

However, the audit report states that most providers likely received the complaint notification letters past the 10-day requirement and indicates that NYC Health's centralized mail system consistently caused significant delays. The auditors did not perform any test to determine the length of time it took for complaint letters to be mailed and offers no evidence to support the statement or finding. Thus, the conclusions stated in the report related to lack of timeliness of notification are not supported. OCFS requests that these conclusions be supported with facts or removed from the report.

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Comment  
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**Recommendation 9:** Refine performance monitoring tools to effectively measure NYC Health's compliance with mandate complaint processing requirements.



**OCFS Response:**

The major reason for OSC making this recommendation is based on flawed interpretation of data. For example, the report states that OCFS inaccurately "scored and passed" the complaints that were drawn as part of the quarterly sample. If that were the case, OCFS would concur with OSC that the instruments and the quality control for conducting the reviews should be revised. However, the statement made by OSC that the cases were scored inaccurately is false. OSC's auditors are contending that all of the cases should have been failed because they question the efficiency of the mailing process that had previously been used by NYC Health. BECS used the date on the notification letter as the notification date. OSC presumed that the notification letter could not have been timely due to the mailing process used by NYC Health. The auditors, however, did not perform a test or assessment on whether the mailing process caused a delay in the mailing of the letters. All other aspects of the scoring were undisputed by OSC. Thus, there is no documented basis to refute OCFS assessment of the sample cases.

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Comments  
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OCFS, however, is working to improve the monitoring tools used to measure NYC Health's compliance with complaint processing requirements. A number of the data elements used to track performance on key indicators require manual collection or extraction of data from existing data systems. The automation of these indicators is already planned for subsequent release upgrades of BECS, and the goal is to have this completed by year 2008. In the interim, OCFS will continue to produce the data manually.

**Recommendation 10:** Develop and distribute policies and procedures for complaint processing that include the steps necessary to comply with the Law and regulations and an easy-to-follow complaint classification listing.

**OCFS Response:** Recognizing the need for continued improvement, OCFS is working with its contractor, Training Strategies Group, to review and enhance the current curriculum for training field staff on conducting complaint investigations. OCFS also recently instituted a new training program targeted at conducting collaborative investigations with Child Protective Services, the police and other partner agencies. In addition, a desk aid was developed to assist staff when they are taking information as part of a complaint intake.

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Comment  
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OCFS is committed to providing support, training and guidance to all field staff; however, the great diversity of issues and situations found in practice does not always fit into an "easy to follow" list of complaint classifications. OCFS' staff communicated to the OSC auditors that the assessment of a complaint at intake, as well as the assessment of risk at each stage of investigation, is an assessment of the situation as a whole, and may not always easily fit into a list of regulatory violations with predefined risks.

\* See State Comptroller's Comments, page 25

On page 12 of the audit, OSC confuses the issue of the initial assessment of the severity of the complaint at intake versus the assessment of the severity of each specific regulatory violation that is actually found upon inspection. The list that the auditors refer to in the report is an exhaustive listing of all regulatory citations with a designation of which of these violations are presumed to be serious. This is a practice guide for inspectors in conducting inspections, regardless of the reason for the inspection. This practice guide was developed to promote greater consistency across individual staff and offices on the determination of severity applied to actual infractions. This consistency is crucial because the severity level has implications for various enforcement actions, including the cash value of fines that might be imposed on providers. This distinction was explained to the auditors throughout the audit.

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**Recommendation 11:** Develop a mechanism to compare the NYC Health employee database to the training rosters to identify the employees who have attended mandated training and formal investigation training.

**OCFS Response:**

The audit report inaccurately describes the legislative expectation of training activities for field staff. While the report accurately reflects the variety of training topics, the report fails to mention that there is no mandate that every inspector participate in each of these training topics. Rather, the Social Services Law indicates that training be made available, within the constraints of available funding. OCFS, primarily through its contractor, Training Strategies Group (TSG), conducts training needs assessments and offers a broad range of training opportunities. Training is offered in traditional classroom settings as well as a series of on-line and video teleconference formats.

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OCFS has shared with OSC the rosters maintained by TSG, our primary training contractor. This contractor is operating as an agent of OCFS and thus, it is acceptable for the roster to be maintained by it, rather than directly by OCFS. OCFS and TSG are reviewing mechanisms for creating reports and triggers for highlighting areas of training in which a particular staff person appears to be deficient.

A major enhancement that is currently being implemented is the creation of comprehensive core training for all new field staff. To the extent funds are available, OCFS is planning to enroll all new field staff into a comprehensive, multi-day course that will address the core functions and competencies of the position, including conducting complaint investigations. The course will also include a follow-up multi-day training within six months of the initial training. The first offering of this course is scheduled for October 2006.

**Recommendation 12:** Verify that NYC Health complaint investigators attend mandated training courses.

\*See State Comptroller's Comments, pages 25-26



**OCFS Response:**

OCFS and NYC Health concur that verification of whether staff attend training is important. OCFS believes changes and enhancement to the supervisory structure within NYC Health have greatly improved the verification process. In addition, the director of the OCFS' BECS office in New York City monitors attendance at all training events and communicates any concerns directly to NYC Health management and OCFS' BECS Home Office.

## APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. As referred to in Comment 3 and 4, we do not believe we have misinterpreted the Social Services Law, OCFS policies and procedures.
2. The contents of the desk aid provided to our auditors during this examination document clearly the ambiguity between OCFS' definition of imminent danger and serious complaints. For example, according to the desk aid either the imminent danger classification or the serious classification may be used to categorize children being left alone.
3. We recommended that OCFS seek legislative authority to establish the 3rd category because it appeared to us that the new "serious" category was almost indistinguishable from that of "imminent danger," which required investigation by the next day (as opposed to 5 days allowed for serious complaints). We agree that OCFS has the authority to shorten the 15 day investigation timeframe for non-emergency complaints. However, the OCFS desk aid does not clearly present that the "serious" classification is different from "imminent danger." We believe that parents of children in day care would see no difference between these two classifications and would want the complaints investigated the next business day.
4. As our report acknowledges, we agree with OCFS' intent. However, the Social Services Law gives providers up to 30 days to correct a violation. Since the statute affords providers up to 30 days, we remain uncertain that OCFS has the authority to shorten that timeframe - i.e., the time afforded providers (absent a statutory amendment clarifying its authority to do so).
5. We agree that the 60-day timeframe is not in violation of the statute. However, we believe that the timeframe violates the spirit of the statute. The statute provides relatively short, defined time periods within which the investigation is to be completed, within which notification must be given of a determination that a violation has been committed, and within which the corrective action has to be taken once notification is given; but does not prescribe the length of time within which a determination of whether or not a complaint is founded has to be made after completion of the investigation. By its contract, OCFS has stretched that timeframe from end of investigation to determination to 60 days when a third party is involved. Compared to the other timeframes, 60 days is a relatively long time.
6. During the course of this examination, we provided OCFS and NYC Health officials with documentation supporting each of our conclusions. As stated in the response, there are four complaints at issue. Two of these complaints, alleging imminent danger, involved weekends. The first complaint was received on January 14, 2005, a Friday. The next day available for the inspection would have been Tuesday, January 18, 2005 (January 17, was a holiday). NYC Health records show an inspection occurred on January 19, 2005. Therefore, after considering the weekend and the holiday, this complaint should have been investigated on January 18, the next business day but was not investigated until the following day. The second complaint, was received on

Wednesday, July 6, 2005. NYC Health records show that attempts to inspect the facility were made on July 7 and July 8. There was no information for July 11 and July 12. The inspection was not made until July 13, or three business days later.

NYC Health states the remaining two complaints, were for Group Day Care Centers which are overseen by another NYC agency, and therefore should not have been part of our audit scope. However, our audit was based on a listing of day care centers provided to us by OCFS. We were told that the listed centers were subject to the contract and to NYC Health oversight. Both of these cases alleged imminent danger. For one of these cases, more than two months elapsed before the inspection, and the other, one and one half months elapsed. OCFS needs to take steps to make sure the listing is accurate for its intended purposes. OCFS should also follow up with the responsible agency to make sure these cases were handled properly.

7. Contrary to OCFS' response, the statements contained in our report were based on audit tests that support our findings about the length of time it took for complaint letters to be mailed. There were two specific complaints that took 15 business days and 49 business days, respectively, before complaint letters were issued by CCFS. During our discussions of these cases with the Assistant Commissioner of NYC Health's Bureau of Day Care, he agreed with our determinations, indicating that further delays were likely due to the absence of

mailing machines at each of the Bureau's offices. As a result, the letters had to be sent to NYC Health's central office. At the conclusion of this audit, OCFS officials told us that they had reached an agreement with NYC Health to expedite these mailings by equipping each field office with the necessary postage metering equipment.

8. At the time of our audit, the Assistant Commissioner of the NYC Health Bureau of Day Care agreed with our observations that the antiquated mailing process delayed the initiation of investigations. He told us that a lack of proper mailing machines caused as long as two weeks delay in mailing notices to day care providers.
9. Our point is that OCFS needs to improve the guidance provided to NYC Health related to the classification of complaints at the time the complaints are received. Our report shows why the guidance provided to NYC Health i.e., a listing of regulation numbers rather than a narrative of what constitutes an imminent danger or serious complaint, needs improvement.
10. Section 390-a.1 of the Social Services Law clearly states that all OCFS and municipal staff employed to conduct inspections of child day care homes, programs or facilities shall receive training as we described on page 13 of this report. Regarding funding constraints, OCFS has never indicated to us that insufficient funding prevented them from providing training in accordance with the Law.