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From: David Zwiebel [mailto:dzwiebel@agudathisrael.org]
Sent: Friday, March 16, 2007 2:58 PM
To: Thomas R. Frieden
Subject:

2007 MAR 19 A 9 36
OFFICE
OFFICER

Commissioner:

I asked my colleague Mordechai Biser, Agudath Israel's associate general counsel, to research the issue we have been discussing in our correspondence regarding the regulation of pre-K programs in public schools and those in religious schools. His conclusion, embodied in the attached memo, is that at least with regard to such matters as physical facilities, class size and staff-child ratios, pre-K public school programs would be subject to no regulation whatsoever. Are we missing something?

David

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March 16, 2007

MEMORANDUM

TO: David Zwiebel
FROM: Mordechai Biser, Esq.
RE: New York City regulations governing pre-K and kindergarten programs

You asked me to analyze the New York City Department of Health and Mental Hygiene's proposal to change Article 47 of the New York City Health Code, and particularly to compare the regulatory provisions that would govern pre-K programs operated by public schools with those that would govern pre-K programs operated by private religious schools.

Currently, both pre-K programs that are part of a public elementary school and those that are part of a private religious elementary school are governed by Article 47. They are both exempt from having to obtain a Health Department Permit, but the other provisions of Article 47 apply to them. *See* New York City Health Code § 47.05 ("Except as otherwise provided in this Article, day care services falling under this section shall, however, comply with the other provisions of this Article").

The Health Department is now proposing a radical revision of Article 47. It would require all private pre-K programs to obtain a permit from the Health Department, thus eliminating the permit exemption for religious schools. But it would exempt public school pre-K programs from Article 47 altogether (proposed §47.01(c)(2)(B): "Child care service shall not mean: a kindergarten or pre-kindergarten class operated as part of and located within a public elementary school by the New York City Department of Education"). The Notice of Intention states (p. 3) that public school day care services will be covered by (among other things) "provisions of the Health Code applicable to schools," but as far as I can tell this is simply not correct. They are not governed by Articles 45 or 49¹, which govern schools starting with kindergarten, and will henceforth not be governed by Article 47 either. It would thus appear that the Department, while increasing the regulatory burden upon private pre-K programs operated by religious schools, will be exempting public school pre-K programs entirely from Health Department regulation.

¹ See New York City Health Code §45.01 ("school means a public or private elementary or junior high school . . . but does not include a day care service attached to an elementary or junior high school.").

When you questioned Department officials why religious school pre-K programs should be included in Article 47 when public pre-K programs are exempt, Commissioner Frieden responded that "these [public] programs already require fingerprinting and child abuse checks and have more stringent staffing and environmental standards than are in the proposed Code." The Notice of Intention contains a similar argument: "Neither the term ["child care service"] nor this Article will be applicable to pre-kindergarten . . . classes located within a public elementary school operated by the City Department of Education (DOE), since public school programs are already extensively regulated under State law, DOE's Chancellor's regulations and provisions of the Health Code applicable to schools."

It is true that pre-K public schools are regulated to some extent, and that these include fingerprinting and child abuse checks. However, there are major differences between the regulations contained in proposed Article 47 and those currently in place elsewhere for public school-based day care programs:

1. We have already shown that day care programs connected with public elementary schools will no longer be regulated by the provisions of the New York City Health Code at all, whereas the private day care programs will all fall under the stringent requirements of the new Article 47.

2. With regard to the DOE's Chancellor's regulations, they do deal with safety plans (A-414), school security (A-412), health records (A-701), child abuse (A-750), fingerprinting and background checks on staff (A-845, C-105, C-115), and licensing requirements for staff members (C-200, C-201, C-225, C-230, C-240). But they do not cover physical facilities issues at all (space requirements, location requirements, toilet and plumbing standards, ventilation and lighting, sanitation and maintenance, equipment and furnishings standards, and the like), all of which the proposed Article 47 does cover. They don't set limits on class size, impose staff to student ratios, or deal with other environmental concerns, all of which are included in Article 47.

3. With regard to state law, true, there are both state statutes and regulations that govern public schools. Education Law §409, for example, authorizes the Commissioner of Education to adopt health and safety regulations for public school buildings, and 8 NYCRR §155.7 contains many of those regulations. But a close look at those requirements shows that they are far less specific and demanding than those imposed on pre-K programs by Article 47 of the New York City Health Code.

In short, while it may be true that "public school programs are already extensively regulated" as the Notice of Intention states, those existing regulations are not nearly as detailed or as onerous as those contained in the proposed Article 47.

M.B.



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March 19, 2007

Commissioner Thomas R. Frieden
Department of Health and Mental Hygiene
93 Worth Street
New York, NY 10003

Dear Dr. Frieden,

I was pleased to read about the proposed N.Y. City Health Department's measures to improve safety and health in child care.

As a past member of the N.Y. City Health Department's Advisory Committee on Child Care which, to my knowledge, is no longer active as well as the Technical Panel Chair on Children with Special Needs for all of the guidelines and standards that were developed by the American Public Health Association and American Academy of Pediatrics in the publications on "Caring for Our Children," I am writing to comment on your new proposed revision of Article 47 of the N.Y. City Health Code. Unfortunately, due to other commitments, I cannot attend or testify at the April 19th hearing. Therefore, I am submitting these comments through this letter.

While the overall guidelines in the proposal are quite comprehensive and excellent, my major concern about the current Health Department guidelines is the omission of important information or standards relevant to the inclusion and management of children with special needs in child care facilities. The only pertinent issue dealt with, to any extent, is the how to administer and manage medication use for children. There is nothing at all noted about ensuring access and the inclusion of children with special needs, as well as the mechanisms to incorporate or use special equipment or specialized services, the legal requirements to serve children with special needs and many other relevant issues. Even under the discussion of training on page 32, there is only a mention of "Early Intervention" and "Attention-Deficit Hyperactivity Disorder" and some vague reference to "children with physical and emotional challenges." But, there is virtually nothing on the importance of early identification of developmental disabilities or about the entire spectrum of these disorders. Without belaboring you with the details, I refer you and your staff to the 2002 AAP/APHA Publication, sponsored by the HRSA Maternal and Child Health Bureau, titled "Children with Special Needs-Applicable Standards From: Caring for our Children-National Health and Safety Performance Standards: Guidelines to Out-of-Home Care."

It is clear to me, that the N.Y. City Department of Health and Mental Hygiene should revive the idea of having an Advisory Committee on Child Care and appoint knowledgeable consumers and professionals, including those knowledgeable about children with special needs, to participate in the Committee's deliberation.

Respectfully submitted,



Herbert J. Cohen, M.D.

Director, Emeritus

Children's Evaluation and Rehabilitation Center
and Rose F. Kennedy University Center For Excellence
in Developmental Disability

Education, Research and Service

Professor of Pediatrics and Rehabilitation Medicine

Albert Einstein College of Medicine

CC: Rena Bryant

ALBERT EINSTEIN COLLEGE OF MEDICINE
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COMMUNITY AFFAIRS OFFICE

It is clear to me, that the N.Y. City Department of Health and Mental Hygiene should revive the idea of having an Advisory Committee on Child Care and appoint knowledgeable consumers and professionals, including those knowledgeable about children with special needs, to participate in the Committee's deliberation.

Respectfully submitted,



Herbert J. Cohen, M.D.

Director, Emeritus

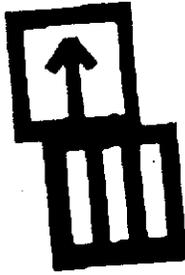
Children's Evaluation and Rehabilitation Center
and Rose F. Kennedy University Center For Excellence
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Education, Research and Service

Professor of Pediatrics and Rehabilitation Medicine

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Williamsburg "Y" Head Start

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Phone (718) 387-0229
Fax (718) 387-1461
Email: meale9406@aol.com

RUTH NEALE
Project Director

Friday, April 13, 2007

Rena Bryant
125 Worth Street
CN 31
New York, New York 10013

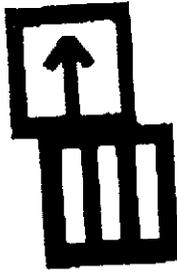
Dear Ms. Bryant:

The Williamsburg "Y" Head Start is a licensed Head Start center which enrolls 178 children. The agency collaborates with the New York City Department of Education and provides Universal Prekindergarten to 100 Head Start children.

Currently, this licensed center is governed by the New York City Department of Education, the New York State Department of Health (CACFP), the federal government (Performance Standards) and the ACS (grantee) guidelines. Effective change must be relevant, adaptable and fiscally sound.

The New York City DOH current standards are the most stringent requirements for educators and child care providers in the state of New York. Therefore, "prescribing" mandated courses which are to be repeated every 24 months to certified educated teachers is a waste of precious funding and time. In some instances, the proposed law is suggesting a minimal fee for these courses. Who will provide the funding for them and/or a repetition of these courses? When a teacher completes his/her education, most of the listing 47.37 on page 31 and page 32, are repetitious of their college course of study.

Recommendation: All training requirements should be forwarded to the universities/colleges to be included in their curricula for anticipated graduating students who are majoring in education.



Williamsburg "Y" Head Start

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RUTH NEALE
Project Director

Educational skills are part of a curricula offered by the accredited colleges and universities. Do not duplicate the role of the professional colleges with a non-credited course of study! It is a costly and unnecessary process. Class coverage would be affected by proposed mandated training courses. It is imperative to have full class coverage at all times. The safety and well being of the children must not be negated for proposed mandated training for teaching staff. If an agency is "encouraged" to send staff for training, will the DOH provide funding for a substitute in the classroom? Mandates must be relevant, adaptable and fiscally sound.

An enterprising, educated education director must be totally responsive to the needs of the children and families plus teaching staff. The education director's credentials and experience are currently validated and reviewed by the NYC DOH. The agency's administrators must decide which additional duties an education director assumes for the agency. The duties of an Education Director should not include maintenance of health records of staff and children.

Conducting SCR screening every two years for all participants in a program is excessive and costly. The NYS SCR MUST BE ENCOURAGED TO MAINTAIN ITS RECORDS for a lengthier period of time so that as soon as someone is convicted of abuse, the appropriate agency would be notified. This would certainly be most effective.

Sincerely,

RUTH NEALE
DIRECTOR

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LILLIAN OXTOBY, Ed.D
170 West End Ave.
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(212) 362-8059

April 13, 2007

2007 APR 18 AM 10:00
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OFFICE OF THE
COMMISSIONER OF
HEALTH

Dear Commissioner,
The Health Department is to be commended for reviewing and updating certain areas of the Health Code, Article 47.
It is important to maintain and upgrade child care standards.

We are two Early Childhood Education Teacher Educators. We are most pleased that the new Code Revisions are mandating all non-DOE child care services for children under six years of age will now be required to hold a DOHMH permit as will infant-toddler (LYFE) programs in DOE schools.

In addition, The "NPR" childcare services programs or schools providing care or instruction for approximately 20,000 children under six years of age or free standing programs or schools operated by religious organizations will now be required to obtain child care permits.

However, we are concerned about the following areas in the revisions:

1. 47.13 a. "A Baccalaureate degree in Early Childhood education or related field of study." Related fields should be defined specifically as Psychology, Sociology, Social Work, or Human Services or Fine Arts.

c. "Baccalaureate or Masters Degree in any other academic subject and one year paid classroom experience teaching children up to Grade 3." We recommend the academic subject should be defined and related to Early Childhood Education (see above 47.13a).

f. "Assistant teacher should be at least 18 years of age." We recommend that the assistant teacher be at least 19 years of age and have the following credentials: High School Diploma or equivalent GED or 60 college credits (AA, AS, or AAS) in related fields.

2. 47.37 "Training" should be defined to differentiate between college courses and workshops. Training sessions are necessary and important, but should not replace full college accredited courses.

Training usually entails a series of three to six hour sessions per topic.

Accredited College Courses require 15 hours per credit by an accredited College or University.

Respectfully submitted,

Dr. Lillian Oxtoby, Professor Emeritus ECE, Borough Manhattan Community College, CUNY and Quality Advisor Quality NY Accreditation Project of NAEYC (Federation of Protestant Welfare Agencies)

Dr. Carol M. Gross, Early Childhood Consultant and Quality Advisor Quality NY Accreditation Project of NAEYC (Federation of Protestant Welfare Agencies)

5

Bernard Fryshman, Ph.D.
1016 East Second Street
Brooklyn, NY 11230
(718) 253-4857

April 17, 2007

To the Hearing Officer:

I am submitting comments regarding the proposed Repeal and Reenactment of Article 47 of the New York City Health Code. I would very much appreciate your including these comments as part of the official hearing record.

Sincerely,



Dr. Bernard Fryshman

Comments Regarding
the
Proposal to Repeal and Reenact Article 47
of the
New York City Health Code

Bernard Fryshman, Ph.D.
April 19, 2007

Statutory Authority

As noted in the Notice of Public Hearing, day care programs provide, among others, "child development, education, recreation, a structured environment; day care programs contribute to the social growth of children, foster intergenerational relationships, and help children strengthen character and promote friendships".

None of these areas lie within the area of expertise of the Department of Mental Health and Hygiene ('DOHMH').

All changes to Article 47 must be weighed against the ability of day care programs to continue to carry out their mission. Changes which compromise these goals should not be made if there are no health or safety considerations which dictate otherwise.

Statement of Basis and Purpose

The onus is on the Department to establish unequivocally that NPR exemptions are not in the best interest of children. Simply saying so is not a proper basis for such significant proposed changes.

47.01 (m)(12)

It is quite in order for DOHMH to designate "food that is adulterated, contaminated or otherwise unfit for human consumption" as an imminent health hazard. On the other hand, the fact that food is served from an "unknown or unapproved source" cannot, under any reasonable definition, be designated as an imminent hazard. The definition does not specify to whom the source must be known, nor does it specify the standards for approval of a food source. This item should be struck.

47.01 (m)(18)

For the Commissioner or his or her designee to be able to deem any other condition as an "imminent health hazard" places unchecked authority in the hands of DOHMH employees who could close a day care program on a whim. Imminent health hazards must be defined; the phrase 'any other condition' is not a definition.

47.03

The watchword in government regulations must always be 'least possible burden.' The power of government is an awesome one and therefore must be used with discretion and care. Sometimes there is clear evidence for the need for government to intervene. Absent such clear and unequivocal evidence, the intervention becomes an intrusion.

In the case of NPR entities there is a history of at least thirty uninterrupted years of safe, effective activity which properly deserves accolades rather than shackles. Introducing a permit process will increase costs, divert resources, and in the end cause the closure of programs which serve the most impoverished populations who needed such day programs most.

The Department should make available a certification program so that those parents who insist upon compliance with extra stringent standards can be satisfied. But this should be strictly voluntary so that NPR entities which want to remain in this category should be able to do so.

47.05

DOHMH has no special expertise or experience that would enable it to specify space requirements which are optimal for a day care program. Programs which have successfully graduated children for several decades bring far more expertise to bear than arbitrary numbers (based on no scientific evidence!), promulgated by DOHMH. This standard carries with it a confiscatory characteristic, with a disparate impact on programs serving poverty level clients.

47.09 (a)(1)

There is no a priori reason that a technical plan should be specified. All premises will unquestionably be inspected and while an accurate sketch is not unreasonable, requiring "blueprints, architectural and engineering requirements" adds a level of cost which has no justification, and no outcome other than the expenditure of unnecessary funds by small day care program providers.

47.09 (a)(4)

The Department must clearly specify what constitutes "other proof satisfactory to the Department."

47.11 (b)(1)

It is not within the scope of authority of DOHMH to judge organization, job descriptions, responsibilities, and the like except insofar as these matters strictly relate to health and safety. In general, these aspects of a day program's operations have little to do with health and safety.

47.11 (b)(2)

"Transportation and grounds" are not within the expertise of DOHMH authority.

47.11 (b)(3)

Fire safety is a matter for determination by the Fire Department. DOHMH has no role to play in such matters.

47.11 (b)(7)

It is within the scope of authority of DOHMH to ensure that staff is trained in all matters relating to child abuse, first aid and emergency medical assistance, report of child injury and illness, matters relating to child discipline, fire safety, and evacuation procedures are all matters for other agencies. It is not within the competence of DOHMH to specify how this training is acquired.

47.11 (8)

Emergency evacuation is a function of the Fire, Police, or other security agencies. DOHMH has no role to play in such matters.

47.11 (9)

Parent/teacher orientation is not the business of DOHMH.

47.17

It is totally outside the competence, interest or authority of DOHMH to address any questions relating to teaching staff qualifications. The regulations as specified propose, focus on certification rather than competency, on inputs rather than outcomes. As such they run counter to the informed thinking regarding teacher preparation.

Young children benefit from a program where teachers and caregivers are knowledgeable of their culture, sensitive to their religion, and encouraging to their lifestyle. Child care must be viewed as a continuation of the home, emphasizing the same kind of ideas and ideals. Training and education programs which are offered in colleges and universities advocate values and behavior which are often at variance with the needs of children. In particular, a college education can encompass values and activities which are not consistent with many religious traditions.

Note, this is not to be taken as negating the value of training. In fact, the educational accomplishments of many NPR caregivers are fully equivalent in terms of rigor, intellectual demand, and acquisition of content and skills to those offered at conventional colleges and universities. The fact that one results in the award of a state approved degree while the other does not, should not affect one's judgment as to their respective quality.

In a word, it is not only in a college or university that requisite knowledge and skills can be acquired. Nor does a degree in early childhood education establish competency. Indeed, because of the flawed identification of certification as competency, many unsuccessful teachers were allowed into the classroom without having to establish that they are, indeed, competent. Does the New York City Department of Health believe children are better off, if a system which demands high levels of competency is replaced by one which relies on certification?

47.23

The proposed staff to child ratios and the maximum group size are purely arbitrary. DOHMH brings no special expertise to bear, nor is there any evidence that these numbers are preferred to any other distribution. Before any such guidelines can be set up, the experience of NPR groups over a period of several decades must be examined in the light of outcomes and health/safety considerations. It is only real world experience which should govern. The DOHMH proposal is at best premature.

47.31 (d)

Before commenting on this proposed change it would be necessary for the Department to present evidence for the need of such a cumbersome, rigorous and perhaps unnecessary process.

Instead of focusing on certification and specified training, the department should establish competency standards which have to be met. Once again the emphasis should be on outputs rather than inputs and competency rather than certificates.

47.37 (d)

It is perfectly within the scope of authority of the Department of Health to expect that teaching staff will have sufficient knowledge to cope with the issues mentioned in this section. It is not in order for the Department to specify "30 clock hours of training every 24 months". For some people this training will not suffice, for others it will be far in excess. The role of the Department should be to ensure that staff members have the requisite knowledge. Periodic testing should be readily available in order to do this.

47.39

See comments with respect to 47.23. The optimal square footage per child cannot be determined by administrative fiat. There are real world circumstances and experience which must be brought to bear. Until this is done in a scientifically rigorous manner, this regulation is simply not in order.

47.41

DOHMH proposes to regulate in areas which are appropriately the role of Department of Buildings and the Fire Department. DOHMH brings no special expertise or insight to such matters and its scope of authority does not extend to this area.

47.43

The number of toilets per child must be established on the basis of experience. Currently operating NPRs with have years of successful experience should be examined for the purpose of establishing good practice. Standards of this kind cannot be established without real world experience and evidence.

47.45

Here, too, baseline figures for good practice must be based on the experience of existing NPRs.

47.47

This is not an area which speaks to health; the safety issues are the function of the Department of Buildings and Fire Department. It is inappropriate for DOHMH to inject itself into areas where it does not belong.

47.59

This is an area which falls within the jurisdiction respectively of the Department of Buildings and the Fire Department. DOHMH should not be injecting itself into such matters.

47.61

While it is entirely in order for the Department to seek to ensure that food provided to children not cause any health problems, it is not the role of the Department to specify the nature of the foods provided to children. Thus prohibiting beverages with added sweeteners makes good sense and one would hope that parents and providers would agree. Yet, this is certainly not an area for regulation, representing as it does government interference in a private, parental matter.

47.65

This is another area totally outside the scope of DOHMH authority.

47.67 (a)

It is not the role of government to specify the nature of a day care program. This is strictly a matter for parents choosing freely among diverse day care programs, to determine what is appropriate for their children's best development. Governmental intervention in the operation and program offerings of independent - and sometimes faith related entities is totally inappropriate. The same comments apply to 47.67 (f).

47.71

It is not the role of government to specify the nature of activities of children enrolled in a daycare program of their choice.

47.77 (b)

A permit should not be necessary for a day care program complying with those health and safety concerns which do fall within the scope of authority of the DOHMH.

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Bronx Organization for the Learning Disabled

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Michael D. Egan
Executive Director

Carol McLoughlin
Educational Director

April 17, 2007

Ms. Rena Bryant, Secretary
New York City Department of Health
125 Worth Street
Room CN-31
New York, N.Y. 10013

Dear Ms. Bryant,

Attached you will find written testimony regarding the proposed changes to Article 47 of the New York City Health Code. I am a former Early Childhood Consultant for the Department of Health (ten years) and I have spent 35 years in the field of Child Care in New York City as a teacher and Director. My school is currently accredited by the National Association For the Education of Young Children (NAEYC). I have great respect for the Department and especially for the Early Childhood Consultants and Public Health Sanitarians. I hope that you will find my testimony helpful.

One of the main suggestions I would like to make regarding the change of Code is to consider forming a collaborative meeting with the New York State Department of Health to insure that their Code and this Code are in sync. I say that, in particular, because some of the issues that come up with State Regulations have, in the past presented problems for New York City. In particular the issue of nap/rest time and the issue of what is considered "Instructional Time" for children in special education programs. If you need to speak with me about any of this testimony please call me and I will be happy to carve out the time.

Thank you for the continued commitment and work that the Department of Health and Mental Hygiene continually does for the children of New York City.

Respectfully,

Carol McLoughlin
Education Director

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Bronx Organization for the Learning Disabled

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Michael D. Egan
Executive Director

Page 1

Carol McLoughlin
Educational Director

- The definitions of full day program and part day program require clarification
- The definition of imminent health hazard Article 47 section (m) (3) requiring the permittee to "take appropriate action" following the reporting to the State Central Registry requires further clarification. What exactly is this referring to beyond the usual scope of an agency's responsibility?
- The Safety Plan requirements are in many instances unrealistic and should be framed in a context which allows for a clearer understanding of what is required. There are a number of instances in this current writing of the article, particularly in the Safety Plan where the permittee has no idea what they are expected to write regarding items listed. For example, section (1) "teaching and other staff qualifications and duties"; "general and activity specific safety"; "water supply"; "electrical wiring". And in section (9) "lost child plan"; "lightning plan". A parent orientation which includes some of these items in the manner suggested by this Code would scare most parents away. While the information provided for safety and health is important it is also vital to use the time in an efficient and productive manner. The framework listed in this section is extremely restricted and focused on the negatives of what may happen to their child in school.

The Department needs to reframe many items in this new Code to recognize the inherent expertise of the applicants for permit. It is clear that there are many safety issues which must be addressed. There are sections in this Safety Plan, in particular, which serve to put all permittees and the Department in an unnecessarily rigid position. The wording has to be either less specific or even more specific to allow for clarity.

The Department of Education provided a framework for submitting a Safety Plan for all UPK applicants which allowed for more flexibility and individuality. The Department might consider utilizing a similar format as a tool rather than enter the Safety Plan in such a rigid manner right into the Code.

- 47.21 Corrective action plan. The comments which are listed above apply to this section as well, particularly section (2) pertaining to death or serious injury occurrence while in the care of any agent etc. Or to the section which relates to "potential for unsupervised contact". The corrective action plan as it is framed here puts so much responsibility upon the child care facility as to appear to remove this responsibility from the State and City Departments which are currently responsible for follow up on these allegations and convictions. While a

child care facility is certainly responsible and needs to maintain follow up of their own, the Code puts a far greater legal responsibility on follow up within the context of this new writing.

- 47.49 (a) dry sweeping is an absolute necessity in most child care facilities. Again this is an item that needs either further clarification or it needs to be an advisory and not in the Code.
- 47.49 (d) and 47.53- When another Code or legal article is listed it should be included in writing in an appendix.
- 47.37 Training: There are many concerns with this article section. Again the issue is the specificity of the training requirements. The 30 hour requirement is 5 days of training which exceeds even the State mandates. The 24 month requirement and 30 hours is prohibitive for most child care facilities. Even if the training is provided with NO FEE, the cost of substitutes is extremely difficult not to mention the time and scheduling. The Training selections are excellent and the mandate for Safety and Health training might be more within the purview of the Department as it currently is rather than listed in the Code as a mandate.
- 47.51 Pesticides: This is a mandate for all pesticide companies and the framing of this information within the Code is unnecessarily rigid. For example, sending a notice home every time the exterminator comes can be replaced by a formal consent by the parent at the beginning of the school year.
- 47.57 Heat Advisories: Clarification is required. While Air conditioning is a goal for most programs, if a program does not have AC it would be important for the Code to determine at what point children should not be present in a non-airconditioned building.



LaGuardia Community College

31-10 Thomson Avenue • Long Island City, New York 11101 • Voice: (718) 482-7200

April 16, 2007

New York City Department of Health and Mental Hygiene
 Ms. Rena Bryant
 Secretary to the Board of Health
 125 Worth Street – CN-31
 New York, New York 10013

Dear Ms. Bryant:

Thank you for the opportunity to respond to the proposed changes to Article 47 of the New York City Health Code. I am happy to see many of the proposed changes and think that they will improve the quality and safety of New York City Child Care Centers.

I have one concern that I would like to address around the change to prohibit swimming in childcare programs. On page 5 and also on page 39 it states, "Swimming and aquatic activities. Swimming and aquatic activities are prohibited."

At LaGuardia Community College Early Childhood Learning Center Programs, we have been providing instructional swim for more than 20 years. Our swim program is a wonderful component where children learn to be safe around water as well as feel a sense of accomplishment that comes with learning something new.

Our parents are very happy that we include swim time into our daily routine. Jessica Lachowski, a parent of one of our preschoolers writes, "I believe that swimming has benefitted my daughter Julia so much because she has learned to deal with her fear of water. Being exposed to swimming has also taught her to have more confidence when in the water. I am very grateful for ECLC having swimming visits in their program. Julia will have these memories for the rest of her life!" Ana Latony-Ramirez, another parent in our program shared that her son's experience with the recreational facilities at the Early Childhood Center has been a rewarding one. "Initially, he was afraid of entering the swimming pool and now he enjoys it. He loves the floating devices used and when I bathe him, he demonstrates how he is learning to swim!"

Children develop lifelong skills that can help them stay healthy. I noticed that the DOH has new requirements around nutrition and obesity prevention. Swimming promotes physical development, develops aerobic endurance, is the most beneficial form of cardiovascular exercise, enhances children's natural flexibility, promotes proportional muscular development, develops superior coordination, and is a sport that will bring children fitness and enjoyment for life. In addition, swimming skills also engage the



thinking process. As children learn new techniques, they must develop and plan movement sequences.

At LaGuardia, children are given the opportunity to swim on a daily basis. Children are rotated so that everyone has a turn. Each day 5 children from each of our two preschool classrooms go to the college pool with a teacher and an intern. At the pool we have instructional swim time. A certified life guard and swim instructor are there to teach the children. We have 10 children in the water with 2 teachers and 2 college interns. Our center has a swim curriculum which I have attached. Children wear bubbles (floatation devices) and also use noodles as they learn to swim. No child is ever forced to go into the water. We follow the child's cues and introduce them into the pool gradually if they show any fear. To give you a more detailed understanding of our swim program I am attaching a letter from the Director of the Aquatics Program at LaGuardia, Dragos Coca.

In my experience, children gain so many things from learning to swim. The most important thing being water safety. They also gain better control over their bodies and feel so proud of themselves when they master a new skill. I have watched shy children gain so much self esteem from their swim experiences! Children who are overweight and cannot run and keep up with their peers in the playground find it easier to swim and become more physically active at other times of the day.

I hope you will consider revising this section of Article 47 and allow swimming to be part of the early childhood experience. There are so many benefits that would be lost to our children if swimming is no longer a part of our program.

Sincerely,



Heather Brown
Associate Director
LaGuardia Community College
Early Childhood Learning Center Programs, Inc.



The World's Community College

LAGUARDIA COMMUNITY COLLEGE • THE CITY UNIVERSITY OF NEW YORK

April 17, 2007

To Whom It May Concern:

During the past 20 years the Recreation Department has provided instructional swimming and Water Safety and Awareness classes for children enrolled at the Early Childhood Learning Center of LaGuardia Community College. Throughout the years hundreds of ECLC students were introduced to the water to safely enjoy it, to understand its dangers and to learn basic swimming skills. We ensure a safe environment and we offer experienced instructors certified as W.S.I. by the American Red Cross. Each ten students class is conducted by an instructor and is supervised by a certified Lifeguard and up to three ECLC staff, ensuring a very good student to adult ratio.

Statistics show that drowning is the second leading cause of unintentional injury related death for children between the age one and fourteen in USA. Learning to swim will introduce a young child to a new environment, will provide a new form of physical activity and most important will enable a child to acquire life long safety skills in and around the water. I believe that through our partnership with the ECLC program at LaGuardia Community College, we had a great success for the benefit of many young children who otherwise would not have such opportunity. This is a unique program within City University of New York network which not only should continue but be used as a model for other Higher education institutions.

Sincerely Dragos Coca
Aquatics Director LGCC, Head Coach

LaGuardia Community College
Early Childhood Learning Center Programs Inc.

Swimming Curriculum

Curriculum by category

Category 1- Those children expressing some Fear of water.

Curriculum

Sub Fear 1

Orientation
Land exercises
Water adjustment (kick, splash from sitting position)

Sub Fear 2

Orientation
Land exercises
Water adjustment (kick, splash, from sitting position)
Water walking (platform)

Category 2- Those children who have primarily mastered skills from category 1 and are comfortable with the water- **Beginners.**

Beginner 1

Orientation
Land exercises
Water adjustment (kick, splash, from sitting position; getting in the water, holding the wall)
Water walking

Beginner 2

Orientation
Land exercises
Water Adjustment (all)
Water walking
Initiate submerge
Rhythmic breathing
Blowing bubbles
Initiate floating

Category 3- Those children who have mastered skills from category 2 and are not exhibiting any signs of water fear. Children who are ready to develop and cultivate higher level swimming techniques- Advance.

Advance 1

Orientation
 Land exercises
 Water Adjustment (all)
 Water walking
 Rhythmic Breathing
 Blowing bubbles
 Push off
 Floating
 Kick board in the water
 Arm rotation
 Combining arm stroke with kicking
 Front crawl arms (deck)
 Back stroke orientation with arm exercise

Advance 2

Orientation
 Review of all of Advance 1
 Skills
 Flutter Kicks (deck)
 Push off & glide
 Front crawl
 Elementary backstroke
 Trending water
 Diving

Advance 3

Orientation
 Review of all Advance 1 & 2
 Skills
 Side stroke kick/ arms
 Side stroke
 Breast stroke
 Dolphin kick
 Coordinate breaststroke
 Kick with breathing

Orientation-

1. Should be incorporated for the first five days of a given session and should include a hands on equipment review process, videotape viewing as well as a walk through the pool area
2. The balance of the time can be used as an actual introduction to the water.

Grouping-

The children will be grouped into three categories having two subgroups per category. Those children assigned on any given day will represent the subgroup closest in skill level with one exception. The exception will be those children that are accompanying the group as part of their pool/water acclimation process and will not be swimming.



Testimony of

Stephanie Gendell
Senior Policy Associate for Child Welfare and Child Care Services
Citizens' Committee for Children

Before the
Board of Health

April 19, 2007

Good morning. I am Stephanie Gendell, the Senior Policy Associate for Child Care and Child Welfare at Citizens' Committee for Children of New York, Inc. (CCC), which is a 63 year old independent child advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe.

I would like to thank the Department of Health and Mental Hygiene and the Board of Health for holding this public hearing regarding the proposed changes to Article 47, which regulates public and private group day care services operating within New York City. The proposed amendments to Article 47 look like sound means to improve the safety and quality of child care centers in New York City.

Elimination of the "No-Permit Required Status":

CCC agrees with DOHMH's proposal to eliminate the "no permit required status" so that all child care centers will now meet the same safety and health requirements, regardless of whether they are run by community based organizations or religious organizations.

Safety and Quality Enhancements:

There are other proposals of significance in the new Article 47 that CCC would like to highlight, as we feel these are especially critical for strengthening DOHMH's oversight of the City's over 3000 child care centers and to improving the safety and quality of the centers.

- Recurring criminal record and child abuse screenings for center staff: CCC supports the proposal that all center staff who have the potential for unsupervised contact with children have criminal background checks and State Central Register (SCR) checks for a history of child abuse or maltreatment and is pleased that these SCR checks will now be conducted every two years and not just at the start of one's child care employment.
- Enhancements for Infants/Toddlers: CCC supports the proposals that will enhance the care of infants and toddlers, who require specialized attention, supervision and safety precautions. Specifically, CCC supports the proposals to a) increase infant/toddler staff qualifications; b) require infant/toddler and night staff to take a course every two years about Sudden Infant Death Syndrome (SIDS) prevention and shaken-baby syndrome; c) decrease the infant/toddler staff ration from 1:4 to be 1:3; d) prohibit the use of stackable cribs; and e) establish a choking hazard rule regarding the storage of personal items such as handbags that could contain items small enough for a child to swallow.
- Safety Plan Requirement and Additional Safety Requirements: CCC supports the new requirement that child care centers maintain a written health and safety plan with respect to medical supervision and health of children, medication administration, fire safety, emergency evacuation, etc. In addition, CCC supports the other child safety requirements proposed in the new Article 47, such as requiring land lines at all centers,

requiring staff preparing food be certified in food protection, requiring safety seats or safety belts be used by children in motor vehicles, prohibiting the use of space heaters, and prohibiting smoking in any indoor or outdoor area being used by the child care center.

Child Care Provider Training Enhancements:

- Recurring child abuse/maltreatment training every two years: Child care staff play a critical role in identifying children who are being abused or maltreated by their parents. The work that DOHMH and ACS have done recently to ensure child care center staff have been trained in how to identify and report suspected abuse or neglect is commendable and should make a difference for abused and neglected children. Repeating this training every two years, as opposed to receiving it just once at the start of one's child care career, is a proposal that CCC strongly supports.
- Additional Enhanced Training Requirements: CCC supports the strengthened training requirements for child care staff that comply with OCFS requirements and now require child care staff to receive 30 hours of training every two years in a variety of important subject matters such as lead poisoning prevention, early intervention, nutrition, asthma prevention and management, attention-deficit hyperactivity disorder and principles of childhood development, including meeting the needs of children with "physical or emotional challenges".

Serving Children with Special Needs in Child Care Centers

More needs to be done to ensure children with developmental delays or disabilities have access to quality child care, that the child care system has the capacity to meet their early care and education needs, and that the children have access to Early Intervention and Preschool Special Education services in their child care settings.

DOHMH's proposed Article 47 takes some important first steps by requiring that child care staff be trained in early intervention, ADHD and "meeting the needs of children with physical or emotional challenges". CCC is hopeful that this training will lead to better identification of children with special needs, improved capacity to serve these children, and increased access to services for children in early education settings.

Conclusion:

In conclusion, we ask that the Board of Health approve the proposed Article 47 due to the many critical safety and quality enhancements it will bring for children in child care settings. We recognize that some centers will incur increased costs to comply with the new training and safety requirements, particularly those caring for infants and toddlers. We call on the City to ensure that sufficient resources are available to help centers to meet the new Article 47 safety and quality requirements.

Thank you for the opportunity to testify.



Child Care, Inc.

**Testimony before New York City Board of Health
Public Hearing on Article 47 Revisions
April 19, 2007**

**Presented by
Betty Holcomb, Policy Director
Child Care, Inc.**

Child Care, Inc. is a resource and referral agency, which serves as a respected source of information for parents and providers, the media and policymakers. We do our best to promote policies that expand the options and improve the quality of early care and education across New York City and New York State.

I want to make three broad statements about the changes, and then provide some background on why we take the position we do.

First and foremost, we want to applaud the Department for the changes in regulations for infant-toddler programs as an important first step in lifting the quality of care in center-based early childhood programs across the City. We see this as **an important first step** in lifting the quality of early childhood services across the City.

We urge the Board to **continue to improve the regulatory requirements in the years to come.** Professional development of the early childhood profession is critical to fostering children's healthy development and growth.

Second, we also **strongly support the changes in the status of No Permit Required programs**, to require those programs to meet basic health and safety requirements. We see this as another important step in assuring that all children are safe and secure.

Third, we hope the Board of Health will **take a second look at the issue of inclusion**. We know there is **great concern that these revisions did not address the issues of children with special needs**. We hope the Board will revisit this issue and make sure that these concerns are addressed as the revisions go forward.

Now let me explain why we are such ardent supporters of increased training for staff working in infant and toddler rooms. There is now a solid body of research about the importance of professional development for every staff person working with young children.

Specifically, studies show that:

1. Children's earliest experiences set the stage for school success and adult productivity. In the first three years of life, the brain grows at breakneck speed, creating more than a trillion pathways for learning and development. **By the age of three, 85 percent of the brain's capacity is in place, creating the ability to speak, learn and reason. Early experiences also influence lifelong habits of learning and social behavior, as well as the trajectory of emotional and physical growth.**

(Source: Shonkoff J. and Phillips, D. eds., National Research Council and Institute of Medicine. From Neurons to Neighborhoods: the Science of Early Childhood Development. Washington, D.C.: National Academy Press, 2002. <http://www.nap.edu/books/0309069882/html/>)

2. We all know that parents are their children's first and primary teachers, but today half of all mothers are back on the job within a year of giving birth. Thus, many infants and toddlers now depend on other adult caregivers for their first lessons in everything from language to coping with frustration. **Studies show that 39 percent spend more than 35 hours a week in care.**

(Source: Ehrle, J. Adams, G. & Tout, "Who's Caring for our youngest Children: Child Care patterns of infants and toddlers. Washington, D.C.: The Urban Institute. Statistics available as part of Fact Sheet, January, 2005, from Zero to Three, Washington, D.C. www.zerotothree.org.)

3. Research shows **babies and toddlers learn in the context of relationships with adults and do best with adults who have a background in child development**, who are able to create a nurturing, supportive relationship. **Positive early relationships foster language development and intellectual curiosity, as well as healthy emotional and social growth.**

(Source: See Shonkoff, above)

4. Staff with a knowledge of child development are also more likely to spot developmental delays and can help families help families find treatment to prevent long-term disabilities.

(Source: In addition to national research, in-depth training and assessment of 22 programs in New York City, conducted by the Infant Toddler Technical Assistance Resource Center, documented such effects locally.)

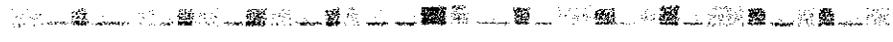
5. There are also special health and safety issues related to caring for infants and toddlers. The new requirements can support best practices related to prevention of Sudden Infant Death Syndrome, Shaken Baby syndrome as well as proper hygiene and health practices.

We cite these findings to underscore the importance of not only these first steps in improving the regulatory requirements for staff training in infant and toddler programs, but to make the point that these requirements should be seen as just the first step in moving in supporting the professionalization of the early childhood workforce.

These regulatory changes will move the entire field toward higher standards of early care and education and safer environment for children to support their healthy growth and development. We not only support this first step, but want you to know that we will support further changes that lift the quality of early childhood services for children in our city.

New York Zero-to-Three Network

· fostering collaboration among those who work with babies, toddlers and their families ·



331 West 57th Street #166, New York, New York 10019 | Phone: 718 638 7788 | www.nyzerotothree.org

Thank you to the Department of Health and Mental Hygiene for inviting us to testify today on the repeal and reenactment of Article 47 of the New York City Health Code to improve the quality of early childhood services in New York City. I am Carole Oshinsky, Co-president of the New York Zero-to-Three Network (NYZTT).

First, on behalf of NYZTT, a network of professionals that promotes the optimal development of young children, their families, their communities, and the systems that serve them in the New York City area, I want to praise the Department. The new Article 47 to improve quality in center-based infant-toddler programs is an **important first step** in raising quality for all young children's services.

In January 2007, NYZTT published a fact sheet: *To Build a Strong Society, Invest in Young Children.* (Go to www.nyzerotothree.org/media/NYCfact_full.pdf for the full text.) In it, we called for New York City to raise standards for training and supervision of infant and toddler child care professionals, incorporating a multidisciplinary, collaborative perspective, and increase training funds. As a start, we asked the City to meet the same child care standards as New York State, and eventually the even more stringent federal ones for Early Head Start.

We pointed out that childhood from birth to age 3 is a critical time, marked by rapid development in emotions, intellect, and socialization, as well as physical growth and the formation of normal brain functioning. The experiences of infants and toddlers in early childhood strongly influence their future success or failure in school and life. More and more economists are showing that investments made in early childhood have better economic returns than investments at an older age.

Here are some relevant facts about New York City's infants and toddlers:

- 63,000 infants—more than 50% of New York City's babies—are born into poverty each year, a major risk factor for early school failure and difficulties later in life.
- Half of all mothers return to work within a year of giving birth; thus many infants and toddlers now depend on other adult caregivers for their first lessons in everything from language to coping with frustration.
- In fact, research shows that 39 percent of infants and toddlers spend 35 or more hours a week in care.
- Many of the mothers of low-income infants and toddlers are depressed (some estimate close to half), and often not receiving treatment—and this effects the

whole family, including the youngest children. This situation is a mental health challenge for child care staff who are not knowledgeable in child emotional development and developmental delays.

- Yet currently only a high school diploma is required to work with infants and toddlers in NY City's center-based facilities and no further training is required.
- In the rest of New York State, at least 9 credits of college, one year of preservice training, and 15 hours of inservice training are required to work with infants and toddlers.

What do our infants and toddlers need:

- **Babies need consistent, high-quality care in a nurturing relationship and do best with adults who have a background in child development and receive ongoing training and reflexive supervision.**
- **Staff with a knowledge of child development will better recognize developmental delays and help families obtain services to prevent longterm problems.**
- **Infants and toddlers have particular health and safety issues.** The new requirements would support research-based practices to prevent Sudden Infant Death syndrome and Shaken Baby syndrome as well as mandate appropriate hygiene and health practices.
- Major national organizations call for drastically increasing the training and continuing education of staff working with infants and toddlers:
 - The American Academy of Pediatrics recommends that caregivers should have at least 30 hours of continuing education in their first year of employment with 16 hours focused on child development and 14 in safety, and child health.
 - Zero To Three, the nation's foremost authority on infant and toddler development, similarly recommends that all teachers in infant-toddler programs have special education and training to promote healthy development and a life-long love of learning.

New York City can take a national leadership role by focusing on developing a citywide plan and budget for the specific needs of children and families from pregnancy to age 3 that looks at services delivered by all city agencies. This revision of Article 47 on infant and toddler center-based child care is a good start.

Thank you very much. I would be happy to respond to any questions or provide additional information.

Attachment:

New York Zero-to-Three Network (NYZTT). (2007). *To Build a Strong Society, Invest in Young Children*. New York, NY: NYZTT.

New York Zero-to-Three Network

• fostering collaboration among those who work with babies, toddlers and their families •

To Build a Strong Society, Invest in Young Children

New York City Needs a Comprehensive System to Provide Services to Infants and Toddlers

Childhood from birth to age 3 is a critical time, marked by rapid development in emotions, intellect, and socialization, as well as physical growth and the formation of brain structures, processes, and functions.¹ The experiences of infants and toddlers in early childhood strongly influence their future success or failure in school and life.² As pointed out by James Heckman, the Nobel Prize-winning economist, investments made in early childhood have better economic returns than investments at an older age.³ New York needs to seize this time of opportunity in early childhood to make a difference in our society. The New York Zero-to-Three Network has produced this fact sheet to help New York City's decision-makers appropriately organize, improve, and increase services and funding to infants and toddlers.

Key Facts About New York City's Infants and Toddlers

- Each year some 63,000 infants—more than 50% of New York City's babies—are born into poverty, which is a major risk factor for early school failure and difficulties later in life.⁴
- The number of children in New York City who have no health insurance is increasing.⁵ While most low-income infants and toddlers are eligible for publicly funded health coverage, they are twice as likely as more affluent young children to be uninsured.⁶
- New York City's program of Early Intervention referral, evaluation, and services is not consistently reaching all the infants and toddlers who need it, especially in poor neighborhoods.⁷
- Early Head Start, a proven federal program to enhance child development and school success,⁸ serves only a tiny fraction of eligible infants and toddlers because of insufficient enrollment slots.⁹

- In New York City, quality infant child care costs can be as much as 130% of a low-income family's budget. Eligible 4-year-olds are 10 times as likely to receive subsidized child care services as eligible 1-year-olds.¹⁰
- Infants are the fastest growing segment of the population in foster care in New York City. Once there, infants stay in care longer and are more likely to return to care.¹¹
- It is estimated that close to half of low-income infants and toddlers have mothers who are depressed and, in many cases, not receiving treatment.¹² Maternal depression affects the whole family; even babies can show signs of depression.¹³ This is one example of a mental health challenge emerging in infancy.
- In New York City, infant and toddler child care providers are underpaid and undertrained. For example, child care workers in New York City center-based facilities working with birth to 2-year-old children are only required to have a high school equivalency diploma and are given no further training.¹⁴
- New York City has at least four different large agencies that deal directly and indirectly with infants and toddlers but has no system to coordinate planning and services across these agencies.

What New York's Infants and Toddlers Need Today

Babies need consistent, high-quality care in a nurturing relationship with a skilled caregiver and a safe and healthy environment.¹⁵ While most low-income parents with young children work full- or part-time, they struggle financially to meet their children's basic needs for sufficient food, adequate housing, health care, and satisfactory child care.¹⁶ All families need support to meet the simultaneous

demands of work and parenting. Low-income families in particular need the availability of adequate, comprehensive, and accessible service systems that support them in their efforts to promote the healthy early development of their children.¹⁷

To guarantee a real future for every child, the New York Zero-to-Three Network believes experts across the disciplines and systems that serve infants and toddlers must come together to develop a comprehensive system that is proactive. This system should start with pregnancy and continue through the early years.

Good services for children from birth to age 3 exist in New York City. However the experienced leaders from the many disciplines that New York Zero-to-Three Network represents—including medicine, nursing, child welfare, early education, social work, child development, nutrition, psychology, rehabilitation and the arts therapies—believe more communication and less fragmentation between systems is imperative to better serve the city's youngest children and families. Due to a lack of adequate funding and comprehensive organization, these services benefit only a small percentage of the infants, toddlers, and families they could help.

We applaud the Mayor's allocation of \$42 million towards tax credits and programs for children under age 5 to "improve the life chances" of our youngest children.¹⁸ These initiatives are welcome first steps. New York City should—and can—do more to help our babies and their families thrive in life and work. In fact, currently, families with infants and toddlers have no regular system to ensure their well-being. Investing further funds in a coordinated, integrated, and transparent system of care for our youngest citizens is an investment in building a strong New York.

Policy Recommendations for New York City

- Take a leadership role by developing a cross-system comprehensive citywide plan and budget for the specific needs of children and families from pregnancy to age 3 that integrates services delivered by the major city agencies—Health and Mental Hygiene, Administration for Children's Services, Family Court, Homeless Services—and others.
- Implement the recommendations made in the 2006 Mayor's Commission on Economic Opportunity report to focus on young children who are born into poverty by investing in home-visiting programs from birth, and consider screening families during pregnancy to determine their need for supports and services.¹⁹
- Ensure that the State's Child Health Insurance Program reaches those who need it.
- Mandate coverage of mental health services for babies, toddlers, and their caregivers in both public and private health insurance plans.
- Expand models of proven infant and toddler programs that use research-based practices to enhance early learning and child development and promote later school success.
- Raise standards for training and supervision of infant and toddler child care professionals, incorporating a multidisciplinary, collaborative perspective, and increase training funds. As a start, require New York City to meet the same child care standards as New York State and eventually the even more stringent federal ones for Early Head Start.
- Provide families with a medical home and a "health passport." A medical home is a regular, consistent, coordinated health care provider and a "health passport" is a portable record that follows families if they move.
- Prioritize low-income families when constructing new services and funding in order to help provide for their children's basic needs and balance the tug between work and family.

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14. Child Care, Inc. (2006). *Infant & toddler programs: The workforce; Better trained teachers = healthy development*. New York, NY: Child Care, Inc. <www.childcareinc.org/pubs/InfantToddlerReport.pdf>; Children's Defense Fund (2005). *State of America's children, 2005*. Table B3-6: Annual Wages of Child Care Workers and Early Childhood Teachers, 2004. Washington, DC: Children's Defense Fund; Haycock, K. (2000). No more settling for less. *Thinking K-16 [Education Trust]*, Spring 4(1): pp. 3-10. Haycock says: "Inexperienced, untrained teachers are likely to start their careers in schools with high concentrations of poor and minority students. In New York State, for example, only one in 33 teachers is uncertified, while in New York City one in seven teachers is uncertified," U.S. Department of Health and Human Services, Administration for Children and Families, National Child Care Information Center. (2006). *Center child care licensing requirements (November 2005): Minimum Early Childhood Education (ECE) Preservice Qualifications and Annual Ongoing Training Hours for Teachers and Master Teachers*. Washington, DC: U.S. Department of Health and Human Services <nccic.org/pubs/clicensingreq/cclr-teachers.pdf>; and U.S. Department of Health and Human Services, Administration for Children and Families, National Child Care Information Center. (2006). *Child care licensing requirements (April 2006): Minimum Early Childhood Education (ECE) Preservice Qualifications, Orientation/Initial Licensure, and Annual Ongoing Training Hours for Family Child Care Providers*. Washington, DC: U.S. Department of Health and Human Services <nccic.org/pubs/clicensingreq/cclr-famcare.pdf>.
15. Zero to Three and The Ounce of Prevention Fund. (2000). *Starting smart: How early experiences affect brain development, 2nd ed.* Washington, DC: Zero to Three and The Ounce of Prevention Fund <www.zerotothree.org/startingsmart.pdf>.
16. National Center for Children in Poverty. (2006). *Demographics of poor young children* (under age 6) [State profiles] <www.nccp.org/state_detail_demographic_poor_young_NY.html>. Low income is defined as income up to twice the poverty line: \$40,000 for a family of four in 2006.
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18. See Commission for Economic Opportunity in Endnote 4.
19. Ibid.

About the New York Zero-to-Three Network

Founded in 1990, the New York Zero-to-Three Network promotes the optimal development of young children, their families, their communities, and the systems that serve them in the New York City region. By providing support, information, education programs, and networking opportunities to professionals, the Network seeks to foster best practices, improved care, sound policymaking, and ultimately, better futures for babies. The Network is one of the few organizations in the New York City region or in New York State focusing specifically on the needs of infants and toddlers.

Participants in the Network include practitioners and researchers in diverse fields such as education, child care, health care, nursing, occupational therapy, physical therapy, psychology, child psychiatry, rehabilitation therapies, mental health, social services, research, as well as representatives from the legal, business, and philanthropic communities. The Network's Regional Policy and Public Education Committee would like to thank the following members who contributed substantially to the development of this fact sheet:

Evelyn Blanck, LCSW, Associate Executive Director, Manhattan Center for Early Learning

Susan Chinitz, PsyD, Director, Early Childhood Center, and Associate Professor of Clinical Pediatrics, Albert Einstein College of Medicine and Co-president, New York Zero-to-Three Network

Bonnie Cohen, LCSW, Early Intervention Program Director, University Settlement Society of New York

Evelyn Efinger, MEd, Infant/Toddler Coordinator, New York State Child Care Coordinating Council

Laura Ensler, MS, Director, Community Development and Outreach, Children and Family Services Division, Visiting Nurse Service of New York

Barbara Greenstein, LCSW, PhD, Deputy Executive Director, Queens Child Guidance Center

Dorothy Henderson, LCSW, Associate Director, Infant-Parent Study Center; Director, Judicial Consultation Project, Institute for Infants, Children & Families, Jewish Board of Family and Children's Services

Elizabeth Isakson, MD, FAAP, Pediatrician, Candidate, Master's in Public Health, Columbia University

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Dina Joy Lieser, MD, FAAP, Director, Docs for Tots New York, Director of Community Pediatrics and Child Advocacy and Attending Pediatrician, New York Hospital Queens, and Assistant Professor of Pediatrics, Weil Cornell Medical College

Priscilla Lincoln, PhD, Clinical Director, Early Head Start Program, Columbia University School of Public Health

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Nikee Tsamas, PhD, Child welfare consultant

For further information about the Network and the benefits of membership, visit www.nyzerotothree.org.

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New York Zero-to-Three

• fostering collaboration among those who work with babies, toddlers and their families •



January 17, 2006

Contact: Carole Oshinsky
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646-284-9628

Organization Urges Comprehensive System for City's Infants and Toddlers

~Lack of coordination shortchanges impoverished children, says New York Zero-to-Three Network~

New York – January 17, 2007– The New York Zero-to-Three Network today called on Mayor Bloomberg to go beyond his proposed \$42 million allocation to “improve the life chances” of our youngest children and develop a comprehensive system to address the needs of the 63,000 infants born into poverty annually in New York.

The period from birth to age 3 is a critical time in the formation of brain structures, processes, and functions. Poverty is a major risk factor for early school failure and difficulties later in life. Families, particularly those who are low-income, need comprehensive, accessible service systems that support their efforts to promote the healthy early development of their children.

New York families with infants and toddlers currently have no regular system to ensure their well-being. Lack of adequate funding and comprehensive organization mean services designed to help benefit only a small percentage of the infants, toddlers, and families they target.

“The recommendations of the Mayor’s Commission for Economic Opportunity are a good first step,” said Rebecca Shahmoon Shanok, a founder of the New York Zero-to-Three Network. “New York City should—and can—do more to help our children. Investing in a coordinated, integrated, and transparent system of care for our youngest citizens is an investment in building a strong New York.”

The Zero-to-Three Network calls on New York to take a national leadership role by developing a citywide plan and budget for the specific needs of children and families from pregnancy to age 3 that integrates services delivered by the major city agencies, including Health and Mental Hygiene, Administration for Children's Services, Family Court, and Homeless Services.

Among the organization’s specific recommendations is that the city give priority to low-income families when constructing new services that help provide for children’s basic needs, and balance the tug between work and family.

Founded in 1990, the New York Zero-to-Three Network promotes the optimal development of young children, their families, their communities, and the systems that serve them in the New York City region. By providing support, information, education programs, and networking opportunities to professionals, the Network seeks to foster best practices, improved care, sound policymaking, and ultimately, better futures for babies. The Network is one of the few organizations in the New York City region or in New York State focusing specifically on the needs of infants and toddlers.

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Because babies
are our future!

Brochure Design: Jeff Yas | Graphic Design (www.jeffyas.com)

WHO WE ARE

The New York Zero-to-Three Network is a community of individuals committed to strengthening the development of young children, their parents and families. The Network includes practitioners and researchers in diverse fields such as education, child care, health care, rehabilitation and arts therapies, mental health and social services. Philanthropic, business and legal professionals, as well as parents, are also involved.



OUR MISSION

The New York Zero-to-Three Network promotes the optimal development of young children, their families and their communities in the New York region.

The Network provides support and information to those who work with New York's youngest children and their families by creating opportunities for interdisciplinary learning and collaboration.

WHAT WE DO

- Foster and disseminate state-of-the-art knowledge
- Sponsor study groups, clinical roundtables, and conferences
- Encourage training that integrates interdisciplinary perspectives
- Facilitate collegial relationships and support among members of different disciplines
- Stimulate research partnerships and collaborative projects
- Maintain a web site with information on local meetings, training opportunities and job openings
- Promote public awareness and advocacy on issues that affect infants, toddlers and their families

WHY YOU SHOULD JOIN

Membership Benefits

- 50% discount for study groups
- 35% discount to New York Zero-to-Three Network conferences
- Free posting of job qualifications on our web site
- Notification of zero-to-three events in the New York region

OTHER WAYS TO SUPPORT US

- Volunteer for committees or tasks
- Your tax-deductible contributions are always welcome



Membership Form

Member Information

New Member Current Member

Date / /

Name

Organization

Profession

Degree

Work Address

Work Phone

Home Address

Home Phone

Fax

E-mail

Where should we send correspondence?

Home Work

Dues

Individual Membership \$45

Student (include copy of ID) \$30

Organizational Membership \$110
(up to 3 members)

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Safe Horizon, Inc

DOHMH
Article 47 Hearing
April 19, 2007

Thank you for this opportunity to respond to the proposed changes to Article 47 of the Health Code. Safe Horizon is the nation's leading nonprofit victim assistance, advocacy and violence prevention organization. The mission of Safe Horizon is "to provide support, prevent violence, and promote justice for victims of crime and abuse, their families and communities."

We at Safe Horizon support several of the proposed changes and hope that the process of reviewing and changing Article 47 will continue to evolve as increased knowledge of best practice emerges to protect and safeguard the children of our city. We especially approve of the following additions to the DOHMH requirements:

- The inclusion of "NPR" programs within Article 47's requirements;
- The increased staff/child ratios for infants;
- Removal of infants and toddlers from inclusion in the child/toilet ratios;
- Required notification to the Department of serious injuries and/or deaths while in care; and,
- Requirement that staff be re-screened every two years.

Safe Horizon's Court-Based Children's Centers

In New York State, there are a total of 32 court-based children's centers under the supervision and regulation of the New York State Unified Court System. All of these centers are known collectively as the Children's Centers Program, and are part of the Division of Court Operations, Office of Alternative Dispute Resolution and Court Improvement (ADR & CI). There are ten Court-Based Children's Centers in New York City, all of which are operated by Safe Horizon.

Nine of Safe Horizon's Court-Based Children's Centers are located in court buildings where families are involved in court proceedings. In Richmond County, due to space issues in the family court, the center is located in a Department Of Health and Mental Hygiene facility directly adjacent to the court house. Our ten sites collectively served nearly 22,000 children in calendar year 2006, many thousands more than all of the children served by all of the City's Head Start centers during the same time period.

Some of the children who use the centers are victims of child abuse or other crimes. Some families are embroiled in custody battles. Some families are facing eviction proceedings. Some parents are seeking orders of protection against the child's other parent. Most of our cases are of emergency nature, where the adult or child is seeking protection through the court system.

Regulation of the Court-Based Children's Centers

In operating these Court-Based Children's Centers, Safe Horizon complies with the day care center requirements of the New York State Unified Court System. For many years, DOHMH has granted Safe Horizon a waiver that permits the operation of its Court-Based Children's Centers without requiring it to meet all of the requirements of Article 47 due to the unique nature of these programs.

Safe Horizon has been complying with many Article 47 requirements and exceeding its requirements whenever possible.

The proposed changes to Article 47 would create additional requirements with which Safe Horizon's Court-Based Children's Centers would be unable to comply. Accordingly, we propose that the regulations exempt the Court-Based Children's Centers from pertinent Article 47 requirements and remove the administrative burden of the waiver process both for the agency and for the Department.

These are some of the ways in which the Court-Based Children's Centers are unique and different from standard child care centers:

- **Confidentiality and availability issues.** The fact that a particular child is in the court building must be kept confidential as much as possible. The Unified Court System regulations prohibit children from leaving the classroom unless signed out. Children who might enter or leave our program at any time during the day must be available to participate in court proceedings when called. These issues combined prevent us from

complying with regulations regarding both outdoor play (47.47), (47.71 (c)), and consistent scheduling (47.67 (b) and (47.71 (a) (1)).

- **The changing population we serve.** - The overwhelming majority of children are seen once, for one day or less. This prevents us from complying with daily inspections of children by staff who knows the children, reporting of enrolled children's illnesses and absences, maintaining ongoing health records and more.
- **The emergency nature of enrollment.** Because most of the registering families don't know of our existence prior to coming to court with their children, we cannot comply with regulations regarding actions prior to enrollment. These include prior parent/child orientation (47.11), prior physical exams and immunizations (47.25), .knowledge of children's communicable diseases unless we observe that a child appears ill (47.27) , providing nutritional guidance to parents before food is sent with children, and more.
- **The differences in supervisory and staffing levels.** Our programs are supervised by an education director who is not always on site. However, all sites have a "site director" with credentials such as a social worker. Additional oversight is provided by court clerks and court officers who are always available for emergencies, along with other levels of supervision not usually available to stand-alone centers. Our group teachers all have at least the Bachelor's Degree.
- **The mandated age range from birth through age 12.** Due to staffing levels and sibling preferences, we are often required to mix ages within one group. (47.23 (f))
- **The location in courts and maintenance provided on state and/or city level** (depending on the facility) preclude us from knowing when pesticides will be applied. Due to the emergency nature of most enrollments, we cannot tell parents in advance. 47.51 (c)
- **The person who enrolls a child is often not a legal guardian** (A babysitter who has a case before the court can bring the children to the court-based center. We may not know the child's legal name or address, yet according to court rules, we must take the child.)

There are some issues in the proposed Article 47 which are not compliance issues. These are issues of general nature that we sincerely and respectfully urge you to reconsider.

- The use of the word “natural” for biological parent; (47.01 (p))
- The requirements for other city agencies to provide paperwork to enable centers to comply with the regulations in a timely manner (for example, both the fire and buildings departments),
- The requirement to report serious injuries and create and submit corrective action plans for injuries occurring off premises to family members of staff and volunteers (for example, if a volunteer’s child is injured in an automobile accident on a vacation). We believe you meant to include reporting of incidents that occur while children are in care.
- Requirements to report to the Department confidential calls of suspected abuse or neglect that are placed to the State Hotline.
- The prohibition against allowing staff and/or children to sweep up crumbs or sand that falls on the floor with a small broom and dustpan.
- Requirements to make reports to the Department within 24 hours. We respectfully suggest the alternate of “within one business day.”
- The requirement that dietary modification be only at the written request of a physician (47.61 (5)) (for example, the child who vomits on Saturday night and is fine on Sunday should be allowed to forgo dairy products on Monday without having to visit a doctor.)
- The cap of 6 ounces of juice per day 947.61 (2). There are 2 issues, one that the CACFP mandates ½ cup servings, which we offer twice daily, and the other that parents of infants and toddlers commonly mix the 100% juice with water. We support the prohibition against sweetened juices and excess consumption of juice and we urge you to rethink this section of the proposed code.
- The requirements to store food in “rodent-proof” containers need clarification.
- References to other articles of the code not accessible to most readers of article 47. We recommend reprinting these sections of code and attaching them as addendum to files and/or printed versions of Article 47 available to the general public.

We further recommend a “grand parenting” of long term teachers who have been at programs for 15 years or more who have: earned the Bachelor’s Degree, participate in annual and other professional development opportunities, and who are not pursuing their full certification. This would enable us to keep very long term employees who are good at their jobs and who provide excellent service to the children and families who need our services.

We believe these recommendations and considerations will strengthen the code, making it more easily understandable by those who use it on a daily basis, and ultimately, making child care safer throughout the city.



HILLTOP Early Childhood SERVICES

Helping Adults to Help Young Children

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(13)

Thank you for arranging for this hearing, and for listening to the responses of so many people who are concerned about child care in our city. I am Ellen Hofstetter Jaffe, a consultant, teacher, staff developer, accreditation facilitator, and advocate with experience with a variety of providers of child care. As I go to my clients, supervise CUNY students in the field, and advise numerous child care facilities, I see large and small programs struggling to comply with Article 47.

I have a lot to say today. I know in preparing for this hearing, most programs looked at these proposed changes and selected the few that matter the most to them to discuss. I'm going to lay it all out – the positives and the negatives. There are ten wonderful new safeguards in this proposed Article 47, some things that could be made wonderful if re-worded appropriately, and there are some things that should be either left out entirely, or drastically changed. Some of these areas may not rise to the level of major concern, but can be the thorn in the hide of the program sincerely providing the best they can for the children in their care and being hassled by items in this code. That's not what the code is for. I know you didn't mean it to come out this way, and I also know there is often a wide gap between what people mean and what the code actually says. Feedback from this hearing will enable you to rethink some of these provisions and strengthen the code. I hope my efforts today are contributing to this outcome.

With this in mind, I welcome these provisions enthusiastically:

- Limiting the number of infants per caregiver and number of infants per class.
- Removing infants and toddlers from the child/toilet ratios.
- Extending the protections of Article 47 to the NPR community.
- Requiring, in the so-called safety plan, essentially a policy and procedure handbook.
- Requiring prior approval of the floor plan before first licensing.
- Requiring programs to allow inspections by the Department.
- Spelling out the times when hand washing is required and requiring gloves when changing diapers.



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- Prohibition of use of television for infants and toddlers.
- Requiring centers to distribute nutrition guidelines to parents who supply the children's food. These are easily available for free from the NYS Department of Health.
- Requiring programs to maintain staff/child ratios during lunch and nap times. My question to the Department is – how are you going to get ACS to provide the funds for this in their constantly reducing budgets?

The following provisions of the proposed changes are welcomed with concerns:

- Specifying that the daily health check be performed by someone who knows the child this is great and is not possible when the child has just entered the program, or if the first staff member to arrive is relatively new on the job.
- Requiring teachers of infants and toddlers to have some training in child development. Fantastic! I suggest you require the same minimal training for assistants in infant and toddler rooms, who often function as lead teachers at various times of the day and when the teacher is out or on vacation.
- Setting a time frame for newly hired teachers to complete their certification requirements. However, I'm not sure that the timeline is realistic for teachers who start out with an AA degree and who are attending school part time. They would have to finish both the BA or BS degree and a Masters Degree in only seven years. It took me three years to get my Masters Degree while working full time. And, are you going to extend this time frame for those already on study plans who have already taken longer than this time?
- Requiring 30 hours of in-service training every two years. However, the state includes only 9 subjects in the 30 hours and this proposed change mandates 14. Language development is not on the list of required subjects and should be. The DOHMH courses now take longer to teach some of the named subjects. My suggestion is to create a two-tiered training system, with the most important training in the first two years of licensure and the second tier required in the second two years. This system could start at any time, and just go forward. This would enable training to go into appropriate depth.



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- Requiring programs to provide orientation to parents and children complete with specifics of that orientation. However, no program I have worked with has ever lost a child. To require programs to include a "lost child plan" in their parent orientation packet is to create needless fear for no reason. As a parent of four and a grandparent of six, if I saw that in my orientation packet, I would not enroll my child or grandchild.
 - Attempting to limit the amount of juice consumed by young children – however, the specifics need to be changed. First, common practice for parents and staff is to cut the juice given to infants and toddlers with water. This would now be against the code. Second, programs funded by CACFP are mandated to provide servings of ½ cup of juice. A program running from 8 AM to 6 PM typically serves juice twice in the day. Please revisit this limit.
 - Requiring reporting to the Department of death or serious injury of children in child care facilities and when a staff member is indicated in a report to the SCR. The two sections that include this mandate need to be more specific. The words of the code don't say this.

Other requirements of the proposed Article 47 need serious rethinking or removal from the code.

Some of the provisions are nearly impossible to achieve, some have no logical or practical explanation, and some may be well meaning but stated in such terms that make the code seem capricious and ridiculous. The last time your Department proposed many changes, I came with a group of Queens directors who supported many provisions and challenged others. I have spent my career supporting just and proper regulations of child care programs. When the provisions of the code are ridiculous, they erode respect for the entire code including those provisions that protect the health and safety of the children. These areas are:

- The use of pillows defined as an imminent health hazard. In my work with programs who serve disabled children, I often see pillows used to help children sit upright, around children in wheel chairs, under knees or arms in therapy situations, on the floor as soft seats, and in other helpful and creative ways. If one puts a baby to sleep with the face



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into the pillow, THAT would be a health hazard. But worded the way it is in this proposed code....

- The old and still absurd prohibition against "dry sweeping". Nearly all child care centers have small brooms for the children to use and other small brooms for the staff to sweep up crumbs, sand, and rice that fall on the floor. I respectfully suggest you put in wording limiting the size and scope of sweeping and stop making programs feel like they are criminals when they take out their little brooms.
- Complete elimination of swimming. Surely, you can come up with safety procedures that will allow children to experience the healthful experiences of swimming and other water activities. And what are "water aquatics"? Does this include sprinklers?
- Requirement that education directors' responsibilities shall include "teaching and other staff training" and separately requiring training only from "approved" trainers without definition of these trainers.
- Requirement that instances of alleged child abuse or maltreatment be reported to the Department AND the SCR. It appears to be a violation of the confidentiality of the call to the SCR.
- Failure to restrict access to the service by a person with a communicable disease or infection that can be transmitted to children defined as an imminent health hazard. So when the DOHMH worker comes to inspect and coughs and sneezes, the program is caught between two opposite violations. How is a center going to prevent a sick mom from picking up her child? This needs re-working.
- Night care defined as starting AT 5 PM. It should say on or AFTER, or by your definition, a program starting at 6 or 7 or 8 PM is not night care.
- Requiring the Buildings Department and Fire Department to comply in a timely manner with the child care service being caught in between.
- How could the program's purchase of disability insurance protect or even benefit the children in care? While it would be nice, it does not belong in the Health Code unless all other employees covered by all other articles of the Health Code are required to have it.



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- Smoking prohibited in any “outdoor area in any premises used by a child care service.”
This would include public parks adjacent to centers. You can rightfully restrict centers from allowing children near smokers, but you cannot expect programs to leave a playground because someone is smoking within its borders.
- If trash or garbage must be stored in containers with “tightly fitted lids” how will the children use them?
- “a supervisor of food service operations a person who has a certificate in food protection “...” for every site, even ones with no kitchen?
- Special diets only with a note from a physician - why? Why can't a parent say “she may be developing a food allergy – last time she ate carrots she had hives. Please don't give her any carrots today.”
- Window guards required for huge stained glass windows several stories above the children's ability to reach them, for example in huge old churches?
- Adults restricted – does not mention prospective parents or friend and relatives of the child's family who may accompany them to the program, attend a birthday party, or be the designated pick up person.

There are some words and phrases that simply have no explanation. I have spoken with more than a dozen veteran child care directors, and none of us can define these terms:

- Food from an unknown or unapproved source
- Re-serving food that was previously served – does this mean if the children didn't eat the crackers that were on the tray that you can't put them out later? What about the programs that have snack available for a few hours to be taken at the children's discretion?
- Rodent proof containers
- What does the word program mean in this context? “required staff training or program which occurred after submission of the previous application.”47.09 (c)
- “Activity specific training for assigned activities” (occurs twice – in staff training and in parent orientation)



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- Lightning plan (in parent/child orientation)
- "Any other free-standing or attached structures"
- What is the definition of "full day" care? Five, six, eight, ten hours per day? This is important for the related definitions of rest time and physical activity.
- What is "structured and guided physical activity"?

The following are additional comments and suggestions to create a better functioning code, worthy of respect and which truly protects the young children of our City:

- I am disappointed that you removed the additional description encouraging assistants to have the AA degree.
- Long term assistant teachers without the GED should be given a timeline to earn it. *Grandfather*
- The Health Code should not use euphemisms. Parenting is a "natural" activity – to whoever acts parentally – including biological, adoptive, and foster parents. The definition of "parent" should be changed from "natural" to "biological".
- When other sections of the code are referenced, those provisions should be copied and amended to copies of Article 47. Some of these are: section 1.03, Article 11, 161.01, Article 81 etc. I tried hard to find these references, including searching the City website, with no success at all.
- Coverage for educational director in his/her absence is newly limited to a group teacher. It can and should include any certified teacher including assistant director, admissions director, staff developer or trainer, therapists or psychologists, etc.
- Various reports are required within 24 hours – they should be within one business day.
- Heat advisory days "providing adequate ventilation and air conditioning". For many programs throughout the city, providing air conditioning is impossible.
- If you want to encourage workers in child care programs not to come to work sick, you can sit with the insurance industry and help create an insurance group, so that small stand-alone programs can afford to purchase health insurance at group rates. People with

I urge you to "grandfather" teachers with Bachelors Degrees who have more than 15 years of experience and who participate in professional development - who will not attain certification



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low cost access to health insurance are more likely to get medical care before their health problems grow to major issues.

- I am concerned that the requirements for 30 minutes of structured and guided physical activity for every child older than one year will mean that many programs will mandate a full half hour of forced exercises, when most young children's attention span is far less than that.
- I am concerned that the State Education Department which funds programs for children with disabilities will not allow programs to provide an hour for nap or rest. Please consult with the State to work out some sort of healthy compromise. And please add words that children who do not sleep should not be forced to spend an hour on their cot.

I hope you accept this feedback in the spirit intended – to collaborate on changes to make Article 47 provide the safest and best possible conditions for the young children of our wonderful city.

Thank you again for this opportunity.



JONATHAN L. BING
Member of Assembly
73rd District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

14
CHAIR
Subcommittee on
Mitchell-Lama Housing

COMMITTEES
Banks
Health
Housing
Judiciary
Social Services
Tourism, Arts & Sports Development

**Testimony to the NYC Department of Health and Mental Hygiene
Public Hearing on Changes to Child Care Center Regulations**

By Assemblymember Jonathan L. Bing

April 19, 2007

Good morning. My name is Jonathan Bing and I am the Assemblymember for the 73rd Assembly District on the East Side of Manhattan. I have come to testify today because I am concerned that some of the proposed changes will have negative consequences for our children, our families and our child care centers throughout New York City.

The restructuring of Article 47 of the New York City Health Code is long overdue, and I applaud the Department of Health for its continued efforts to make child care centers safer and better operated. I must, however, express some concerns that have been related to me by my constituents to ensure that they are duly considered by the Department.

I am concerned that at a time in our City when we should be doing our best to encourage more child care facilities to open, some of the proposed regulations would have the opposite effect of causing existing, well-run facilities to close. While I can appreciate the desire to raise the qualifications of teaching staff and lowering staff to child ratios, I am concerned that this will lead to a significant increases in expenses for child care centers and make it impossible for a number of them to continue to operate.

In addition, the blanket prohibition against swimming and aquatic activities appears to be overbroad. I certainly understand and support the desire to shield our children from potentially dangerous situations, but this general prohibition without any flexibility for exceptions is problematic. Certain facilities, such as the Vanderbilt YMCA and the 92nd Street YMHA in my District, have long utilized their access to swimming pools to safely introduce children to swimming and exercise. This early access can be instrumental in not only ensuring a child's comfort with the water, but in also providing her with potentially life-saving skills in the event she faces an emergency situation in the water. A better option for the Department would be to promulgate certain safety requirements for child care facilities without prohibiting swimming and aquatic activities entirely.

In conclusion, I am pleased that the Department has seen fit to update the regulations and hope that my comments today lead to a fine-tuning of the proposed changes to Article 47.

Thank you for your consideration.

(15)

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Resolution Comments

From: Ellison, Torrie [TEllison@odysseyhouseinc.org] **Sent:** Wed 4/18/2007 5:40 PM
To: Resolution Comments
Cc:
Subject: Public Hearing
Attachments:  appeal to doh (4).doc(32KB)

Good afternoon,

I just wanted to make sure that you received my registration for the public hearing scheduled for April 19,2007 at 125 Worth Street.

Torrie Ellison

Educational Director of Children's Services

219 East 121st Street

New York, New York 10035

X-5193

212 987 5193

TEllison@OdysseyHouseINC.org

Good Afternoon Colleagues & Constituents

My name is Torrie Ellison; I am the Director of Children's Services for Odyssey House Family Center Program. I would like start with a brief overview of our program. For forty years; Odyssey House Family Center of Excellence has been serving Parents & Children. Our work with families began in 1973. We have two Department of Health Licensed program; one located at East 121st & one on Wards Island. We service infants, toddlers and pre-school children. The most recent changes proposed by the Department of Heath & Mental Hygiene are first-rate and we support the changes, however the financial burdens which will fall upon our program to hire additional staff, consultants and require additional resources, and physical plant revisions will require support. As you are aware; we serve infants & currently do not have a ratio of 1 adult to every three children, our infant program is located on the second floor at our 121st street site. We appeal to your office to provide a comprehensive plan for programs such as ours related to a timeline for programmatic compliance, as well as resources, hands on support through site visits implementing the changes, and resources available. The outlined changes, once again which are supportive of best practices for children will mean a significant financial burden to our program, once again, as a not for profit program serving homeless children of chemically addicted parents cannot be easily absorbed.

MORTON M. AVIGDOR, ESQ.

957 East 10th Street
Brooklyn, NY 11230
(917) 861-9550
avigdorm@aol.com

TESTIMONY DELIVERED TO THE NEW YORK CITY HEALTH
DEPARTMENT April 19, 2007

Commissioner Frieden, Distinguished Members of the New York City
Board of Health, good morning.

My name is Morton Avigdor. I am an attorney in private practice in New
York City. From 1986 to 2000 I had the distinction of serving for 14 years as
the Chairperson of the Subcommittee of Health on behalf of the Committee
of Nonpublic School Officials for the City of New York and acted as liaison
to the Department of Health. I have also practiced extensively in front of the
New York City Department of Health Tribunal defending numerous
parochial schools on actions brought by the Department. I stand here today
to testify in opposition to the proposed rules amending article 47 of the New
York City Health Code. These proposals do not make children safer.

UNCONSTITUTIONAL

These amendments present the most egregious entanglement between
Church entities and the State that I have ever seen. It is frightening from a
First Amendment perspective to see this Department attempt to regulate the
personnel of a pervasively religious organization. To require a permit for a
core religious activity performed by a religious organization is offensive to
the Wall that separates Church and State.

I don't take the position that the Department of Health could never regulate
if children were in physical danger or in harms way... but over the
approximately 200 years that parochial schools have formally operated in
New York State that has not been the case. To my knowledge, there has
been no blatant transgression perpetrated by non-accredited or non-
registered teachers in the parochial school preschool system that rises to the
occasion necessitating correction with such onerous regulation. That you
could regulate does not mean that you *should* regulate. Once government

perceives their ability to so freely curb the first phrase of the First Amendment's guarantee of free exercise of religion, will government feel equally comfortable regulating the second part of the First Amendment's guarantee of a free press, the right to congregate or to free speech? Nothing has happened that compels this council to abridge rights guaranteed under the Constitution.

UNFAIR and UNFUNDED

I find it difficult to justify the department's present willingness to fund inspectors, enforcement mechanisms and the development of new regulations for parochial schools when a couple years ago the Department claimed poverty in providing funds for full and part-time New York City Department of Health nurses for parochial schools that requested them.

UNEQUAL ENFORCEMENT and APPLICATION

Why are these regulations directed only at parochial school children? Public-school children are just as vulnerable to the vicissitudes you seek to prevent for nonpublic school children. The notion that parochial schools would be subject to fines, violations and potential closure while the public schools would not, would be an unequal application and enforcement of the law.

UNWISE and UNSAFE PUBLIC POLICY

Abolishing NPR status when these schools are safe and reliable providers of Pre-School education is unwise. These are schools, after all, that provide education from Pre-School through High School.

The public policy implications for demanding the increased square footage per child is potentially disastrous in its' practical application. Church related and religious schools have traditionally been a haven for the poor. These new requirements, without any help from government to pay for them, are unfunded mandates that will close the door to affordable childcare for the indigent. Those most needy children are placed in harms way by this proposed regulation because they will be without affordable supervised care.

UNFORGIVABLE

Approximately 2 years ago I represented a religious organization running a school program that was padlocked by the Department of Health on a Friday morning. In the Department's wisdom they sent the children back to their homes where many parents had already gone to work. Panic and havoc ensued. There was no imminent threat to the health of these children (they were closed on a paperwork issue) but the Department put them in harm's way with their reckless act. You attempt to do the same today with these regulations by restricting affordable Day Care settings for the poor. The closure story doesn't end with that Friday morning. After months of defending the religious organization before the administrative law court the Administrative Law Judge vindicated my client and the violations were dismissed. Aside from the considerable cost and time spent in defending the action, the damage to the school's reputation was done and a severe abridgment of their First Amendment rights was perpetrated. My client received no apologies or regrets from this Department. That constitutional infringement was unforgivable and unforgettable. This Department callously abused its' discretion as it applies to religious free exercise rights. Sadly, this Department does not have the confidence or trust of the religious school or faith community.

The issues I present today are serious and require much further debate, consultation and deliberation. I urge this council to postpone adopting these damaging regulations until such time as these troubling problems are studied, considered and addressed.

Respectfully submitted,

Morton Avigdor, Esq.



NYC Early Childhood Professional Development Institute
101 West 31st Street, 7th Floor
New York, New York 10001

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Comments made to the Department of Mental Health And Hygiene Hearings
RE: Proposed changes to Article 47

Thank you for the opportunity to speak this morning – I'd like to thank the Department of Mental Health and Hygiene for considering these most essential changes to Article 47. I represent the NYC Early childhood Professional Development Institute and pledge our support and technical assistance to insure the successful implementation of these most critical and positive changes in regulation.

For many years we have acknowledged how important the first three years of life are and we also recognize the need and number of slots for infant and toddler programming has been growing steadily. These facts leave you no choice but to adopt the proposed changes requiring individuals who work with these youngest children to be trained and educated appropriately.

We also applaud the proposed change in regulation that will require 30 hours of training every two years for all child care staff – and we at the PDI are positioned to implement several pieces of infrastructure including an online live training calendar, a trainers' registry, a professional development record that individuals can use so they are more deliberate and intentional in their quest for professional development, among other things to support this changes

New York City has long been admired by other cities and states throughout the country, for its regulations regarding the certification of preschool teachers in child care settings. These new changes will serve the city's children well and will go a long way to insure the health, safety and education of our youngest citizens.

Respectfully submitted by

A handwritten signature in cursive script that reads "Sherry M. Cleary".

Sherry M. Cleary
Executive Director

CUNY The City
University
of
New York

Statement Regarding Intended Changes to Article 47, Child Care Health Code
By Jonathan Shevin, Early Childhood Center Director, Central Queens YM&YWHA
4/19/07

Good morning. I would like to thank the Department of Health for your efforts to harmonize the codes for daycare with other laws, permit regulations and our goals for our children's health, safety and development. My name is Jonathan Shevin and I am the Director of the Early Childhood Center at the Central Queens YM&YWHA on 108th St. in Forest Hills. As a neighborhood program administrator, I appreciate any effort to take the discrepancies and contradictions out of the various requirements we must meet.

I am concerned, however, at the rather blunt proposal 47.57(i) on page 39: "Swimming and aquatic activities are prohibited." I am certain that the generations of families who have chosen our Early Childhood Center, in part because of the quality of our aquatic program, would be concerned and dismayed as well if they knew that this was the direction that the City was going. The Y has offered swimming programs for over 20 years. During that time, we have met city and state requirement for safety, meeting standards for the physical plant, the supervision of the pool, the training and licensing of our lifeguards and aquatic staff and the use and storage of pool related chemicals. We consider those requirements to be the minimum standards for our aquatic programs; we have gone above and beyond them and the loyalty of our community attests to our success.

These standards have been in place for years because they work. Our pool programs are both attractive and safe. Throughout the City, at private facilities as well as public pools and schools, committed professionals have offered swimming programs that enhance the quality of life for NY's citizens. It is not simply that we insure the safety of our children while they are swimming with us; these classes are where children learn how to be safe so that when they are on their own, they can make the safe choices.

As the Department of Health, you are at the forefront of promoting and enforcing healthy choices. It certainly makes sense to require that when our children attend swim programs, those programs must meet safety standards. But in an age when we know the dangers of a sedentary lifestyle, and we know that developing healthy habits needs to be established early in life, there is no sense in undermining the ability of responsible, quality programs to address those concerns. The loving and wise parents who send their children to our programs because we offer instructional and recreational swimming are making the right choice. In fact, they could be spokespeople for the goals of the Department of Health.

Please reconsider this ban on aquatic programming in DOH licensed Day Care programs. There is no coherence to a DOH policy that permits families to "drop-off" a child at a swimming pool, but forbids such activities where teaching staff bring these children, and where both certified lifeguards and a suitable ratio of instructional staff are present. Our health and fitness department will continue to meet the Department of Health's standards for individual participants, including our youngest swimmers. It would be sad that they could not participate as part of our Early Childhood Center with those same DOH standards. This is a step backward in the City's services to our families.



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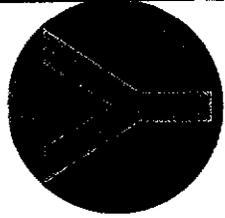
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Forest Hills, New York 11375

The Central Queens Y opens up a world
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and connection with the Jewish community.

UJA Federation
of New York

Central Queens YM & YWHA acknowledges with gratitude UJA-Federation's Management Assistance Program and its pro bono consultants, writer Barbara Lovenheim and photographer Ben Asen, who generously provided their professional expertise on this project.

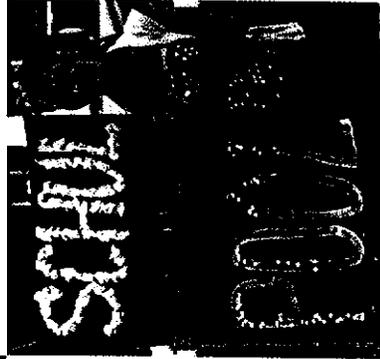
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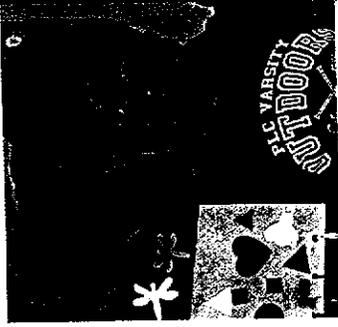


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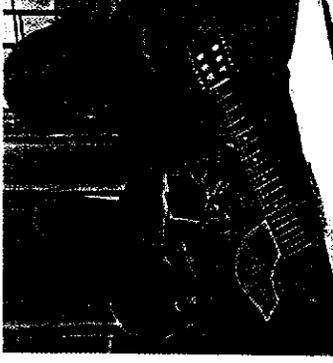


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growing space: Families with young children thrive at the Y. Tots and toddlers take **first steps** learning to socialize and play. Pre-schoolers embrace new experiences and are encouraged to develop their **own abilities**. Young students paint and sing; they learn new ideas and are introduced to **Jewish** tradition.



active kids: Our sports programs build **character** and **self-confidence** as kids play and compete. In after-school and vacation programs our kids receive **personal attention**. In summer camps, **positive role models** help kids discover **nature**, experience teamwork, and creative Jewish living.



staying fit: All ages maintain a **healthy lifestyle** working out in our fitness center, swimming in the Y's pool, and in pools at our camps. Pre-schoolers learn **coordination**, older kids acquire sports expertise, adults and seniors develop a **fitness** regimen to maintain and improve their well-being. All benefit from our **wellness** programs.



expanding horizons: Adults attend **workshops** in the arts as well as lectures and film series. Immigrants receive **basic assistance**, vocational guidance, and classes on improving their English and preparing for **citizenship**. Everyone takes part in Jewish and **Israeli** celebrations with the community.





Federation of Protestant Welfare Agencies

TESTIMONY

of

The Federation of Protestant Welfare Agencies

Before the

New York City Department of Health and Mental Hygiene

Public Hearing – Article 47 of the New York City Health Code

April 19, 2007

Prepared by:

Vani Sankarapandian,

Senior Policy Analyst for Early Childhood Education and Child Welfare

My name is Vani Sankarapandian and I am the Senior Policy Analyst for Early Childhood Education and Child Welfare at the Federation of Protestant Welfare Agencies (FPWA). For 85 years, FPWA has been a leading policy advocate for individuals and families served by our more than 300 member human service agencies and churches in and around New York City. FPWA promotes the social and economic well-being of greater New York's most vulnerable by strengthening human service organizations and advocating for just public policies.

We would first like to take this opportunity to commend the New York City Department of Health and Mental Hygiene (DOHMH) for investing the time and effort necessary to comprehensively revise Article 47. Article 47 has not been revised in almost 20 years, and we are pleased to see DOHMH undertaking the serious task of ensuring that these regulations reflect the modern day needs of the child care community and the families that they serve. The fact that the regulations now define early care and education programs as "child" care rather than "day" care is a clear sign that DOHMH is committed to a vision of early care that has the best interests of the child in mind. While we are excited to see the regulations move towards greater safety and more highly qualified staff, we would also like to highlight a few key concerns regarding the difficulties of implementation. We hope that DOHMH will take into account the complexity involved in putting new regulations into practice and recognize that child care programs may need time and resources to fully realize the Department's vision.

Higher Staff Qualifications and Increased Training Requirements

FPWA strongly supports incorporating higher education requirements into the qualification standards for infant/toddler teachers. Early childhood teachers with more education and training provide higher quality teaching and foster improved "social, emotional, linguistic, and cognitive development for the child."¹ For infants and toddlers in particular, scientific research shows that brain development can have lasting effects on a child's future ability to learn, meaning that a child's earliest learning experiences can stay with them for a lifetime.² While infant/toddler teachers were previously hired with as little as a high school diploma or GED, they must now have an Associate's Degree or be engaged in a study plan to reach an

¹ Barnett, "Better Teachers, Better Preschools: Student Achievement Linked to Teacher Qualifications," National Institute for Early Education Research, Issue 2, December 2004. Available at <http://nieer.org/resources/policybriefs/2.pdf>.

² "Starting Smart: How Early Experiences Affect Brain Development," Zero to Three, Available at <http://www.zerotothree.org/site/DocServer/startingsmart.pdf?docID=2422>.

Associate's Degree within seven years. To be study plan eligible, a teacher must have at least a Child Development Associate (CDA) credential or a high school diploma (or GED), nine college credits in early childhood education (ECE), and two years experience in child care. Although we believe that the regulations should be clarified to indicate that the CDA credential for these teachers should be related specifically to infant/toddler care, FPWA urges DOHMH to implement these higher qualifications. Infant/toddler teachers with higher qualifications will be in a better position to nurture, encourage, and teach young children during this critical period of child development.

While proposed regulations address the need for more highly qualified infant/toddler teachers, the minimum hiring requirement for assistant teachers is still a high school diploma or GED. FPWA encourages the Department to raise the minimum requirement for assistant teachers to at least a CDA credential, with a study plan option available to new and current employees with only a high school diploma or GED. Assistant teachers play an extremely important role in the child care classroom. In fact, during the vacation and sick leave of the group teachers, assistant teachers are in charge of child care classrooms. The minimum hiring requirement should reflect the need for trained personnel to assist group teachers in daily caregiving activities.

Furthermore, while we applaud efforts to create a highly qualified early care workforce, it is extremely important to recognize that child care programs may face serious barriers in finding and hiring highly educated preschool and infant/toddler teachers. The educational levels of early childhood educators in New York have fallen in recent years; this has been due in part to low pay and inadequate benefits.³ Professionals in the early care workforce in New York State are drastically underpaid in comparison to their kindergarten counterparts, making it difficult for programs to recruit highly-trained staff members.⁴ Moreover, programs may find it difficult to retain the teachers that are hired. Poor teacher compensation lowers existing teacher morale and results in high teacher turnover.⁵ Without the ability to offer comparable salaries or benefits, child care programs are at risk of losing newly trained staff

³ Herzenberg, Price, and Bradley, "Losing Ground in New York Early Childhood Education: Declining Workforce Qualifications in an Expanding Industry, 1980-2004," Economic Policy Institute, Issue Brief #216-E, September 2005. Available at <http://www.epinet.org/issuebriefs/216/ib216e-ny.pdf>. (Note: Early childhood educators in center-based care refers to directors, teachers, assistant teachers, and teacher aides.).

⁴ "Current Data on the Salaries and Benefits of the U.S. Early Childhood Education Workforce," Center for Child Care Workforce, 2004. Available at: www.ccw.org/pubs/2004compendium.pdf.

⁵ Barnett, "Low Wages = Low Quality: Solving the Real Preschool Teacher Crisis," National Institute for Early Education Research, Issue 3, March 2003. Available at <http://nieer.org/resources/policybriefs/3.pdf>.

to higher paying positions under the Department of Education. It is important for the Department to be aware of some of the difficulties child care providers will face in implementing these new regulations.

Training Requirements

FPWA is pleased to see the Department address the need for on-going training and staff development in New York City child care programs. The proposed regulations require mandatory child abuse and prevention training, as well as 30 hours of training every two years for teaching staff in areas such as health, nutrition, child development, and parent communication. Continuing education is crucial to keeping abreast of changing child development theory, safety advancements, and other issues that significantly influence the quality of care. FPWA strongly supports regulatory moves towards increased training for early care professionals, but encourages New York City to support these regulations with an increased investment of resources and funding in workforce development opportunities.

Grandfathering Provisions for Currently Employed Teachers

In its proposed regulations for infant/toddler teachers, DOHMH recognized the need to accommodate currently employed teachers who have considerable experience in child care, but who have not been held to these new, higher qualification standards in the past. Currently employed infant/toddler teachers with a high school diploma or GED can satisfy the higher qualification requirements with either five years of supervised experience in infant/toddler care or a study plan working towards the newly imposed minimum hiring requirements within two years and an Associate's Degree within seven years. FPWA supports the inclusion of this "grandfathering" clause, which provides options for career infant/toddler teachers who do not meet the new qualifications for hiring to continue working as early care professionals. Many of these teachers have years of practical, hands-on experience and a sincere passion for caring and educating New York City's youngest children.

However, FPWA urges the Department to include a similar "grandfathering" provision for group preschool teachers. Although preschool teachers have always been required to have either State certification or a plan for working towards State certification, there are no minimum eligibility requirements for the study plan option or fixed time limits for completing the study plan under the existing code. Under the proposed regulations, some currently

employed preschool teachers who have not progressed far enough in their plans towards certification to meet the newly-proposed minimum eligibility requirements for the study plan option will no longer be employable. Therefore, FPWA encourages DOHMH to adopt a "grandfather" provision for these teachers similar to the "grandfather" clause applicable to infant/toddler teachers, which would allow currently employed preschool teachers who do not meet the minimum eligibility requirements to engage in a time-limited study plan towards State certification. Many of these teachers are valued and respected members of their program staff who have devoted their professional lives to serving children and families and who deserve the option to continue working and advancing.

Staff-to-Child Ratios

FPWA supports the lowering of the staff-to-child ratio from 1:4 to 1:3 for children under one year of age. Smaller staff-to-child ratios are associated with improved quality of care and more individualized attention for each child. However, the Department must also take into account the difficulties of implementing a lower ratio. As was mentioned earlier in this testimony, low compensation often makes it difficult for child care programs to recruit and retain early care professionals. Moreover, hiring new staff is an added expense that may be difficult for child care programs to accommodate. While we are pleased to see the staff-to-child ratio for the youngest children in child care lowered, we hope to see an accompanying investment of resources from New York City in helping child care providers to meet new regulations.

FPWA also urges DOHMH to allow for some flexibility in the separation of age groups above the infant/toddler groups, particularly with regards to staff-to-child ratios. While it is important to prohibit the mixing of infants and toddlers with older age groups (as is proposed in the regulations), some mixing of age groups for older children is likely to occur. For instance, children may age out of one group and into another during times of the year when it is not appropriate to move them to a new classroom. Therefore, the Department should address this in its regulations, perhaps by making it explicit that the predominant age of the mixed group will dictate the appropriate staff-to-child ratio.

Comprehensive Written Safety Plan

The proposed changes to Article 47 include a requirement for each child care program to formulate a written safety plan that is much more comprehensive than previously required.

The written safety plan, to be submitted by all existing child care programs and future applicants for child care permits for approval by DOHMH, must include details regarding all aspects of program operation, including staff training, fire safety, facility management, and health procedures.

While FPWA supports the concept of a more comprehensive plan which provides easy access for directors and staff to crucial safety information, we believe that in order for this regulation to be truly effective, directors must have instruction on the proper formulation of a complete and accurate plan. The Department should prepare materials that will provide guidance, including detailed outlines indicating what information is necessary and models of acceptable written safety plans. Directors will also need clear direction on whether these safety plans must be updated annually or at the time of permit renewal (which typically occurs every two years).

Aquatic Activities

Lastly, FPWA urges the Department to reconsider its outright prohibition of swimming and aquatic activities. First, it is important to define the term "aquatic activities." Child care programs currently include field trips, such as trips to park areas with lakes or amusement parks, which sometimes involve some water-based activity, but not necessarily swimming. It is unclear whether the prohibition would apply to all varieties of water activity. Secondly, we believe that while water activities may require more regulation, they should not be banned. In addition to the recreational benefits, swimming and other water-based exercises can be extremely valuable for child development. Through swimming, children engage in physical activity that reduces the risk of childhood obesity, learn important safety skills, build self-confidence through athletic development, and gain an overall appreciation for physical exercise and healthy living. While we understand DOHMH's motivation to protect the safety of every child, we believe that a complete prohibition of swimming is an overly drastic resolution. Instead, child care programs who wish to involve children under their care in aquatic activities should be regulated to ensure that participating children are in the safest possible environment. Such regulations could include lower adult-to-child ratios to ensure close supervision, safety instruction prior to entering the water during each activity time period, and established ratios of children-to-certified lifeguards or CPR certified adults.

20

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Resolution Comments

From: Michael Spezzano [mspezzano@ymcanyc.org]
To: Resolution Comments
Cc: Linda Allocco; Shelly Wimpfheimer
Subject: Comments on Repeal and Reenact of Article 47
Attachments:  DOH Aquatics Letter.doc(986KB)

Sent: Wed 4/18/2007 5:26 PM

Dear Ms. Bryant,

Attached is a comment letter from the YMCA of Greater New York on the Notice of Intention to Repeal and Reenact Article 47 of the New York City Health Code.

Sincerely,

Michael J. Spezzano

Vice President, Program & Membership

YMCA of Greater New York

333 Seventh Avenue

New York, NY 10001

212-630-9636

212-947-0950 Fax

mspezzano@ymcanyc.org

www.ymcanyc.org



April 18, 2007

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

Dear Ms. Bryant,

This letter is to comment on behalf of the YMCA of Greater New York on the Notice of Intention to Repeal and Reenact Article 47 of the New York City Health Code. The YMCA is one of the largest providers of child care program in New York City and has been operating high quality program for many years in our facilities as well as public schools throughout the five boroughs.

Specifically, this letter is to voice our opposition to the proposed change in section 47.57 that would prohibit swimming and other aquatic activity as part of child care programs. Historically YMCAs have promoted and conducted numerous programs, including aquatics, which build healthy spirit, mind, and body for all. Some of our most popular programs promote aquatic and water safety experiences for persons across their lifespan. The YMCA is a recognized world-wide leader in developing and promoting safe and effective aquatic programs and has been doing this work for over 100 years. As a result we feel compelled to comment on the adverse effect this proposed change would have on the developmental quality of child care programs and the experience of the young people in our care.

As an integral part of our child care programs, YMCAs teach the nationally recognized curriculum of the YMCA of the USA Swim Lessons Preschool program for children beginning at the age of three years old. What children learn in these programs is centered on aquatic readiness skills that are developmentally suited to their age and individual ability. Working in small groups under the supervision of well-trained and nationally certified instructors, participants are able to learn:

- Confidence and simple motoric competence in the water
- How to follow directions from the instructor as well as simple, fundamental water safety rules
- Breath control skills
- Basic arm and leg movements

In YMCA aquatic programs, young children (6 months to 6 years) receive developmentally appropriate swimming experiences as individually determined for each child by parents, caregivers, pediatricians, and our staff of swimming professionals.



YMCA
OF GREATER NEW YORK

We build strong kids, strong families,
strong communities

Association Office, 333 Seventh Avenue, 15th Floor, New York, NY 10001
Tel: (212) 630-9600 / Fax (212) 630-9604
www.ymcanyc.org

While the YMCA fully supports increased efforts to ensure child health and safety, we feel our aquatic programs offer children a safe and unique opportunity to be physically active and to learn skills that will not only help to keep them safe around water, but also can guide them to develop a healthy habit that will carry over into adulthood. With the unfortunate high incidence of accidental drownings of young people every year that could be prevented through instruction, there is an ever present need to teach aquatic safety to children. At the same time, the generally poor state of child health has been well-documented, and programs such as aquatics can help youth obtain much-needed physical activity as a key part of a healthy lifestyle.

The YMCA of Greater New York looks forward to continued dialogue, discussion, and collaborative efforts on the topic of safety in New York City child care programs, and stands ready to assist in whatever way possible.

Sincerely,

Michael J. Spezzano
Vice President, Programs and Membership
YMCA of Greater New York

Written Testimony for the Department of Health and Mental Hygiene
On Article 47 of the New York City Health Code

April 19, 2007

Comments by Carol Westinghouse
Program Manager, Cleaning For Health
INFORM

INFORM is submitting comments in favor of the amendments in Article 47 that require the use of environmentally sensitive cleaning products in day care facilities.

INFORM is a national, environmental non-profit organization that, for 34 years, has helped protect human health and the environment by promoting sustainable business practices and policies. For more than a decade, INFORM has researched products, including cleaners, that contain persistent, bioaccumulative, toxins (PBTs) and other toxic chemicals that pose substantial threats to human and environmental health. Since 2004 we have encouraged over 100 institutions to adopt green cleaning, including 68 schools. Once all these facilities complete the transition, they will have eliminated the use of more than 40,000 pounds of toxic chemicals.

INFORM supports the required use of environmentally sensitive cleaning products in day care facilities for four key reasons:

1. **Toxins affect children's bodies at higher rates than adults' bodies.** The surrounding environment affects children more because pound for pound, children breathe more air, drink more water and eat more food. They play closer to the ground, and engage in hand-to-mouth activity, which allows toxins to directly enter their bodies. Children metabolize and eliminate toxins more slowly than adults and their rapidly developing systems are more sensitive.¹
2. **Childhood exposures to industrial chemicals in the environment can result in several developmental problems.** Exposure can cause cancer, and damage the developing brain, leading to
 - autism
 - attention deficit disorder (ADD)
 - learning disabilities
 - mental retardation²
3. **Childhood exposures to industrial chemicals in the environment is thought to contribute to the asthma epidemic.** There are direct links between ingredients in common cleaning products to the cause and/or triggering of asthma.³ According to the National Center for Health Statistics, in 2003, asthma had affected nearly 30 million Americans in their lifetime. One out of every thirteen school-age children has asthma and childhood deaths due to asthma have tripled in the past 15 years. Asthma is the primary cause of missed

¹ *Environmental Health Threats to Children: A Look at the Facts*, INFORM Inc. Fact Sheet (developed by Dr. Phil Landrigan, Mt. Sinai Medical Center, Department of Community Medicine)

² *Toxic Threats to Child Development*, Greater Boston Physicians for Social Responsibility, 2000

³ *Studies Associated with Cleaning Products*, INFORM, Inc. Fact Sheet

school days, over 1 million per year. Asthma also costs society \$16 billion per year in medical and indirect costs.⁴

4. **Cost and performance competitive environmentally preferable alternatives exist that can protect children's health.** A deep cleaning process in a day care center for Downs Syndrome children reduced total illnesses by 24%, number of doctor visits by 34% and number of days absent by 46%.

Similarly, deep cleaning and reduced use of toxic chemicals at the Frank Porter Graham Child Development Center reduced airborne dust by 52%, volatile organic compounds (VOCs) by 49% and bacteria by 40%.⁵

Children in day care centers are our most vulnerable population. Toxic chemicals should not be used in these facilities when less-toxic alternatives exist and are widely available. These alternatives are certified by Green Seal and Environmental Choice, or are recognized by the EPA's Design for the Environment. New York City has the opportunity to set the standard for the nation by requiring the use of third-party certified environmentally preferable cleaning products in day care facilities.

⁴ EPA, *The Burden of Asthma in New England*, Asthma Regional Council

⁵ *Safe and Healthy School Environments*, Frumkin, Geller, and Rubin

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**Testimony of Jorge Saenz De Viteri to
NYC Department of Health and Mental Hygiene on the proposed changes to
Article 47 of the health code.**

Good morning, my name is Jorge Saenz De Viteri, a parent, the Executive Director for Bronx Community College Child Development Center, Inc. and Co-President of the New York City Association for the Education of Young Children (NYCAEYC).

First, I would like to applaud the efforts of all the individuals who worked together to introduce and bring forth the proposed changes to improve the safety of child care services in New York City. This is truly a great effort to strengthen the current regulations and aligned them with the current regulations of the NYS Office for Children and Family Services (OCFS) to ensure the safety and developmental well-being of children while in out-of-home care in New York.

After reading the proposed changes and attending the briefing held at Child Care Inc, I would like to recommend the following for consideration:

FIRST RECCOMENDATION

That the NYCDOH of health considers the SUNY Health and Safety Training as a required training for child care providers working in these license settings as part of the initial 30 hours of training that are being required.

In 2000, New York State Governor George E. Pataki signed the Quality Child Care and Protection Act into law. This law has led to changes in the OCFS day care regulations in many areas. As of March 5, 2001, programs regulated by OCFS are required:

1. All providers and operators of licensed/registered child care programs must take a total of 30 hours of training during their licensing/registration period.
2. Fifteen hours of this training must be obtained within the first six months of initial licensure, registration or employment in a regulated child care program.
3. Family day care and group family day care providers must take some specific training in health and safety prior to getting an initial license or registration.
4. Routine licensure/registration renewal period is 2 years.

Item 3, references the SUNY Health and Safety Competency Based training which covers the following training topics (*referred to as modules). Each module of training includes a written exam and/or a demonstration of skills. There are currently seven modules and they are:

- **Module 1: Safety**
 - Unit A. Indoor Safety
 - Unit B. Outdoor Safety
 - Unit C. Emergency Preparedness And Fire Safety
- **Module 2: Supervision**
 - Unit A. Program Capacity
 - Unit B. Competent Direct Supervision

**Testimony of Jorge Saenz De Viteri to
NYC Department of Health and Mental Hygiene on the proposed changes to
Article 47 of the health code.**

- **Module 3: Special Infant Issues**
 - Unit A. Sudden Infant Death Syndrome (Sids)
 - Unit B. Shaken Baby Syndrome (Sbs)
- **Module 4: Child Abuse And Maltreatment**
- **Module 5: Food Safety**
- **Module 6: Infection Control**
 - Unit A. Germ Transmission And Hand Washing
 - Unit B. Cleaning And Sanitizing
 - Unit C. Safety Precautions Relating To Blood
 - Unit D. Diaper Changing
- **Module 7: Health**
 - Unit A. Health History And Immunizations
 - Unit B. Daily Health Check & Excluding Children From Care
 - Unit C. Planning For Emergencies

This training is a competency-based training, which is more intensive than traditional training formats. It is based on specific, measurable abilities directly related to instructional objectives. Trainees complete post-training tests and demonstration of skills to determine their achievement of the objectives. After reviewing this information, trainers offer additional instruction and mentoring to trainees who did not master the material.

If early childhood practitioners have higher levels of formal education and specialized training, they are much more likely in their work with young children and families to use the evidence-based practices and possess the ongoing professional commitment we know are necessary to make a positive difference in children's lives.

— *Preparing Early Childhood Professionals: NAEYC's Standards for Programs*

SECOND RECCOMENDATION

Another recommendation is around the education and training requirements for Infant and Toddlers Teachers and Assistant Teachers.

Research makes it abundantly clear that early childhood educators with more professional preparation provide more developmentally appropriate, nurturing, and responsive care and education experiences for young children. (Professional preparation includes university and college course work as well as the pre- and in-service training and technical assistance that early childhood staff receive.) Research also shows that in addition to specialized education and training for teachers of young children, other components of high-quality teacher preparation include experience in working with young children and support systems focused on teachers' instructional behaviors and classroom management, such as mentoring, coaching, and constructive feedback (Pianta 2007).

**Testimony of Jorge Saenz De Viteri to
NYC Department of Health and Mental Hygiene on the proposed changes to
Article 47 of the health code.**

I would like for the board to consider the following recommendation to the proposed requirements for § 47.13(f) & § 47.15(b)

AS PROPOSED

§ 47.13(f) - assistant teacher must:

- be at least 18 years of age; and
- Have a HS diploma or equivalent

§ 47.15(b) -infant/toddler teacher (new title) must:

- be at least 21 years of age
- Have HS diploma or eqv.; 9 college credits in ECE; 2 years of child care experience, and study plan leading to AA degree in ECE in 7 years.

RECOMMENDING

§ 47.13(f) - assistant teacher must:

- be at least 18 years of age; and
- Have a HS diploma or equivalent and 12 college credits in ECE, or a Child Development Associate Credential (CDA) in an Infant & Toddler setting.

§ 47.15(b) -infant/toddler teacher (new title) must:

- be at least 21 years of age
- Have a AA degree in ECE and study plan leading to BA degree in ECE in 7 years
- 2 years work experience with infants

To learn more on the CDA Credential, please visit the Council for Professional Recognition website at www.cdacouncil.org

Again, I commend the NYCDOHMH for taking this much-needed step to secure and safeguard the children in our city while they are enrolled in center-based programs. Should you need further

Respectfully yours,

Jorge Saenz De Viteri

Executive Director, Bronx community College CDC, Inc.

Co-President, New York City Association for the Education of Young Children

**Testimony of Jorge Saenz De Viteri to
NYC Department of Health and Mental Hygiene on the proposed changes to
Article 47 of the health code.**

Background information Jorge Saenz De Viteri, MSED

Mr. Saenz De Viteri has over 24 years of experience in the Early Childhood field. Seventeen of these years have been in the management of early care and education and related programs. His experience includes classroom teaching, managing private and publicly funded early childhood settings; Infant/Toddler, Head Start, Pre-School, Group Day Care, Family Child Care and School-Age Programs. He has taught early childhood courses at the undergraduate and graduate level, as well as coordinated the Child Care Certificate Program, which prepared individuals for the nationally recognized CDA credential at Lehman College, which included the delivery of a Spanish coursework track for English Language Learners (ELL.).

Mr. Saenz de Viteri is the father of an eight-year-old girl and active member of the National Association for the Education of Young Children and its affiliates. His diverse experience in the field has helped him become very knowledgeable about the federal, state, local and private funding streams related to early care and education, as well as children's health care programs.

For the past six years, he has been an active Executive Board member for the New York City Association for the Education of Young Children and is currently the Co-President for the organization. As an advocate and a member and regional leader of the Universal Pre-K Community Based Organization (UPK-CBO) network in NYC, he has spearheaded efforts to establish a countywide Universal Pre-K (UPK) Community Based Organization Steering Committee (*NYCDOE Bronx Regions 1 and Region 2 which has 121 State mandated community based UPK Providers*). He was a member of the NYC Professional Development Institute of Early Childhood Education (ECE) Pilot Workforce workgroup to implement a citywide comprehensive assessment of New York City's early childhood workforce and he has organized countywide leadership forums for the ECE Community. Mr. Saenz De Viteri has served on the National Council of La Raza (NCLR) Advisory Group for the Latino Family Values Framework (LFVF), the *Sembrando Semillas* Training Plan. He is the co-facilitator of NAEYC's Latino Caucus online community, as well, the recently launched NYCAEYC Online community.

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Follow up

Resolution Comments

From: RTheilheimer@bmcc.cuny.edu [RTheilheimer@bmcc.cuny.edu] **Sent:** Thu 4/19/2007 4:10 PM
To: Resolution Comments
Cc:
Subject: proposed changes to the Health Code
Attachments:

Dear Ms. Bryant:

I am writing to comment on the proposed changes to the Health Code Article 47. Many of the proposed changes to the code seem beneficial. For example, I am glad to see that NPR child care services and LYFE programs will be covered under the new regulations.

However, I wonder about requiring 30 minutes of "structured and guided play" for children three years and older. That regulation could be used by some to justify activities that are inappropriate for young children and could penalize others who understand what it means for children to initiate their own learning.

Also, I do not think it is wise to include all use of pillows as an imminent health hazard. I understand the worry of suffocation, but early childhood education experts recommend soft surfaces such as pillows create, for example, in a reading area. Perhaps that regulation could be rephrased to allow for such surfaces while still protecting children's safety.

I am also concerned that mixed age grouping for infants and toddlers seems to be restricted to the birth - 24 months range. Early Head Start and other high quality programs have groupings from under a year of age through 3 years.

With regard to staffing and training:

- There is no mention of a Masters Degree. Since New York State initial certification is time limited, the code should stipulate that a head teacher and especially a director must obtain a Masters degree and professional certification within the time frame specified by the New York State Education Department.
- Anyone with professional certification needs ongoing professional development similar to what the new code suggests. However anyone not yet licensed should be taking credit bearing courses, not workshops. The new code does not make clear that coursework meets the requirement for 30 hours of training.

I am glad that the new code aligns course requirements with the State Education Department's certification requirements. I hope that Educational Consultants from the Department of Mental Health and Hygiene will continue to monitor progress towards the degree for teachers in a study plan, checking to see that the teacher is taking precisely those courses that the State Education Department requires for teacher certification.

Sincerely yours,

Rachel Theilheimer, Chair
 Teacher Education Department
 Borough of Manhattan Community College

199 Chambers St.
New York, NY 10007
212.220.1217

Rena Bryant

From: Thomas R. Frieden
Sent: Monday, April 30, 2007 5:54 PM
To: Thomas Merrill; Rena Bryant
Cc: Christina Chang; Anna Caffarelli
Subject: FW: Letter to Commissioner Frieden
Attachments: Letter to Commissioner Thomas Frieden.pdf

From: Kenea Letts [mailto:kletts@childcareinc.org]
Sent: Monday, April 30, 2007 5:45 PM
To: Thomas R. Frieden
Cc: Frank Cresciullo; Elliott Marcus; Nancy Kolben; Sherry Cleary
Subject: Letter to Commissioner Frieden

Dear Commissioner Frieden:

We are writing to applaud you and your staff on both the content and process in proposing revisions to Article 47. The proposals are realistic, achievable and will improve the quality of care for thousands of the City's children each day.

We are especially pleased with the proposals to improve the training, qualifications and staffing in infant-toddler programs. We also acknowledge and affirm the wisdom of the Department for proposing changes in the status of 'No Permit Required' programs as another critical step in assuring that every child is safe and secure while attending a child care program. No parent should have to worry about whether a program has proper supervision, qualified staff and a safe environment.

We are eager to support the Department in its effort to enact these important regulatory changes and hope that they are enacted by July. We know there is broad interest and support in the early childhood community for these improvements. The proposed regulatory changes have the power to drive important quality improvements for years to come.

We urge you to move ahead without any further delay – and to call on us if we can be of assistance as the process moves ahead.

Again, our thanks to you and your staff for such a thorough and thoughtful process that produced these critically important proposals.

Sincerely,

Nancy Kolben

Nancy Kolben

Executive Director

Sherry M. Cleary

Sherry M. Cleary

Executive Director

Child Care, Inc. NYC Early Childhood Professional Development Institute

<<Letter to Commissioner Thomas Frieden.pdf>>

Kenea Letts

Executive Assistant

Child Care, Inc.

322 Eighth Ave, 4 Fl

New York, NY 10001

212 929 7604 ext 3013

212 929 5785 fax

www.childcareinc.org

Rena Bryant

From: Thomas Merrill
Sent: Monday, April 30, 2007 6:07 PM
To: Rena Bryant
Subject: Fw: Letter to Commissioner Frieden

Attachments: Letter to Commissioner Thomas Frieden.pdf



Letter to
mmissioner Thomas

----- Original Message -----
From: Thomas R. Frieden
To: Thomas Merrill; Rena Bryant
Cc: Christina Chang; Anna Caffarelli
Sent: Mon Apr 30 17:54:06 2007
Subject: FW: Letter to Commissioner Frieden

From: Kenea Letts [mailto:kletts@childcareinc.org]
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Sincerely,

Nancy Kolben

Sherry M. Cleary

Nancy Kolben

Executive Director

Child Care, Inc.

<<Letter to Commissioner Thomas Frieden.pdf>>

Kenea Letts

Executive Assistant

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Sherry M. Cleary

Executive Director

NYC Early Childhood Professional Development Institute

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Resolution Comments

From: Morales-Mason, Monique [MMorales-Mason@dycd.nyc.gov] **Sent:** Tue 5/15/2007 12:34 PM
To: Resolution Comments
Cc: Parikh, Monica
Subject: DYCD's Statement in Support of Revisions to Article 47
Attachments: Support of Child Care Revisions to Health Code-5.14.07 FINAL.doc(427KB)

Good Afternoon,

Attached please find the Department of Youth and Community Development's (DYCD) Statement in Support of Revisions to Article 47 Pertaining to Day Care Services.

Thank you.

Monique Morales-Mason

Community Associate

Office of External Relations

NYC Department of Youth & Community Development

156 William Street, 6th Floor

New York, NY 10038

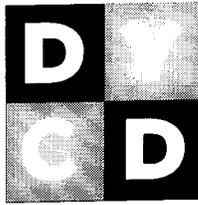
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2007 MAY 16 P 12:29
COMMUNITY ASSOCIATE OFFICE
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DEPARTMENT OF YOUTH & COMMUNITY DEVELOPMENT



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DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT
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JEANNE B. MULLGRAY
Commissioner

DYCD's Statement in Support of Revisions to Article 47
Pertaining to Day Care Services

My name is Bill Chong and I serve as the Deputy Commissioner for Youth Services at the NYC Department of Youth and Community Development (DYCD). The Department of Health and Mental Hygiene (DOHMH) proposes that the Board of Health repeal and reenact Article 47, which regulates public and private group day care services that operate in New York City. This proposed change in regulation will update Article 47's provisions and harmonize them with comparable provisions of the New York State Social Services Law (SSL) and the regulations of the State Office for Children and Family Services applicable to child day care in other parts of the State. DYCD supports the proposed revisions. We strongly believe that by obtaining adequate permits, child care facilities are encouraged to maintain safe and healthy programs with high professional standards that better serve our City's children.

Out-of-School Time Programs

DYCD administers the City's Out-of-School Time (OST) program, the largest municipally-funded after-school system in the nation. The OST program is a three-year, \$200 million dollar initiative, providing a mix of academic, recreational and cultural activities for young people after school, during holidays and in the summer. The OST program serves more than 65,000 youth from ages five (5) to twenty-one (21). The programs themselves, of which there are over 550, are operated by community-based organizations and are located in schools, community centers, settlement houses, religious centers, cultural organizations, libraries, Parks Department and NYC Housing Authority facilities.

Among other things, the proposed revisions would require child care services that provide care or instruction to children under six (6) years of age in free-standing programs (or schools operated by religious organizations) to obtain child care service permits. Currently, all OST programs (even the 40% housed in non-public school locations) have requisite permits and are fully compliant with the health and safety standards mandated by the New York State School Age Childcare (SACC) regulations.

DYCD has always worked closely with DOHMH's Bureau of Daycare to ensure that OST programs meet both facility and staff training requirements and will continue to ensure full compliance with all applicable regulatory revisions. It is of the utmost priority that facilities have strong health and safety standards, and high professional standards for the staff that will be interacting with children. Accordingly, we encourage all child care service providers to adopt these heightened requirements.

