
**Thomas P. DiNapoli
COMPTROLLER**



**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

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**OFFICE OF CHILDREN AND
FAMILY SERVICES**

**DAY CARE COMPLAINTS
OUTSIDE OF NEW YORK
CITY**

Report 2005-S-55

AUDIT OBJECTIVES

Our objectives were to determine whether the Office of Children and Family Services' (OCFS) regional offices, registrars, and subcontractors are properly entering and accurately classifying, recording, timely investigating, and thoroughly resolving complaints about day care providers outside New York City, and whether OCFS is adequately overseeing the processing of these complaints.

AUDIT RESULTS - SUMMARY

OCFS is responsible for overseeing the provision of day care in the State with the exception of day care centers in New York City so that children are cared for in a secure and healthy environment. Designated State, county or contract employees issue licenses, register day care service providers, and conduct inspections and investigations once a complaint is received. 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.

While 49 of 55 of the complaints we reviewed were entered onto OCFS' Child Care Facility System (CCFS), the State's database of licensed and registered day care providers, in a timely manner, OCFS could further improve this process by formalizing guidelines about how quickly complaints are to be entered. The guidelines should also include instructions on how complaints are to be added when they are not received through the toll-free number (e.g., complaints received by staff in the field without access to CCFS). [Pages 4-5]

Twenty-four of the 60 complaints were not classified properly. Eight complaints were misclassified due to licensor/registrar error. We consider the remaining 16 complaints misclassified based upon our understanding of the intention of the Social Services Law. These misclassifications resulted in some serious complaints being classified as non-emergency and sometimes resulted in a delay of these complaints being investigated. [Pages 5-7]

OCFS initiated investigations of 59 of the 60 complaints in our sample within the required timeframes. We found that 29 of the cases sampled were not thoroughly investigated. In addition, we conclude that twelve of those should have been classified as imminent danger cases but were instead classified in lesser categories. Accordingly, complaints not investigated timely, potentially place children at risk. [Pages 7-8]

Employees investigating complaints often relied on the day care providers' denials of the allegations as the primary or sole basis for unsubstantiating a complaint. OCFS can improve this process by requiring investigators to confirm the viability of a complaint with outside sources. [Pages 7-9]

Thirty-one of the 60 complaints in our sample were substantiated and required corrective actions. Eight of the 31 were not corrected within 30 days, taking between 41 and 83 calendar days from the time the providers were notified of violations until the corrective actions were taken. Providers for the remaining 23 substantiated complaints stipulated that they had implemented necessary corrective action. [Page 9]

Seventeen of the 23 complaints required on-site inspections to confirm that the corrective action occurred. These inspections were done

for 10 of the 17 complaints. There were no on-site inspections for the remaining seven to verify that the corrective action was performed and the identified violations no longer constituted a serious risk to children. [Pages 8-9]

Our report makes nine recommendations to improve OCFS' oversight of day care complaint processing. OCFS officials agreed with certain of our recommendations. They did not agree with our conclusions and recommendation pertaining to seeking clarification to the Law.

This report, dated July 30, 2007, is available on our website at: <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
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The Office of Children and Family Services' (OCFS) Bureau of Early Childhood Services (Bureau) is responsible for overseeing day care services in the State with the exception of day care centers in New York City. It helps protect the health and safety of children by verifying that their day care providers comply with certain minimum standards established by OCFS' regulations (e.g., safety, sanitation, nutrition, prevention of child abuse, maltreatment, etc.).

OCFS has seven regional offices and oversees the licensing and registration of day care service providers done by these offices. State, county or contract employees responsible for issuing licenses and registering day care service providers are called licensors and registrars, respectively. These licensors and

registrars are responsible for conducting inspections once a complaint is received.

The regional offices also oversee the registration of day care service providers done by registrars in counties throughout New York State and in New York City. As of January 4, 2006, there were 37 out of 57 counties under contract with OCFS to provide registration of day care service providers.

Section 390 of New York State Social Services Law (the Law) establishes four types of day care providers:

- Day Care Centers - any program or facility caring for children for more than three hours per day, per child, in which child day care is provided, not in a personal residence. OCFS has established two sets of regulations depending upon the type of Day Care Center. The first applies to Day Care Centers that care for more than six children at a time, not in a personal residence. The second applies to small Day Care Centers that care for up to six children, not in a personal residence.
- Group Family Day Care - provides care in a residence for 7 to 10 children of all ages, and up to 12 children, where children are over 2 years of age.
- Family Day Care Homes - provides care in a residence for three to six children at a time, aged six weeks to six years. This is, by far, the largest group of providers.

(For both Group Family and Family Day Care homes, if the children are two years of age and older, two additional school age children may be cared for by the provider, during non-school hours.)

- School-Age Child Care programs - provides after-school care/programs in a commercial facility for groups of seven or more school age children who are under 13 years of age or who are incapable of caring for themselves.

The Law requires OCFS officials to perform unannounced inspections of the records and premises of child day care providers to investigate complaints and confirm that previously identified problems were corrected.

A complaint can be initiated by anyone and can be received at OCFS' central office, regional offices, registrars in counties, or by subcontractors (community-based organizations under contract with the local districts to register day care providers). OCFS requires all complaints to be entered directly into the Child Care Facility System (CCFS) immediately upon receipt. CCFS is the day care licensing and registration system of record in New York State. The details of all day care complaint investigations, inspections, and enforcement actions are required to be documented and summarized in this database.

There are three categories of complaints, all of which must be investigated within specific timeframes. Two categories - "imminent danger" and "non-emergency," were established by the Law. The other, "serious," was recently created by OCFS as a category for those complaints deemed more important than non-emergency but do not involve imminent danger to children. The responsibility for classifying complaints lies with the employees initially receiving the complaints.

Once a complaint is classified, the person or office who received it must enter the

complaint information into CCFS. An investigation should determine if the alleged violation can be substantiated or if it is unsubstantiated. Providers must be notified in writing within ten days of the results of the investigation. If substantiated, providers are required to implement corrective actions within 30 days after being notified of the regulatory violations or OCFS may enforce additional actions against the provider. Generally, if a violation is deemed as imminent danger or serious, follow-up visits by the person who investigated the complaint must be performed to directly verify that the provider implemented required corrective actions.

For calendar year 2004, there were a total of 3,232 complaints received outside of New York City, 101 of which were classified as imminent danger. From January 1, 2005 through November 23, 2005, there were 2,966 complaints received, 59 of which were classified as imminent danger.

Our audit tests assessed whether regional offices and others who receive complaints regarding day care service providers operating outside of New York City promptly entered 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 action, and whether investigators verified that the corrections required for substantiated complaints were implemented.

Audit report 2005-S-40, addresses day care complaints in New York City.

AUDIT FINDINGS AND RECOMMENDATIONS

Prompt Entry of Complaints into CCFS

Day care complaints received on OCFS' toll-free telephone number are automatically routed into a general purpose phone number for the regional office which has responsibility for the area where the call originated. Day care complaints can also be received by fax, e-mail, or regular mail at any OCFS office, or office that registers and/or issues licenses to day care providers.

Once a day care complaint is received, OCFS expects it to be immediately classified and entered into CCFS, so OCFS officials can have access to up-to-date complaint data. However, this expectation is not stated in written guidelines. If information is not entered into CCFS immediately, it is difficult for OCFS to monitor the timeliness and completeness of day care complaint investigations statewide, and to monitor and evaluate registrars' contractual performance. In addition, some staff, such as those who work in the field, do not have direct access to CCFS. They must call in complaints to those who do have access to CCFS. Therefore, complaints received by these people are not always entered into the system in a timely manner.

To determine if the data is being entered into CCFS timely, we reviewed a judgmental sample of 60 complaints from throughout the State, outside of New York City. Out of these 60, we did not have the CCFS entry date for five complaints. We had complete CCFS information regarding the timeliness of information for 55 cases. We reviewed these 55 to see if complaints were entered into the system on the same day as a basis of determining timeliness. We found that most were entered in a timely manner. The entry

dates for 49 complaints agreed with the date that the complaints were received. For the remaining six complaints, between one and thirteen days passed before these were recorded in CCFS. However, they were all promptly investigated within the timeframes established by the Law according to classification entered for these complaints.

Since the timeframe for a complaint investigation begins with the receipt of a complaint, we believe OCFS needs to create clear guidelines about how quickly complaints are entered into CCFS. The guidelines should also include instructions on how complaints are to be added when they are not received through the toll-free number (e.g., complaints received by staff in the field without access to CCFS).

Recommendation

1. Create and distribute guidelines requiring the immediate entry of complaint data into CCFS.

Accurate Complaint Classification in CCFS

The Law and OCFS guidelines classify complaints into one of the following three categories, based upon the severity of the alleged violation.

1. Imminent Danger - complaints that allege a child or children are likely to be seriously harmed or injured unless intervening action is taken. The Law requires these to be investigated no later than the next day of operation of the provider.
2. Serious - complaints that providers allow situations to develop that put a child or children at risk of significant or substantial injury or harm. Some examples include leaving children

alone, use of corporal punishment and inadequate response to a child's medical needs. OCFS requires these complaints to be investigated within five business days.

3. Non-Emergency - complaints that do not fall into the above categories. The Law requires these to be investigated within 15 days of receipt of the complaint.

We found that the initial classification of 36 of our sample of 60 complaints was consistent with the requirements of the Law and OCFS guidelines. The other 24 complaints in our sample were not properly classified.

- Eight complaints included alleged violations that OCFS guidelines identify as serious, yet these were classified as non-emergency.

For example, documents show that complaints alleging use of foul language around children, lack of adequate vehicle restraints, and sharing confidential information regarding day care children were classified as non-emergency instead of serious.

- Sixteen complaints were classified as serious or non-emergency, but should have been classified as imminent danger based on our review of the complaints.

Nine of the 16 complaints we believe should have been classified as imminent danger involved illegal provider allegations, i.e. people allegedly operating without a valid day care license or registration.

Social Services Law prescribes specific timeframes for investigating complaints determined by the severity of the alleged violation. Complaints of 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. All other non-emergency complaints must be investigated **within** 15 business days.

While the Law established the imminent danger and non-emergency categories for complaints and their corresponding timeframes for investigation, OCFS administratively established the "serious" category and its five day timeframe for investigation.

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 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 in fact it 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.

OCFS relies heavily on CCFS for monitoring the 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 its offices receive. In addition, OCFS is not able to accurately assess the performance of its offices in timely responding to such complaints. In addition, without accurate complaint data, OCFS profiles of individual providers - and the information available to the public about such providers - could be unreliable.

Recommendations

2. Develop a review process to confirm the accuracy of complaint classification on CCFS.
3. Seek appropriate changes to the Social Services Law or regulations to establish a third category (serious) of complaint classification and the corresponding timeframe for investigation. Clarify the distinction between “imminent danger” and “serious” complaints in the complaint classification descriptions.

Timely Investigation of Complaints

The Law requires that all complaints involving a child being at risk (imminent danger) be investigated by the provider’s next business day of operation and that all other complaints (non-emergency) be investigated within 15 days. OCFS’ complaint status (serious) established five business days as the standard for initiating investigations for these complaints.

We found that OCFS initiated their investigations of 59 of the 60 complaints in our sample within the required timeframes. One remaining complaint was classified as serious and was not investigated until nine calendar days after the complaint was

received rather than within the required timeframe of five business days.

Recommendation

4. Continue to investigate complaints within the legally required timeframe.

Thorough Resolution of Complaints

The Law requires OCFS to perform unannounced inspections of the records and premises of child day care providers to investigate complaints. OCFS must also develop a system for investigating complaints, which includes inspections and interviews. OCFS requires those who conduct investigations to discuss and confirm complaint allegations with providers as well as others, such as neighbors, parents or children in day care. They must also obtain any other appropriate collateral information.

OCFS requires that each completed complaint investigation result in a determination of whether any alleged violation is substantiated or unsubstantiated, and expects each investigation to be fully documented in CCFS. OCFS relies upon the information recorded in CCFS as support for any required enforcement actions.

Using the information contained in CCFS and other documents, we found that 31 of our sampled 60 complaints were thoroughly resolved. All of these complaints resulted in appropriate verification that corrective action, if required by the providers, was taken. The investigation documentation for the remaining 29 complaints in our sample was not thorough and did not show that appropriate verification of corrective action was done. We found that those conducting investigations did not always perform the steps necessary and required to do an adequate investigation.

For example, we believe inspectors placed too much reliance upon the providers' denial of the allegations as the primary or sole basis for an unsubstantiated determination. Some inspectors did not discuss the complaint with anyone but the providers. Of the 29 complaints, we found ten were unsubstantiated without any discussions with parents, neighbors, children, or other potential sources of information concerning the allegations contained in the complaint. In addition, a number of State, county and subcontractor employees told us that information relevant to a complaint investigation cannot be obtained through discussions with children. Employees responsible for registrations in Monroe County believe that OCFS forbids them from discussing complaints with children when they must investigate complaints. This is not true. According to OCFS officials, children should be interviewed when they are in danger.

In addition, one complaint alleged that the provider and her husband fight in front of the day care children and that the provider's husband drinks around the children, then becomes mouthy, using swear words. The inspector's sole interview for this complaint was with the provider. We believe that others should have been interviewed at the center, including the children, and the provider interview should not have been used as the primary basis for unsubstantiating this complaint.

We also determined that 12 complaints were not thoroughly investigated because the State, county or subcontracting inspector did not investigate all allegations and/or used unreliable evidence to unsubstantiate complaints. For example:

- An inspector obtained evidence that a provider had the appropriate

permission to have day care children at a location other than the registered day care center. However, we found no evidence that this inspector investigated another important aspect of this complaint concerning an unsupervised child running towards the road.

- A complaint alleging an unregistered or unlicensed day care center was operating Tuesdays and Thursdays was inspected on a Friday. The only person interviewed about the allegation was the provider. The complaint was classified as unsubstantiated.
- A provider continued to operate illegally because an inspector did not count the provider's boyfriend's two children as being in day care at this location. According to OCFS policy, the boyfriend's children should have been counted as part of the day care enrollment.

According to OCFS officials, formal notification of inspection results must be sent to all providers within ten days of each complaint inspection, regardless of the results of the investigation. The provider has 30 days from the date of being notified that a complaint was substantiated to correct the violation(s).

Nine providers in our sample of 60 did not receive timely notification of the complaint inspections. Inspectors took between 15 and 48 calendar days to send these letters. The determinations for five of these nine complaint inspections were substantiated.

In addition, OCFS requires on-site inspections to determine if provider's corrective action has resolved serious and imminently

dangerous complaints. For illegal providers receiving a cease and desist letter, OCFS requires four weekly follow-up inspections to verify that the provider is no longer operating illegally.

Thirty-one of the 60 complaints in our sample were substantiated and required corrective action. Eight of the 31 were not corrected within 30 days, taking between 41 and 83 calendar days from the time the providers were notified of violations until the corrective actions were taken. Providers for the remaining 23 substantiated complaints stipulated that they had implemented necessary corrective action. Seventeen of the 23 complaints required on-site inspections to confirm that the corrective action occurred. These inspections were done for 10 of the 17 complaints. There were no on-site inspections for the remaining seven to verify that the corrective action was performed and the identified violations no longer constituted a serious risk to children.

For instance, the inspector who investigated one complaint did not follow-up on a substantiated over capacity determination, even though a couple of months earlier this provider had admitted to being over capacity. The inspector accepted the provider's written statement to stay within capacity instead of performing an unannounced on-site inspection. We believe the inspector did not use due diligence to protect the safety of the children in this day care facility and should have performed the on-site inspection.

As previously noted, nine providers in our sample were determined to be operating illegally, either without a license or proper registration. Four weekly inspections are required as part of the follow-up on illegal providers, but these inspections were only performed for three of the nine providers. Less than four follow-up inspections were

performed on the other six illegal providers and the steps necessary to verify they would cease operating illegally were not performed as required. One of these six illegal providers was directed to apply for a license and then continued to operate illegally without any evidence of OCFS inspecting this center during the registration application period. This provider had apparently been operating for a long time and was providing services to a large number of school aged children. However, the children being served continued to be at risk as a result of this provider's operations not be monitored during the application period. In addition, we did not see any attempts to mitigate these risks while the provider's application was pending.

Recommendations

5. Verify that inspectors follow OCFS investigation requirements.
6. Re-enforce the ten-day complaint inspection result notification requirement with all State, county and subcontractor employees responsible for investigating complaints.
7. Re-enforce on-site follow-up inspection procedures to determine the status of providers' corrective action with all State, county and subcontractor employees responsible for investigating complaints.

Other Matters

We found that the Regional Offices we visited were not consistent in the way they identified pertinent complaint investigation information and where they then recorded it in CCFS. For example, in the Rochester and Long Island regions, some investigations are entered only under the CCFS notes tab. However, because this note tab is not directly associated with a

specific complaint, the information is not available for review as a part of the complaint record. We also found that interviews with the providers and others were frequently not recorded under the interview tab, which was sometimes used to document the investigation. The narrative tab - the field designated for recording the results of investigations - has a limited capacity and was often insufficient to record the results of most investigations. Accordingly, some registrars were more likely to document their investigation in on-site, hard copy inspection records. These records would then serve as evidence if official enforcement proceedings were required.

Recommendations

8. Train Regional Office staff in the proper conduct of the monitoring function.
9. Recommendation deleted.
10. Review the capacity concerns of CCFS, and then instruct Regional Office staff about what investigation information should be recorded in CCFS, and where.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the New York State Office of Children and Family Services' day care complaint process for the period January 1, 2005 through February 28, 2006. The objective of our audit was to determine whether OCFS verifies that all complaints are promptly entered into CCFS, accurately classified, timely investigated, and thoroughly resolved. We also determined whether OCFS monitors its registrars' performance based on the four categories. Finally we determined whether the OCFS management responsible for the

oversight of the day care complaint process and staff are following the appropriate agency policies, procedures and law. To accomplish our objectives, we reviewed Section 390 of the Social Services Law, OCFS Day Care Regulations, OCFS Day Care Policies and Procedures, a judgmental sample of day care complaints from a download of the 2,966 complaints OCFS provided to us that were received between January 1, 2005 and November 23, 2005 from within the Albany, Long Island, and Rochester regions, and relevant supporting investigative records. We also met with officials from OCFS and the registrar to confirm and enhance our understanding of day care policies, procedures, and day care complaint investigations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

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

Draft copies of matters contained in this report were provided to OCFS officials for their review and comment. Their comments were considered in preparing this report and are attached as Appendix A. Appendix B includes State Comptroller's Comments in response to OCFS officials.

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, Anthony Carbonelli, John Lang, Anthony Calabrese, Thierry Demoly and Sue Gold.

APPENDIX A - AUDITEE RESPONSE



New York State
Office of
Children &
Family
Services

Eliot Spitzer
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2796

May 4, 2007

Mr. William P. Challice
Audit Director
Office of the State Comptroller
State Audit Bureau
123 William Street-21st Floor
New York, New York 10038

Subject: Draft Audit Report 2005-S-55

Dear Mr. Challice:

The Office of Children and Family Services has reviewed the draft audit on Day Care Complaints Outside of New York City, issued March 7, 2007. Enclosed is our response for your consideration.

Sincerely,

William T. Gettman, Jr.
Deputy Commissioner
For Administration

Enclosure

cc: Lynn Dobriko



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**New York State Office of Children and Family Services
Response to Office of the State Comptroller (OSC)
Draft Report—2005-S-55
Day Care Complaints Outside of New York City**

The New York State Office of Children and Family Services (OCFS) has reviewed Draft Report 2005-S-55 on Day Care Complaints Outside of New York City and offers the following response:

Introduction

The OCFS' Bureau of Early Childhood Services (BECS) is responsible for the day care complaint investigations licensed and registered day care facilities in New York State, with the exception of child day care centers in New York City, which are licensed by the City of New York. Complaint investigations, other than day care centers in the City of New York are conducted either by BECS' staff, or in some instances, by registrar staff under contract with OCFS' BECS. OCFS would like to note that before the start of the audit, BECS was already engaged in a process of continuous improvement in identifying and resolving opportunities to further strengthen the consistency of field work.

OCFS' staff welcomed the audit as an additional external control towards the core goal of reducing risk and improving the quality of child care for children across New York State. 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 its registrar partners could continue to track progress in this area.

* Comment 1

Background

Listed below is some information on day care complaints received statewide for the years 2004 and 2005. This data indicates generally that 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.

- 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.
- Inspections revealed imminent danger in only 1.3 percent of the cases where the initial assessment of severity was serious.

*See State Comptroller's Comments, Page 19

- A final determination of imminent danger when the initial intake assessment was non-emergency occurred in less than two-tenths of one percent of the complaints.

Response to the General Text and Background in the Audit Report:

On page 2, In the Audit Results Summary, first paragraph, please correct OCFS' New York City day care responsibilities. OCFS' responsibilities include oversight of all day care programs in New York City, except day care centers in New York City. Please revise the audit report accordingly.

* Comment 2

On page 2, In the Audit Results Summary, fourth paragraph, please correct the inconsistency in this paragraph, which first states that 59 of 60 complaints were timely inspected, and then states that 12 of the same complaints were not timely inspected.

On page 3, In the Background section, second paragraph, please rephrase the audit report to reflect that the seven OCFS' referenced regional offices are part of OCFS and not independent contractors supervised by OCFS. The audit report seems to imply that these offices are independent contractors and that is incorrect.

On page 4, In the Background section, first full paragraph, second sentence, please delete the phrase "Pursuant to the Law" because that is incorrect. The Social Services Law does not require complaints to be logged into the Child Care Facility System (CCFS). It is OCFS' policy that complaints be logged into CCFS.

Response to Recommendations

Recommendation 1: Create and distribute guidelines requiring the immediate entry of complaint data into CCFS.

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 all staff, both direct OCFS' BECS staff and all registrar employees and subcontractors.

The expectation of immediacy of entry of complaints into CCFS is addressed in training curricula related to complaint investigation, both in "stand alone training" and in the comprehensive training instituted for all new field staff.

Recommendation 2: Develop a review process to confirm the accuracy of complaint classifications in 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

*See State Comptroller's Comments, Page 19

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 principle 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.

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 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.

Finally, it should be noted that the process of defining the actual regulatory violations that are alleged by a complainant, and assigning a level of seriousness to those allegations, are reviewed by a supervisor prior to the complaint investigation being assigned to a licenser or registrar. This “second set of eyes” provides additional confidence in the accuracy and consistency of the application of BECS’ policy and standards.

Recommendation 3: Seek appropriate changes to the Social Services Law or regulations to establish a third category (serious) of complaint classification and the corresponding timeframe for investigation. Clarify the distinction between “imminent danger” and “serous” complaints in the complaint classification descriptions.

*
Comment
3

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, right hand column, first paragraph. As a result of the statute and OSC’s own admission regarding OCFS’ authority, OCFS requests that this part of the recommendation be removed from the report.

*See State Comptroller’s Comments, Page 19

Recommendation 4: Continue to investigate complaints within the legally required timeframes.

OCFS Response: The audit sample indicated a 98.3 percent compliance rating for investigating complaints timely per the requirements set out in statute and policy. OCFS' staff will continue to investigate complaints in a timely manner.

Recommendation 5: Verify that inspectors follow OCFS investigation requirements.

OCFS Response: While the majority of complaints evaluated during the audit were conducted and resolved in a manner consistent with BECS' policy and procedures, the audit did highlight the need to reemphasize and retrain all staff.

All regional managers have been directed to review complaint investigation procedures and follow up with all state, county and subcontract staff. In addition, all new field staff must complete a component in complaint investigation as part of the Licenser/ Registrars' Institute training.

A new training module has also been introduced this year that addresses the issue of conducting collaborative investigations with other agencies such as police, child protective services and others. An additional module is also under development that addresses the specific interview skills needed when interviewing children.

Recommendation 6: Re-enforce the ten-day complaint inspection result notification requirements with all State, county, and subcontractor employees responsible for investigating complaints.

OCFS Response: It is important to clarify that OCFS consistently interprets timelines to be measured in "business days" rather than calendar days. It was not clear if this was the standard that OSC followed. Thus, some of the letters that OSC determined to have been outside the required ten-day timeframe may not have been outside of the ten-day timeframe if business, rather than calendar days had been used in the calculations. Further, by OSC's own data, which may have used calendar rather than business days, in only eight percent of the sample did a provider, even with a substantiated violation, receive the letter outside the required ten-day timeframe.

That said, OCFS concurs that it is crucial for the provider to have timely notification so as to promote timely corrective action and will continue to reinforce and monitor for this standard.

Recommendation 7: Re-enforce on-site follow-up inspection procedures to determine the status of providers' corrective action with all State, county, and subcontractor employees responsible for investigating complaints.

OCFS Response: While OCFS concurs with the importance of continuously reinforcing follow-up procedures, the interpretation of the guidelines should be appropriate to the situation. For example, if an investigation of illegal child care on the first inspection confirms the complainant's allegation that there were a specific number of children in care, but also provides clear proof that all of the children are relatives of the provider, multiple visits may not be necessary. Similarly, if after the second visit, there is clear proof that the person has moved, multiple additional visits may also be unnecessary.

Again, OCFS concurs with OSC that the thoroughness of the complaint investigation and follow-up are critical responsibilities. All regional offices have been directed to reemphasize this with staff and all supervisors have been reminded to focus on this issue in caseload management reviews.

Recommendation 8: Train Regional office staff in the proper conduct of the monitoring function.

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Comment
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OCFS Response: OSC is correct that a significant level of responsibility is invested in Registration contactors and subcontractors. OCFS concurs with the importance of a strong consistent monitoring function. However, the appropriateness of making a statewide audit finding based on three complaint monitoring forms all conducted by the same BECS' staff person in relation to a single county quarterly review is questionable. The specific staff person involved has been retrained and the issue has been highlighted for all regional offices.

Recommendation 9: Implement appropriate corrective actions when registrars do not perform according to contract requirements.

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Comment
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OCFS Response: All registration contracts are structured as performance-based contracts. Thus, on a quarterly basis, there is immediate fiscal ability for timely and appropriate corrective actions. In addition, OCFS' BECS' Regional Office Manager and Supervisors meet regularly with the registrars to review policy and procedures. Any issues that emerge through quarterly file reviews are addressed at these meetings.

Recommendation 10: Review the capacity concerns of CCFS, and then instruct Regional Office staff about what investigation information should be recorded in CCFS and where.

OCFS Response: As was explained to the OSC staff, CCFS is a system still under development. In addition, like so many other areas where there has been an introduction of automated supports to casework, the transition is a greater challenge for some staff than others. That said, the feedback learned from this audit about some important areas where staff were not fully using the system as designed was very beneficial. First, working with the CCFS design team, certain

*See State Comptroller's Comments, Page 19

revisions to CCFS have been “fast tracked” and rolled out that have simplified work for staff, such as creating a report that automatically merges all notes any inspector has recorded in relation to a particular facility into an easy to produce report. “Robohelp”, an on-line technical assistance tool for users, has also been integrated into CCFS functionality.

In addition, BECS’ staff in collaboration with the training contactor has developed and conducted a comprehensive training for designated staff in each region who can serve as regional “Master Users” of CCFS and thus are available to assist peers in using the system accurately and to its fullest potential.

APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. As referred to in Comment 3, we do not believe we have misinterpreted the Social Services Law, OCFS policies and procedures.
2. We have modified our report to reflect this additional information.
3. We recommended that OCFS seek legislative authority to establish the third 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 five days allowed for serious complaints). We agree that OCFS has the legal 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 the 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. We removed this recommendation and its related text in preparing this final report.
5. As part of our recommendations, we intend that OCFS apply the fiscal sanctions as part of other forms of corrective action.