

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received formal comments from one social services district and a joint letter from both the chairperson of the Administrative Regulations Review Commission and the chairperson of the Task Force on New Americans of the New York State Assembly.

1) One comment related to the requirement that in all foster care placement cases, information and documents in the Uniform Case Record (UCR) must include among other items, documentation of immigration status. Concern was raised that this could be interpreted to include documentation of the immigration status of family members other than the foster child.

Response: OCFS has revised the language to clarify that the requirement for documentation of immigration status applies only to the foster child.

This is a technical, non-substantive change to the regulations.

2) One comment related to the standard for mandated preventive services, as statutorily defined in 409-a of the Social Services Law (SSL), "...that the child is at risk of placement into foster care." OCFS had added the qualifier "serious" to modify "risk." The commenter was concerned that adding this qualifier might have been done in order to reduce the provision of mandated preventive services.

Response: OCFS did not intend to go beyond the current statutory framework and deleted the reference to "serious" but revised the language to more accurately reflect the applicable statutory provisions to avoid any confusion.

This is a technical, non-substantive change to the regulations.

3) One comment questioned the meaning of the definition of the new program choice “Non-LDSS Custody Relative/Resource Placement”, as to whether it related to both court ordered direct placements with a relative/resource and non-court ordered situations where a child resides with a relative. The commenter was concerned about the use of the term “placed” for both these situations. In neither case does the social services district have custody of the child.

Response: OCFS believes that the definition of the new program choice is sufficiently clear. It applies to both court ordered direct placements and non-court ordered situations consistent with section 371.12 of the SSL, which defines the term “place out” to mean the arranging of “free care of a child in a family”. Explanatory materials have been provided to social services districts and voluntary authorized agencies, including in an OCFS administrative directive, 05-OCFS ADM-2.

Accordingly, the proposed regulations were not revised.

4) One commenter asked why “certified” was added to the requirement to obtain copies of the foster child’s birth certificate, as this is only needed for termination of parental rights (TPR) and adoptions.

Response: OCFS has a strong preference for the obtaining of certified copies of a foster child’s birth certificate as early as possible when a child comes into foster care so there is not a delay in a subsequent TPR or adoption proceedings. However, because it is not required in all cases, the word “certified” has been deleted from the final regulation. This change in no way precludes social services district staff from securing certified birth certificates on all foster children.

This is a technical, non-substantive change to the regulations.

5) One commenter asked for clarification of the term “alternative placement setting”, as that term relates to what must be documented in progress notes for this population and to clarify that certain of the documentation requirements only relate to children in foster care, i.e., in the custody of the commissioner of a social services district.

Response: OCFS has clarified in the final regulation that this section relates to “children who are not residing with a parent and who are in foster care or an alternative placement setting...”. This includes situations where the child is in a “Non-DSS Custody-Relative/Resource Placement.” For further clarification, OCFS has added the term “as applicable” in describing the progress notes documentation requirements, as some documentation requirements specifically only relate to foster care cases.

This is a technical, non-substantive change to the regulations.

6) One comment related to the language used to describe what records a former foster child may obtain. Concern was raised about granting access to the “clinical” records of the child’s parents. Questions were raised about whether current statutory provisions authorize access to the “Clinical” records of the child’s parents and whether the regulations provide enough information as to the definition of “social history.”

Response: OCFS has reviewed section 373-a of the SSL that expressly authorizes a foster child to obtain his or her birth parents’ medical history. Since the word “clinical” does not appear, OCFS has removed this term from the final regulation. OCFS has further clarified that educational records referenced in the regulations relate to the former foster child’s educational records.

These are technical, non-substantive changes to the regulations.

OCFS will provide additional guidance to the field about “social histories” in the form of an Informational Letter to assist social services districts and voluntary authorized agencies with implementing this provision.

7) One commenter asked that the regulations be amended to place the responsibility for providing foster care records to the former foster child on the voluntary authorized agency with case planning responsibility.

Response: OCFS feels that that is an issue better addressed through the foster care purchase of services contract between a social services district and a voluntary authorized agency. The social services district, as the case manager, is responsible for meeting the applicable requirements set out in these regulations but may delegate those responsibilities to a voluntary authorized agency. The process will be increasingly simplified by the use of the CONNECTIONS system.

Accordingly, the proposed regulations were not revised.

8) One commenter asked that the regulations be amended to require voluntary authorized agencies that are ceasing operation to give the social services district a plan for the maintenance of foster care records regarding children who had previously been in that agency’s care. The regulations, as proposed, only provided for a plan to OCFS. The commenter additionally wants the social services district to have a role in reviewing the record maintenance plan provided to OCFS.

Response: OCFS feels that that is an issue better addressed through the foster care purchase of services contract between a social services district and a voluntary authorized agency.

Accordingly, the proposed regulations were not revised.

In addition to the formal comments discussed above, OCFS also received some verbal and e-mail questions about various portions of the proposed regulations from staff from some social services districts. Based on these questions, the following additional technical non-substantive changes have been made to clarify the regulations, including conforming language in various other regulatory sections.

- Sections 423.2 and 423.4 regarding preventive cases, section 432.2 regarding child protective cases and section 441.21 regarding foster care cases were amended to conform with the single case planner requirement in section 428.2 (c) of the proposed regulations including clarifying the allowance of caseworkers (other than case planners) to perform required casework contacts under the direction of the case planner;
- Paragraph (2) of subdivision (b) of section 428.3 relating to Plan Amendment variations was repealed, as it is no longer applicable and was inconsistent with the requirements in section 428.3 (b) (1) that all listed items making up the UCR, including the Plan Amendment, be in the form and manner prescribed by OCFS; and
- The newly renumbered paragraph (5) of subdivision (a) of the newly renumbered section 428.10 was revised to cross-reference the expungement standard for preventive only cases as referenced in 18 NYCRR 466.5, and the sealing standard for adoption records consistent with section 114 of the Domestic Relations Law.