



Independent Democratic Conference

Hidden Dangers in Daycare

**Part 2 of a Series of Investigative Reports into the
Safety, Standards and Quality of Daycare in New
York State.**

May 2013

Introduction

Last week, New York State Senate Co-Leader Jeff Klein (D-Bronx) and Senator Diane Savino (D.-Staten Island) released Part 1 of a series of investigative reports into the safety, standard and quality of daycare in New York State.¹ The report summarized the findings of a citywide investigation into New York City group day care centers.² The report found that not only are an alarming number of group day care centers repeatedly cited by the NYC Department of Health for “critical” and “public health hazard” health code violations, but due to a lack of accountability, few of these group day care centers take meaningful corrective action.³

This report is Part 2 of the series and focuses on an Independent Democratic Conference (IDC) analysis of the inspection reports for day care centers overseen and regulated by the NYS Office of Children and Family Services (OCFS).⁴ As demonstrated below, similar to the IDC’s findings in Part 1, these state-regulated providers are racking up violations of state regulations while continuing to operate without serious consequences. It is our hope that through shining light on this issue and by enacting our inspection report posting legislation (S.5414) threats to our children’s safety will be substantially decreased. After all, as stated by President Barack Obama in this year’s State of the Union, children are our most precious resource.⁵

I. Recent Momentum

On the same day that the IDC released Part 1 of its report on the state of New York State day care centers, various news outlets reported that federal health officials are also looking to overhaul federally funded child day care centers across the country.⁶ These changes appear to be part of President Obama’s broader agenda to ensure health and safety across all learning environments and to improve the quality of facilities.⁷ Similar to the IDC’s legislation requiring all day care centers in New York State to post their most recent inspection report at the entrance of the facility and on their website, if possible, federal officials reportedly would implement rules to increase accountability among child care providers and improve transparency. The goal is to ensure that parents have the knowledge they need when making decision on the appropriate day care center to send their children.⁸

Also, on May 16, 2013, an upstate New York local news channel reported that it had “dug” through inspection data on how local state-regulated providers “stack up and what parents can do to be sure you’re choosing a good [day care center].”⁹ In the report, the local news channel

¹ See 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), located at <http://www.nysenate.gov/press-release/senators-jeff-klein-and-diane-savino-detail-hidden-dangers-nyc-day-care-centers-new-in>.

² See *id.*

³ See *id.*

⁴ 18 NYCRR Parts 413, 418.

⁵ http://www.huffingtonpost.com/mark-kennedy-shriver/president-obamas-commitme_b_2686071.html.

⁶ <http://abcnews.go.com/US/wireStory/feds-propose-overhaul-child-care-centers-19191215#.UZTc5aK-oQM>.

⁷ See *id.*

⁸ See *id.*

⁹ <http://www.cbs6albany.com/news/features/top-story/stories/the-real-deal-safe-your-daycare-8338.shtml>.

talked to a daycare worker who worked at a state-regulated day care center for two years. The workers stated that she was in the dark on how often her employer was cited for safety concerns:

“I was very surprised to see that...I was shocked that as an employee I didn’t have to know about the violations and that it did not need to be passed onto the parents, that didn’t seem right...It was all very hush-hush, we were not supposed to discuss it with parents.”¹⁰

This confession is simply shocking! The IDC’s legislation will correct this glaring deficiency in our childcare system. Parents will no longer be in the dark, and will possess the information needed to ensure their children receive the best possible treatment.

II. Day Care Centers in New York State

This report details an investigation into violations at day care centers in various regions of New York State. According to OCFS Regulation 18 NYCRR § 413.2(g), Day Care Centers are defined as those that are in :

- Non-residential settings
- With 7 or more children
- 6 weeks to 12 years old

Similar to the findings in Part 1, many of these daycares are persistent violators of health and safety regulations, are racking up 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.

This IDC examined 1,594 day care centers overseen and regulated by OCFS in various regions of the state. The IDC’s investigation revealed several instructive and disappointing results. These results included the facts that:

--Hundreds of day care centers have been cited for multiple violations within the past 24 months.

--Of those centers with multiple violations, only a small number have been held accountable by way of an OCFS enforcement action.

--Many of the worst actors—including those centers who have placed children in “imminent danger” as defined by OCFS—have not been held accountable with any enforcement action and continue to operate (SEE PAGE 10)

--Accessibility of OCFS inspection reports is sub-par, with inspection reports only accessibly via a multistep process on the OCFS website.

¹⁰ See *id.*

III. The Inspection Process in New York State

In Part 1 of our Investigative Series, we found that the NYC Department of Health lacks a clear inspection process in its regulations and/or on its website.¹¹ However, in reviewing OCFS regulations and its guidance materials maintained on its website, we found that OCFS does clearly set forth its inspection process and enforcements mechanisms. Below is a summary of the general process for addressing complaints and/or violations state regulations.

According to an OCFS manual:

- **Initial and Renewal Licensing Inspections** – Announced inspection of the facility.
- **Routine Inspections** – By law, 50% of all registered day care programs must be inspected each year.¹² The registered providers inspected are chosen at random and inspections may or may not be announced.
- **Complaint Investigations** – If OCFS receives a complaint about a provider, they perform a complaint investigation. These inspections are not announced. If the complaint is rated as an imminent danger, the inspection will begin the next day. For complaints rated as serious, inspections will begin within five days, and for complaints rates as non-emergency, the inspection will begin in fifteen days. Below is a description of the levels of danger.
- **Monitoring Inspections** – This is a follow-up inspection to a previous inspections to assess compliance with regulations.
- **Fatality Inspections** – If a child dies while in care, OCFS immediately sends a representative to gather information and assess the condition of children at that particular day care.¹³

If a violation is found during one of these inspections, the provider is then notified in writing of the violation within 10 business days. **OCFS allegedly classifies violations as non-emergency, serious and imminent danger. However, upon scouring the violation reports on line, there is no mention of these classifications in each providers report.** In the manual, OCFS or defines the following:

- **Non-emergency violations** are those that do not appear to create any risk to the safety of children; no harm has occurred, no harm imminent.
- **Serious violations** are those that cause, have caused, or create the risk of harm to a child in care but the probable harm would not likely result in death, serious or protracted disfigurement, or protracted impairment of physical or emotional health.
- **Imminent Danger** – A violation is classified as an imminent danger when there is a condition in a child care center that is causing, has caused, or could reasonably be expected to cause death, serious or protracted disfigurement, or protracted impairment of physical or emotional health to any child if the operation of the child day care program were to continue before the violation, condition, or practice was eliminated. Refusal or

¹¹ See 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), located at <http://www.nysenate.gov/press-release/senators-jeff-klein-and-diane-savino-detail-hidden-dangers-nyc-day-care-centers-new-in>.

¹² Social Services Law § 390(4)(a).

¹³ http://www.ocfs.state.ny.us/main/documents/docs.asp?document_type=4&category_number=3.

failure to provide access and inadequate or incompetent supervision may be considered imminent danger.

Some examples of imminent danger violations are as follows: a serious fire, safety or health risk; use of corporal punishment; inadequate/incompetent supervision; inadequate light, ventilation, sanitation, food, water or heating; repeated overcapacity; abuse, failure to report child abuse; refusal to provide access to inspectors.¹⁴

Again, while these classifications are helpful and led to the IDC easily identifying the most troublesome city violations, the failure of OCFS to put similar classifications on line goes contrary to the goal of transparency.

IV. Inspection Reports for Day Cares in New York State (Past 24 Months)

This report analyzes 1,594 day care centers in various regions of New York State. The vast majority of these day care centers are cited for a significant number of violations. This pattern is troubling, because such businesses remain open, often with the cited violations continuing unabated.

Based on an IDC analysis of inspection reports on the OCFS website, the following chart provides a breakdown of the total number of day care centers in the various regions of the state that were analyzed and the number of corresponding violations per region in the past 24 months.¹⁵

[Chart on Next Page]

¹⁴ See *id.*

¹⁵ This report takes into account a margin of error of +/- 5%.

Violations for Day Care Centers By Region

	<u># of Providers</u>	<u># of Violations In Past 24 Months</u>
<i>Long Island (Suffolk County and Nassau Counties)</i>	406	1,825
<i>Western New York (Erie and Niagara Counties)</i>	249	864
<i>Central New York (Onondaga County)</i>	76	1,112
<i>Capital Region (Albany, Saratoga and Rensselaer Counties)</i>	277	423
<i>Hudson Valley (Rockland County)</i>	62	154
<i>Westchester County</i>	210	1,062
<i>Monroe County (Rochester)</i>	135	522
<i>Orange County (Newburgh)</i>	59	154
<i>Oneida County (Utica)</i>	42	258
<i>Ulster County (Kingston)</i>	41	103
<i>Broome County (Binghamton)</i>	37	548
<i>Totals</i>	<u>1,594</u>	<u>7,025</u>

Source: IDC Analysis of OCFS data located at https://www.ocfs.state.ny.us/main/childcare/ccfs_template.asp.

For the regions of the state that were analyzed, the worst offenders were in the Long Island region, where providers averaged almost 4.5 violations in the past 24 months. This region also saw the greatest number of total violations with 1,825.

Overall, for the regions that were analyzed, these day care centers were cited for 7,025 violations in the past 24 months. These alarming numbers would compel any rational parent to ask how safe their child is.

Top Violator List – Day Care Centers

<u>Rank</u>	<u>Name of Facility</u>	<u>License/Registration #</u>	<u># of Violations (past 24 months)</u>
<u>#1</u>	<u><i>Kurious Kids Childcare & Play Center – Binghamton, NY</i></u>	<u>321757</u>	<u>71</u>
<u>#2</u>	Jewish Community Center Early Childhood Center – Vestal, NY	40820	70
<u>#3</u>	M.A.T.S.S. of Syosset, LTD – Syosset, NY	435145	56
<u>#4</u>	Club Play LLC – Melville, NY	335449	54
<u>#5</u>	Imagine Learning Center – East Moriches, NY	289942	50
<u>#5</u>	St. Matthews Church Child Care Center – East Syracuse, NY	448629	50

Source: IDC Analysis of OCFS data located at https://www.ocfs.state.ny.us/main/childcare/ccfs_template.asp.

Based on our findings, the IDC is compelled to point out the top bad actors by region that were analyzed, so that parents know to avoid specific day care centers that have seriously run afoul of OCFS regulations in the past 24 months. The following chart is a breakdown of the top bad actor by region:

Top Bad Actor By Region – Day Care Centers

<u><i>Regions</i></u>	<u><i>Name of Facility</i></u>	<u><i>License/Registration #</i></u>	<u><i># of Violations (past 24 months)</i></u>
<i>Long Island (Suffolk and Nassau County)</i>	M.A.T.S.S. of Syosset, LTD – Syosset, NY	435145	56
<i>Western New York (Erie and Niagara Counties)</i>	Seneca Nation of Indians Early Childhood Learning Center – Irving, NY	43692	30
<i>Central New York (Onondaga County)</i>	St. Matthews Church Child Care Center – East Syracuse, NY	448629	50
<i>Capital Region (Albany, Saratoga and Rensselaer Counties)</i>	Fords Childcare and Learning Center – Mechanicville, NY	584175	39
<i>Hudson Valley (Rockland County)</i>	Teacher Mommy Day Care – Spring Valley, NY	617788	20
<i>Westchester County</i>	Child’s Word Academy – Peekskill, NY	43313	35
<i>Monroe (Rochester)</i>	New Born Fellowship Church, Inc. – Rochester, NY	139965	26
<i>Orange (Newburgh)</i>	Children’s Corner Learning Center – Middletown, NY	308587	21
<i>Oneida (Utica)</i>	MVCAA, Inc. Griffiss Child Development Center – Rome, NY	42878	27
<i>Ulster (Kingston)</i>	Bright Beginnings of New Paltz, Inc. – New Paltz, NY	43618	11
<i>Broome (Binghamton)</i>	Kurious Kids Childcare & Play Center – Binghamton, NY	321757	71

Source: IDC Analysis of OCFS data located at https://www.ocfs.state.ny.us/main/childcare/ccfs_template.asp.

V. Most Egregious Violations

The IDC analysis of OCFS data also makes it clear that while some regulations are not commonly violated they should be noted due to their seriousness. The following is a brief list of such regulations:

- **Corporal Punishment** – OCFS regulations prohibits corporal punishment and defines it as “punishment means punishment inflicted directly on the body including, but not limited to, spanking, biting, shaking, slapping, twisting or squeezing; demanding excessive physical exercise, prolonged lack of movement or motion, or strenuous or bizarre postures; and compelling a child to eat or have in the child's mouth soap, foods, hot spices or other substances.”¹⁶ Violations of these regulations were cited in Monroe County on fifteen (15) occasions and Central New York (Onondaga County) on eleven (11) occasions in the past 24 months. Upon a further review, these violations do not appear to be isolated to the regions that we analyzed. An analysis of OCFS data shows that these violations have been cited in Erie, Westchester, Monroe, Oswego, Jefferson, Nassau, Chautauqua and Dutchess Counties in the past 24 months.¹⁷

Upon review of news reports, in 2010, an Auburn, New York daycare provider was cited for two violations of this regulation due to one child coming home with a arm bruise and another child being pushed.¹⁸ Based on this report, one would infer that the violations highlighted above are similar in nature. Furthermore, upon looking at this day care center today, it has received an additional 38 violations since its 2010 investigation.

- **Frighten, Demean or Humiliate A Child** – OCFS regulations prohibit “[m]ethods of discipline, interaction or toilet training which frighten, demean or humiliate a child.”¹⁹ Our analysis showed that these violations was cited in seven of the fifteen counties that we analyzed. In Central New York (Onondaga County), these regulations were cited on nine (9) occasions in the past 24 months. These type of violations could impair a child’s long term mental health and well being.

Upon a review of news reports, in 2011, a Potsdam, NY day care center was cited for using training techniques that frighten, demean or humiliate children.²⁰ The report stated that despite the violations, this day care center had not received any punishment from the state.²¹

- **Isolating a Child In A Closet** – OCFS regulations prohibit isolating a child in a closet, darkened area, or any area where the child cannot be seen and supervised by the caregiver.²² Shockingly, we saw that these regulations were violated in four different regions that we analyzed. Upon review of news reports, in a 2011, a Gloversville, NY

¹⁶ See 18 NYCRR § 418-1.9(e).

¹⁷ https://www.ocfs.state.ny.us/main/childcare/ccfs_template.asp.

¹⁸ http://www.syracuse.com/news/index.ssf/2010/06/state_cites_auburn_daycare_pro.html.

¹⁹ See 18 NYCRR § 418-1.9(h).

²⁰ <http://www.watertowndailytimes.com/article/20111202/NEWS05/712029896>.

²¹ See *id.*

²² See 18 NYCRR § 418-1.9(c).

daycare provider was cited for violating this regulation for locking a child in an unlit storage room and bathroom for extended periods of time.²³

- **Child Abuse and Maltreatment** – OCFS regulations prohibit abuse or maltreatment of a child receiving child care.²⁴ Our analysis showed that these violations have occurred in three of the five regions that we analyzed. In the Western New York Region, these violation have been cited on 10 occasions, and in the Capital Region, these violations have been cited on 5 occasions in the past 24 months.

Upon reviewing news reports, in 2007 a Harlem based day center was allowed to remain open despite earlier reports of abuse.²⁵ This led to a tragedy where a child was shaken to the point of brain damage.²⁶ Also, in 2009 a Long Island day care center was under investigation by OCFS for tying a 2-year old to a chair with a bed sheet.²⁷ The news report stated that this day care center had three prior incidents all categorized as “Safety Health Hazard.”²⁸

Violations of these specific regulations are serious and put children’s physical and mental health in jeopardy.

Our analysis also shows that various day care centers are repeatedly violating some of these very serious regulations, remain in business and have faced no enforcement action. The following is a sample of these repeat offenders:

- E.O.C. of Nassau County, Inc. (Active License # 39844)
Hempstead, NY
 - Cited for isolating a child in a closet, darkened area, or any area where the child cannot be seen and supervised by a staff member on 10/24/11
 - Cited for abuse or maltreatment of a child on 7/16/12
 - **NO** enforcement action since 2003
- Wilson Commencement Park Early (Active License # 41604)
Rochester, NY
 - Cited for corporal punishment on 4/30/12
 - Cited again for corporal punishment on 1/4/13
 - **NO** enforcement action since 2003
- KinderCare Learning (Active License #305733) Webster, NY
 - Cited for corporal punishment on 8/17/11
 - Cited again for corporal punishment on 4/11/12
 - **NO** enforcement action since 2003

²³ <http://www.leaderherald.com/page/content.detail/id/540859/Parent-alleges-abuse--neglect-at-day-care-center.html?nav=5011>.

²⁴ See 18 NYCRR § 418-1.10(a).

²⁵ http://www.nypost.com/p/news/regional/item_mZoFA1HvdX72cHMUKIL5UK.

²⁶ See *id.*

²⁷ <http://abclocal.go.com/wabc/story?section=news/local&id=6730342>.

²⁸ See *id.*

The IDC believes that by increasing transparency measures, we will allow parents to be informed of these types of serious violations and make informed decision on where the place their child.

VI. Most Common Violations (Past 24 Months)

Among the vast amount of violations cited statewide, the IDC looked at some of the more persistent violations that seemed to be common to day care centers, family day care centers and group family day care centers no matter where they were in the state.

1. Failure to Take Precautions to Eliminate all Conditions Which Pose a Safety or Health Hazard

According to OCFS Regulations 18 NYCRR § 418-1.5(a), suitable precautions must be taken by day care centers to eliminate all conditions in areas accessible to children which pose a safety or health hazard.²⁹ Overall, this specific regulation was violated 522 times accounting for 7% of total violations. The Long Island region committed the most violations with 133.

Again, it should first be pointed out that this regulation is overly broad, vague and fails to give parents or the general public the information necessary on how each facility violated this regulation and the conditions at the facility that warranted the violation.

Nevertheless, this appears to be a 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 safety and cleanliness in a day care.

Additionally, in Part 1 of the IDC report, a summary of a field investigation conducted by IDC staff was detailed. During the field investigation, IDC staff observed the following "hidden dangers" at day care centers 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.
- Children left unattended
- One facility had an open closet with no doors with shelves containing various cleaning supplies and gallons of old paint. 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."
- 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

²⁹ 18 NYCRR § 418-1.5(a).

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.

In sum, failing to take precautions to eliminate all conditions which pose a safety or health hazard to children is unacceptable and additional steps need to be taken to ensure that day care centers do not continue to violate this regulation.

2. Unlicensed Operation of a Day Care Center

According to OCFS Regulations 18 NYCRR § 418-1.15(a)(1), day care centers must obtain a license from the Office and must operate in compliance with the regulations of the Office and all other applicable laws and regulations.³⁰ Overall, this regulation was violated 127 times. The Long Island region committed the most violations with 48.

While this violation could pertain to licensed providers generally not operating in compliance with applicable laws and regulations, it could also apply to an individual or organization operating a day care center without a valid license or registration issued by OCFS. Parents should be especially concerned about these violations because issues pertaining to unlicensed operators of day care centers are well documented. Unlicensed day care centers can pick and choose certain laws and regulations they think are important. Operating an unlicensed day care is akin to operating a restaurant without the proper safety and cleanliness guidelines.

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

OCFS regulations state that each employee and volunteer must verify prior to employment with a statement to the day care center, and every two years thereafter, that the individual is physically fit to provide child day care, has no diagnosed psychiatric or emotional disorder which would preclude such individual from providing child day care, and is free from communicable disease.³¹ A violation means that a day care center did not adequately screen employees, have current employees re-certified as medically-fit, or failed to keep such files on record.

In the past 24 months, this regulation has been violated in the regions that were analyzed 225 times. 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.

VII. 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 State 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

³⁰ 18 NYCRR § 418-1.15(a)(1).

³¹ 18 NYCRR § 418-1.11(c).

informed decisions when it comes to choosing a daycare. As recently reported by OCFS, 53% of inspections statewide had violations of applicable regulations at state-regulated daycares.³² In order to address the transparency issue and persistent violator issue, the IDC recommends the following legislative proposals:

Greater Enforcement of OCFS Violations

The IDC believes that day care providers will not be properly motivated to change correct violations unless OCFS begins holding day care centers accountable. Many of the inspection reports examined by the IDC—including those of the worst actors—found that OCFS regularly declines to take any enforcement action. The IDC encourages OCFS to increase the frequency of enforcement action, particularly when these violations place children in imminent danger.

Posting of Classifications of Violations on OCFS Website

Currently, OCFS 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, there is no affirmative action to make parents aware of the quality of daycare they are putting their child in. Also, in reviewing OCFS guidance materials, it appeared that OCFS classified violations as non-emergency, serious and imminent. However, when reviewing OCFS inspection reports, there was no such classifications. Parents and the general public, therefore have no way of knowing if daycare centers have been cited for the most serious violations – imminent danger violations. While parents and the general public can make assumption whether or not the violations rise to the most serious level, it is the IDC’s belief that OCFS should make it abundantly clear when citing a provider for a violations what the classification of such violation is. This again would increase accountability among child care providers and improve transparency to ensure that parents have the knowledge they need when making decision on the appropriate day care center to send their children.

Posting of Inspections at Day Care Facilities

The IDC has introduced legislation (S.5414) 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 May 10, the IDC released its Five Point Working Women’s Agenda. In this report, one area the IDC 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:

³² 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.

- **Increase 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 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.