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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 10, 2010

Ms. Gladys Carrion
Commissioner
NYS Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Re: Report 2008-F-49

Dear Ms. Carrion:

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, we have followed up on the actions taken by officials of the Office of Children and Family Services (OCFS) to implement the recommendations contained in our audit report, *Day Care Complaints Outside of New York City* (Report 2005-S-55).

Background, Scope and Objective

OCFS is responsible for overseeing day care services in the State with the exception of day care centers in New York City. OCFS helps protect the health and safety of children by verifying that their day care providers comply with certain minimum standards established by OCFS regulations. The Social Services Law (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. OCFS uses three complaint categories based upon the severity of the alleged violation: imminent danger, serious and non-emergency. In calendar year 2008, there were 3,145 complaints received outside of New York City including 51 imminent danger complaints, 2,430 serious complaints and 664 non-emergency complaints.

Our initial audit report, which was issued on July 30, 2007, covering the period January 1, 2005 through February 28, 2006, determined whether OCFS regional offices, registrars, and subcontractors were properly entering and accurately classifying, recording, timely investigating, and thoroughly resolving complaints about day care providers outside New York City, and whether OCFS was adequately overseeing the processing of these complaints. We concluded 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. The objective of our follow-up was to assess the extent of implementation as of November 24, 2009 of the ten recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found OCFS officials have made progress in implementing the recommendations contained in our prior audit report. However, additional improvements are needed. Of the ten prior audit recommendations, six recommendations have been implemented, three recommendations have been partially implemented and one recommendation was deleted in the final report.

Follow-up Observations

Recommendation 1

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

Status - Implemented

Agency Action - OCFS developed and distributed a Complaint Intake desk aid (Desk Aid) for Regional offices and registrar staff. This Desk Aid assists with classifying the severity of complaint allegations, structuring the conversation and developing the initial complaint investigation. The Desk Aid requires a worker to open the Complaint Intake in the Child Care Facility System (CCFS) and enter the data as soon as a complaint call is received.

Recommendation 2

Develop a review process to confirm the accuracy of complaint classification on CCFS.

Status - Implemented

Agency Action - OCFS developed a review process to confirm the accuracy of complaint classifications in CCFS. On June 29, 2009 OCFS distributed to staff the Regulator's Guide to Complaint Categories - Desk Reference Guide (Guide). This Guide helps staff to determine the level of harm and risk to children and the immediacy of the action needed in response to each particular case. Further, it requires a supervisor to review the complaint to confirm the classification in CCFS. The Guide states that "Based on the information provided, the regulator assigns a complaint category. A supervisor will then read the complaint intake information and assess the complaint category against the allegations. Changes to the assigned category may be made at this point, if deemed necessary by the supervisor." Due to the Guide's late distribution, we were unable to test its execution and effect.

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 "serious" complaints in the complaint classification descriptions.

Status - Partially Implemented

Agency Action - The intent of the recommendation to seek appropriate changes to the Social Services Law or regulations was to ensure the continued use of the non-mandated “serious” complaint category. We found that OCFS has been using the category continuously since 2001 and according to OCFS officials the category has been a valuable alternative between the extreme categories of imminent danger and non-emergency classifications in the Law. Further, officials told us that they intend to continue using the serious category. However, OCFS officials have not sought changes to the Law or regulations.

OCFS did clarify the distinction between “imminent danger” and “serious” complaints in the Guide’s complaint classification descriptions. The new definition for imminent danger violations adds urgency as a criterion for complaint classification. The imminent danger classification is assigned to complaints when the complaint includes at least one serious violation, plus, “an urgent need for intervening (the need for intervening action to be taken without delay),” in order to avoid further harm or risk of harm. If the regulator determines that the situation, although serious, does not require an immediate response to protect the safety of the children in the program, the report should be categorized as serious. Due to the Guide’s late distribution, we were unable to test its execution and effect.

Recommendation 4

Continue to investigate complaints within the legally required timeframes.

Status - Implemented

Agency Action - We found that complaints generally continue to be investigated within the legal timeframes. We reviewed all complaints that were received from January 26, 2009 through January 30, 2009 to determine if they were investigated within the legal timeframes. Out of 19 complaints that were received, 18 were completed timely. One was classified as “serious” danger and was initiated six days after the complaint was received, which is only one day late. In the previous audit we found that 59 out of 60 complaints recorded were made within legally required timeframes.

Recommendation 5

Verify that inspectors follow OCFS investigation requirements.

Status - Implemented

Agency Action - OCFS verifies that inspectors follow investigation requirements during quarterly Registrar Case Review Complaint Monitoring (review). Each review contains the complaint number, date of the complaint, who the complaint was reviewed by, the answers to questions that pertain to how the investigation was conducted, the date the review was completed and whether it was verified in CCFS. There were 142 reviews conducted in 2008. We

judgmentally selected five reviews for the month of January 2009 and found that all investigation requirements were met.

Recommendation 6

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

Status - Partially Implemented

Agency Action - OCFS has reinforced the ten-day complaint inspection result notification requirement by including it as part of multiple trainings such as Complaints/Inspections training, Child Abuse and Maltreatment training and most recently Collaborative Interviews and Investigations training during 2008 and 2009. However, OCFS officials were unable to provide supporting documentation showing that all appropriate county employees received the training.

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.

Status - Partially Implemented

Agency Action - OCFS has reinforced the on-site follow-up inspection procedures. OCFS issued a memorandum dated June 10, 2009, on the subject of Reviewing Corrective Action Plans. It was distributed to Regional Staff and Registrars. This memorandum reinforces the requirements for verification of corrected serious and imminent danger violations and requirements for verification of non-emergency violations. However, OCFS officials were unable to provide supporting documentation showing that all appropriate county employees received the memorandum.

Recommendation 8

Train Regional Office staff in the proper conduct of the monitoring function.

Status - Implemented

Agency Action - OCFS provided several training sessions to Regional staff on the proper conduct of monitoring. From May 2, 2006 through October 16, 2008, three different trainings (Collaborative Interviewing, Effective Complaint Investigations and Child Day Care Regulatory Staff Training Institute Part 1 and 2) were offered at various dates throughout the State and records show 312 employees attended.

Recommendation 9

Recommendation was deleted in our final report.

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.

Status - Implemented

Agency Action - OCFS reviewed and addressed the capacity concerns of CCFS. OCFS determined that the multiple narrative boxes available in the Inspections\Complaints\Checklist window provide ample space to record complaint investigation findings and results. In addition, OCFS increased the character capacity of each narrative box from 3,000 to 4,000 characters in April 2009. We reviewed 12 complaint investigations that were started in May 2009 and found that CCFS has adequate space to record complaint investigation information. OCFS provided inspection training Statewide from October through December 2008 which included information on how to correctly record complaint investigation findings in CCFS. In addition, the online CCFS help files have been updated to include complete information on recording complaints and complaint inspection results.

Major contributors to this report were Todd Seeberger, Mike Cantwell and Rachelle Luchkiw.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of OCFS for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Donald D. Geary
Audit Manager

cc: Thomas Lukacs, Division of Budget
Ralph Timber, Audit Liaison