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Department of Health & Mental Hygiene

Public Hearing

ARTICLE 47

125 Worth Street

New York, New York

Friday, April 19, 2007

10:00 a.m.

24 Reported by:
Michelle Cox
25 JOB NO. 193352

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DR. FRIEDEN: My name is Tom Frieden, and I'm health commissioner. Today is an opportunity for a public hearing. With me today is Tom Merrill, who's general counsel. Elliot Marcus is associate commissioner. Frank Cresciullo is assistant commissioner. And other department staff are also here as well.

The public hearing today is on a proposal to repeal and reenact Article 47 under the New York City Health Code. This does not represent a formal meeting with the Board of Health. The purpose of the hearing is to allow the public to testify or present written comments on the proposal. Anyone wishing to submit written comments should give them to the Secretary to the Board, Rena Bryant, who's here. There is a transcript of this hearing, which is word for word. That goes to all of

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the members of the Board of Health.

In addition, every comment that's made is taken into account by the department in making recommendations to the Board of what it should do, and is taken into consideration by the Board.

I can say that for virtually -- there are many different things that the Board of Health does. It regulates health very broadly in New York City. We often get public comments. And we usually adjust our proposals based on those public comments in some way or another. And we always value input from the public. So I thank the public -- all of you very much for being here.

The notice of this public hearing, along with the actual text of the proposal, was published in The City Record on Tuesday, March 13.

The notice advised the public to request a sign interpreter or other

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forms of reasonable accommodation for

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a disability, if necessary, for the

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hearing; no such request was

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received. Copies of the Notice of

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Intention are available somewhere

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here; outside of the room.

8

People wishing to speak at the

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hearing were asked to preregister.

10

And we will call on those of you who

11

preregistered in the order you

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registered. If someone is not here

13

when his or her turn comes, I'll call

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the next person and later we'll call

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the names of those who may have

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missed their turns. Anyone may also

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register now at the table, if you

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wish to speak; such persons will be

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called after preregistered speakers.

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Each speaker will be limited to five

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minutes maximum, but you can submit

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written comments of any length, which

23

will be considered.

24

Let me remind you that the

25

purpose of today's hearing is to

1
2 elicit comments and information to
3 assist the Board of Health in
4 determining whether or not to adopt
5 this proposal or to change it. While
6 your testimony can raise questions
7 you may have about the proposal,
8 please understand that there will be
9 no response from the Department about
10 your proposal today. What the
11 Department will do is to study it
12 carefully and to determine what it
13 would recommend.

14 Before going forward with this, I
15 would like to circulate a letter that
16 was sent out yesterday, and summarize
17 that. The Health Department has been
18 communicating with child care
19 providers about this revision since
20 the middle of 2005. And I
21 personally called the leaders of
22 organizations that were affected
23 in the fall of 2005.

24 In the second half of 2006, we
25 had a series of meetings with many

1
2 different child care providers about
3 these proposals. We informally
4 circulated this draft for comments in
5 the first half -- in the first month
6 of 2007. And the idea being to
7 try to get informal comments before
8 we get formal comments. We then
9 circulated for formal comments.
10 However, we received comments
11 recently that despite that process,
12 there were groups that did not have
13 ample time to look at the proposals.
14 So the department has made a clear
15 determination that we will not be
16 proceeding for the June Board of
17 Health with this proposal to adopt;
18 that will give more time for people
19 to make comments, and more time for
20 the Department to consider those
21 comments and gather additional
22 information that would help in coming
23 to the right decision. The public
24 comment period will be extended until
25 June 30th, 2007.

1

2 MR. MERRILL: July.

3 DR. FRIEDEN: What did I say?

4 July 30th; I said it wrong.

5 The public period for written
6 comments will be extended through
7 July 30th of 2007.

8 We will also have additional
9 meetings in the coming weeks with
10 interested parties to continue the
11 dialogue. And without further
12 introductory remarks, I'll begin
13 calling those who preregistered.

14 Dr. Frieda Spivack? Sorry if I
15 got your name wrong. Is Dr. Spivack
16 here? Okay. Dr. Alan Goodwin?

17 If you can come to the table and
18 make your comments.

19 MR. MERRILL: I'll give you
20 two-minute and one-minute warnings.

21 DR. GOODWIN: Pardon me?

22 MR. MERRILL: Two-minute and
23 one-minute warnings.

24 DR. GOODWIN: I won't even be
25 that long.

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MR. MERRILL: Okay.

DR. GOODWIN: I'm Dr. Alan

Goodwin. I strongly advocate professional development and stronger credentials for infant/toddler program staff. Programs for these children must acknowledge the vast body of research, which supports the need for both a nurturing environment and actual age appropriate developmental stimulation.

I don't think there's any question about the need for a nurturing environment. There has perhaps been some controversy about developmental stimulation. But we especially know with urban programs that children, very young children, infants and toddlers must have programs and services that meet their needs. Programmatically, that is why we see an increased recognition for infant/toddler CDA credentialing, for example; that's why we see expanded

1
2 support for programs like the
3 creative curriculum -- excuse me, for
4 infants and toddlers and the need to
5 implement this and other curriculums
6 is divine. For example, the creative
7 curriculums for infants and toddlers,
8 which is being used certainly in the
9 preschool arena is very -- is not so
10 simple. It takes a lot of skill, a
11 lot of training to implement. And
12 that requires training, which
13 includes college courses and related
14 training.

15 Again, I want to repeat, the
16 professional development and college
17 credentials are exceedingly important
18 with staff serving this population,
19 infant/toddlers' programs. And the
20 children they serve require
21 professional leaders and staff.

22 Thank you.

23 DR. FRIEDEN: Thank you very
24 much. And I would just comment that
25 if anyone has specific line

1
2 corrections, or section corrections
3 that they recommend, these are always
4 much appreciated.

5 Going on to the next registered
6 speaker, Stephanie Gendell?

7 MS. GENDELL: You're going to
8 copy the --

9 DR. FRIEDEN: Yes. You can give
10 copies to Ms. Bryant. And we can
11 also take them.

12 MR. MERRILL: And I'll be
13 flashing a two-minute and one-minute
14 warning.

15 MS. GENDELL: Okay. No problem.

16 Good morning. I'm Stephanie
17 Gendell, Senior Policy Associate for
18 Child Care and Child Welfare Services
19 at Citizens' Committee for Children
20 of New York, which is a 63-year-old
21 independent advocacy organization
22 dedicated to ensuring every
23 New York City child is healthy,
24 housed, educated and safe.
25 And I would first like to thank

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everyone for holding this hearing today. We feel that the proposed amendments to Article 47, look like sound means to improve the safety and quality of child care centers in New York City.

First, we agree with DOHMH's proposal to eliminate the no permit status required -- the no permit required status so all child care centers will now meet the same safety and health requirements, regardless of whether they are run by communities, organizations or religious organizations.

We also agree with the variety of safety and quality enhancements that are in Article 47, such as recurring criminal record and child abuse screenings for all center staff. The enhancements for infants and toddlers; and the safety plan requirements for all centers.

Further, we're happy to see some

1
2 of the items related to the training
3 enhancements for child care
4 providers, on or particularly --

5 DR. FRIEDEN: Could you speak up
6 a little bit.

7 MS. GENDELL: Oh, sorry. Oh, I'm
8 sorry. We've been in touch with the
9 work DOHMH and ACS have done recently
10 regarding training staff on child
11 abuse, neglected and maltreatment, and
12 we are happy that that will be
13 recurring.

14 We do feel more needs to be done
15 to ensure children with developmental
16 delays or disabilities have access to
17 child care; that the child care
18 system has the capacity to meet their
19 early child education needs. And
20 that the children have access to
21 early intervention and preschool
22 special education services in their
23 child care settings.

24 DOHMH's proposed Article 47 takes
25 some important first steps by

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requiring child care staff be trained
in early intervention, ADHD and
"meeting the needs of children with
physical and 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 their early care and
education settings.

In conclusion, we ask that the
Board of Health approve the proposed
Article 47 amendments 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

1

2 help centers meet the new Article 47
3 safety and quality requirements.

4 Thank you for the opportunity to
5 testify.

6 DR. FRIEDEN: Thank you. Betty
7 Holcomb? Is Betty Holcomb here?
8 Vani Sankar -- sorry. Vani
9 Sankarapandian.

10 MS. SANKARAPANDIAN: Wow,
11 that's -- you've actually got it
12 right.

13 DR. FRIEDEN: Five years in India
14 got me something.

15 MS. SANKARAPANDIAN: Oh, okay.

16 MR. MERRILL: I'll give you two-minute
17 and one-minute warnings.

18 MS. SANKARAPANDIAN: My name is
19 Vani Sankarapandian, and I'm the
20 senior policy analyst for Early
21 Childhood --

22 MS. BRYANT: Please speak
23 up. Thank you.

24 MS. SANKARAPANDIAN: Okay. My
25 name is Vani Sankarapandian, and I'm

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the senior policy analyst for Early
Childhood Education and Child Welfare
at the Federation of Protestant
Welfare Agencies.

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.

We would first like to take this
opportunity to commend the
New York City Department of Health
and Mental Hygiene for investing the
time and effort necessary to
comprehensively revise Article 47.

While we are excited to see the
regulations move towards greater
safety and more highly qualified
staff, we would also highlight a few
key concerns regarding the
difficulties of implementation.

FPWA strongly supports
incorporating higher education

1

2 requirements into the qualification

3 standards for infant/toddler

4 teachers. Scientific research shows

5 that brain development during infancy

6 can have lasting effects on a child's

7 future ability to learn. While

8 infant/toddler teachers were

9 previously hired with as little as a

10 high school diploma or GED, they must

11 now have or be engaged in a study

12 plan to reach an associate's degree.

13 Although we believe that the

14 regulation should be clarified to

15 indicate that the child development

16 associate, CDA, credential for these

17 teachers hired, based on a CDA

18 credential and a clear study plan,

19 should be related specifically to

20 infant/toddler care.

21 FFWA urges DOHMH to implement the

22 higher qualifications. Well-educated

23 infant/toddler teachers will be in a

24 better position to nurture, encourage

25 and teach young children during this

1
2 critical period of child
3 development.

4 Under the proposed regulations,
5 the minimum hiring requirement for
6 assistant teachers is still a high
7 school diploma or GED. We encourage
8 the Department to raise the minimum
9 requirement for assistant teachers to
10 a CDA credential with a study plan
11 option available to new and current
12 employees.

13 While we applaud efforts to
14 create a highly qualified workforce,
15 it is important to recognize that
16 child care programs may face serious
17 barriers in hiring and retaining
18 highly educated teachers.

19 Professionals in the early care
20 workforce in New York State are
21 drastically under-paid in comparison
22 to their kindergarten counterparts,
23 making it difficult for programs to
24 recruit highly-trained staff
25 members.

1

2 Moreover, without the ability to
3 offer comparable salaries or
4 benefits, programs are at risk of
5 losing newly trained staff to higher
6 paying positions under the Department
7 of Education. But it's important for
8 the Department to be aware of these
9 difficulties providers will face in
10 implementing new regulations.

11 FPWA is pleased to see the
12 Department address the need for
13 ongoing training and staff
14 development, including a requirement
15 for 30 hours of training every two
16 years for teaching staff. We
17 strongly support increased training,
18 but encourage New York City to
19 support these regulations with an
20 increased investment of resources and
21 workforce development. In its
22 proposed regulations for
23 infant/toddler teachers, DOHMH
24 recognizes the need to accommodate
25 currently employed teachers who had

1
2 not been held to higher qualification
3 standards in the past.

4 FPWA urges the Department to
5 include a similar grandfathering
6 provision for currently employed
7 group preschool teachers. Although
8 preschool teachers have always been
9 required to have either state
10 certification or a plan to achieve
11 certification, there are no minimum
12 eligibility requirements or fixed
13 time limits for the study plan option
14 under the existing code. Under the
15 proposed regulations, currently
16 employed preschool teachers who do
17 not meet the newly-proposed minimum
18 eligibility requirements for the
19 study plan option will no longer be
20 employable. Therefore, we encourage
21 DOHMH to adopt a grandfather
22 provision, which would allow these
23 preschool teachers to engage in a
24 time-limited study plan towards state
25 certification.

1

2 The proposed regulations ask for
3 a written safety plan that is much
4 more comprehensive than previously
5 required. While we support this
6 regulation, directors must have
7 instruction on the proper formulation
8 of a complete and accurate plan. The
9 Department should prepare materials
10 that provide guidance, including
11 detailed outlines indicating what
12 information is necessary in matters
13 of acceptable written safety plans.

14 We urge the Department to
15 reconsider its outright prohibition
16 of swimming and aquatic activities.
17 Water activities may require more
18 regulation, but they should not be
19 banned. Through swimming, children
20 engage in physical activity, learn
21 important safety skills, gain
22 self-confidence and gain an overall
23 appreciation for healthy living.
24 Instead of prohibiting aquatic
25 activity, child care programs should

1
2 be regulated to ensure that
3 participating children are in the
4 safest possible environment. Such
5 regulations could include: Lower
6 adult-to-child ratios to ensure close
7 supervision, safety instruction prior
8 to entering the water during each
9 activity time period, and established
10 ratios of children-to-certified
11 lifeguards or CPR certified adults.

12 Thank you for the opportunity to
13 testify.

14 DR. FRIEDEN: Thank you very
15 much. I will also comment, although
16 I said earlier, the Department will
17 not be responding to any of the
18 comments; this is our listening
19 time, that the Board of Health had a
20 similar reaction on the aquatic
21 appropriation; so I think that's
22 something you're likely to see
23 changes on.

24 Next on the preregistered list is
25 Cecilia Scott-Croff.

1

2 Is Cecilia Scott-Croff here?

3 Next is Julia Travers.

4 And we're just going through the

5 preregistered individuals, as I said

6 at the outset, then we'll have time

7 for others who -- we'll call the

8 people who weren't here when their

9 names were called. And then we'll

10 take any open comments. And you can

11 register with Rena Bryant, if you

12 wish to speak.

13 MS. TRAVERS: Thank you to the

14 New York City Department of Health

15 and Mental Hygiene for providing this

16 opportunity for most of us in the

17 community, to testify on the repeal

18 and reenactment of Article 47 of the

19 New York City Health Code to improve

20 the quality of early childhood

21 services in New York City.

22 I'm Julia Travers. I'm an

23 infant/toddler specialist, and I

24 coordinate the New York City

25 Infant/Toddler Research Center, which

1

2 is located at Child Care Inc. and is

3 an initiative of the five child care

4 resource and referral agencies that

5 include the Day Care Counsel of

6 New York, Chinese American Planning

7 Counsel, Committee for Hispanic

8 Children and Families, Child

9 Development Support Corporation and

10 Child Care Inc.

11 The center is one of seven

12 statewide regional centers funded by

13 New York State office of children and

14 families. And our goal is to improve

15 the quality of infant/toddler care in

16 New York State, and particularly

17 New York City.

18 A team of five infant/toddler

19 specialists who work at each of these

20 agencies provide training and

21 technical assistance to a broad range

22 of infant/toddler providers, center

23 providers, family child care, and group

24 family child care. And these

25 services are delivered in three

1
2 languages: English, Spanish and two
3 dialects of Chinese.

4 We -- besides providing workshops
5 and trainings on site, we also go in
6 to assess infant/toddler center
7 programs using the ITERS,
8 Infant/Toddler Environmental Rating
9 Scale, which is a nationally
10 recognized tool, which helps programs
11 to assess their performance and then
12 work with us towards quality
13 improvement.

14 We also speak with parents and
15 providers on the telephone, and share
16 our library of resources with
17 providers. As a representative of
18 the New York City Resource and
19 Referral Consortium, I want to praise
20 the Department's efforts to improve
21 the quality of center-based
22 infant/toddler care, which we feel is
23 an important first step in improving
24 the quality of early child care
25 services in New York City.

1

2 Research has shown, as we well
3 know, that between the prenatal
4 period and age three, 80 percent of
5 the brain is developing, setting down
6 life-long patterns of social,
7 emotional, physical and intellectual
8 growth. Early relationships and
9 experiences matter, and influence
10 life-long abilities to communicate,
11 learn and establish healthy social,
12 emotional relationships, which has
13 been found to lead to school success
14 and adult productivity.

15 Close to two-thirds of the calls
16 that are received by the Child Care
17 Resource and Referral Agencies in
18 New York City come from parents of
19 children under three. And the
20 majority of those are parents of
21 infants seeking care. Parents are
22 babies' first teachers, but today
23 half of all mothers must return to
24 work within the first year.

25 Increasingly, infants and

1
2 toddlers spend at least ten hours in
3 child care. Thus the child care
4 provider becomes a very important
5 first teacher. We know that babies
6 learn best within relationships, and
7 they do with consistent trusted
8 adults who are responsive to
9 individual needs, who are
10 knowledgeable of child development
11 and provide a healthy, safe and
12 interesting environment that supports
13 language development and early
14 literacy, intellectual curiosity and
15 promotes emotional well-being.

16 Staff who understands child
17 development is more likely to
18 recognize the possible developmental
19 concern and then work with the parent
20 to share that information and give
21 information about the New York City
22 Early Intervention Program.

23 Researchers document the link
24 between the training of staff and the
25 outcomes of children. We are out

1
2 there in the field and we have been
3 doing this for over two years, going
4 out to a wide range of infant/toddler
5 programs. And we see critical issues
6 related to lack of knowledge of basic
7 health and safety, infection control,
8 the lack of language stimulation.

9 What is age appropriate for infants
10 and toddlers? They're not really
11 preschoolers. And really supporting
12 the emotional well-being.

13 So we strongly support these
14 regulations to raise the standards of
15 those who work with infants and
16 toddlers and also have a path towards
17 professional development, that we
18 hope will be supported fund-wise so
19 that they're able to do this.

20 Thank you very much.

21 DR. FRIEDEN: Thank you very
22 much. Thank you very much, ladies
23 and gentlemen.

24 The other preregistered
25 individuals, Catherine Hickey and

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Paul Lynch?

THE PUBLIC: Dr. Hickey's on her way.

DR. FRIEDEN: Okay. As I said at the outset, we'll go through the entire list of those registered and then go back to those who weren't here when their names were called.

Carole Oshinsky?

MS. OSHINSKY: Thank you to the Department of Health and Mental Hygiene for inviting us to testify today on the repeal and enactment of Article 47 to improve the quality of early childhood services in New York City. I am Carole Oshinsky, co-president of the New York City Zero-to-Three Network.

First, on behalf a New York Zero-to-Three, a network of professionals that promotes the optimal development of young children, their families, their communities and assistance that serves them in the New York City

1
2 area. I want to praise the
3 Department. The new article to
4 improve quality in center-based
5 infant/toddler programs is an
6 important first step, and I emphasize
7 first step, in raising quality for
8 all young children services.

9 In January 2007 we published a
10 fact sheet: To Build a Strong
11 Society, Invest in Young Children;
12 and that's included in your packet,
13 and you can also see it on our web
14 site.

15 In it we call for New York City
16 to raise standards for training and
17 supervision of infant and toddler
18 child care professionals,
19 incorporating a multidisciplinary,
20 collaborative perspective, and
21 increase training funds. As a start,
22 we ask the city to meet the same
23 child care standards as
24 New York State, and eventually the
25 even more stringent federal ones for

1
2 early Head Start; our children
3 deserve that.

4 We pointed out that child care
5 from birth to three is a critical
6 time, marked by rapid development in
7 emotions, intellect and
8 socialization, as well as physical
9 growth and the formation of normal
10 brain functioning. The experiences
11 of infants and toddlers in early
12 childhood strongly influence their
13 future success or failure, not only
14 in school but in life. More and more
15 economists are showing that
16 investments made in early childhood
17 had better economic returns than
18 investments at an older age. Here
19 are some relevant facts about
20 New York City's infants and
21 toddlers: 63,000 infants, that's
22 more than half of New York City's
23 babies, are born into poverty each
24 year, a major risk factor for early
25 school failure and difficulties later

1
2 in life. Half of all mothers return
3 to work within the year of giving
4 birth. Thus many toddlers and
5 infants now depend on other adult
6 caregivers for their first lessons in
7 everything from language to coping
8 with frustration. We know there are
9 nearly 325,000 children under the age
10 of three in New York City. 39
11 percent of these infants spend up to
12 35 or more hours a week in child
13 care; that's a lot of hours. Many
14 mothers of low-income infants and
15 toddlers are depressed. Some
16 estimate as much as half those
17 mothers, and often not receiving
18 treatment. And this affects the
19 whole family including the young
20 children. This situation is a mental
21 health challenge for child care
22 staff, who are not knowledgeable in
23 child emotional development and
24 developmental delays. This
25 underscores that all staff need to be

1
2 trained and have educational
3 experience and credentials in infant
4 and toddler development.

5 Research also tells us that the
6 quality of care our children receive
7 is strongly associated with the
8 training and education of the
9 provider. It's not based on age;
10 it's not based on experience; it's
11 based on educational development and
12 training. Yet currently only a high
13 school diploma is required for
14 center-based facilities and not much
15 training. So we're glad to see the
16 new regulations will implement a much
17 higher scale of development and
18 training. In the rest of New York
19 State, presently you'll need at least
20 nine credits of college, one year of
21 preservice training, and 15 hours of
22 in-service training.

23 What do our infants and toddlers
24 need: Babies need consistent high
25 quality care and a nurturing

1
2 relationship, and do best with adults
3 who have a background in child
4 development and receive ongoing
5 training and reflective supervision.
6 That takes time and that takes
7 money.

8 Staff with a knowledge of child
9 development will better recognize
10 developmental delays and help
11 families obtain services to prevent
12 long-term problems. Infants and
13 toddlers have particular health and
14 safety problems and the new
15 regulations will address these kinds
16 of issues.

17 Major national organizations are
18 in line with us in calling for 30
19 hours of continuing education, for
20 example, The American Academy of
21 Pediatrics and also the National
22 Zero-to-Three Network -- the National
23 Group, Zero-to-Three, the foremost
24 authority of infant and toddler
25 development.

1
2 New York City can take a national
3 leadership role by focusing on
4 developing a city-wide plan and
5 budget for the specific needs of
6 children and family, from pregnancy
7 to age three, that looks at services
8 delivered by all city agencies. This
9 revision of Article 47 on infant and
10 toddlers' center-based care is a good
11 start. Thank you very much.

12 DR. FRIEDEN: Thank you very
13 much.

14 MR. AVIGDOR: Good morning,
15 Dr. Frieden, distinguished members of
16 the New York City Board of Health.
17 My name is Morton Avigdor. I'm an
18 attorney in private practice in New
19 York City. From 1986 until 2000, I
20 had the distinction of serving for 14
21 years as the chairperson of the
22 Subcommittee of Health on behalf of
23 the Committee of Nonpublic Schools
24 for the City Of New York, and I acted
25 as a liaison to the Department of

1
2 Health for quite some time. I've
3 also practiced extensively in front
4 of the New York City Department of
5 Health Tribunal defending numerous
6 parochial schools on actions brought
7 by the Department. I stand here
8 today to testify in opposition to the
9 proposed rules amending Article 47 of
10 the New York City Health Code. These
11 proposals do not make children
12 safer. These amendments present the
13 most egregious entanglement of
14 church entities in the state that I
15 have ever seen. It is frightening
16 from a First Amendment perspective to
17 see this department attempt to
18 regulate the personnel of a
19 pervasively religious organization to
20 require a permit for a core religious
21 activity performed by a religious
22 organization is offensive to the rule
23 that separates church and state.

24 I don't take the position that
25 the Department of Health could never

1
2 regulate if children were in physical
3 danger or in harm's way. But over
4 the approximate 200 years the
5 parochial schools have formally
6 operated in New York State, that has
7 not been the case. To my knowledge,
8 there has been no blatant
9 transgression perpetrated by
10 non-accredited or non-registered
11 teachers in the parochial schools --
12 preschool system, that rises to the
13 occasion necessitating correction in
14 such an onerous regulation. That you
15 could regulate does not mean that you
16 should regulate. Once government
17 perceives their ability to so freely
18 curb the first phrase of the First
19 Amendment's guarantee for free
20 exercise of religion, will government
21 feel equally comfortable regulating
22 the second part of the First
23 Amendment's guarantee of a free
24 press, the right to congregate and
25 free speech? This is a guarantee in

1
2 our constitution. Nothing has
3 happened that compels this council to
4 abridge rights guaranteed under the
5 Constitution.

6 I find it difficult to justify
7 the Department's present willingness
8 to fund inspectors, enforcement
9 mechanisms and the development of new
10 regulations for parochial schools,
11 when a couple years ago the
12 Department claimed poverty in
13 providing funds for full-and part-
14 time New York City Department of
15 Health nurses for parochial schools
16 that requested.

17 Why do we have money for
18 regulation but not for assisting
19 these parochial schools? Why are
20 these regulations directed only at
21 parochial school children?
22 Public-school children are just as
23 vulnerable to the vicissitudes you
24 seek to prevent for nonpublic school
25 children. The notion that parochial

1
2 schools will be subject to fines,
3 violations and potential closure
4 where public schools would not, would
5 be an unequal application of
6 enforcement of the law.

7 Abolishing NPR status when these
8 schools are safe and reliable
9 providers of preschool education is
10 unwise. These are schools after all,
11 they provide education from preschool
12 through high school. The public
13 policy implications for demanding the
14 increased square footage per child is
15 potentially disastrous in its
16 practical application. Church
17 related and religious schools have
18 traditionally been a haven for the
19 poor. These new requirements without
20 any help from government to pay for
21 them, are unfunded mandates that will
22 close the doors to affordable child
23 care for the indigent. Those most
24 needy children are placed in harm's
25 way by this proposed regulation

1
2 because they will be without
3 affordable supervised care.

4 Approximately two years ago I
5 presented a religious organization
6 running a school program that was
7 padlocked by the Department of Health
8 on a Friday morning. In the
9 Department's wisdom they sent the
10 children back to their homes, where
11 many parents had already gone to
12 work. Panic and havoc ensued. There
13 was no imminent threat to the health
14 of these children; they were closed
15 on a paperwork issue. But the
16 Department put them in harm's way by
17 their reckless act. You attempt to
18 do the same today with these
19 regulations by restricting affordable
20 day care settings for the poor. The
21 closure story doesn't end with that
22 Friday morning. After months of
23 defending the religious organization
24 before the administrative law court,
25 the administrative law judge

1

2 vindicated my client and the

3 violations were dismissed. Aside

4 from consumable cost of time and

5 money spent in defending the action,

6 the damage to the school's reputation

7 was done and a severe abridgment of

8 their First Amendment rights were

9 perpetrated. My client received no

10 apologies from this Department. That

11 constitutional infringement was

12 unforgivable and unforgettable. I'm

13 almost finished.

14 MR. MERRILL: Your five minutes

15 are up.

16 MR. AVIGDOR: This Department

17 callously abused its discretion as it

18 applies to religious free exercise

19 rights. Sadly, this Department does

20 not have the confidence or trust of

21 the religious school or the faith

22 community.

23 I urge this counsel to postpone

24 adopting these damaging regulations

25 until such time as these troubling

1
2 problems are studied, considered and
3 addressed. Thank you.

4 DR. FRIEDEN: Kathy Robinson?

5 MS. ROBINSON: Hi, I'm Kathy
6 Robinson. I'm the director of the
7 Sunset Park Children School Day Care
8 Center. I only have a brief
9 comment. And that is -- and I want
10 to thank the Department of Health for
11 this meeting today. And on the top
12 of Page 17 it says, "An assistant
13 teacher shall be at least 18 years
14 old and have a high school diploma or
15 equivalent GED." I would like to ask
16 the Department to also consider the
17 CDA credential, because that has many
18 courses which are really more germane
19 to the kind of work and childhood
20 development that we do rather than
21 the GED courses. And that's all.
22 Thank you.

23 DR. FRIEDEN: Thank you.

24 Lana Broitman? Is Lana Broitman
25 here? David Zwiebel?

1

2 MR. ZWIEBEL: Good morning,
3 Commissioner, Popler -- Dr. Popler,
4 members of the staff. Good to see
5 all again. And thank you for
6 inviting us to participate in this
7 morning's hearing. And also thank
8 you for your efforts to reach out to
9 committees that will be affected by
10 these proposed new regulations. And
11 we're delighted that we have an
12 opportunity to work with you. And as
13 you move forward in this process,
14 hopefully we will be able to move
15 forward in a way that -- that makes
16 sense.

17 I am the executive vice president
18 for Government of Public Affairs for
19 Agudath Israel of American. And I
20 also sit on the New York City
21 committee of religious and
22 independent school officials. And
23 this is an issue which obviously is
24 going to have a major, major impact
25 on the schools. Jewish schools

1
2 around the city, there are
3 approximately 140 or 150 Jewish
4 schools, elementary schools
5 throughout the city, I believe. And
6 there are larger numbers of schools
7 of other faith communities. So we
8 are talking about large numbers of
9 elementary programs that have
10 preschool programs attached to them.

11 And it's going to be a major change
12 because even though, as you know,
13 under the existing Article 47,
14 technically preschool programs in
15 these schools were technically
16 covered. But, nonetheless, as the
17 Department has acknowledged, in the
18 real world, de facto, once a program
19 has been determined to be eligible
20 for the NPR status, then the fact
21 the Department has not regulated
22 schools at all.

23 So in the real world, there has
24 been no regulation of the preschool
25 programs that are located and

1
2 connected with the religious school
3 community. Now, the proposal is that
4 not only would the regulation or the
5 implementation of the regulation
6 begin at this point, but in addition,
7 it would be a removal of the NPR
8 status. The Department points out in
9 its preamble to the draft
10 regulations, that it has -- it would
11 intervene in an NPR -- it would
12 regulate or get involved in an NPR
13 situation only upon complaint. I
14 take it there haven't been a whole
15 lot of complaints because we
16 certainly are unaware generally of
17 interventions by the Department with
18 respect to preschool programs that
19 are located in our schools. The
20 reason there hasn't been a lot of
21 complaints is because the track
22 record that the religious school
23 community has in caring for its
24 children, of making sure that the
25 children are safe and protected is an

1
2 excellent one. There are no
3 complaints because of the strong
4 track record. So to some extent,
5 this is a solution in search of a
6 problem. The problem is not there
7 within our schools. And here we're
8 talking with a series of regulations
9 or the implementation of a series of
10 regulations, which will effectuate
11 not a subtle shift in the
12 relationship between government and
13 the schools, but would effectuate a
14 sea change in those regulations.
15 Regulations that are enormously
16 burdensome from a bureaucratic and
17 administrative's perspective,
18 extremely expensive to comply with in
19 terms of space requirements, staff
20 requirements, administrative
21 requirements, would require finding
22 new space for these programs where no
23 new space exists. In many ways we're
24 talking about the potential of
25 putting programs out of business. We

1
2 are talking about making the programs
3 so expensive that many parents who
4 can currently afford child care
5 programs for their children will no
6 longer be able to, and could limit
7 the number of slots that are
8 available for children in a community
9 which is growing by leaps and
10 bounds. So this is a severe problem,
11 compounded by fact -- as my friend,
12 Avigdor Morton pointed out a moment
13 ago, that this is really an unfunded
14 mandate. And in that respect quite
15 different from what exists with
16 respect to other preschool programs.
17 There are serious free exercise
18 issues that are raised by this, both
19 with respect to the parents' ability
20 to find religious schooling at the
21 preschool age for their children; and
22 make no mistake about it, these are
23 religious schools, these are
24 schools -- these are programs in
25 which religion is being taught. And

1
2 it's part of a larger religious
3 mission of our schools and of parents
4 in our communities to make sure that
5 their children are educated in this
6 manner. And so we're speaking about
7 the religious freedom of schools,
8 which are going to be told for the
9 very first time that they have to
10 hire certain teachers with certain
11 qualifications. This is a concept
12 that does not exist in New York at
13 all, and would very clearly raise
14 some serious questions arising along
15 the boundary of church/state.

16 So bottom line recommendation at
17 this point -- and we're delighted to
18 be working with the Department and
19 with the Board of Health in the weeks
20 and months ahead to try to work this.
21 But our feeling at this point is that
22 the NPR status should not be revoked,
23 it should be maintained because not
24 requiring a permit is an essential
25 component of free exercise and the

1
2 religious autonomy that is necessary
3 to allow these schools to continue.

4 Don't regulate those things that
5 touch upon religion, the classroom
6 experience, which is essentially a
7 religious experience. And let's work
8 out reasonable regulation of school
9 facility issues, which are not
10 already regulated by the fire
11 department or other agencies, where
12 obviously that's something where we
13 should be working hand-and-hand to
14 make sure our children are properly
15 safe. Thank you.

16 DR. FRIEDEN: Thank you. Carol
17 Merryshapiro? Is Carol Merryshapiro
18 here? Paul Averbach. Is Paul
19 Averbach here? Jonathan Shevin?

20 MR. SHEVIN: Good morning. I
21 would like to thank the Department of
22 Health for your efforts to harmonize
23 the codes for day care with other
24 laws, permit regulations, and our
25 goals for our children's health

1
2 safety and development. My name is
3 Jonathan Shevin. I'm the director of
4 the Early Childhood Center at the
5 Central Queens YM and YWHA on 108th
6 Street in Forest Hills. As a
7 neighborhood program administrator, I
8 appreciate any effort to take the
9 discrepancy and contradictions out of
10 the various requirements we must
11 meet. I'm concerned, however, at the
12 rather blunt proposal 47.571 on Page
13 39: Swimming and aquatic activities
14 are prohibited. I am certain that
15 the generations of families who have
16 chosen our early childhood center in
17 part because of the quality of our
18 aquatic program would be concerned
19 and dismayed as well if they knew
20 this was the direction the city was
21 going. The Y have offered swimming
22 programs for over 20 years. During
23 that time we've met city and state
24 requirements for safety, meeting
25 standards for the physical plan, the

1
2 supervision of the pool, the training
3 and licensing of our life guards and
4 aquatic staff in the use and storage
5 of pool related chemicals. We
6 consider those requirements to be
7 minimum standards for our aquatic
8 programs. We've gone above and
9 beyond them, and the loyalty of our
10 community attests to our success.

11 These standards have been in place
12 for years because they work. Our
13 pool programs are both attractive and
14 safe. Throughout the city and
15 private facilities as well as public
16 pools and schools, committed
17 professionals have offered swimming
18 programs that enhance the quality of
19 life for New York City. It is not
20 simply that we ensure the safety of
21 our children while they are swimming
22 with us, these classes are where
23 children learn how to be safe so that
24 when they are on their own, they can
25 make safe choices. As the Department

1
2 of Health, you're at the forefront of
3 promoting and enforcing healthy
4 choices. It certainly makes sense to
5 require that when our children attend
6 swimming programs, these programs
7 must meet safety standards. But at
8 an age when we know the dangers of a
9 sedentary lifestyle, and we know that
10 developing healthy habits needs to be
11 established early in life, there's no
12 sense in undermining the ability of
13 responsible quality programs to
14 address those concerns.

15 The loving and wise parents who
16 send their children to our programs
17 because we offer instructional and
18 recreational swimming are making the
19 right choice. In fact, they could be
20 spokespeople for the goals of the
21 Department of Health. Please
22 reconsider this ban on aquatic
23 programming and DOH license day care
24 programs. There's no coherence to a
25 DOH policy that permits families to

1
2 drop off a child at a swimming pool
3 that forbids such activities, when
4 teaching staff bringing these
5 children in are both certified
6 lifeguards and a suitable ratio of
7 instructional staff are present. Our
8 health and fitness department will
9 continue to meet the Department of
10 Health standards for individual
11 participants, including our youngest
12 swimmers. It would be sad that they
13 could not participate as part of our
14 early childhood center with these
15 same DOH standards. This is a step
16 backwards in the city services to our
17 families.

18 DR. FRIEDEN: Thank you very
19 much. As I have said earlier, the
20 Board expressed the same concern.

21 Sherry Cleary?

22 MS. CLEARY: Good morning, my
23 comments are going to be very brief.
24 I'm the executive director for the
25 New York City Early Childhood

1
2 Professional Development Institute,
3 housed at CUNY. And I'm most
4 grateful for an opportunity to
5 address you this morning. I'd like
6 to thank the Department of Health
7 and Mental Hygiene for these most
8 essential changes to Article 47. I
9 represent the PDI and pledge our
10 support and technical assistance to
11 insure the successful implementation
12 of these most critical and positive
13 changes in regulation. That every
14 program serving children in this city
15 be regulated is a change that is to
16 be regarded as responsible and long
17 overdue. The critical exemption has
18 no basis in logic. For many years we
19 have acknowledged how important the
20 first three years of life are and we
21 also recognize the need and number
22 for infant and toddler programming
23 has been growing steadily. These
24 facts leave you no choice but to
25 adopt the proposed requiring

1
2 individuals who work with these
3 youngest children to be trained and
4 educated appropriately.

5 We also applaud the proposed
6 change in regulation that will
7 require 30 hours of training every
8 two years for all child care staff.

9 And we at the PDI are positioned to
10 implement several pieces of
11 infrastructure including online life
12 training calendars, a trainers'
13 registry, a professional development
14 record that individuals can use so
15 they are more deliberate and
16 intentional in their quest for
17 professional development, among the
18 other things to support these changes
19 that you propose.

20 New York City has long been
21 admired by other cities and states
22 throughout the country for its
23 regulations regarding the
24 certification of preschool teachers
25 in child care settings. These new

1
2 changes that you proposed will serve
3 all of the city's children that are
4 in child care, and will go a
5 long way to ensure the health, safety
6 and education of our youngest
7 citizens. Thank you.

8 DR. FRIEDEN: Thank you. Ellen
9 Jaffe? Is Ellen Jaffe here? Jesse
10 Colchamiro?

11 MR. COLCHAMIRO: Good morning.
12 I'm Jesse Colchamiro, the education
13 director for Safe Horizon Children
14 Centers.

15 Thank you for this opportunity to
16 respond to the proposed changes to
17 Article 47 of the Health Code. Safe
18 Horizon is the nation's leading
19 nonprofit victim assistance, advocacy
20 and violence prevention organization.
21 The mission of Safe Horizon is to
22 provide support, prevent violence,
23 and promote justice for victims of
24 crime and abuse, their families and
25 their communities.

1
2 We at Safe Horizons support
3 several of the proposed changes and
4 hope that the process of reviewing
5 and changing Article 47 will continue
6 to evolve, as increased knowledge of
7 best practices emerges to protect and
8 safeguard the children of our city.

9 We especially approve of the
10 following additions to the DOHMH
11 requirements: The inclusions of NPR
12 programs within Article 47's
13 requirements; the increased
14 child/staff ratios for infants;
15 Removal of infants and toddlers from
16 inclusion in child/toilet ratios;
17 required notification of the
18 Department of serious injuries and/or
19 deaths while in care; requirement
20 that staff be re-screened every two
21 years.

22 In New York State, there was a
23 total of 32 court-based children
24 centers under the supervision and
25 regulation of New York State Unified

1
2 Court System. All of these centers
3 are known collectively as the
4 Children's Centers Program, and are
5 part of the Division of Court
6 Operation, Office of Alternative
7 Dispute Resolution and Court
8 Improvement. The retaining
9 court-based Children's Centers in New
10 York City, all of which are operated
11 by Safe Horizon.

12 Nine of the Safe Horizon
13 court-based Children's Centers are
14 located in court buildings where
15 families are involved in court
16 proceedings. In Richmond County, due
17 to space issues in the family court,
18 the center is located in the
19 Department of Health and Mental
20 Hygiene facility, directly adjacent
21 to the courthouse. Our ten sites
22 collectively served nearly 22,000
23 children in the calendar year 2006,
24 many thousands more than the children
25 served by all of the city's Head

1

2 Start centers during the same time
3 period.

4 Some of the children who use
5 centers are victims of child abuse or
6 other crimes. Some families are
7 embroiled in custody battles. Some
8 families are facing eviction
9 proceedings. Some parents are
10 seeking orders of protection against

11 the child's other parent. Most of
12 our cases are of the emergency
13 nature, where the adult or child is
14 seeking protection through the court
15 system.

16 In operating these court-based
17 Children's Centers, Safe Horizon
18 complies with the day care center
19 requirements of the New York City
20 Unified Court System. For many years
21 DOHMH has granted Safe Horizon a
22 waiver that permits the operation of
23 its court-based Children's Centers
24 without requiring it to meet all of
25 the requirements of Article 47 due to

1
2 the unique nature of these programs.

3 Safe Horizon has been complying
4 with many Article 47's requirements
5 and exceeding its requirements
6 whenever possible.

7 The proposed changes to Article
8 47 would create additional
9 requirements with which Safe
10 Horizon's court-based Children's
11 Centers would be unable to comply.

12 Accordingly, we propose that the
13 regulations exempt the court-based
14 Children's Centers from pertinent
15 Article 47 requirements and remove
16 the administrative burden of the
17 waiver process both for the agency
18 and for the Department.

19 Here are some of the ways in
20 which court-based Children's Centers
21 are unique and different. In terms
22 of confidentiality and availability,
23 the fact that a particular child is
24 in the court building must be kept as
25 confidential as possible. The

1
2 court -- UCS regulations prohibits
3 children from leaving the classroom
4 unless signed out. Children who
5 might enter or leave our program at
6 any time during the day, must be
7 available to participate in court
8 proceedings when called. These
9 issues combined prevent us from
10 complying with the regulations
11 regarding both outdoor play and
12 consistent scheduling.

13 We serve a change in population.
14 The overwhelming majority of children
15 are seen once, for one day or less.
16 This prevents us from complying with
17 daily inspections of children by
18 staff who knows the children;
19 reporting of enrolled children's
20 illness and absences; maintaining
21 ongoing health records and more.

22 The emergency nature of our
23 enrollment: Because most of the
24 registering families don't know of
25 our existence prior to coming to the

1
2 courts, we cannot comply with
3 regulations regarding actions prior
4 to enrollment. These include prior
5 child/parent orientation, prior
6 physical exams and immunizations,
7 knowledge of child's communicable
8 disease, unless we observe that a
9 child appears ill, and providing
10 nutritional guidance to parents
11 before food is sent with the children
12 and more.

13 Our -- the difference in
14 supervisory and staffing levels: Our
15 programs are supervised by an
16 education director who is not always
17 on site. However, all sites have a
18 site director with credentials such
19 as a social worker. Additional
20 oversight is provided by court clerks
21 and court officers who are always
22 available for emergencies, along with
23 other levels of supervision not
24 usually available to stand-alone
25 centers. Our group teachers have at

1

2 least the bachelor's degree.

3 The mandated age range from birth

4 through age 12: Due to staffing

5 levels and siblings preferences, we

6 are often required to mix ages within

7 one group.

8 Just a couple more.

9 The location in courts and

10 maintenance provided on state or city

11 level preclude us from knowing when

12 pesticides will be applied. Due to

13 the emergency nature of most

14 enrollments, we can't notify

15 parents.

16 And the person who enrolls a

17 child is often not a legal guardian.

18 A babysitter who has a case before

19 the Court can bring the children to

20 the court-based Center. We may not

21 know the child's legal name or

22 address, yet according to the court

23 rules, we must take the child.

24 DR. FRIEDEN: Thank you very

25 much. Our last preregistered

1
2 individual, and then we'll go back to
3 the people who weren't here when
4 their names were called earlier.
5 Barry Klein from Assemblyman Jonathan
6 Bing's office?

7 MR. KLEIN: Thank you very much.
8 My name is Barry Klein. I'll just
9 read Assemblyman Bing's testimony
10 into the record.

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

21 The restructuring of Article 47
22 of the New York City Health Code is
23 long overdue, and I applaud the
24 Department of Health for its
25 continued efforts to make child care

1
2 centers safer and better operated. I
3 must, however, express some concerns
4 that have been related to me by my
5 constituents to ensure that they are
6 duly considered by the Department.

7 I'm concerned that at a time in
8 our city when we should be doing our
9 best to encourage more child care
10 facilities to open, some of the
11 proposed regulations would have the
12 opposite effect of causing existing,
13 well-run facilities to close. While
14 I can appreciate the desire to raise
15 the qualifications of teaching staff
16 and lowering staff to child ratios,
17 I'm concerned that this will lead to
18 a significant increase in expenses
19 for child care centers and make it
20 impossible for a number of them to
21 continue to operate.

22 In addition, the blanket
23 prohibition against swimming and
24 aquatic activities appears to be
25 overbroad. I certainly understand

1
2 and support the desire to shield our
3 children from potentially dangerous
4 situations, but this general
5 prohibition without any flexibility
6 for exceptions is problematic.
7 Certain facilities, such as the
8 Vanderbilt YMCA and the 92nd Street
9 YMHA in my district, have long
10 utilized their access to swimming
11 pools to safely introduce children to
12 swimming and exercise. This early
13 access can be instrumental in not
14 only ensuring a child's comfort with
15 the water, but also in providing her
16 with potentially life-saving skills
17 in the event she faces an emergency
18 situation in the water. A better
19 option for the Department would be to
20 promulgate certain safety
21 requirements for child care
22 facilities without prohibiting
23 swimming and aquatic activities
24 entirely.

25 In conclusion, I am pleased that

1
2 the Department has seen fit to update
3 the regulations and hope that my
4 comments today lead to a fine-tuning
5 of the proposed changes to Article
6 47.

7 Thank you for your consideration.

8 DR. FRIEDEN: Thank you. Now,
9 we'll go back to the individuals
10 whose names we called and who were
11 not here at the time.

12 Dr. Frieda Spivack? Is

13 Dr. Spivack here?

14 Betty Holcomb? Is Betty Holcomb
15 here?

16 MS. HOLCOMB: Good morning. I am
17 policy director at Child Care, Inc.
18 I think many of you are familiar with
19 our organization. It has about 25
20 years' experience as a resource and
21 referral agency. And we offer
22 technical assistance to early
23 childhood programs around the city.
24 We also serve as advocates and try to
25 promote best practices and best

1
2 health and safety. We do a lot of
3 training on health and safety around
4 the city. I want to make three broad
5 statements about the revisions, which
6 we heartily support. We're really
7 glad that the Department has taken up
8 this process, and we were delighted
9 with the way the process was
10 conducted. We think that it made
11 some suggestions in manners that
12 were realistic and moved the quality
13 of services ahead.

14 First and foremost we want to
15 applaud the Department for the
16 changes and regulations for the
17 infant and toddler programs as an
18 important first step in lifting the
19 quality of care in center-based early
20 childhood programs across the city.
21 We see this as a very important first
22 step in lifting quality. We urge the
23 Board to continue to improve the
24 regulatory requirements in the years
25 to come. We think these first

1
2 changes were realistic and affordable
3 and achievable, that we think it's
4 just a first step in where the city
5 needs to go.

6 Second, we also strongly support
7 the changes in status of no permit
8 requirement programs. We believe
9 it's important to require all
10 programs to meet basic health and
11 safety requirements. We see this as
12 another step that was long overdue in
13 assuring that all children are safe
14 and secure and that parents can rest
15 easy when they drop their children
16 off every day.

17 Third, we hope the Board of
18 Health will take a second look at the
19 issue of inclusion for children of
20 special needs. We know there's a
21 great concern in the early childhood
22 community about -- the revisions did
23 not address the issues of children
24 with special needs so far. We hope
25 the Board will revisit this issue and

1
2 make sure these concerns are
3 considered and addressed as the
4 revisions go forward.

5 I've given you some testimony
6 here about why we support the
7 improved training requirements in the
8 infant and toddler rooms; we
9 presented this to you before, so I'm
10 not going to take more time this
11 morning, since you've got such a long
12 list. But basically we believe that
13 whatever small cost is associated
14 with these improvements is going to
15 be well worth the payback that we get
16 in terms of children's healthy
17 development, particularly in the
18 ability of staff who's been trained
19 in child development to support -- to
20 spot developmental delays of infants
21 and toddlers, and to get them early
22 intervention so they can stay on
23 track and those problems don't become
24 more serious, more extensive and more
25 debilitating in the years to come.

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Thank you.

DR. FRIEDEN: Thank you.

Cecilia Scott-Croff? Is Cecilia
Scott-Croff here?

Catherine Hickey?

DR. HICKEY: Commissioner,
Mr. Cresciullo. Members of the
Board, my apologizes for not being on
time this morning. I thought two and
a half hours was sufficient to drive
25 miles. But evidently, three hours
would have been more prudent on my
part.

I'm Dr. Catherine Hickey. I'm
secretary for education and
superintendent of schools for the
Roman Catholic Archdiocese of
New York. I also chair the committee
of religious and independent school
officials in the city of New York.
And I am so pleased to see so many of
my colleagues from the religious
schools here today. I am also at
this point representing the

1
2 educational community of the Diocese
3 of Brooklyn. My colleagues from the
4 Diocese of Brooklyn were not able to
5 be here today, so they asked me to
6 speak for them as well, and I'm very
7 happy to do that.

8 The Archdiocese of New York
9 comprises seven New York State --
10 upstate counties and three boroughs
11 of New York City. We represent
12 Manhattan, Staten Island and the
13 Bronx, as far as the Catholic Church
14 is concerned. In the whole
15 archdiocese we educate 106,000
16 children in 288 schools. We're the
17 largest system of Catholic schools in
18 the United States. Our Catholic
19 school system the foundation of the
20 New York City public schools by six
21 years, and we actually predate the
22 establishment of the Archdiocese of
23 New York by eight years.

24 We educate 6,827 children in 182
25 pre-kindergartens. 3,900-plus of

1
2 those students are educated within
3 the City of New York and 115
4 pre-kindergartens. Pre-kindergarten
5 is an integral part of our
6 educational program.

7 Our three- and four-year-old
8 students receive the finest in
9 religious and secular education, as
10 do the students in all of our
11 grades. I come before you today to
12 assert that we are quite distressed
13 that the proposed Article 47
14 regulations discriminate against our
15 religious programs and seek to
16 redefine the superior education that
17 these children receive as child
18 care.

19 The proposed Article 47
20 regulations see fit to accord the
21 public schools in the New York City
22 Department of Education the status of
23 schools, but no such values has been
24 afforded to the religious schools in
25 New York City. We have been

1
2 administering pre-kindergartners for
3 generations. And the quality of our
4 pre-kindergarten education speaks for
5 itself, and that the parents of
6 almost 7,000 children trust us, and
7 continue to trust us with their
8 children's religious and secular
9 educational formation.

10 We do not oppose the Board of
11 Health's oversight in matters of health
12 and safety. Of course, we have
13 always acknowledged the right and
14 duty of this esteemed body to ensure
15 the health and welfare of children.
16 We regularly cooperate with the
17 Department of Health inspections, as
18 well as inspections from the
19 New York City Fire Department and the
20 New York City Department of
21 Buildings. We recognize this value
22 as you continue to safeguard
23 children.

24 However, the thought that this
25 body would begin to regulate our

1
2 educational programs and dictate who
3 we may hire, our curriculum and other
4 educational details that impact on
5 our programs is very distressing.

6 Catholic church mandates that the
7 bishop of the diocese alone ensures
8 the quality of education that takes
9 place within the Catholic schools in
10 that diocese. Under no circumstances
11 is the bishop permitted to yield that
12 responsibility to a civil authority.

13 This is a matter of religious
14 principle. The United States Supreme
15 Court and the State of New York have
16 long recognized the right of
17 religious and independent schools to
18 exist unfettered and without
19 government entanglement. I now ask
20 the question why? Why now?

21 We deeply regret any tragic
22 events that have occurred in child
23 care programs in the city. We mourn
24 a young life lost. However, I must
25 ask again, why, after 208 years of

1
2 providing quality education is the
3 City of New York seeking to regulate
4 the educational programs of our
5 religious schools. There is no
6 connection between the horrors that
7 may have occurred in child care
8 programs and the quality education
9 that children receive in the
10 pre-kindergartens of the Archdiocese
11 of New York and in the
12 pre-kindergartens of those run by
13 other religious denominations.

14 We view the proposed Article 47
15 regulations as religious
16 discrimination that tries to impose
17 state control where none has
18 previously existed.

19 One shake.

20 The proposed regulations break
21 the barriers of the separation of
22 church and state and must be amended
23 to repair this breach. I urge you to
24 continue the dialogue with the
25 religious bodies of the City. And I

1
2 thank you, quite honestly, for news
3 we got late yesterday afternoon, that
4 the vote on this issue is going to be
5 postponed from June to September.

6 So we thank you very much for
7 that, and realize that we plan to
8 continue the quality education which
9 our religious schools provide and
10 have done for so many years and we do
11 so well. But at the same time we
12 work together to ensure the health
13 and safety of the children of the
14 City of New York. Thank you very
15 much.

16 DR. FRIEDEN: Thank you. Lana
17 Broitman? Is Lana Broitman here?

18 Carol Merryshapiro? Is Carol
19 Merryshapiro here?

20 Paul Averbach? Is Paul Averbach
21 here?

22 Ellen Jaffe? Is Ellen Jaffe
23 here?

24 That concludes our preregistered
25 speakers. We'll now go to

1
2 individuals who are registering here.

3 I do want to make the comment
4 that all public comments will be
5 posted on the web site as well as the
6 transcript of this public hearing.

7 So that is -- this is all a matter of
8 public record.

9 So we have one speaker signed up
10 so far; is that right? Rabbi David
11 Neederman. And if there are other
12 people who want to speak, please sign
13 up with Rena Bryant.

14 MR. NEEDERMAN: Good morning,
15 Commissioner and Board Members and
16 staff. I'm testifying to -- today to
17 express our strong opposition to the
18 proposed Article 47 and regulations
19 as they relate to the change in the
20 NPR status for religious schools.

21 I'm the president of the
22 United -- UJO Williamsburg. The UJO
23 represents a network of Hasidic
24 schools. It is a network with 15,000
25 students, approximate ages three to

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18. We share your comment and concern to safeguard the children; it's very dear to our heart as well. However, we have to point out that the enactment of the Article 47 as currently proposed will devastate our community.

Most important, the two groups, children and parents that Article 47 is meant to benefit, will actually suffer the most. We have serious concerns with many of the regulations in Article 47.

However, most important, it will be impossible for Yeshiva schools to comply with the Article 47 regulations regarding maximum group size per school room, child staff ratio, educational credentialing system for staff for the four reasons: funding, physical premises, faculty and for religious reasons.

It would take millions of dollars to implement these regulations. If

1
2 the child-staff ratio and group-size
3 requirements are to be maintained,
4 the initial facilities will have to
5 be located in our community, which is
6 nearly impossible.

7 The Hasidic community of
8 Williamsburg is unfortunately one of
9 New York City's poorest communities.

10 56 percent of all families live at
11 income levels below the poverty
12 level. And 80 percent with income
13 levels below 200 percent of the
14 poverty levels. All children -- all
15 children attend Yeshiva schools.

16 However, mostly through scholarship
17 or financial aid. Due to the poverty
18 in the community, the Yeshivas will
19 not be able to raise additional
20 tuition to cover the millions of
21 dollars that it would be required to
22 comply. In no way can families
23 afford to pay more. But worst of all
24 is, that when schools will have, God
25 forbid, to close down the nursing

1
2 pre-K programs, the big question is
3 and will be, what is going to happen
4 to these children? And I want to
5 say, not only are the children at
6 risk.

7 I will not exaggerate. If I will
8 say that -- as proposed the current
9 Article 47 will cause the delicate
10 social family system structure of the
11 community to collapse.

12 I'll finish up and say, we are
13 thankful to you, Commissioner, for
14 extending the time for comment.
15 However, we must have at least nine
16 to seven months to study what impact
17 that is going to have on our
18 communities, and how we can work with
19 you to improve, if you will, and if
20 you'll point it out to us -- the
21 safety issues we are ready to comply
22 with. It's said that if you want to
23 change the state as a one lot, 20 by
24 100, you have to go through the rule
25 of process. And such an impact of

1
2 change that it is going to have on
3 our communities can be done so, so
4 fast.

5 So I thank you. I hope we can
6 still -- we want to work with you,
7 and we can still work with you to
8 extend the comment period time.

9 DR. FRIEDEN: Thank you.

10 Next preregistered at the time is
11 Council Member, David Yasshy.

12 MR. YASSHY: Thank you. I
13 commend you for the brief waiting
14 period that you've -- thank you.

15 My name is David Yasshy. I
16 represent the 33rd Counsel District
17 in Brooklyn. I'm here to testify in
18 opposition to these proposed
19 regulations. I'll just say at the
20 outset, my hope is that you will
21 withdraw them and start back at the
22 drawing board and work together with
23 the religious school community to
24 craft something and come forward with
25 that.

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I believe that these regulations,
not just entrench on but really do
pass in a territory where it violates
separation of church and state. We
have to be, as a government,
extraordinarily careful,
extraordinarily careful in regulating
religious institutions seeking to
educate the young people of their
faiths. And that is what this
regulation will do.

There are certain, you know,
parts of this -- I -- of course, we
want to make sure that health and
safety are protected. And regulating
the presence of, you know, toxins in
the physical environment I think is
appropriately within the purview of
the health department; although even
there, I would suggest that the
process by which the regulations came
forward does, I think, need
improvement. And the best course
would be to go back, start working

1
2 with the religious school community
3 to really understand what the
4 conditions are out there and what
5 purpose regulation can serve.

6 I mean, the health record of
7 religious schools have been superb.
8 And ordinarily I understand that --
9 you know, I've heard the argument,
10 I've probably even made the argument,

11 Well, we shouldn't wait until
12 something happens in order to
13 regulate. But when you're talking
14 about church and state, the
15 presumption really goes the other way
16 rather than the presumption being
17 let's not wait, you know, let's act
18 preemptively. I think the
19 presumption should be we have to be
20 certain that regulation is necessary
21 before we as a government proceed.

22 But even, you know, with
23 the -- even though I acknowledge that
24 the presence of physical toxins may
25 merit regulation, I cannot see any

1
2 circumstance that would merit
3 regulation of the pedagogical
4 practices, which is really what it is
5 if you're talking about teacher
6 certification, if you're talking
7 about the number of teachers. That
8 really gets into regulating pedagogy.
9 And that I do not believe should be
10 the problems of the Health
11 Department.

12
13 So I would respectfully
14 ask the Department, ask the Board to
15 withdraw these regulations, start
16 over with a collaborative process
17 with the religious school community
18 and work from there.

19 If there are questions, I'd --

20 DR. FRIEDEN: This is actually
21 just a public hearing; it's not a
22 time for interchange.

23 Are there any individuals who
24 wish to testify at this time?

25 All right. So, basically, I need

1
2 to excuse myself at this point, and
3 anyone else can. But the record
4 stays open until noon in case anyone
5 shows up, because the public hearing
6 was advertised from 10:00 until
7 noon. And so in case anybody else
8 comes, until noon, there will be
9 individuals here to listen to what
10 they say.

11 All comments will be considered.

12 As I mentioned earlier, we have
13 already stated that we will not be
14 going to the Board of Health in
15 June. We will be convening
16 additional meetings. We have
17 undertaken a long process of
18 consultation. We'll continue that
19 process as we move forward.

20 I need to step out now, but the
21 record remains open until noon.

22 Thank you all very much for
23 taking the time and interest for
24 comments.

25 MR. MERRILL: Okay. We're going

1
2 to resume now. We have two speakers
3 signed up.

4 Jay Miller? Okay.

5 You'll have five minutes. I'll
6 give you a two-minute warning and a
7 one-minute warning.

8 MS. MILLER: Okay. Thank you.

9 Good morning. I just want to say
10 thank you so much for giving us this
11 opportunity. My name is Jay Miller.
12 I'm from Bishop Sexton Head Start out
13 in Bed-Sty, Brooklyn.

14 One of the changes that we're
15 really concerned with is in reference
16 to the training for the staff. The
17 proposed 30 hour training requirement
18 for New York City educational staff
19 and child care centers is unnecessary
20 and inappropriate. These staff
21 members are already on a career path
22 towards certification, as currently
23 required in our Article 47. There
24 should not be a substitution for
25 workshops and training for college

1
2 credits. The cost and time invested
3 will leave the staff without college
4 credits, degrees, certifications, and
5 furthermore programs will need to
6 hire subs in place of teaching staff
7 who would have to attend these
8 workshops.

9 New York City already currently
10 requires specific courses for
11 teaching staff who are on study plans
12 that include the following:
13 philosophical, sociological history,
14 foundations of education, child
15 development, educational development
16 in philosophy; three instructional
17 methods and material courses, one on
18 which must be pre-K and kindergarten;
19 parent education and community
20 relations, a parent/child sociology
21 and family, and et cetera. They are
22 also required to do 300-clock hours
23 of student teaching with children,
24 and that leaves 150 hours with the
25 six-year-olds.

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Another issue that we were talking about in reference to the educational directors maintaining the staff and the children's records, I'm not sure if you're familiar, but within Head Start, we have a social service department. And our social service department handles the intake of the children, thereby they keep all the children's medicals. And the administrative -- and we have also an administrative department within our programs, and they would handle all the staff medicals and the volunteer medicals.

And our -- main concern also, is we're just wondering why we weren't brought to the table in reference to helping to formulizing some new programs and procedures for our programs, since we are the ones that work with our children and families. And I think we will be better suited to make the

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final decision.

So we just hope that we'll be able to be brought to the table with the second commission that's going to be working on that for September in June, in revitalizing our Article 47. Thank you.

MS. ROBINSON: Can you give us your telephone number --

MS. MILLER: Sure.

MS. ROBINSON: -- for contact information?

Why don't you give it to Mr. Cresciullo.

All right. Next speaker, Dana Yeary?

I'll give you five minutes. You get a two-minute and one-minute warning.

MS. YEARY: I won't even need that.

MR. MERRILL: Okay. I like to hear that.

MS. YEARY: Good morning. My

1
2 name is Dana Yeary. I'm from Energy
3 Newsome Head Start up in Harlem.
4 We'd just like to say at Newsome we
5 do support the proposed amendments to
6 Article 47. We believe that the
7 revisions will ensure that the
8 children and families that we serve
9 will receive the best services
10 possible.

11 We would agree with Amendment
12 47.13 in regards to each site
13 requiring a separate educational
14 director. This amendment will ensure
15 that programs with more than one site
16 will have the oversight that is
17 required to bring high standard of
18 service. Our only concern -- well,
19 our main concern is the funding for
20 this position. Head Start funding
21 has decreased steadily in the past
22 few years. We are expected to
23 provide the same level of services
24 with fewer resources. We would like
25 to know how this added position would

1
2 be factored into our already strained
3 budgets. Will we be granted a grace
4 period to fill this new role if the
5 grantee does not supply us with the
6 funds immediately. And also on that
7 note, we would like to encourage you
8 to discuss many of these added
9 changes with the Administration for
10 Children Services, which is one of
11 the largest grantee agencies for Head
12 Starts in the city. They oversee 77
13 Head Starts. Thank you.

14 MS. ROBINSON: Are there any
15 individuals who would like to speak
16 who have not signed up?

17 MR. MERRILL: Okay.

18 MS. ROBINSON: Yes or no? Are
19 you getting up to speak?

20 MR. MERRILL: No. That was a no;
21 shake of the head.

22 MS. ROBINSON: Okay.

23 So we'll stay until 12 o'clock.

24 We're going to adjourn until 12

25 o'clock, and then we'll be back here

1
2 to close the hearing.

3 (Meeting adjourned.)

4 MR. MERRILL: 11:50, we have
5 another speaker. Mag Enriques, who
6 I'm sorry is from --

7 MS. ROBINSON: Could you please
8 keep it down so the reporter can
9 hear.

10 MR. MERRILL: You have five
11 minutes, Ms. Enriques. And I'll give
12 you a two-minute warning and a
13 one-minute warning. Go ahead.

14 MS. ENRIQUES: My name is Mag
15 Enriques. My center is in the Bronx.
16 We have five classrooms and licensed
17 for 115 children.

18 I'm very disturbed, and I have
19 other directors with the same
20 problem, that we were in mid-process
21 to re-license, my license expired
22 March 17th. I know of another of my
23 director's who's -- March 26.

24 In the process and just this
25 cutoff is similar to the bussing

1
2 business. And now I think we should
3 ask for, and consideration should be
4 given for grandfathering in those
5 centers whose license were expiring
6 and in the process of expiring or
7 already expired.

8 We heard downstairs that at the
9 meeting we were at, that under the
10 Article 47, enforcement is basically
11 what it is, that all of the centers
12 are out of compliance. We do not
13 have certified teachers. Not every
14 classroom has a certified teacher.
15 How is this going to be handled? We
16 were basically told, essentially, You
17 can't go to the bathroom. You can't
18 have lunch. You can't have a sick
19 day. You can't take a vacation
20 because there must be a certified
21 person covering the child/teacher
22 ratio. Directors are supposed to
23 fill in. But already -- I don't have
24 an assistant director. It's a small
25 -- not large enough for an assistant

1
2 director. For me to go into the
3 classroom on top of all the ACS
4 requirements and doing recruiting and
5 paperwork for ACS with the families,
6 and doing their applications and
7 getting the documentation and then
8 submitting it to ACS for our families
9 has really become very, very
10 burdensome. And we need some relief
11 and some consideration. All of this
12 happened, literally, overnight.
13 There seems to have been no
14 consultation with the directors of
15 the centers that were going to be
16 affected with ACS. And now we feel
17 that we are left in a lurch. And it
18 seems that day care, private day
19 care, and we're talking about
20 nonprofit organizations, it seems
21 like it's being phased out of
22 existence by burdensome regulations.
23 And what do we tell these
24 parents? We don't have a certified
25 person on the staff. We can't -- we

1
2 were told that if you have over the
3 child ratio -- when the day that they
4 come, if you have five over,
5 immediately those five have to be
6 sent home. What are we supposed to
7 do? We're open from 8 a.m. to
8 6 p.m. Teachers are only, by their
9 unions, scheduled to work 38 hours a
10 week. And if you have a group
11 teacher who's doing her seven and a
12 half hours for the day and leaves,
13 they're saying now that the assistant
14 teacher, if they are not certified,
15 which they aren't, and certainly
16 teacher aides aren't, that they can't
17 cover the room. We have to bring
18 another teacher from another room or
19 combined children in rooms, which
20 again affects the teacher/child
21 ratio, because if we are combining
22 kids, there's more kids per square
23 foot of how many people and children
24 should be in a particular room. This
25 is ridiculous. And we'd like some

1
2 relief.

3 MR. MERRILL: The period of
4 comment has been extended on Article
5 47 through July 30th. So if anyone
6 wants to submit written comments you
7 can do that through July 30th.

8 THE PUBLIC: And who may they be
9 written to?

10 MR. MERRILL: The same address
11 that's on the front of the Notice of
12 Intention.

13 MS. ROBINSON: We'll give you
14 copies of the Notice of Intention,
15 and it will be the same address as
16 they are now.

17 MR. MERRILL: Is Ms. Jaffe
18 ready?

19 This is probably going to be our
20 last speaker since it's 11:56, it's
21 Ms. Jaffe.

22 Ellen Jaffe of the Early Child
23 Care Consulting, you have five
24 minutes. And I'll give you a
25 two-minute warning and one-minute

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warning.

MS. JAFFE: Okay. Just let me
get out my presentation. Okay.

First, 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'm Ellen Hofsetter 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
probably won't get it all in in the
five minutes, so I'm going to try to
summarize and leave you with the
papers.

There were a lot of positives and

1
2 a lot of negatives in the proposed
3 code. There are at least ten
4 wonderful new safeguards in the
5 proposed Article 47. And some others
6 that could be made wonderful if we
7 word it appropriately. And there are
8 some things that should be either
9 left out entirely or drastically
10 changed. Some of the areas may not
11 rise to the level of major concern,
12 but can be the thorn in the hide of
13 the program sincerely providing the
14 best they can for the children in
15 their care and being hassled by items
16 in this code. That's not what the
17 code is for. And I know you didn't
18 mean it to come out this way. And I
19 also know there's often a wide gap
20 between what people mean and what the
21 code actually says. Feedback from
22 this hearing will enable you to
23 rethink some of these provisions and
24 strengthen the code. I hope my
25 efforts today are contributing to

1
2 this outcome.

3 There's a lot of positives and I
4 have a long list. And if you're
5 interested, only a few minutes. I'm
6 now going to read them. And these
7 are positives that are welcomed with
8 concerns.

9 One is specifying a daily health
10 check be performed by someone who
11 knows the child. It's great, but
12 it's not possible when the child has
13 just entered the program, or if the
14 first staff member to arrive is
15 relatively new on the job. So it
16 just needs a little tweaking.

17 Requiring teachers of infants and
18 toddlers to have some training in
19 child development is fantastic. And
20 I suggest you require the same
21 minimal training for assistants in
22 infants' and toddlers' rooms, who
23 often function as lead teachers at
24 various times of the day and when the
25 teacher is out or on vacation.

1
2 I love that you set a time frame
3 for newly hired teachers to complete
4 their certification requirements. It
5 was not there in the previous code.
6 But I'm not sure that time line is
7 realistic for people who start out
8 with an AA, and only have seven years
9 to complete the entire BA and the
10 master's. It took me three years to
11 get my master's part-time when I was
12 working, just for the master's. And
13 are you going to extend the time
14 frame for those who are already on
15 study plans who have already been
16 there for longer?

17 I love the requirement of 30
18 hours of in-service training every
19 two years. The state has only eight
20 or nine subjects, and you've got 14.
21 And during the training in depth,
22 it's not going to be possible for
23 that many subjects; so I suggest you
24 have a two-tier training with some of
25 the important ones being in the first

1
2 two years and some of the other ones
3 coming later.

4 Requiring programs to provide
5 orientation to parents and children
6 with specifics of the orientation.
7 There is no way a parent coming into
8 a program wants to see in their
9 packet a Lost Child Plan. We don't
10 want to put those kinds of red flags
11 in front of parents. It's just not
12 fair. Most programs don't ever lose
13 children. So do something with
14 words.

15 There are other requirements of
16 the proposed Article that need
17 rethinking or removal from the code
18 or just rewording. Like the use of
19 pillows defined as an imminent health
20 hazard. Commonly, in programs for
21 disabled children, pillows are used
22 to help prop children up. All
23 right. Let me just go to some of the
24 other ones.

25 There are some words or phrases

1
2 that just -- nobody can understand.
3 Food from an unknown or unapproved
4 source; re-serving food that was
5 previously served. What's a
6 rodent-proof container? What does
7 the word "program" mean in the
8 context, "required staff training or
9 program which occurred after the
10 submission of the previous
11 application." That's in 47.09(c).
12 Activity specific training for
13 assigned activities; we don't know
14 what that means. A lightning plan in
15 a parent and child orientation. "Any
16 other free-standing or attached
17 structures." What is the definition
18 of "full day care?" This is really
19 critical: Five, six, eight, ten
20 hours per day? This is important for
21 the related definitions of rest time
22 and physical activity. And what is a
23 "structured and guided physical
24 activity?" Coverage for an
25 educational director in his/her

1
2 absence is newly limited to a group
3 teacher. That should really include
4 anybody who is on staff who's
5 certified. For example, an assistant
6 director, a therapist who has
7 teaching certification --

8 MR. MERRILL: Five minutes; I'm
9 going to ask you to wrap up.

10 MS. JAFFE: Okay.

11 MR. MERRILL: You can submit your
12 written comment and also the
13 commentary --

14 MS. JAFFE: Okay. And I'm mostly
15 concerned that the state education
16 department that funds programs for
17 children with disabilities does not
18 allow programs to provide a full hour
19 for nap or rest; so I suggest that
20 you have some kind of a joint
21 committee with them, and come up with
22 some wording that will help
23 children.

24 I hope you accept this feedback
25 in the spirit intended, to

1
2 collaborate on changes to make
3 Article 47 provide the safest and
4 best possible conditions for young
5 children of our wonderful city.

6 Thank you again for this
7 opportunity,.

8 MR. MERRILL: Thank you.

9 Right now it's 12:03, so we're
10 going to close the meeting.

11 Is there anyone else who wants to
12 speak? Okay.

13 So we're going to close the
14 public comments -- the public comment
15 hearing portion. But as the
16 Commissioner mentioned earlier, the
17 period the people can submit written
18 comments has been extended to --
19 through July 30th. So if anyone has
20 written comments, you can submit them
21 by then. They will be posted on
22 the Internet, just as they are sent
23 to us; as today's hearing --
24 testimony will be on the Internet.
25 The resolution will be put over by

1 the Board of Health until September
2 to allow those comments to be made.

3 So thank you, and we're going to
4 adjourn now. Thank you.

5 (Time noted: 12:03 p.m.)

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1 C E R T I F I C A T E

2 STATE OF NEW YORK)

3 : ss

4 COUNTY OF NEW YORK)

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6 I, MICHELLE COX, a Notary Public
7 within and for the State of New York, do
8 hereby certify that the within is a true
9 and accurate transcript of the
10 proceedings taken on April 19th, 2007.

11 IN WITNESS WHEREOF, I have hereunto
12 set my hand this 7st day of May 2007.

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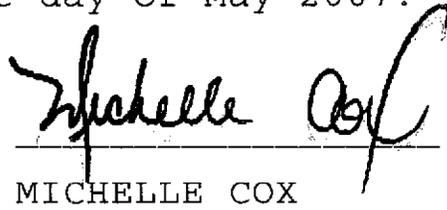
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MICHELLE COX