

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**SOME NEW YORK CITY
CHILDCARE PROVIDERS DID NOT
ALWAYS COMPLY WITH HEALTH
AND SAFETY REQUIREMENTS**

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Office of Inspector General

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Report in Brief

Date: June 2018

Report No. A-02-16-02003

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Administration for Children and Families provides Federal grants for childcare services through the Child Care and Development Fund (CCDF). Previous OIG reviews of States that received CCDF funds identified multiple health and safety issues that put children at risk. To determine whether similar health and safety risks exist at childcare providers in New York City, we reviewed three providers that received CCDF funds. The providers are exempt from the State's licensing requirements but must meet the State's health and safety requirements.

Our objective was to determine whether New York ensured that selected New York City providers that received CCDF funds complied with State and local requirements related to the health and safety of children.

How OIG Did This Review

Of the 150 legally exempt providers in New York City that received CCDF funds as of April 2016, we selected 3 providers for our review. The providers were selected based on consideration of certain risk factors, including enrollment size and previous noncompliance with health and safety requirements.

We conducted unannounced site visits at 11 locations operated by the 3 providers from May through September 2016 at the providers' locations in Brooklyn, New York.

Some New York City Childcare Providers Did Not Always Comply With Health and Safety Requirements

What OIG Found

New York did not ensure that selected New York City providers that received CCDF funds complied with applicable State and local requirements related to the health and safety of children. We found potentially hazardous physical conditions at 11 locations operated by the 3 providers that we reviewed. Moreover, we found that the providers did not comply with requirements to obtain background checks on employees.

The instances of noncompliance occurred because New York had no written procedures regarding monitoring of legally exempt providers' compliance with physical condition and background check requirements. In addition, New York's requirement that providers access a child abuse and maltreatment system to perform one required background check was inconsistent with current State law.

What OIG Recommends and New York's Comments

We recommend that New York ensure that the health and safety issues noted in our report are corrected, develop written procedures to ensure that legally exempt providers' compliance with physical condition and background check requirements is regularly monitored, and seek a change to State law to allow providers access to the child abuse and maltreatment system or take other steps to ensure that required background checks are completed.

In written comments on our draft report, New York agreed with all of our recommendations and described actions that it had taken or planned to take to address them. For example, New York stated that it is collaborating with applicable State oversight agencies to address the health and safety issues identified in our report and expanded its protocols for inspecting legally exempt group childcare programs. New York also indicated that it proposed statutory language to the State legislature that would require legally exempt group childcare programs to begin conducting certain background checks.



Among our findings, we discovered an open gate that allowed the children direct access to the street from a play area.

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Review	1
Objective	1
Background	1
Child Care and Development Fund Program	1
New York’s Child Care and Development Fund Program	2
How We Conducted This Review	2
FINDINGS	3
Providers Did Not Always Comply With Physical Conditions Requirements.....	3
Providers Did Not Always Comply With Background Check Requirements.....	5
Causes of Noncompliance with Health and Safety Requirements	5
RECOMMENDATIONS	6
STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	6
APPENDICES	
A: Audit Scope and Methodology	7
B: State and Local Health and Safety Requirements	8
C: Photographic Examples of Noncompliance With Physical Conditions Requirements	10
D: Monitoring Visits and Instances of Noncompliance at Each Legally Exempt Provider	17
E: State Agency Comments.....	18

INTRODUCTION

WHY WE DID THIS REVIEW

The Administration for Children and Families (ACF) provides Federal grants for childcare services through the Child Care and Development Fund (CCDF). Previous Office of Inspector General (OIG) reviews of States that received CCDF funds identified multiple health and safety issues that put children at risk.^{1,2} To determine whether similar health and safety risks exist at certain childcare providers in New York City, we reviewed three childcare providers that received CCDF funds.

OBJECTIVE

Our objective was to determine whether the New York State Office of Children and Family Services (State agency) ensured that selected New York City providers that received CCDF funds complied with applicable State and local requirements related to the health and safety of children.

BACKGROUND

Child Care and Development Fund Program

The CCDF program assists low-income families, families receiving temporary public assistance, and families transitioning from public assistance to obtain child care so that parents may work or obtain training or education.³ Funding for the CCDF program for fiscal year 2017 was approximately \$5.8 billion nationwide.

Federal regulations (45 CFR § 98.10(a)) require States to designate a lead agency to administer the CCDF program. Federal regulations also state that, in retaining overall responsibility for the administration of the program, the lead agency must ensure that the program complies with an approved CCDF State plan and all Federal requirements and must monitor programs and services (45 CFR §§ 98.11(b)(4) and (6)).

¹ A series of health and safety audit reports of childcare facilities determined whether the States ensured that childcare providers receiving CCDF funding complied with State requirements designed to protect the health and safety of children. We have developed the following website dedicated to our health and safety work: <https://oig.hhs.gov/oas/child-care/>.

² OIG also highlighted in a report the need for stronger oversight to protect the CCDF program and ensure that safe, high-quality care is provided to CCDF-eligible children: *More Effort Is Needed to Protect the Integrity of the Child Care and Development Fund Block Grant Program* ([OEI-03-16-00150](#), issued July 2016).

³ The CCDF program is authorized by the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. § 9858 et seq.) and section 418 of the Social Security Act (42 U.S.C. § 618).

The CCDBG Act of 2014 reauthorized the CCDF program and improved childcare health, safety, and quality requirements. The law included a requirement that, beginning in November 2016, each State perform an initial onsite monitoring visit and at least one annual unannounced onsite visit of providers that receive CCDF funds. The law also required childcare providers to submit criminal background checks every 5 years for all childcare staff. The law allows for extensions and waivers to come into compliance under certain circumstances. As of January 2018, New York's State agency was not yet in compliance with these requirements but had received an extension for the background check requirement until September 30, 2018, and had requested a waiver for the enforcement of the monitoring requirement until November 19, 2018.

New York's Child Care and Development Fund Program

In New York, the State agency is the lead agency that administers the CCDF program. In its CCDF State plan, the State agency certifies that there are in effect, within State or local law, requirements applicable to CCDF providers that are designed to protect the health and safety of children.

New York offers several childcare provider options to parents, including centers and family homes. The State agency exempts certain center-based group providers from licensing requirements.⁴ However, these providers, referred to in this report as "legally exempt providers," must meet health and safety requirements. As of April 2016, more than 15,000 children were enrolled in 150 legally exempt provider programs in New York City.

In New York City, the city's Department of Health and Mental Hygiene (DOHMH) oversees legally exempt preschool programs serving children ages 3 through 5, while the State agency oversees legally exempt afterschool programs serving school-age children. For both programs, providers self-certify compliance with health and safety standards. The State agency does not require legally exempt providers to be regularly monitored, although it does investigate complaints of noncompliance.

HOW WE CONDUCTED THIS REVIEW

Of the 150 legally exempt providers in New York City that received CCDF funds as of April 2016, we selected 3 providers for our review. We selected these providers after considering certain risk factors, including enrollment level and previous noncompliance with health and safety requirements. Each of the providers operated both preschool and afterschool programs. In all, the providers served approximately 4,000 CCDF-funded children and employed approximately 1,100 employees. Our fieldwork consisted of unannounced site visits conducted at the providers' 11 locations throughout Brooklyn, New York, from May through September 2016.

⁴ These providers include kindergarten, pre-kindergarten, nursery school, or after-school programs for children operated by a private school or academy operating on the premises where an elementary or secondary education is provided.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, and Appendix B contains a description of State and local health and safety requirements that pertain to providers.

FINDINGS

The State agency did not ensure that selected New York City providers that received CCDF funds complied with applicable State and local requirements related to the health and safety of children. The State agency did not conduct monitoring visits at any of the three legally exempt providers that we reviewed. Such visits may have identified noncompliance with State and local health and safety requirements that we identified during our own visits.

Specifically, we found 57 instances of noncompliance with State requirements and 19 instances of noncompliance with local requirements related to protecting children from potentially hazardous physical conditions at the 11 locations operated by the 3 legally exempt providers we reviewed. Also, we found that the providers did not comply with background check requirements. Even though onsite inspections were occasionally conducted by DOHMH at the preschool locations operated by legally exempt providers in New York City, the monitoring did not ensure that providers that received CCDF funds complied with State and local requirements related to the health and safety of children.

Appendix C contains photographic examples of noncompliance with physical conditions requirements. Appendix D contains a table that displays the instances of noncompliance at each provider location we reviewed and a summary of monitoring visits conducted.

PROVIDERS DID NOT ALWAYS COMPLY WITH PHYSICAL CONDITIONS REQUIREMENTS

The State agency did not ensure that the legally exempt providers we reviewed complied with State and local health and safety requirements described in Appendix B. Specifically, all three of the providers we reviewed had one or more instances of noncompliance with the minimum requirements to protect children from potentially hazardous physical conditions in both their afterschool and preschool programs. At these 3 providers, we found a total of 57 instances of noncompliance with State requirements for afterschool care and 19 instances of noncompliance with local requirements for preschool care related to physical conditions.

Examples of noncompliance included:

- Individuals did not have two separate ways to escape the facility in case of an emergency.

- Children had access to unsafe areas, including an unlocked fuse box located in a classroom hallway (Appendix C, photograph 1) and an unlocked gate that provided direct access to the street (Appendix C, photograph 2).
- Safety hazards were present in areas accessible to children, including exposed radiators, broken windows, loose nails, and sharp sheets of metal in children’s play areas, and loose wires in classrooms. Also, there were broken and missing floor tiles that posed a tripping hazard (Appendix C, photograph 3) and an unsafe playground that contained an open garbage container near the children’s play area (Appendix C, photograph 4).
- Cleaning products, including bleach, were left under a sink accessible to children (Appendix C, photograph 5).
- Perishable food was not refrigerated after having been opened (Appendix C, photographs 6 and 7).
- Emergency phone numbers were not posted conspicuously on or adjacent to the telephone (Appendix C, photograph 8).
- Protective caps, covers, or permanently installed obstructive devices were not used on electrical outlets accessible to young children (Appendix C, photograph 9).
- Paint and plaster were not in good repair in areas accessible to children (Appendix C, photographs 10 and 11).
- There were no smoke detectors in two of a provider’s locations.
- One provider location did not have a first-aid kit onsite. Other first-aid kits were incomplete, not portable (Appendix C, photograph 12), or contained expired items (Appendix C, photograph 13).
- Stairs and railings were in poor repair, including one railing that was not properly secured (Appendix C, photographs 14 and 15).
- Preschool providers did not meet minimum staff-to-children ratios.⁵

⁵ The minimum staff-to-children ratio requirement for preschool classrooms is 1:20. Specifically, 1 location did not meet this requirement in 17 classrooms, and a second location did not meet it in 3 classrooms. These classrooms exceeded this ratio by a range of one to six children.

PROVIDERS DID NOT ALWAYS COMPLY WITH BACKGROUND CHECK REQUIREMENTS

For prospective employees, New York City preschool providers are required to arrange for a criminal record check to be performed by local law enforcement and to query the Statewide Central Register of Child Abuse and Maltreatment prior to hiring all employees with the potential for unsupervised contact with children (New York City Health Code (NYC-HC) Article 43.13).

We found instances of noncompliance with local requirements related to background checks for preschool employees at all three providers that we reviewed. Specifically, we reviewed compliance with background check requirements for 1,108 employees and found the following instances of noncompliance:

- Criminal record checks were not performed for 904 employees.
- The Statewide Central Register of Child Abuse and Maltreatment was not queried for any of the employees. Although DOHMH required providers to check employees against the Statewide Central Register of Child Abuse and Maltreatment, State law⁶ prohibits private schools from accessing this system.⁷

CAUSES OF NONCOMPLIANCE WITH HEALTH AND SAFETY REQUIREMENTS

The instances of noncompliance related to physical conditions occurred because the State agency had no written procedures regarding the monitoring of legally exempt providers and did not conduct monitoring visits at any of the three providers that we reviewed. Rather, the State agency relied on provider self-certification of compliance with health and safety standards. In addition, although DOHMH written policies required annual monitoring visits to legally exempt preschool providers, it performed only sporadic (not annual) onsite inspections at the providers' preschool locations.⁸

The instances of noncompliance related to background checks occurred because the State agency had no written procedures regarding the monitoring of legally exempt providers to ensure that these checks were performed. In addition, DOHMH's requirement that providers check employees against the Statewide Central Register of Child Abuse and Maltreatment is inconsistent with current State law. Specifically, State law prohibits private school providers from accessing this system.

⁶ New York Social Services Law §§ 422(4)(A) and 424-a.

⁷ All three of the providers we reviewed were private schools.

⁸ The State agency did not conduct any monitoring visits at the selected providers from January 2012 to September 2016. DOHMH conducted monitoring at all but three of the provider locations, as summarized in Appendix D.

The gaps in monitoring at legally exempt providers resulted in vulnerabilities that jeopardized the health and safety of children in their care.

RECOMMENDATIONS

We recommend that the State agency:

- ensure that the health and safety issues noted in this report are corrected,
- develop written procedures to ensure that legally exempt providers' compliance with physical conditions and background check requirements is regularly monitored as legal or policy changes are made to comply with the CCDBG Act of 2014, and
- seek a change to State law to allow private school providers to access the Statewide Central Register of Child Abuse and Maltreatment or take other steps to ensure that required background checks are completed.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency agreed with all of our recommendations and described actions that it had taken or planned to take to address them. The State agency commented that it is collaborating with applicable State oversight entities to address any remaining health and safety issues that we identified. In addition, the State agency promulgated new regulations through an emergency rulemaking process that granted it the authority to conduct inspections in legally exempt group childcare programs. The regulations also addressed some of the new health and safety requirements found within the CCDBG Act of 2014. The State agency indicated that it is expanding its protocols for inspecting legally exempt group childcare programs to support consistent oversight. Finally, the State agency stated that it has proposed statutory language to the State legislature that would authorize private school providers to access the Statewide Central Register of Child Abuse and Maltreatment and require legally exempt group childcare programs to begin conducting other background check requirements found in the CCDBG Act.

We commend the State agency for taking prompt corrective actions in response to our recommendations. We note, however, that we did not review the State agency's new procedures to determine their effectiveness.

The State agency's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 150 legally exempt providers in New York City that received CCDF funds as of April 2016, we selected 3 providers for our review. We selected these providers after considering certain risk factors, including enrollment size and previous noncompliance with health and safety requirements. We performed unannounced visits at the providers' 11 locations throughout Brooklyn, New York. We limited our review of the State agency's internal controls to those controls related to monitoring of legally exempt providers.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal, State, and local requirements and New York's CCDF State plans;
- interviewed ACF officials to gain an understanding of the CCDF program;
- interviewed State agency officials to obtain an understanding of how New York City CCDF program providers are monitored and obtained a letter from the State agency to give to the providers we reviewed, explaining our audit;
- developed a health and safety checklist as a guide for conducting site visits;
- reviewed the State agency's prior health and safety inspection findings for the providers we visited;
- conducted unannounced site visits at three providers to determine whether they met health and safety requirements;
- interviewed provider staff to identify employees who had direct access to children and reviewed related background check documentation to determine whether background check requirements were met; and
- discussed the results of our review with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: STATE AND LOCAL HEALTH AND SAFETY REQUIREMENTS

NEW YORK CODES, RULES, AND REGULATIONS

Legally exempt afterschool providers self-certify compliance with the following health and safety requirements:

- The provider and all children have two separate and remote ways to escape in an emergency (18 New York Codes, Rules and Regulations (NYCRR) § 415.4(f)(7)(v)(a)).
- The provider will use barriers to restrict children from unsafe areas (18 NYCRR § 415.4(f)(7)(v)(c)).
- Where childcare is provided on floors above the first floor, windows on floors above the first floor are protected by barriers or locking devices to prevent children from falling out of the windows (18 NYCRR § 415.4(f)(7)(v)(d)).
- Adequate and safe water supply and sewage facilities are provided and comply with State and local laws. Hot and cold running water is available and accessible at all times (18 NYCRR § 415.4(f)(7)(v)(e)).
- Suitable precautions will be taken to eliminate any conditions in areas accessible to children that pose a safety hazard (18 NYCRR § 415.4(f)(7)(v)(g)).
- All poisonous or toxic materials (such as detergent) should be kept in a place inaccessible to children (18 NYCRR § 415.4(f)(7)(v)(h)).
- Perishable food will be kept refrigerated (18 NYCRR § 415.4(f)(7)(v)(j)).
- Emergency telephone numbers (e.g., fire department, poison control center) are posted conspicuously on or adjacent to the telephone (18 NYCRR § 415.4(f)(7)(v)(r)).
- Protective caps, covers, or permanently installed obstructive devices are used on all electrical outlets that are accessible to young children (18 NYCRR § 415.4(f)(7)(v)(s)).
- Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into their food (18 NYCRR § 415.4(f)(7)(v)(t)).
- There is one operating smoke detector on each floor of the facility. Such detectors will be checked regularly to ensure proper operation (18 NYCRR § 415.4(f)(7)(v)(u)).

- The facility is equipped with a portable first aid kit that is accessible for emergency treatment (18 NYCRR § 415.4(f)(7)(v)(v)).
- Stairs, railings, porches, and balconies are in good repair (18 NYCRR § 415.4(f)(7)(v)(x)).

NEW YORK CITY HEALTH CODE

Legally exempt preschool providers self-certify compliance with local requirements. In New York City, the following basic health and safety requirements are included in local requirements:

- The minimum staff-to-child ratio for children 3 years to under 5 shall be 1:20 for classroom activities and, for children 5 years to under 6, shall be 1:25 for all activities (NYC-HC §43.09).
- Emergency telephone numbers shall be posted in each classroom (NYC-HC §43.21).
- A fully stocked first-aid kit shall be easily accessible for use, kept out of the reach of children, and inspected periodically (NYC-HC §43.21(c)).
- There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface (NYC-HC §43.23(b)(1)).

**APPENDIX C: PHOTOGRAPHIC EXAMPLES OF NONCOMPLIANCE
WITH PHYSICAL CONDITIONS REQUIREMENTS**



Photograph 1: Unlocked fuse box located in a classroom hallway was accessible to children.



Photograph 2: Open gate allowed children direct access to the street from a play area.



Photograph 3: Broken and missing floor tiles posed a tripping hazard.



Photograph 4: Open garbage container in children's playground.



Photograph 5: Cleaning products, including bleach, stored under a sink accessible to children.



Photographs 6 and 7: Perishable food was left unrefrigerated after having been opened.



Photograph 8: Emergency phone numbers were not posted adjacent to the telephone.



Photograph 9: Protective caps or covers were not used on all electrical outlets in areas accessible to children.



Photograph 10: Paint was not in good repair.



Photograph 11: Plaster was not in good repair.



Photograph 12: First aid equipment was not portable.



Photograph 13: First aid kit contained expired item. (Photo depicts an over-the-counter medication that was nearly 3 years past its expiration date.)



Photograph 14: Stairs were in poor repair.



Photograph 15: Stair railing was not properly secured.

APPENDIX D: MONITORING VISITS AND INSTANCES OF NONCOMPLIANCE AT EACH LEGALLY EXEMPT PROVIDER⁹

Provider	Location	Date of Last DOHMH Monitoring Visit as of September 2016	Number of DOHMH Monitoring Visits¹⁰ From January 2012 to September 2016	Non-Compliance With State Requirements for Physical Conditions (Afterschool Care)	Non-Compliance With Local Requirements for Physical Conditions (Preschool Care)	Noncompliance With Local Requirements for Background Checks (Preschool Care)
1	1	4/22/2015	1	N/A	3	29
1	2	1/21/2016	3	N/A	2	44
1	3	9/3/2013	1	11	3	393
1	4	None	0	8	N/A	N/A
1	5	None	0	5	N/A	N/A
1	6	3/8/2016	2	7	2	22
1	7	11/18/2015	2	4	2	58
2	1	1/14/2016	5	7	3	97
2	2	8/13/2014	3	4	1	72
2	3	12/17/2014	3	5	N/A	N/A
3	1	None	0	6	3	189
	Total		20	57	19	904

Note: We have provided the State agency the specific names of the providers audited.

⁹ Locations marked N/A are not applicable because only one type of care (preschool or afterschool) is provided at the location; therefore, the location is not subject to both requirements.

¹⁰ There were an additional 12 visits from January 2012 to September 2016 conducted by DOHMH at 4 provider locations to determine whether the facilities corrected the issues identified in the initial monitoring visit.

APPENDIX E: STATE AGENCY COMMENTS



Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

May 10, 2018

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Department of Health and Human Services
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Re: Audit A-02-16-02003

Dear Ms. Tierney:

In response to the Department of Health and Human Services (DHHS) Office of Inspector General (OIG) draft report concerning oversight of the legally-exempt group child care providers in New York City, the New York State Office of Children and Family Services (OCFS) has prepared this response.

Background Information

Under New York State (NYS) Law, certain group child care programs are not required to meet the state's child day care licensing and registration requirements. As applicable to this draft report, these programs, referred to as legally-exempt group child care programs, include kindergarten, pre-kindergarten and nursery school programs for children three years of age or older and afterschool programs for school-age children operated by private schools or academies in the same locations as elementary or secondary education programs (Social Services Law (SSL) section 390(1)).

In 2016 at the time the OIG conducted the audit program visits, federal and state law permitted legally-exempt group child care programs to be enrolled with the state to provide child care services to children receiving subsidies funded under the NYS Child Care Block Grant, which includes federal Child Care and Development Fund (CCDF) dollars, if the programs met minimum health and safety requirements in accordance with OCFS regulations (SSL section 410-x(3)). The applicable OCFS regulations in effect at that time required all legally-exempt group child care programs to submit information regarding whether any employees or volunteers had ever been convicted of a crime or been the indicated subject of a child abuse or maltreatment report; there were no state statutory provisions authorizing the programs to conduct state child abuse or

maltreatment or state or federal criminal history background checks. The OCFS regulations established separate additional minimum health and safety requirements for legally-exempt group child care programs based upon one of two groups in which they fit: groups under the auspices of another governmental agency (GUAs), which are programs that were required to obtain a license or certification from another state or local agency, and groups not under the auspices of another governmental agency (GNUAs).

OIG's Review

Nine of the programs visited by the OIG were GNUA programs operated by private schools or academies¹ that provided care to school-aged children during non-school hours. These programs were not operated under the auspices of another agency. To provide subsidized child care services, they had to include a written attestation and certification that they met the basic health and safety requirements set forth in OCFS regulations^{2,3} as part of the enrollment package they submitted to the agency designated by OCFS to enroll legally-exempt child care programs (hereinafter, the enrollment agency). Since these programs had to be operated by schools and located in school buildings, they also were subject to the NYS Education Law⁴ requirement that the schools be inspected at least annually for fire hazards. The NYS Education Department (SED) was responsible for monitoring whether such fire inspections occurred.

The other eight programs visited by the OIG were GUAs that fit within the definition of School Based Programs for Children Ages Three through Five subject to Article 43 of the New York City (NYC) Health Code. These programs were operated under the auspices of the NYC Department of Health and Mental Hygiene (NYCDOHMH), which was responsible for monitoring program compliance with such requirements. As such, these GUA programs were not subject to the health and safety attestation requirements set forth in OCFS regulations. Instead, as part of the enrollment package, these GUA programs had to attest that they complied with all other applicable state and NYC requirements.⁵ As the OIG notes, although Article 43 of the NYC Health Code required such programs to conduct state child abuse and maltreatment checks on employees and volunteers, such checks were not authorized under state law.

Under OCFS regulations in effect when the OIG program visits occurred, prior to enrolling or re-enrolling a legally-exempt group child care program, the enrollment agency had to review the enrollment package to determine whether it was complete, including whether the program was exempt from the state's child day care licensing and registration requirements. To determine if an applicant was exempt from state child day care licensing or registration requirements, the enrollment agency had to determine if the program was located at and operated by a school in compliance with the compulsory education requirements established in NYS Education Law. Among the methods, the enrollment agency would verify that the program was an eligible school

¹ Such private school or academy, must be providing elementary or secondary education or both, in accordance with the compulsory education requirements of NYS Education Law, and the legally-exempt child care program must be located on the same premises or campus as the school or academy.

² 18 NYCRR 415.4(f)(7)(v)

³ The health and safety regulations include, but are not limited to: having two separate and remote ways to escape in an emergency; use of barriers to restrict children from unsafe area; taking suitable precautions to eliminate conditions that pose a safety hazard; storing poisonous or toxic materials in their original container and inaccessible to children; use of protective caps, covers or permanently installed obstructive devices on all electrical outlets; and, keeping paint and plaster in good repair.

⁴ Education Law §807-a

⁵ 18 NYCRR 415.1(i)

was to see if it had a Basic Educational Data System registration number issued by the SED State Office of Religious and Independent Schools. If the program met the eligibility requirements for enrollment of a legally-exempt group child care program, and, if a GNUA, attested that it met the applicable health and safety requirements set forth in OCFS regulations, then the enrollment agency had to enroll the program. Once a legally-exempt group child care program was enrolled, the applicable oversight agency was responsible for monitoring compliance with the applicable requirements. As part of the contract with OCFS, the enrollment agency investigated complaints about legally-exempt child care programs, but did not conduct pre-enrollment inspections.

Twelve of the programs visited by the OIG were operated by non-public independent and religious schools that had both GNUA programs for school-age children and GUA programs for pre-school aged children running in the same buildings as their schools. The co-location of these programs added a layer of complexity to investigating health and safety complaints about the school buildings given the separate jurisdiction of the three oversight agencies. If a complaint was made against a GNUA program, the enrollment agency would have investigated the complaint and worked with the program to come into compliance with the applicable OCFS regulations. However, if a complaint was made against a GUA program, the enrollment agency would have notified NYCDOHMH.

The OIG makes three recommendations in the draft report: 1) *Ensure that the health and safety issues noted in this report are corrected;* 2) *Develop written procedures to ensure that legally-exempt providers' compliance with the physical conditions and background check requirements is regularly monitored as legal or policy changes are made to comply with the CCDBG Act of 2014;* and 3) *Seek a change to State law to allow private school providers to access the Statewide Central Register of Child Abuse and Maltreatment or take other steps to ensure that required background checks are completed.*

In response to the first OIG recommendation, OCFS is collaborating with NYCDOHMH, SED and/or the enrollment agency, as applicable, to address any of the health and safety issues noted in the draft report that continue to exist. The other two recommendations relate to New York State's efforts to implement the federal Child Care and Development Block Grant Act of 2014 (hereinafter referred to as the "new CCDBG Act"). As the OIG is aware, the OIG's visits to the programs referenced in the audit occurred before the effective dates for the enhanced inspection, health and safety, and background check requirements contained in the new CCDBG Act. Since then, OCFS received waivers from DHHS' Administration for Children and Families (ACF) extending the time the state has to implement those requirements. New York State sought the waivers because of the limited federal funding available to support the significant compliance costs, the negative impact on low income families if state and local funds were diverted from child care subsidies to compliance activities, and the need for state statutory changes.

OCFS Response

NYS is collaborating with the applicable state and NYC oversight agencies.

OIG Recommendation 1: *Ensure that the health and safety issues noted in this report are corrected.*

OCFS Response: OCFS agrees that the identified programs must correct any remaining health and safety items noted in the report that apply to them under state or NYC Law. As stated above, OCFS is collaborating with the applicable oversight entities, NYCDOHMH, SED and/or the enrollment agency, to address any such issues.

New York State is taking steps to implement the new CCDBG Act including strengthening oversight of legally-exempt group child care programs.

OIG Recommendation 2: *Develop written procedures to ensure that legally-exempt providers' compliance with the physical conditions and background check requirements is regularly monitored as legal or policy changes are made to comply with the CCDBG Act of 2014.*

OCFS Response: OCFS agrees with the recommendation. Prior to receiving the draft report, OCFS had already begun evaluating additional potential measures to increase the oversight of legally-exempt group child care programs and was working to make the statutory and regulatory changes necessary to bring these programs into compliance with the new CCDBG Act. The first step in this progressive approach was an emergency rulemaking granting OCFS and its designees, local departments of social services (LDSSs) and enrollment agencies, the authority to conduct inspections in legally-exempt group child care programs. These new regulations took effect on April 16, 2018. OCFS is expanding the protocols for inspecting legally-exempt group child care programs including developing standardized inspection tools and training for inspectors that will support consistent oversight, in addition to increasing oversight.

OCFS also addressed some of the other new CCDBG Act health and safety requirements as part of the emergency rulemaking process. The regulations establish maximum group sizes, staff to child ratios, and a minimum age for children enrolled in legally-exempt group child care programs. OCFS is considering additional regulatory changes to further enhance the physical plant health and safety standards applicable to legally-exempt group child care programs.

As previously indicated, NYS received waivers from ACF delaying the dates by which the state must fully implement the new CCDBG Act's inspection, health and safety, and background check requirements. NYS learned in late March of this year that some additional CCDF funding was included in the final federal 2018 budget. Although the additional federal funding is insufficient to cover NYS's full costs of implementing the new CCDBG Act, the Governor immediately provided proposed appropriation and statutory language to the legislature as part of the Executive Budget for State fiscal year 2018-19 to enable NYS to begin meeting the Act's inspection, health and safety, and background check requirements. The executive office and the legislature were not able to reach an agreement on the statutory language during the state budgetary process but did agree on the appropriation language. OCFS anticipates discussions on the statutory language will continue during the remainder of the state legislative session.

In the meantime, OCFS continues to actively undertake measures to address implementation needs. OCFS understands the importance of compliance with the new CCDBG Act requirements and will continue to advocate for changes to the applicable provisions of state law. OCFS also is actively working on establishing the infrastructure necessary to implement these requirements, including continuing conversations with the other state agencies responsible for criminal history background checks, sex offender registries, and child abuse and maltreatment records, as well as evaluating the systems' changes.

OIG Recommendation 3: *Seek a change to State law to allow private school providers to access the Statewide Central Register of Child Abuse and Maltreatment or take other steps to ensure that required background checks are completed.*

OCFS Response to Recommendation 3: OCFS agrees with this recommendation. As stated above, legally-exempt group child care programs do not need a state license or registration to operate. These programs also currently do not have the necessary statutory authority to inquire whether certain individuals are the subjects of indicated child abuse and maltreatment reports on file with the Statewide Central Register of Child Abuse and Maltreatment. As discussed above, OCFS has provided proposed statutory language to the legislature to authorize such access and to require legally-exempt group child care programs to begin conducting the other background check requirements of the new CCDBG Act by September 30, 2018, when the state's existing waiver expires.

Thank you for the opportunity to comment on the draft report and to update the OIG on NYS's continuing efforts to implement the new CCDBG Act.

Sincerely,



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Office of Children and Family Services