



Independent Democratic Conference

Hidden Dangers in Daycare

**Part 1 of a Series of Investigative Reports into the Safety,
Standards and Quality of Daycare in New York State.**

May 2013

Introduction

There is little reason to believe that sending your child to a group day care center¹ in New York should be any more dangerous than caring for your child in your own home. However, it is much easier for a parent/guardian to identify and correct threats to child safety in one's home. Similar threats at day care centers often go unseen by parents. These hidden risks are present though, and pose a serious threat to our children. Worse, they may go undetected and unaddressed for extended periods of time. Although inspections attempt to catch these problem providers before they become public health hazards, many problems linger long after being cited and continue to linger. Also, while it is no secret that affordable daycare is limited in New York State and especially New York City, it begs one to ask the question--At what point does the safety and health of a child outweigh the need to keep a day care with persistent violations open just for the sake of having a daycare open?

I. Group Day Care in New York City

As the first in a series of reports to be released by the Independent Democratic Conference regarding the quality, affordability and regulations in Daycare in New York State, this report details an investigation into violations in New York City issued to Group Day Care Centers in the past three years. What the investigation found is that many group daycares in New York City are persistent violators of public health hazard laws, are racking up critical violations and most parents would probably never know this is the case when considering placing their child into the care of some of these facilities.

There are 2,163 group daycare centers in New York City, licensed by New York City. While not **every** group daycare has hidden dangers there are a disturbingly large amount of group daycares that have been cited for serious violations since 2010 and are still operating. Parents and guardians have no way of knowing the host of violations issued to their child's daycare unless they go onto the New York City Department of Health Website and search for the section related to childcare and then search to get to the licensing section and then search for the name of their daycare center. Needless to say this takes a parents skilled with a computer and able to navigate the channels of the New York City government website. Furthermore, as will be highlighted later on in this report, during an independent investigation conducted by staff of the IDC, most day care providers indicate that they have never received any violations even though evidence indicates that they are one of the worse violators in the city preventing parents from making an informed decision.

II. The Inspection Process in New York City

Through its Bureau of Day Care, the NYC Department of Health oversees and inspects four types of day care facilities—Group Day Cares (GDC), Group Family Day Care Centers (GFDC), Family Day Care Centers (FDC) and School Age Centers (SA). GFDC, FDC and SA facilities are all subject to state law (New York Social Service Law, Section 390) and regulations promulgated by the New York State Office of Children and Family Services (OCFS). For these types of facilities, the City (through a DOHMH contract with OCFS) plays a significant role in providing day-to-day oversight, including license application and renewal processing, complaints and inspections, and recommendations for enforcements actions. However, for state-regulated day cares, OCFS is the ultimate authority. Group Day Care facilities are overseen and regulated exclusively at the local level in NYC.²

¹ GDCs care for 3 or more children in the age range of 0-6 years in a non-residential setting. (NYC Health Code Subsection 47.01(c)).

² See New York City Health Code Article 47.

For GDCs in NYC, there are various regulations, policies and procedures concerning complaint response, investigation and the resolution process of these facilities.³ While it is not at all clear whether DOHMH complies and enforces these regulations, policies and procedures, it is important to understand the general complaint process before highlighting the systemic problems with GDCs in NYC.

In NYC, there are two types of inspections: complaint inspections, which are in response to a reported violation, and routine inspections, which appear to be annual and unannounced. Complaints are generally received via phone calls, mail, email, in-person/walk-in, voice mail and fax.⁴ Upon receipt, complaints are assigned a severity code: (i) an “A” complaint indicates an immediate risk of danger to children and requires a BDC inspector to visit the site within 24 hours; and (ii) a “B” complaint might include possible unlicensed daycare, dirty facility/home, unsafe play area and are to be visited no later than seven business days from the date of the complaint.⁵ After the complaint inspection is performed, a copy of the complaint response form is sent to the Central Office.⁶ Thereafter, there is a compliance inspection.⁷

In the absence of a complaint, DOHMH routinely inspects GDCs to ensure compliance with the NY Health Code. Violations are categorized as general violations, critical violations and public health hazard violations.

- General violations are those that do not pose a direct threat to children and must be corrected within a month by the GDC. DOHMH **does not** perform compliance inspections to determine if violations were corrected when there are no critical violations and fewer than six general violations observed at the time of an inspection.
- Critical violations are those that **do not pose an imminent risk** to the health and safety of children. These violations are serious and must be corrected by the provider within two weeks. DOHMH will conduct a compliance visit to assure these violations have been corrected.
- Public Health Hazard violations are the most serious type of violations. They present an imminent threat to the health and safety of children, and must be immediately addressed and corrected within one business day by the GDC.⁸ Some examples of public health hazard violations are as follows:

Child care service failed to arrange/conduct criminal/SCR background clearance checks for required individuals; failed to re-clear required individuals with the SCR every two years;

Child care service failed to provide constant and competent supervision for children within its care;

Child care service failed to maintain required staff to child supervision ratios at time of inspection; and

Windows excluding fire escape windows in a child care service observed without window guards in a child care service.

³ NYC DOHMH Report on the Bureau of Day Care, issues October 7, 2004, located at <http://www.nyc.gov/html/doh/html/living/childcare.shtml>.

⁴ See *id.*

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See NYC Health Code Subsection 47.01(k).

These inspections are a critical step in ensuring that there is a constant monitor over the places where we send our children. However, the IDC’s findings show that these inspections alone are clearly not working. Greater steps need to be taken to crack down on problem providers and incentivize them to perform better. Greater transparency must be in place for parents to make an informed decision regarding where they place their child. Finally, despite the need for affordable daycare, the city and state should strive for affordable and safe daycare. If that means having to suspend or revoke licenses on the worst of the worst, then so be it in the best interest in the child. There is no silver bullet to solving the childcare crisis in New York State and New York City—but there is no reason to sit idly by either.

III. Inspection Reports for Group Day Care in New York City (2010 – Present Time)

In New York City, there are 2,163 Group Day Cares that are generally inspected annually. The vast majority are cited for a significant number of violations. What is very clear from the data is that failed establishments are given ample opportunities to clean up their acts, but fail to do so. This pattern is troubling, because such businesses remain open, often with the cited violations continuing unabated. In addition, based on first hand conversations, many providers do not reveal their long and troubled history.

Based on an IDC analysis of inspection reports, the following chart provides a breakdown of the Group Day Cares in New York City, the number of corresponding violations per borough since 2010 and the average number of violations per provider per borough since 2010

Violations for Group Day Care by Borough

<u><i>Borough</i></u>	<u><i># of Providers</i></u>	<u><i># of Violations Since 2010</i></u>	<u><i>Avg. # of Violations Per Provider Since 2010</i></u>
<i>Bronx</i>	295	3,854	13.06
<i>Staten Island</i>	112	1,388	12.39
<i>Brooklyn</i>	809	11,743	14.49
<i>Manhattan</i>	482	5,575	11.57
<i>Queens</i>	465	3,287	7.07

Source: IDC Analysis of DOHMH data located at <https://a816-healthpsi.nyc.gov/ChildCare/ChildCareList.do>.

In total, NYC group day care centers accumulated an average of a dozen violations per provider since 2010. The worst offenders were in Brooklyn, where providers averaged almost 15 violations. This borough also saw the greatest number of total violations with 11,743. This is especially disturbing as Brooklyn is home to the most Group Day Cares in New York City.

Overall, Group Day Care Centers were cited for close to 26,000 violations since 2010. These numbers would compel any rational parent to ask how safe their child is.

Top Violator List by Group Day Care

<u>Rank</u>	<u>Name of Facility</u>	<u>Permit #</u>	<u># of Violations (since 2010)</u>	<u>#of Public Health Hazard Violations (since 2010)</u>
#1	<i>Eden Christian Academy & Early Childhood Center - Bronx</i>	7142	120	17
#2	Practical Learning Center - Brooklyn	5641	93	4
#3	Sparkles Day Care - Brooklyn	7099	91	26
#3	Saintlius Day Care Center - Brooklyn	7768	91	19
#5	Next 2 Home Child Care – Brooklyn	7760	86	15
#6	New York Kids - Brooklyn	19557	83	51
#7	Avalon Child Care, Fifth Avenue - Brooklyn	7618	82	18
#8	Brooklyn Institute For Children - Brooklyn	6379	81	13
#9	Fantasia Day Care Center - Brooklyn	6134	78	13
#10	Grand Street Childcare Center- Manhattan	4831	66	11

Source: IDC Analysis of DOHMH data located at <https://a816-healthpsi.nyc.gov/ChildCare/ChildCareList.do>

IV. 5 Most Dangerous Violations (2010 to Present)

Among the vast amount of violations cited citywide, the IDC looked at some of the more persistent violations that seemed to be common to group day care providers no matter where they were in the city.

1. Failure to use non toxic materials in the upkeep of daycare centers and failure to maintain the daycare free from peeling plaster, missing tiles and other defects.

Overall, New York City Group Day Care Centers violated this regulation **2,498 times** accounting for 10% of total violations.

Brooklyn committed the most violations with 1282. They were followed by Manhattan (465), Queens (381), Bronx (302), and Staten Island (68).

Parents should be especially concerned about these violations. Children are particularly vulnerable to toxic chemicals. Due to their developing bodies, children are susceptible to even small amounts of toxicity. Parents often do not consider toxicity threats in our day care centers. However, a study released last year by the California Air Resources Board and California Environmental Protection Agency found that the threat was all too real.⁹ The consequences of exposure to toxic chemicals include bronchial obstruction, allergies, and asthma for children.¹⁰

2. Persistent failure to screen staffers for past history of child abuse and maltreatment, criminal convictions and sex offender status.

This violation is considered a public health hazard by NYC DOH and has Group Day Cares in New York City are on record for violating this requirement 1,672 times since 2010.

Thirty-eight percent of the violations (643) happened in Brooklyn; followed by Bronx (328), Manhattan (313), Queens (299), and Staten Island (89).

When parents choose a Group Day Care, a minimum expectation is that they can trust providers to keep their children safe and out of harm's way during the workday. Criminal background checks are a paramount and simple mechanism to ensure this. GDCs are not only violating this regulation repeatedly, but DOHMH is allowing them to continue operating afterwards even though they consider this a public health hazard. By not suspending their permit for such a violation or revoking for persistent violators, DOHMH is essentially asking parents to trust that those GDCs learned their lesson.

3. Persistent failure to ensure facilities are cleaned and maintained and free of food and debris,

In certain instances, a violation of this regulation can be considered a critical offense. Throughout the city there were 1,513 violations of this nature. This abuse was found to be most rampant in Queens, where 678 such violations took place. Brooklyn saw a nearly identical number with 631. Manhattan (97), Bronx (65), and Staten Island (42) each accounted for less than 100 violations.

This is another regulation made to guarantee a safe environment for one's child. This is a basic guarantee that daycares can and should easily fulfill. To comply with this regulation means to maintain fundamental cleanliness in a day care. When dealing with children, even the smallest element can have a devastating potential for their health.

During recess, a child could easily fall and be seriously cut on broken glass. Improperly cleaned desk and carpets and toys can lead to a whole host of sicknesses which are easily contactable by children. Also consider lunchtime. If a staffer does not pick up leftover food, the potential remains for a child to pick up this food and choke. Furthermore, they may eat a product they are allergic to, and go into anaphylactic shock. These scenarios are all too possible, and thus these violations all too real.

4. Failure to ensure that all staff members are physically and mentally healthy per a licensed healthcare provider.

According to NYC DOH regulations, no educational director, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other staff member who regularly associates with children shall be permitted to work in a service unless such person is healthy. Prior to commencing work, all such staff and

⁹ Asa Bradman, et al., "Environmental Exposures in Early Childhood Education Environments," *California Air Resources Board and California Environmental Protection Agency*, April 5, 2012, <http://www.arb.ca.gov/research/apr/past/08-305.pdf>.

¹⁰ *Ibid*, 4.

volunteers shall present a certificate from a licensed health care provider certifying that, on the basis of medical history and physical examination, such staff member or volunteer is physically and mentally able to perform assigned duties. Failing to meet this regulation is considered a critical violation. A violation means that a group daycare center did not adequately screen employees, have current employees re-certified as medically-fit, or failed to keep such files on record.

Since 2010, Brooklyn Group Day Centers violated this provision a total of 481 times. This was followed by Manhattan (299), Bronx (251), Queens (144), and Staten Island (74).

Sound mental health of those charged with supervising our children is paramount in this day and age. The ability to ensure that a staff member is mentally capable of taking care of children should be the first requirement of any job involved in childcare. Yet the persistent violations show that this is not the case.

5. Failure to install and maintain window guards on all windows in all rooms, hallways, and stairwells.

Throughout New York City there were 230 violations of this regulation, with Brooklyn accounting for over half (122). Violating this regulation means that a day care center is flagrantly putting the safety of its children on the line. Window guards must be installed for all windows.

Just last month, New Yorkers saw how important it is to install window guards in areas where children may be. This past April, Rusroshi Barua, a 3-year-old Queens girl, fell out of her family's fifth floor apartment window.¹¹ This is not an isolated incident. Each year over 5,000 children and teenagers are injured each year from falling out of windows.¹² Due to this New York City requires that window guards be installed in apartments with children 10 and younger, along with group daycare centers. Unfortunately based on inspection records this is not the case.

V. Field Investigation conducted Week of May 6th, 2013

IDC staff undertook a field investigation of group daycare centers throughout New York City . One common occurrence found by this investigation is that all of the day care facilities when questioned about their violation history indicated that they had clean records despite evidence to the contrary. Also for the ones who were persistent violators of the failure to do criminal and background checks all facilities in person maintained that they check everyone all of the time. Unfortunately this undercover investigation uncovered more alarming "hidden dangers" which raised concerns:

- Children napping with blankets and throws wrapped around their heads, which could lead to suffocation.
- The smell of mold at the various facilities.
- Some of the facilities had children being left unattended
- One facility had an open closet with no doors with shelves containing various cleaning supplies and gallons of old pain. Upon the undercover pointing it out to the staff, the staff member acknowledged that they should have that locked up because the "kids could poison themselves with that"
- Children watching television for the duration of the visit. Upon asking why the kids were watching so much television, the employees got extremely flustered and told the kids it's time "to play in the yard."

¹¹ Edgar Sandoval, Irving DeJohn, and Barry Paddock, "3-year-old Queens girl dies in fall from famil's fifth-floor window," *New York Daily News*, February 11, 2013, <http://www.nydailynews.com/new-york/queens/girl-3-dies-5-story-fall-article-1.1260535>.

¹² Carla K. Johnson, "5,000-plus children fall from windows each year," *USA Today*, August 22, 2011, <http://usatoday30.usatoday.com/news/health/wellness/story/2011/08/5000-plus-children-fall-from-windows-each-year/50080672/1>.

- Center had gates at the tops of stairways being left open.
- Center had the door unlocked and the undercover investigator was able to walk in and tour the hallways without anyone stopping them. Then the undercover was able to walk out to the children’s playground unimpeded.
- At one location, the undercover mentioned that “my daughter is asthmatic” and has to take medicine and asked if they would be able to administer it. Their reply was “we are not supposed to, but we do it”. When asked again a couple of times using different phrasing they insisted they would take care of it even though they were obviously not supposed to administer medicine.

VI. Working on Solutions

Short Term

As demonstrated above, there are many issues when it comes to an assurance that day care providers in New York City are maintaining a level of safety and cleanliness that we would expect when it comes to our children. There are also issues with parents being able to make fully informed decisions when it comes to choosing a daycare. It is also important to note that these problems are not limited to city-regulated day care center providers. As will be shown in future investigations and as was reported by OCFS recently, 53% of inspections statewide had violations of applicable regulations at state-regulated daycares.¹³ In order to address the transparency issue and persistent violator issue the IDC recommends two legislative proposals:

Posting of Inspections at Day Care Facilities

Currently, the Department of Health posts inspections reports on its website. However unless skillful with a computer or told to you by the director of a facility you are visiting to consider placing your child, there is no affirmative action to make parents aware of the quality of daycare they are putting their child in. The IDC will introduce legislation requiring all day care centers statewide to post their latest inspection report at the entrance of the facility. This new requirement will fully inform parents/guardians of the safety of the facility. It is also the hope that by posting the latest inspection reports, daycares will have incentive to rectify and remedy persistent violations in order to be able to post a cleaner inspection report.

Additionally, under this legislation, providers will be penalized for failing to post the date and results of its most recent inspection. Again it is the hope that this will result in all daycares participating in full transparency with parents.

Long Term

On Friday, the Independent Democratic Conference released their Five Point Working Women’s Agenda. In this report one area the Independent Democratic Conference focused on was Affordable Childcare. In order to ensure that parents are able to choose the best childcare for their children and not allow “bad actor” daycare facilities to continue to operate just because they are affordable, the IDC Working Women’s Agenda would:

- **Increasing New York’s Child Care Tax Credit by 50% across the board and expanding eligibility for New York State’s child care assistance subsidies. All families who qualify for New York’s Child and Dependent Care Credit would receive a 50% increase in annual tax credits. For example, under the IDC’s plan, families earning between \$30,000 and \$50,000**

¹³ OCFS “Report to the Governor and Legislature on Family Day Care and School Age Child Care Registration: April 1, 2010 – March 31, 2011 (Pursuant to Chapter 750 of the Laws of 1990)” May 2010.

would receive additional tax savings of \$367, raising the average credit for these taxpayers to \$1,100.

- **Expand the number eligible families under the child care subsidy program**
- **Require New York State to conduct a comprehensive study on the affordability and availability of day care throughout the state**

With these short term and long term legislative solutions it is the hope of the Independent Democratic Conference that the bar can be raised for child care in New York City and New York State.